

Mariner Life Legal Desk

July 2006

Changes to Transport Canada Policy: Anti-depressants & Crew Medical Certificates

When in 1914 Ernest Shackleton published his renown advertisement for crew to man his transatlantic expedition to Antarctica, he clearly considered, as a prudent master would, the psychological pressures that would beset his crew. “Small wages, bitter cold, long months of complete darkness, constant danger, safe return doubtful”. Shackleton was wise for setting expectations low.

While modern mariners have countless more luxuries of technology, comfort and safety than did Shackleton’s crew, today’s mariners are exposed to a wider and more complex array of stressors, both on and off the job, that can effect their mental well-being. Stressful work environments. Inconsistent income. Long stints at sea. Troubles at home. Discontent with career advancement. Persistent injury. These are all common troubles than can, and do, impact almost every mariner’s happiness.

Everyone experiences times when they are unhappy though, such as for those reasons given above. The feeling of sadness is appropriate and transitory – this is normal. However, when such feelings persist and impair daily life, they may signal an underlying depressive illness. It is the severity and duration of symptoms, plus the presence of other features, that help distinguish this normal sadness from a depressive disorder.

The true difficulty arises though in that, because many of our personal problems do not resolve themselves overnight (divorce, recovery from injury, financial difficulties – all taking months if not years to resolve), mariners and doctors must distinguish between what is unhappiness due to a transitory, albeit lengthy, period of unhappiness and a period where there is a true depressive illness. It is in this grey area, the area between *feeling* depressed and *being* depressed, that “anti-depressants” have come to play a large role in recent years.

In recent decades the evolution and availability of new anti-depressants has lead to these drugs being prescribed by more and more doctors. Prozac, Welbutrin, Effexor, Paxil, Zoloft are common examples. Health Canada reports that in 1995 about 3.0% of the population used anti-depressants. By 1999 this number had doubled and by 2004 it had grown a further 80% - close to 15 million prescriptions per year. A recent study commissioned by Health Canada found that 81% of physician visits for feelings of depression resulted in a recommendation for an anti-depressant. This is not to say prescriptions for anti-depressants are a bad thing, only to say anti-depressants are out there and we must account for them.

This discussion on the prevalence of anti-depressants brings me to the focus of this month's Legal Desk. It involves a client, who with their permission I explain this issue, had their Marine Medical Certificate revoked after Transport Canada conducted a random review of their medical file and discovered the crewman to have been prescribed two common anti-depressants.

A short background on Medical Certificates and medical examinations is appropriate here. The requirement for a Medical Certificate comes from section 63 of the *Medical Regulations* to the *Canada Shipping Act*, which states:

*63. No person shall employ a person as a seafarer to whom this Division applies unless the person produces a valid medical certificate issued under this Division, attesting to the person's fitness*

*(a) to perform the duties for which the person is to be employed; and*

*(b) to make the voyage to be engaged in by the ship.*

The *Medical Regulations* go on to provide that seafarer who *does not have* one of the following disabilities may obtain a Medical Certificate:

- (a) an impairment that could cause an unpredictable loss of consciousness and is not controlled through medication or otherwise;
- (b) a disorder that could prevent the seafarer from reacting effectively while performing duties;
- (c) a condition that could endanger others, taking into account the duration of voyages and the conditions on board ship;
- (d) a condition that is likely to require emergency medical care and is not controlled through medication or otherwise; or
- (e) an active psychiatric disorder, including drug or alcohol dependence or abuse.

On their face, these conditions seem imminently reasonable. Passenger, crew and ship safety are at stake, after all. In the example of my client, they had undergone a full medical examination by Transport Canada in September of 2003 and been given a clean bill of health and an unrestricted Medical Certificate. The tough pill to swallow though came 4 months later when having completed a review of this seaman's medical records, Transport Canada wrote stating: "the Minister has authorized a re-examination of your medical status. The Marine Medical Review Board met on [date] and the following

decision was reached: *You are assessed as unfit*. The Medical Regulations do not permit a seafarer with certain disabilities, including an *active psychiatric condition*, to obtain a medical certificate”.

The documents on which the Medical Review Board decision was made, having been disclosed to my client under the *Access to Information & Privacy Act*, included only one letter from her family doctor that noted the prescription for the two drugs, and cautioned Transport Canada that the doctor saw no reason why the medication would interfere with the seaman’s ability to conduct duties as a crewman. Despite this doctor’s opinion, as well as Transport Canada’s medical examiner’s opinion that the mariner was “fit”, and without any first-hand assessment of the mariner, the Review Board declared the mariner “unfit”.

On its face, the Medical Review Board had *deemed* the seaman to have “an active psychiatric condition” because they had been prescribed anti-depressants. On this finding, having been prescribed anti-depressants, the seaman had their Medical Certificate revoked and lost their livelihood at sea.

The consequences of Transport Canada taking such a position, and applying it uniformly, were profound. If such a policy was pursued consistently by Transport Canada across the country, thousands of mariners could have their Medical Certificates revoked, losing their ability to earn a living at sea, not because they had a depressive illness, but because their doctor prescribed a pill to help them through a divorce or an injury or a family death. The mariner appealed. During preparation for the appeal we encountered at least two mariners who had been required by Transport Canada to discontinue taking an anti-depressant prescribed by their doctor, and wait for six months, in order to qualify for a Medical Certificate.

On appeal of the Medical Review Board’s decision the Appeal Board restored the mariner’s Medical Certificate. The success of the appeal was largely the result of two additional opinions of doctors that stated there was no indication that use of those medications would interfere with the crewman’s ability to fulfill their job duties. However, Transport Canada, having considered the human rights and practical effects of such a policy softened their position on the eve of the Appeal and consented to reinstatement of the mariner’s Medical Certificate.

The appropriateness of Transport Canada’s interpretation of the role anti-depressants play in a mariner’s ability to fulfill their duties, and whether their use requires a finding that a mariner has an “active psychiatric condition” had been criticized. Revisions to the policy and the relevant portions of the *Crewing Regulations* were being considered at the time of the appeal, and are now closer to completion. Amendments to the regulations are expected to take effect later this year.

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