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NTSB Order No. EA-5838

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 10th day of April, 2018

_____	)	
DANIEL K. ELWELL,	)	
Acting Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-30469
v.	)	
	)	
JEFFREY O. SIEGEL,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

**1. Background**

Respondent appeals the oral initial decision of Administrative Law Judge William R. Mullins, issued March 13, 2018.<sup>1</sup> By that decision, the law judge affirmed the Acting Administrator's emergency order as to the violation of 14 C.F.R § 91.19(a), but reduced the

<sup>1</sup> A copy of the law judge's initial decision, an excerpt from the hearing transcript, is attached.

sanction from revocation of respondent's pilot certificate to a 90-day suspension.<sup>2</sup> Respondent and the Acting Administrator timely cross-appealed. For the reasons set forth below, we affirm the law judge's finding of a violation of 14 C.F.R § 91.19(a) and reinstate the sanction of revocation.

*A. Facts*

Respondent held an Federal Aviation Administration (FAA) private pilot certificate.<sup>3</sup> On or about October 1, 2016, respondent was the pilot of a Lancair Evolution aircraft.<sup>4</sup> After takeoff from the Allen County Airport in Iola, Kansas, respondent experienced engine trouble and performed an emergency off-airport landing, resulting in damage to the aircraft and non-life-threatening injuries to his passenger, Bethany Brandstatter.<sup>5</sup> Ms. Brandstatter was transported to the hospital from the accident site, and Respondent accompanied her. The Allen County Sherriff's Department and the Kansas Highway Patrol (KHP) responded to the accident scene and collected and inventoried the items of value in the aircraft to return them to respondent.<sup>6</sup> Among the items recovered from the aircraft was a messenger bag containing \$850 cash and

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<sup>2</sup> 14 C.F.R. § 91.19(a) provides, "Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, mari[j]uana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft."

<sup>3</sup> Compl. ¶ 1; Answer ¶ 1.

<sup>4</sup> Compl. ¶ 2; Answer ¶ 2.

<sup>5</sup> At the time of the flight, the passenger was respondent's girlfriend, but she is now his wife. For simplicity, she will be referred to as his wife in this opinion and order.

<sup>6</sup> Tr. 12.

three packages containing bars labeled as chocolate, “Lab tested to 100 mg of THC” (hereinafter, “the bars”).<sup>7</sup>

KHP Trooper Lucas Wagner visited respondent at the hospital and informed him that KHP had recovered the cash and the bars. When asked if the bars belonged to his wife, respondent indicated they were his.<sup>8</sup> Trooper Wagner sent the seized bars to the Kansas Bureau of Investigation (KBI) for chemical analysis to confirm the presence of THC. The KBI performed two tests on samples taken from the bars; both confirmed the presence of THC.

Trooper Wagner prepared an arrest report and an Incident Narrative Report, both of which described the discovery of the bars. The arrest report references three “edible marijuana bags” and “3 small bags of edible chocolate with THC in it.”<sup>9</sup> In the Incident Narrative Report, Trooper Wagner stated, “I seized 3 packages of Chocolate that contained THC...I met with [respondent] at the hospital...I advised [him] that I located the Chocolate THC and would be sending it off for testing. [He] advised me he was hoping I wouldn’t have found it.”<sup>10</sup>

### *B. Procedural Background*

The Acting Administrator issued an Emergency Order of Revocation on February 7, 2018. The emergency order, which became the complaint in this case, alleged respondent violated 14 C.F.R § 91.19(a) because he “operated N38DM within the United States when [he] had knowledge that marijuana was carried onboard the aircraft.” Respondent filed a petition for

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<sup>7</sup> THC is an abbreviation for tetrahydrocannabinol, the primary psychoactive chemical in marijuana.

<sup>8</sup> Tr. 18.

<sup>9</sup> The state criminal charges ultimately were dismissed without prejudice before trial.

<sup>10</sup> Exh. A-3.

review on February 12, 2018, and the proceedings were conducted in accordance with the expedited procedures applicable to emergency cases under 49 U.S.C. §§ 44709 and 46105(c).

Upon proper notice to the parties, the law judge conducted a hearing and issued an initial oral decision on March 13, 2018. The Acting Administrator proffered three witnesses: Trooper Lucas Wagner of the KHP, who discovered the bars on the aircraft, questioned respondent at the hospital, and prepared the arrest report and Incident Narrative Report; Kelly Daniel, the KBI forensic scientist who tested the bars and prepared the Forensic Laboratory Report; and FAA Special Agent Manny Martinez, who conducted the enforcement investigation.

Trooper Wagner testified that he responded to the aircraft accident along with other officers. Respondent and his wife were taken to the hospital to treat her injuries,<sup>11</sup> therefore, Trooper Wagner and other officers inventoried the contents of the aircraft so anything of value could be returned to respondent.<sup>12</sup> Trooper Wagner testified that inside a black briefcase, he found laptops, a camera, \$850 cash, and “three packages of chocolate THC.”<sup>13</sup> The trooper stated that he had been an investigator for more than 16 years.<sup>14</sup> He described his academy training in the detection of marijuana, noting that THC could be contained in such edibles as gummies and chocolate.<sup>15</sup> According to Trooper Wagner, the labels on the three packages indicated the bars were infused with THC.<sup>16</sup> He met respondent at the hospital and returned the cash and electronic

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<sup>11</sup> Respondent’s injuries were minor and did not require treatment at the hospital.

<sup>12</sup> Tr. 12.

<sup>13</sup> Tr. 16-17.

<sup>14</sup> Tr. 11.

<sup>15</sup> Tr. 28.

<sup>16</sup> Tr. 17.

devices. The trooper testified respondent stated he had forgotten the cash was in the briefcase. Regarding the bars, Trooper Wagner testified that respondent said he “was hoping that [the trooper] wouldn’t have found it.”<sup>17</sup> Trooper Wagner asked respondent whether the bars belonged to respondent’s wife and was told “No. She has nothing to do with it. It’s mine.”<sup>18</sup> Trooper Wagner advised respondent he would be filing a report and sending it to the county to press charges. Trooper Wagner elected not to arrest respondent at the hospital to be “nice” because respondent’s wife was being treated for her injuries.<sup>19</sup>

Kelly Daniel, the KBI forensic scientist, testified as an expert in testing for marijuana, THC and other drugs. She testified that she was experienced in testing edibles and that the process for detecting THC in chocolate was the same as that used to detect THC in marijuana.<sup>20</sup> Ms. Daniel stated THC extracted from marijuana is used to make edibles, mature stalks from marijuana would “not contain THC” unless it was “very minimal levels,” and stated use of this type of low-THC content material to produce edibles would not be “economical.”<sup>21</sup> She testified that she weighed the bars and described two tests used to confirm the presence of THC in a sample. She provided detailed testimony about how the two tests were performed and procedures used to ensure accuracy and prevent erroneous results. She first performed a thin-layer chromatography test which gave a presumptive positive result for THC in all three bars.<sup>22</sup> She

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<sup>17</sup> Tr. 18.

<sup>18</sup> Id.

<sup>19</sup> Tr. 18-19.

<sup>20</sup> Tr. 71.

<sup>21</sup> Tr. 87-88.

<sup>22</sup> Tr. 74-75.

then performed a gas chromatography/mass spectrometry test which also confirmed the presence of THC in all three bars.<sup>23</sup> She testified that the tests performed cannot determine the quantity or concentration of THC within a sample, whether the THC is naturally occurring or synthetic, nor, if naturally occurring, from what part of the cannabis plant it was derived.<sup>24</sup> Finally, she testified that “any THC is controlled” and is illegal in Kansas.<sup>25</sup>

FAA Special Agent Manny Martinez testified that he began an investigation into this matter after being contacted by the Wichita Flight Standards District Office regarding the accident. He contacted Trooper Wagner and received a copy of the police report which indicated bars containing THC were found in the aircraft.<sup>26</sup>

Respondent and his wife both testified that the bars belonged to respondent’s wife and that he was not aware it was on the aircraft until after the accident. His wife testified that her friend gave her the bars sometime in August or September, a month or month and a half before the accident, and that, while at her home in Colorado, she “put them in the closest bag that was by me” to get it out of sight, which was respondent’s black briefcase.<sup>27</sup> She testified she did not intend to leave it in his bag, but just forgot about it.<sup>28</sup> She testified that respondent is very “systematized” and uses certain compartments of the briefcase for particular items, while not

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<sup>23</sup> Tr. 75.

<sup>24</sup> Tr. 77; 87-88.

<sup>25</sup> Tr. 88-89.

<sup>26</sup> Tr. 93-94.

<sup>27</sup> Tr. 115-18.

<sup>28</sup> Tr. 115-16.

using other compartments.<sup>29</sup> The compartment where she put the bars was used for their passports and nothing else.<sup>30</sup> She testified that she did not tell respondent about the bars at the time she put it in the bag, and only remembered it was in the bag, which was on the aircraft, as she was wheeled past the aircraft wreckage on a stretcher and saw police officers around the wreckage.<sup>31</sup> At some point thereafter, she told respondent “I think there might be edibles in the plane.”<sup>32</sup> She testified respondent said he took responsibility for the bars when talking to police.<sup>33</sup>

Respondent testified that he became aware that the bars were on the aircraft when his wife told him after the accident. He testified he was not aware that they were on board prior to the flight.<sup>34</sup> Respondent testified in detail about the various compartments in the briefcase, and what items he routinely stores in each compartment.<sup>35</sup> He stated that the front flap of the messenger bag, where the bars were found, was used only to store two passports. He testified that when confronted by Trooper Wagner who reported he had found “these edibles” on the aircraft, respondent asked the officer to “look past this.” He then “agreed to responsibility for having edibles” because the Trooper told him it was “just a slap on the wrist” in Kansas and because he felt responsible because “they were in [his] plane.”<sup>36</sup> Regarding the \$850 found in the

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<sup>29</sup> Tr. 117.

<sup>30</sup> Tr. 118.

<sup>31</sup> Tr. 121.

<sup>32</sup> Id.

<sup>33</sup> Tr. 122.

<sup>34</sup> Tr. 134.

<sup>35</sup> Tr. 134-35.

<sup>36</sup> Tr. 139.

briefcase, respondent testified he always kept it in his briefcase because it was proceeds from a Certificate of Deposit from his grandparents which his parents had cashed in for him.<sup>37</sup>

*C. Law Judge's Oral Initial Decision*

The law judge summarized the evidence presented and the testimony of each of the witnesses. Regarding KHP Trooper Wagner, KBI forensic scientist Kelly Daniel, and FAA Special Agent Martinez, the law judge found all three were “very credible” witnesses.<sup>38</sup> Regarding respondent, the law judge found “his credibility on the issue of his knowledge is questionable, simply because he made the statement to the patrolman. He not only said, ‘I wish you hadn’t found that,’ but he also later said, ‘It was mine.’”<sup>39</sup> The law judge further summarized his judgment regarding respondent’s knowledge of the presence of the bars, saying “[respondent] was aware of the marijuana on the airplane when it was in flight ... he was aware it was in the briefcase. He was aware the briefcase was in the aircraft.”<sup>40</sup>

The law judge next turned to the question of whether there was marijuana on the aircraft. He reached his conclusion based on the KBI Forensic Laboratory Report admitted into evidence and the testimony of KBI forensic scientist Kelly Daniel, whom he found to be “very credible.”

After determining there was marijuana on the aircraft, the law judge again addressed his finding regarding respondent’s knowledge that the drugs were present, saying, “I’m satisfied that

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<sup>37</sup> Tr. 135; 143.

<sup>38</sup> Oral Initial Decision at 182.

<sup>39</sup> Id. at 183.

<sup>40</sup> Id. at 182-83.



[r]espondent was aware that the marijuana was on board the aircraft. He was aware it was in the briefcase, he was aware the briefcase was on the airplane.”<sup>41</sup>

In discussing the sanction, the law judge stated, “I’ve already talked about I think this was an inadvertent act on the part of this pilot...it wasn’t intentional or reckless.”<sup>42</sup> The law judge distinguishing the facts of this case from other cases involving large quantities of drugs being trafficked by aircraft, in reducing the sanction from revocation to a 90-day suspension. He relied on his determination that it was an “inadvertent act” on the part of respondent and made note that this case involved “simple possession of a very small quantity not for commercial purposes.”<sup>43</sup>

#### *D. Issues on Appeal*

Respondent argues that THC is not marijuana as alleged in the complaint and that he did not knowingly carry the bars on his aircraft. The Acting Administrator argues that the law judge erred in reducing the sanction from revocation to a 90-day suspension.

## **2. Decision**

While we give deference to our law judge’s rulings on certain issues, such as credibility determinations,<sup>44</sup> we review the case under *de novo* review.<sup>45</sup>

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<sup>41</sup> Id. at 183.

<sup>42</sup> Id. at 184.

<sup>43</sup> Id.

<sup>44</sup> Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), *aff’d sub nom.*, Porco v. Huerta, 472 Fed.Appx. 2 (D.C. Cir. 2012) (per curiam).

<sup>45</sup> Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013); Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

*A. Sufficiency of Complaint*

In his brief, respondent argued that THC is not marijuana and thus the Acting Administrator failed to meet his burden of proof. The Acting Administrator charged respondent with violating 14 C.F.R. § 91.19(a) which prohibits, “operat[ion of] a civil aircraft within the United States with knowledge that narcotic drugs, mari[j]uana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.” The Acting Administrator pleaded that respondent “operated N38DM within the United States when [he] had knowledge that marijuana was carried onboard the aircraft.”<sup>46</sup>

We find the Acting Administrator met his burden in this regard. The testimony of all witnesses agreed that edibles were discovered on respondent’s airplane inside a bag belonging to him. Edibles are products intended for human consumption containing THC derived from marijuana plants. The edibles in this case came from Colorado which strictly controls the commercial production and sale of retail marijuana products.<sup>47</sup> Retail marijuana products with multiple servings may contain no more than 100 mg THC, with no single serving containing more than 10 mg THC.<sup>48</sup> The bars recovered from respondent’s bag were labeled as being within the maximum allowable serving size for THC. Based on the labeling, the testimony of the KBI scientist, and the KBI lab results, the bars taken as a whole contain THC amounts well beyond

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<sup>46</sup> See Complaint at ¶5.

<sup>47</sup> See C.R.S. 39-28.8-101 which considers THC derived from marijuana as marijuana and states that marijuana retail products include edibles.

<sup>48</sup> See Code of Colorado Regulations Marijuana Enforcement Division, 1 CCR, 212-2 at 13 and 14 (2014).

miniscule levels.

The Controlled Substances Act (CSA) defines marijuana as “all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.”<sup>49</sup> Acknowledging non-psychoactive commercially produced hemp products, the definition excludes “the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.”<sup>50</sup> The facts in this case are inconsistent with a comparison to non-psychoactive, commercially produced hemp products. Instead, the edibles in question were intentionally infused with THC up to the maximum allowable amount under Colorado law. The plain language of the CSA includes in Schedule 1(c) “any material . . . which contains any quantity of [THC].”<sup>51</sup> The THC is a derivative of marijuana and, as such, is considered the same as marijuana under the CSA as well as being a prohibited substance in Kansas.<sup>52</sup>

Even assuming *arguendo*, that THC is not marijuana, we have long held that in our proceedings, “notice pleading” principles require the Administrator to “give only a short and plain statement of the claim showing that the pleader is entitled to relief, and not a complete

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<sup>49</sup> 21 USC § 802 (16).

<sup>50</sup> *Id.*

<sup>51</sup> See United States v. Plume, 447 F. 3d 1067 (8<sup>th</sup> Cir. 2006) one of several cases which has addressed the question of marijuana as distinct from non-psychoactive, commercially produced hemp products.

<sup>52</sup> See Kansas Stat §§ 21-5706 and 65-4015(d)(17) and (h)(1).

detailing of all the facts.”<sup>53</sup> As we noted in Administrator v. Scott, “[b]ecause the complaint is the vehicle by which respondent is given fair notice of the charges he will be expected to defend against and which facts and circumstances underlie those alleged violations, we cannot give any weight to apparent violations which were not alleged in the Administrator's complaint.”<sup>54</sup>

Consequently, we review this aspect of the pleadings within the context of the Acting Administrator's specific allegations.

We hold that respondent was on fair notice of the charges which he would be expected to defend against. Trooper Wagner immediately notified respondent he found the bars in the bag recovered from the aircraft. There was no question as to what substance—the edibles or bars labeled as containing THC (the psychoactive chemical contained in marijuana)—that respondent was defending against. To try to argue that the complaint fails because all marijuana contains THC but not all THC derives from marijuana is an argument without merit in this case. Kansas State law prohibits possession of marijuana and/or THC.<sup>55</sup> Federal law places both marijuana and tetrahydrocannabinoids (synthetic and natural) in Schedule 1 of the drug schedules in the Controlled Substances Act.<sup>56</sup> Put simply, both the psychoactive chemical (THC) as well as the marijuana plant are illegal under both Kansas and Federal law. The complaint in this case gave

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<sup>53</sup> See Administrator v. Robert, NTSB Order No. EA-5556 at 10-11 (2010); Black's Law Dictionary 1271 (9th ed. 2009); see also Administrator v. Darby, NTSB Order No. EA-5521 at 8 (2010).

<sup>54</sup> NTSB Order No. EA-4030 at 6 (1993); see also Administrator v. MacGlashan, 5 NTSB 1539, 1541 (1986) (the complaint establishes the parameters of the Administrator's case); Administrator v. Robinson, 5 NTSB 1690, 1692 (1987) (Board cannot redraft the complaint but must evaluate the evidence in light of the allegations).

<sup>55</sup> See Kansas Stat §§ 21-5706 and 65-4015(d)(17) and (h)(1).

<sup>56</sup> See 21 U.S.C. § 812(c).

respondent fair notice. The fact that the form of the THC was in an edible rather than a green leafy plant is irrelevant.

*B. Knowing Transport of a Controlled Substance*

To prove knowledge in the context of a § 91.19(a) or any other type of violation under the Federal Aviation Regulations, we do not require direct evidence but rather permit proof of the knowledge element through circumstantial evidence by a preponderance of the evidence.<sup>57</sup> To determine whether knowledge was established by a preponderance of the evidence necessitates credibility determinations by the law judge of the witnesses. We will not overturn a law judge's credibility determination unless a party can establish the credibility determination was arbitrary and capricious.<sup>58</sup> We have held that a law judge's credibility determinations should be based explicitly on factual findings in the record.<sup>59</sup>

In this case, the law judge expressly found all three witnesses for the Acting Administrator credible and found respondent was not credible. He tied these credibility determinations to factual findings in the record. Specifically, on the issue of respondent's knowledge, the law judge stated, "I believe that [respondent] was aware of the marijuana on the airplane when it was in flight" and "I'm satisfied that [r]espondent was aware that the marijuana was on board the aircraft."<sup>60</sup> He based those findings on the facts adduced at hearing by circumstantial evidence which included:

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<sup>57</sup> See generally, Administrator v. Byrd, NTSB Order No. EA-5782 (2016); see also Administrator v. Dillmon, NTSB Order No. EA-5528 (2010).

<sup>58</sup> Porco, *supra* n.40, at 20-21.

<sup>59</sup> Id. at 11; 23.

<sup>60</sup> Oral Initial Decision at 182-83.

- The label on the bars stated that they contained THC; <sup>61</sup>
- Respondent knew the bars were in his briefcase;<sup>62</sup>
- Respondent knew the briefcase was on his aircraft;<sup>63</sup>
- Respondent told Trooper Wagner he wished the trooper had not discovered the bars;<sup>64</sup>  
and
- Respondent told Trooper Wagner that the bars were his.<sup>65</sup>

The law judge also noted that he questioned the credibility of respondent's testimony at the hearing compared to his initial statements made to Trooper Wagner at the hospital.<sup>66</sup>

In addition to these specific findings by the law judge, we also note that respondent admitted it was his briefcase which he carried during work trips and had carried with him during the multiple days of the trip from which he was returning. His wife testified that the bars had been in the bag since August or September and respondent testified that he traveled once a month. He was using the bag on this trip to transport items of common use including laptops, camera, and cash. He provided a highly detailed description of the contents of every pocket of that briefcase and explained that the front flap had a pocket which should only have contained two small, flat passports.<sup>67</sup> In admitting the briefcase was his, respondent conceded that he tried

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<sup>61</sup> Id. at 179.

<sup>62</sup> Id.

<sup>63</sup> Id.

<sup>64</sup> Id. at 179.

<sup>65</sup> Id.

<sup>66</sup> Id. at 183.

<sup>67</sup> Tr. 134-35.

not to share luggage with his wife.

We find it strains credulity that someone who can describe the contents of every pocket in his bag and does not generally share his bag even with his wife failed to notice that the front pocket of his bag which should only have contained passports instead contained three bars, individually packed in foil with a combined weight of about 3 ounces, containing THC. Respondent testified he realized the bars were in the plane as his wife was being treated, and the trooper testified that as she was still receiving treatment, he spoke with respondent. We also note, while in the hospital, respondent specifically denied to Trooper Wagner that the bars belonged to his wife. Only at the hearing, over a year after the fact, did his story change—now conveniently claiming that the bars belonged to his wife and he had no knowledge of them. At the time when respondent's recollection would have been the freshest, he claimed the bars as "all his" and specifically rejected the idea that the bars had anything to do with his wife.

We find both direct evidence of knowledge through respondent's admissions to Trooper Wagner as well as circumstantial evidence of knowledge cited by the law judge in his oral initial decision. Together, this direct and circumstance evidence more than met the Acting Administrator's burden of proving knowledge by a preponderance of the evidence. We also conclude that the law judge's credibility determinations were not arbitrary and capricious. He made a credibility determination adverse to respondent and tied his findings of fact to specific evidence adduced at the hearing. Therefore, based upon the evidence and under our jurisprudence established in Administrator v. Porco,<sup>68</sup> we must affirm the law judge's finding that respondent knowingly transported a controlled substance in violation of § 91.19(a).

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<sup>68</sup> See supra at n.44.

### *C. Sanction Determination*

The Acting Administrator contends the law judge erred by reducing the Acting Administrator's choice of sanction from revocation of respondent's private pilot certificate to a 90-day suspension of that certificate.

Congress, in the Pilot's Bill of Rights, struck the statutory language previously requiring the NTSB to defer to the Administrator's choice of sanction in enforcement actions.<sup>69</sup>

Subsequent to the enactment of the Pilot's Bill of Rights, and as set forth in Administrator v. Jones,<sup>70</sup> we apply principles of judicial deference to the interpretations of laws, regulations, and policies that the Administrator carries out in accordance with the United State Supreme Court's ruling in Martin v. Occupational Safety and Health Review Commission.<sup>71</sup> In Martin, the Court emphasized the importance of the reasonableness inquiry when determining whether an agency's statutory interpretation is entitled to deference.<sup>72</sup> We have emphasized that the determination of whether the Administrator's choice of sanction is reasonable is case-specific and is based upon the facts and circumstances adduced at the hearing.<sup>73</sup> Further, we will consider both aggravating and mitigating factors in evaluating the reasonableness of an imposed sanction.<sup>74</sup>

Applying our standard of *de novo* review, in the case before us we find the law judge's

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<sup>69</sup> Pub. L. 112-153 § 2(c)(2), 126 Stat. 1159, 1162-63 (August 3, 2012) (amending 49 U.S.C. § 44709(e)).

<sup>70</sup> NTSB Order No. EA-5647 (2013).

<sup>71</sup> Id. at 19 (citing Martin v. Occupational Safety & Health Review Comm'n, 499 U.S. 144, 145, 111 S. Ct. 1171, 1173, 113 L. Ed. 2d 117 (1991)).

<sup>72</sup> Martin, supra note 64 at 145, 150-58.

<sup>73</sup> Jones, supra note 63 at 21 n. 62.

<sup>74</sup> See Administrator v. Hackshaw, NTSB Order No. EA-5501 (2010) (recon. denied, NTSB Order No. EA-5522 (2010)) and Administrator v. Simmons, NTSB Order No. EA-5535 (2010).



reduction of the sanction from revocation to a 90-day suspension was arbitrary and capricious. In his decision, the law judge attempted to distinguish the facts of this case from a previous case in which he affirmed revocation of a pilot's certificate where that pilot was carrying 200 pounds of marijuana on an aircraft.<sup>75</sup> The law judge stated that the case *sub judice*, in contrast, involved "simple possession" of marijuana presumably purchased legally under Colorado state law, did not involve any evidence of use while operating the aircraft, and did not involve any evidence of the transportation of marijuana for commercial purposes.<sup>76</sup> The law judge stated "this was an inadvertent act on the part of this pilot[.] It certainly wasn't reckless, it wasn't intentional or reckless, as suggested by revocation in the Compliance Philosophy."<sup>77</sup>

While the law judge did not cite to the specific case he attempted to distinguish, he may have referred either to Administrator v. Goldenshtein<sup>78</sup> or Administrator v. Fletcher.<sup>79</sup> It should be noted in both cases, however, those respondents were charged not with violations of 14 C.F.R. § 91.19(a), but rather with ineligibility to hold a pilot's certificate under 49 U.S.C. § 44710(b)(1), which states:

The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued [to] an individual under section 44703 of this title [49 USC § 44703] **after the individual is convicted**, under a law of the United States or a State related to a controlled substance (**except a law related to simple possession of a controlled substance**), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) an aircraft was used to commit, or facilitate the commission of, the offense;

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<sup>75</sup> Oral Initial Decision at 184.

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> NTSB Order No. EA-5812 (2017).

<sup>79</sup> NTSB Order No. EA-5330 (2007).

and  
 (B) the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.<sup>80</sup>

In the case before us, respondent was not only charged under Kansas state law with simple possession,<sup>81</sup> as that term is contemplated by 49 U.S.C. § 44710(b)(1), but no conviction resulted therefrom: the underlying charge was dismissed without prejudice prior to the hearing before the law judge.<sup>82</sup> Comparison of respondent's case to the facts of Goldenshtein or Fletcher is therefore inapposite.

The law judge cited to the FAA's "Compliance Philosophy" document, FAA Order 2150.3B,<sup>83</sup> in his discussion that respondent's violation was not the type of "intentional or reckless deviations from regulatory standards" for which the sanction of revocation was contemplated by the Order.<sup>84</sup> The FAR which respondent was alleged to have violated, however, required only that respondent had *knowledge* of edibles aboard the civil aircraft he was operating – not intent, and not recklessness.<sup>85</sup> In point of fact, FAA Order 2150.3B specifically identifies a violation of § 91.19(a) as a violation for which revocation is appropriate:

The FAA has concluded that by their nature, some acts of misconduct are so egregious as to demonstrate the certificate holder never possessed or no longer possess the qualifications required to hold any airman certificate and other certificates. Therefore, such acts of misconduct warrant revocation of all airman certificates and other certificates held by the certificate holder. Such acts include: ... operating a civil aircraft within the

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<sup>80</sup> 49 U.S.C. § 44710(b)(1) (2012) (emphasis added).

<sup>81</sup> Kansas Stat § 21-5706, *Unlawful possession of controlled substances* (2014).

<sup>82</sup> Tr. 163-64.

<sup>83</sup> Fed. Aviation Admin. Order 2150.3B (2007) (Change 11 of this Order, effective date February 24, 2016, was in effect at the time of respondent's accident).

<sup>84</sup> Oral Initial Decision at 184.

<sup>85</sup> See supra at note 2.

United States with knowledge that narcotic drugs, marijuana, and depressant or stimulant drugs or substances as defined in federal or state statutes are carried in the aircraft, in violation of 14 C.F.R. § 91.19(a)[.]<sup>86</sup>

Similarly, the law judge's consideration of the amount of controlled substances onboard the aircraft, as well as respondent's inferred purpose of personal use for its transport, as mitigating circumstances for a reduction in sanction was unreasonable. The FAR alleged to have been violated by the respondent is not predicated upon an *amount* of controlled substance possessed, but instead merely knowledge of its presence onboard the aircraft.<sup>87</sup> Further, a violation of § 91.19(a) can stand without regard to a pilot's motive in transporting the marijuana – whether that motive is possession, intent to distribute, or personal use. The fact that respondent was not transporting 200 pounds of marijuana for sale and distribution is therefore irrelevant as a purported mitigating factor, and the law judge's reliance upon it in determining the sanction was arbitrary and capricious. Additionally, we do not find the law judge's statement that the bars were "purchased legally in Colorado" to be a relevant mitigating factor because it remains illegal under Federal law to possess this controlled substance and transport it on an aircraft within the national air space.<sup>88</sup> In the absence of any mitigating factors, therefore, we find revocation is the reasonable and appropriate sanction for a violation of 14 C.F.R § 91.19(a) under the facts and circumstances of this case.

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<sup>86</sup> Supra note 84 at chapter 7, paragraph 12.b, p.7-22 (2016).

<sup>87</sup> Although not relevant to a determination of sanction, the state statute under which respondent was charged for possession of marijuana also is not predicated upon the amount of the controlled substance possessed. See Kansas Stat § 21-5706, supra at note 74, at (b)(7).

<sup>88</sup> 21 USC § 844.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied,
2. The Acting Administrator's appeal is granted; and
3. The law judge's ruling as to sanction is reversed.

SUMWALT, Chairman, DINH-ZARR, AND WEENER, Members of the Board, concurred in the above opinion and order. DINH-ZARR, Member, joined by SUMWALT, Chairman, and WEENER, Member, submitted the following concurring in part statement.

Member T. Bella Dinh-Zarr, Concurring in Part

While I concur with the outcome of this emergency appeal, I would like to highlight several important issues that I believe were not fully elucidated in the Board's Opinion and Order.

The law judge determined respondent's testimony was contradictory and was not credible. On direct examination, respondent's counsel asked, "What did you do when you realized that there was chocolate in the bag carried on the aircraft?" (Tr. 133). Respondent responded that he had an "oh crap" (Tr. 133) moment as his wife "was getting stitched up." (Tr. 134) This testimony seems to contradict prior testimony by respondent at the hearing regarding how he first became aware the bars were on his plane in his bag. While not necessary to the law judge's adverse credibility determination with respect to respondent's testimony, respondent's remark is worth noting.

At hearing and on appeal, respondent argues that the bars contained mere "trace" amounts of THC as permitted under the Controlled Substances Act (CSA). I note that the CSA prohibits any THC. However, in referring to trace amounts of THC, respondent focuses on the portion of the CSA that carves out an exception for mature stalks and other items used in commercial hemp product production which may contain remnants or trace amounts of THC. This exception is not

what we have in the case before us.

In the case *sub judice*, the Administrator did not need to prove the bars contained a particular level of THC. Instead, the Administrator merely needed to distinguish trace THC amounts that might naturally occur in commercial hemp products—not intended to have psychoactive effects—from chocolate that is intended to provide psychoactive effects. The THC quantity was not particularly relevant although the evidence taken together would not support any finding other than THC was present above trace levels as defined in the CSA.

The evidence adduced at hearing more than met the Administrator’s burden to show the presence of THC by a preponderance of the evidence. Specifically, the evidence showed THC as follows:

- Witnesses including the respondent and his wife refer to the chocolate as “edibles” at some point during the hearing.
- Having received the edibles, respondent’s wife felt the need to quickly conceal them.
- The “edibles” came from Colorado where the state has decriminalized possession and use of marijuana and permits the sale of marijuana derived, THC infused edible products.
- Colorado law controls the amount of THC allowed in edible products and requires labeling to show the THC content.
- Testimony described a bar was labeled as reading “Infused with 100mg THC”.
- This label was consistent with the Colorado statute regarding THC levels which allows a maximum of 100mg per unit.
- Colorado law states 10mg THC is the maximum serving size.
- The bars were submitted to KBI for confirmatory testing and two random samples showed the presence of THC.
- The bars were preserved as evidence, not melted down and tested in aggregate to determine the total amount of THC in all three bars.

While we are bound by law, the Board is not required to leave our common sense behind as we apply that law. It defies logic that respondent, his wife, and the other witnesses would refer to these bars as “edibles” (which are now commonly known throughout the country as food items infused with THC) if they were merely lawful hemp items containing trace THC with non-psychoactive effects. Likewise, it also defies logic that respondent was simply trying to protect respondent’s wife in telling the trooper that the THC bars were his rather than his wife’s if the bars, in fact, were legal items containing trace amounts of hemp under the CSA. Finally, respondent would not have had an “oh crap” moment in the hospital if the bars only contained

trace, legal amounts of THC. At least one bar was labeled as “Infused with 100mg THC”—the maximum amount permissible under Colorado law—and, when tested, the bars tested positive in both tests for some level of THC. The logical conclusion is that the bars contained THC beyond a mere trace.

In conclusion, the Administrator met his burden of proof by a preponderance of the evidence to show that the bars contained in respondent’s messenger bag inside respondent’s aircraft contained THC, as prohibited by the CSA and Kansas law, in this case.

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\* \* \* \* \*

In the matter of: \*

MICHAEL P. HUERTA, \*  
ADMINISTRATOR, \*  
FEDERAL AVIATION ADMINISTRATION, \*

Complainant, \*

v. \*

JEFFREY O. SIEGEL, \*

Respondent. \*

\* \* \* \* \*

Docket No.: SE-30469  
JUDGE MULLINS

United States District Court  
400 East 9th Street  
Kansas City, Missouri

Tuesday,  
March 13, 2018

The above-titled matter came on for hearing, pursuant to  
Notice of Hearing, at 9:00 a.m.

BEFORE: WILLIAM R. MULLINS  
Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

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On behalf of the Respondent:

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## ORAL INITIAL DECISION AND ORDER

10 JUDGE MULLINS: This has been a proceeding before the  
11 National Transportation Safety Board, held under the provisions of  
12 Section 44709 of the Federal Aviation Act of 1958, as amended, on  
13 the appeal of Jeffrey Owen Siegel from an Emergency Order of  
14 Revocation that has revoked his private pilot certificate.

15 The Emergency Order of Revocation serves as the complaint in  
16 our proceedings and was filed on behalf of the Administrator  
17 through the Enforcement Division of the Western Enforcement  
18 Division out of Chicago.

19 The matter has been heard before me, William R. Mullins. I'm  
20 an administrative law judge for the National Transportation Safety  
21 Board, and as mandated by the Board's Rules, I will issue a  
22 decision at this time in this emergency case.

23 The matter came on for hearing here in Kansas City. Today  
24 is the 13th day of March, and a notice was given to the parties.  
25 The Administrator was present throughout these proceedings and

1 represented by counsel, Ms. Kate Barber, of the Western  
2 Enforcement Team, Esquire. The Respondent was present throughout  
3 these proceedings and represented by Mr. Greg Winton, Esquire, of  
4 Maryland.

5 The parties were afforded a full opportunity to offer  
6 evidence, to call and examine and cross-examine witnesses. In  
7 addition, the parties were afforded an opportunity to make  
8 argument in support of their respective positions.

9 The matter was on for this Emergency Order, which basically  
10 comprised five paragraphs. The first paragraph, directed to  
11 Mr. Siegel, states that, "You, at all times relevant hereto, held  
12 Private Pilot Certificate No. 153745664." And that was admitted.

13 Paragraph 2 states that, "On or about October 1, 2016, you  
14 operated a Lancair Evolution aircraft, registered as N38DM ('the  
15 aircraft') near the Allen County Airport, Iola, Kansas." That has  
16 been admitted.

17 Paragraph 3, "At the conclusion of the above-described  
18 operation, the Kansas State Highway Patrol discovered marijuana on  
19 board the aircraft." That was denied.

20 Paragraph 4, "You admitted to the Kansas State Highway Patrol  
21 that you were aware that there was marijuana on board N38DM."  
22 That was denied.

23 Paragraph 5, "You operated N38DM within the United States  
24 when you had knowledge that marijuana was carried on board the  
25 aircraft." That has been denied.

1           As a result, the Administrator has alleged a regulatory  
2 violation of FAR 91.19(a), which states that no person may operate  
3 a civil aircraft within the United States with knowledge that  
4 narcotic drugs, marijuana, and depressant or stimulant drugs or  
5 substances, as defined in the federal or state statutes, carried  
6 in the aircraft. And that carries, according to the reg, either a  
7 suspension or revocation.

8           The Administrator had three witnesses and there were three  
9 exhibits marked Administrator exhibits. The first witness called  
10 was Trooper Lucas Wagner, who's a Kansas State Highway Patrolman.  
11 He's undergone -- he's been with the highway patrol, I think he  
12 said 16 or 17 years, and he did 6 months of training in Salina.  
13 His testimony was that he had investigated several aircraft  
14 accidents.

15           He introduced, and they were admitted, Exhibits A-1 and 2,  
16 which are photographs of the accident, which apparently the  
17 testimony was -- and this was uncontroverted or undisputed that  
18 this Respondent was operating his aircraft, a turbine-powered  
19 aircraft, when the engine failed right after takeoff out of Iola  
20 Airport. He made an emergency landing on -- attempted to make an  
21 emergency landing on a county road, and it ended up destroying the  
22 aircraft. He and his passenger, Beth Brandstetter, who is now his  
23 wife, were both taken to the hospital.

24           Trooper Wagner did testify that he and another deputy were  
25 inventorying the aircraft and making sure that things were secure

1 because the pilot and the passenger were gone. He discovered in a  
2 briefcase \$850 in cash and also three chocolate bars. It was not  
3 clear in the evidence, although these parties live in Colorado  
4 where marijuana is legal, but these were chocolate bars that said  
5 right on the face of it, and that was Exhibit A-5 that was offered  
6 as demonstrative evidence. We don't have it in the file, but  
7 there was no question about that. But each chocolate bar  
8 indicated that it contained THC or marijuana.

9 The Exhibit A-3 on cross-examination, which was Trooper  
10 Wagner's accident report and also his arrest record thing that he  
11 filled out, was covered in cross-examination. And then the  
12 Respondent offered A-3, and it was admitted into evidence.

13 During then, Trooper Wagner testified he went to the  
14 hospital. He met the Respondent, Mr. Siegel. He told Mr. Siegel  
15 that he found this marijuana on board, and Mr. Siegel said, "Well,  
16 I wish you hadn't found that." Then on rebuttal, Trooper Wagner  
17 also testified that at some point that that was in his narrative  
18 report. He did testify at another time during his conversation  
19 with Mr. Siegel, Mr. Siegel said, "That was mine," in reference to  
20 these candy bars.

21 The second witness called by the Administrator was Kelly  
22 Daniel, who's the chemist with the -- at that time it was with the  
23 Kansas Bureau of Investigations. She testified about doing the  
24 testing on these candy bars and that it was tested positive for  
25 THC. There was some question about whether it was synthetic or

1 the real stuff, I guess, but she said either one of them is a  
2 controlled substance. According to the Kansas folks, it didn't  
3 make any difference.

4 The third witness called by the Administrator was Mr. Manuel  
5 Martinez. He's a special agent with the Federal Aviation  
6 Administration. He received Inspector Wagner's report, and based  
7 on that report and the admission contained in that report, he  
8 processed and started an enforcement investigative file. He sent  
9 out a letter of investigation, and that was somewhere in the  
10 testimony, this was in late 2016. The Emergency Order in this  
11 case was not issued until February 7 of 2018. So, several months  
12 have transpired from the time this investigation was started and a  
13 letter of investigation and a notice of proposed action did go  
14 out, but many months transpired before anything was done with it.

15 I say only this in passing, which I will address on down the  
16 line. It seems that it's such a revocable offense, that the  
17 Administrator in safety in air commerce would dictate that things  
18 like this move faster than 15 or 16 months later.

19 After Mr. Martinez testified, the Respondent's case-in-chief,  
20 he called Bethany Brandstetter. She testified she was on board  
21 the aircraft. She testified that the marijuana was hers and she  
22 had put it in Respondent's bag. She testified that at the time  
23 they had been living together. They have -- since this incident  
24 and I think last summer, they got married. In any event, she said  
25 it was hers and that she didn't think he knew anything about it.

1           She testified that she told him about it when she was going  
2 to the airport to get all these stitches. She was hit and beat up  
3 pretty bad, but she remembered that was on there and so she told  
4 him that it was on there and it was hers.

5           Then the Respondent was called to testify, and the Respondent  
6 said that he wanted to take full responsibility for this because  
7 he thought there was going to be -- as suggested by the trooper,  
8 that there were going to be some criminal charges filed in the  
9 state court. The testimony was from several witnesses that the  
10 state dismissed all of the charges resulting in this incident and  
11 the possession of this controlled substance in January of this  
12 year.

13           Trooper Wagner also testified that this was a simple  
14 possession thing and would've been a misdemeanor. They didn't  
15 jail anyone on these first offense misdemeanor possession charges  
16 in Kansas.

17           After the Respondent testified, he talked about -- that the  
18 trooper said he was going to have to do something because his  
19 supervisor was there. Well, then on rebuttal, the trooper was put  
20 back on the stand and said his supervisor didn't travel with him,  
21 he didn't know where that came from because his supervisor wasn't  
22 with him and he did not say that at all. That's when he -- I  
23 think at that time, he said that -- well, he had testified about  
24 it previously, but he again reemphasized that Respondent,  
25 Mr. Siegel, talked about that "It was mine, I'm taking full

1 responsibility; it's mine," referring to the candy bars.

2 Let me talk just briefly about the credibility of the  
3 witnesses. First of all, Trooper Wagner and Ms. Daniel were very  
4 credible witnesses. They're state employees, or he is a state  
5 employee, she was a state employee at the time. The state didn't  
6 have any, if you will, dog in this hunt. But I thought their  
7 testimony was straightforward and just as they recalled it from  
8 those many months ago.

9 I didn't talk about it, but Ms. Daniel identified Exhibit A-  
10 4, which was her report based on the testing she did to determine  
11 this was marijuana.

12 Special Agent Martinez simply was here today. He didn't even  
13 talk about sanction, although sanction has been argued here and I  
14 don't think you need to go on about that. I'll talk about  
15 sanction in a little bit, but Mr. Martinez's testimony was very  
16 credible. He was doing his job and he just brought forward the  
17 report basically of Trooper Wagner.

18 As far as the issues in this case, and as stated by both  
19 parties at the outset, although you could've fooled me after your  
20 closing argument, but it was a really simple case. The two issues  
21 were: Was it marijuana, and was there knowledge on the part of  
22 the Respondent? I would say, based on the credibility of the  
23 witnesses -- I talked about the Administrator's witnesses. I  
24 think -- understanding the situation, I believe that Mr. Siegel  
25 was aware of the marijuana on the airplane when it was in flight.

1           Now, he was aware it was in the briefcase. He was aware the  
2 briefcase was in the aircraft. There wasn't any indication of  
3 use. There were blood tests taken. No one's even offered any of  
4 those blood tests that were taken at the hospital. This was a  
5 simple possession in an airplane case that -- I believe his  
6 credibility on the issue of his knowledge is questionable, simply  
7 because he made the statement to the patrolman. He not only said,  
8 "I wish you hadn't found that," but he also later said, "It was  
9 mine." Whether he was doing that to protect his wife, or his soon  
10 to be wife, from criminal charges, I don't know, but he's pretty  
11 much stuck with that answer and I'm satisfied that was his answer  
12 that he made that day.

13           So the real issue in the case, was it marijuana? I think the  
14 testimony of Ms. Daniel was very clear that it was marijuana.  
15 Counsel has argued, and I'll let you argue that somewhere on down  
16 the line, whether it was something besides marijuana. But I think  
17 she said that THC comes from marijuana. I'm satisfied that that  
18 satisfies the statute in this case.

19           Therefore, the issue of marijuana was established, and I'm  
20 satisfied that the Respondent was aware that the marijuana was on  
21 board the aircraft. He was aware it was in the briefcase, he was  
22 aware the briefcase was on the airplane. It might have refreshed  
23 his recollection at the time of the accident, but he knew it was  
24 in there.

25           Let me talk about conclusions of law. I want to talk about



1 sanction a little bit. I'm really disturbed and I'm going to read  
2 a section -- this is Section F out of the FAA's Compliance  
3 Philosophy that was issued in June 26 of 2015. Paragraph F says,  
4 "The FAA views those intentional or reckless deviations from  
5 regulatory standards, as defined in the Agency's safety oversight  
6 guidance, or deviations from regulatory standards that otherwise  
7 present an unacceptable risk to safety, as posing the highest risk  
8 to safe operation of the National Air Space, and thus requiring  
9 strong enforcement."

10 The last 91.19 case I had about 2 years ago out in Amarillo,  
11 there were 200 pounds of marijuana on an airplane. Guess what the  
12 sanction was? Revocation. How is that consistent with what we've  
13 got here today? This was a simple possession of a substance that  
14 was purchased legally, apparently in Colorado. There wasn't any  
15 use involved. There wasn't any transporting for commercial  
16 purposes involved. I've already talked about I think this was an  
17 inadvertent act on the part of this pilot, Mr. Siegel. It  
18 certainly wasn't reckless, it wasn't intentional or reckless, as  
19 suggested by revocation in the Compliance Philosophy.

20 So therefore, I'm going to find that there was a violation,  
21 as established by the evidence of FAR 91.19(a). I find that under  
22 the facts of this case the appropriate sanction would be one of a  
23 90-day suspension.

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ORDER

IT IS THEREFORE ORDERED that safety in air commerce and safety in air transportation does not require an affirmation of the Administrator's Emergency Order of Revocation as issued.

Specifically, I find there has been established a regulatory violation of 91.19(a) because there was knowledge about this recreational use, three candy bars, on the airplane. But because it wasn't reckless and it wasn't intentional on the part of this Respondent, I don't think the sanction sought should be approved.

I find that appropriate sanction in this case would be a 90-day suspension of the Respondent's airman certificate.

IT WILL BE SO ORDERED.

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WILLIAM R. MULLINS  
Administrative Law Judge

## 1 APPEAL

2 JUDGE MULLINS: Mr. Winton, you may appeal this order today,  
3 and you may do so in this emergency case. You have to file your  
4 appeal within 2 days. The Office of Administrative Law Judges,  
5 Room 4704, 490 L'Enfant Plaza East, Southwest, Washington, D.C.  
6 If you do file that appeal, then 5 days after the Notice of  
7 Appeal, you have to file a brief in support of that appeal. The  
8 briefs go to that same address, but to the Office of the General  
9 Counsel, which is at Room 6401, but the same street address.  
10 Filing of appeals, especially emergency cases, critical, so you  
11 need to do that timely and/or you lose any interest on the part of  
12 the Board to review it.

13 The same goes for the Administrator, and the Administrator --  
14 I'm going to ask Mr. Winton if he'll step up. I'm going to hand  
15 you a copy of this. I know the Administrator has these probably  
16 on file in your office, but I can give you a copy with those  
17 addresses, if you'd like. I don't have it out here, but I've got  
18 it in my briefcase. Would you like to have a copy?

19 MS. BARBER: Not right now, Your Honor. No, thank you.

20 JUDGE MULLINS: Okay. All right. Any question about the  
21 order?

22 MR. WINTON: No question, Your Honor.

23 JUDGE MULLINS: Any question about the order, Ms. Barber?

24 MS. BARBER: My one question is, so the emergency rules are  
25 still applicable until the appeal time runs?

1 JUDGE MULLINS: Well, the suspension is in force and in  
2 effect right now.

3 MS. BARBER: Right.

4 JUDGE MULLINS: I don't know. These things are usually black  
5 and white, but I threw some gray at it today, so I don't know  
6 exactly how that goes.

7 MS. BARBER: Okay.

8 JUDGE MULLINS: I'll let you all worry about that. All  
9 right, thank you, folks. We're in recess.

10 (Whereupon, at 3:22 p.m., the hearing in the above-referenced  
11 matter was closed.)

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## CERTIFICATE

This is to certify that the attached proceeding before the  
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF:            Jeffrey O. Siegel  
DOCKET NUMBER:            SE-30469  
PLACE:                        Kansas City, Missouri  
DATE:                         March 13, 2018

was held according to the record, and that this is the original,  
complete, true and accurate transcript which has been compared to  
the recording accomplished at the hearing.

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David Molinaro  
Official Reporter