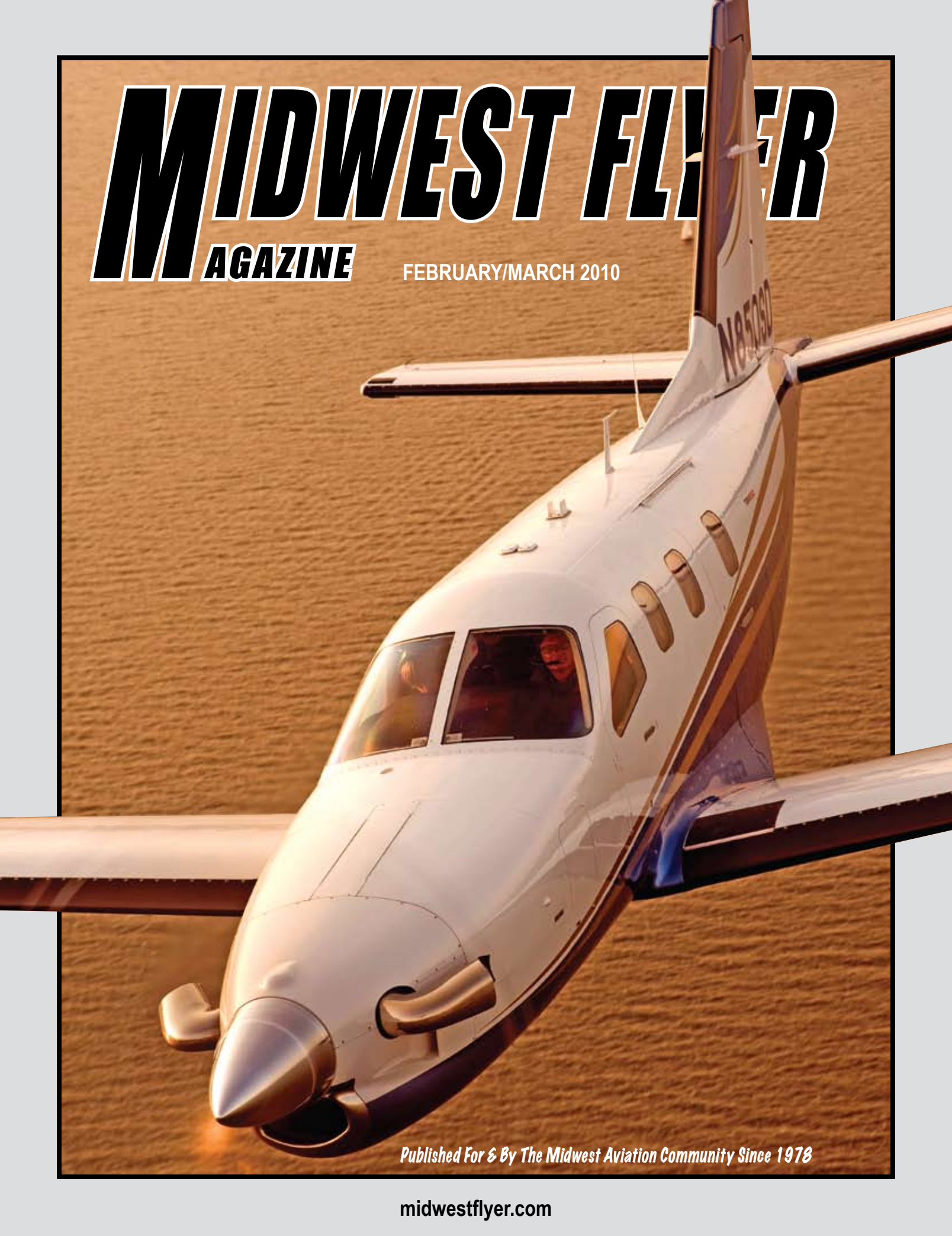


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Commercial Pilot Receives 160-Day Suspension For Altitude Deviation

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The NTSB has affirmed an administrative law judge's ("ALJ") decision to impose a 160-day suspension of a commercial pilot's airman certificate for a 500-foot altitude deviation. In *Administrator v. Saghafi*, the FAA alleged that the airman was flying at flight level (FL) 170 when air traffic control (ATC) instructed him to climb and maintain FL 180. According to the FAA, the airman apparently ascended to FL 180, but then descended to 17,500 feet, which resulted in a loss of separation between the airman's aircraft and another aircraft. The FAA issued an order suspending the airman's commercial pilot certificate for 180 days for violations of FARs 91.123(b) (failure to comply with an ATC instruction) and 91.13(a) (careless and reckless).

The airman appealed the order to the NTSB. After an evidentiary hearing, the ALJ affirmed the FAA's order, but reduced the suspension down to 160 days based upon the airman's completion of additional training. Although the airman had filed a report under the Aviation Safety Reporting Program (ASRP), the ALJ determined that the airman was ineligible for waiver of sanction since the airman had received another ATC violation within the preceding 5 years. The airman then appealed the ALJ's decision to the full NTSB.

On appeal, the airman argued that the ALJ erred in allowing an FAA inspector's opinion that the airman had acted in a careless or reckless manner, because whether he acted in a careless or reckless manner was a legal conclusion about which the inspector was not qualified to testify. He also argued that the inspector's testimony that he "deliberately" deviated from the ATC instruction was incorrect because the airman did not hear the instruction. With respect to sanction, the airman argued that a 160-day suspension was excessive, because it was based on a finding that he acted in a careless or reckless manner. He further argued that it should have been mitigated by the fact that he had a sick passenger on board, that he incorrectly heard the ATC instruction, that he had had no additional violations, and that he had taken affirmative steps to prevent such miscommunication in the future.

In rejecting the airman's appeal, the Board initially observed that the airman had not shown that the ALJ erred by allowing the inspector's opinion that the airman had acted in a careless or reckless manner. It then went on to note that the airman did not appear to dispute that he violated FAR 91.123(b) when he failed to maintain FL 180 and, as a result, that violation supported a violation of FAR 91.13(a)

as a residual violation. Additionally, the Board found that the airman's "admitted act of turning around to assist his sick grandson while encountering turbulence amounts to a violation of § 91.13(a)." As a result, the inspector's testimony, even if in error, was not dispositive of the issue.

With respect to sanction, the Board began by observing that the ALJ had already considered the airman's mitigating factors when he reduced the sanction from 180 days down to 160 days. It then noted that the sanction was within the guidelines established in the FAA's Sanction Guidance Table (Appendix B to FAA Order 2150.3B) and that the Board must defer to the FAA's choice of sanction. Finally, the Board referred to its precedent that failure to adhere to ATC instructions is a serious violation and the airman's "conduct on the flight at issue could have led to a sobering outcome." Consequently, the Board affirmed the sanction, as well as the violations.

This looks like it was an unfortunate set of circumstances for the airman. In hindsight, it raises several questions, at least in my mind. When the airman reached FL 180, why didn't he engage the autopilot and then deal with his grandson? (Having had a similar situation with my son, I can sympathize with the airman having to deal with a sick, young passenger. However, the aircraft and the FAA can be very unforgiving. You have to fly the airplane first.)

What were the circumstances of the airman's prior ATC related violation? Why wasn't the airman using proper radio phraseology and procedures? (I suspect, and mind you it is only a suspicion, that communication issues may have been involved in the previous violation.) Finally, would the sanction have been less if the deviation had not resulted in loss of separation? (Probably.)

What can we learn from this case? First, it is imperative that proper phraseology and radio procedures be used to ensure that communications are clear and understood. Second, when problems/distractions arise in the cockpit, flying the airplane should remain the pilot's first priority and only then should the pilot try and deal with the problem/distraction.

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