

BEFORE THE BOARD OF OUTFITTERS  
STATE OF MONTANA

IN THE MATTER OF CASE NOS. 2014-OUT-LIC-1356, 2014-OUT-LIC-1357,  
2014-OUT-LIC-1358, 2014-OUT-LIC-1359, 2014-OUT-LIC-1360, AND  
2014-OUT-LIC-1376 REGARDING:

THE PROPOSED DISCIPLINARY ) Case No. 1331-2015  
TREATMENT OF THE LICENSE OF )  
ROBERT FRISK, )  
Outfitter, License No. 22. )  
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**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

In this matter, the Business Standards Division (BSD) of the Department of Labor and Industry (department), providing administrative support to the Board of Outfitters (Board), gave notice to licensee Robert Frisk that the Board's screening panel proposed sanctions against his license for professional misconduct pursuant to:

- (a) Mont. Code Ann. § 37-1-316(5) (providing misleading, deceptive, false or fraudulent advertisement or other representation in conduct of his profession);
- (b) Mont. Code Ann. § 37-1-316(18) (conduct not meeting generally accepted standards of practice);
- (c) Admin. R. Mont. 24.171.2301(3)(h) (abuse of livestock); and
- (d) Admin. R. Mont. 24.171.2301(3)(o) (failing to respond to board inquiries and requests).

Hearing Officer Terry Spear conducted a contested case hearing in this matter from July 14 through July 17, 2015 in Helena, Montana. Mark Jette, Office of Legal Services, DLI, on behalf of BSD, presented the case for sanctions. James C. Bartlett, Attorney at Law, represented licensee.

Witnesses who testified under oath during this hearing were Michael Munoz, Susan Younkin (recalled in rebuttal), Nancy Antes (recalled in rebuttal), Gail Kreger (recalled in rebuttal), Karen Brooks (recalled in rebuttal), Emma Lou Kerstetter (recalled in rebuttal), Michael Hayes, Marty Meiser (recalled in rebuttal), Ross

Drishinski, Barbara Lancaster, Karen Mathison, Jere VandeBos, Jennifer Schofield, Randy Nicklaus (recalled in rebuttal), Logan Lloyd, Chad Nethercott, and Robert Frisk (recalled in rebuttal and then recalled again in sur-rebuttal).

BSD's Exhibits 1 through 7 were admitted into evidence. Respondent's Exhibits A, C, E, and G were also admitted into evidence.

After the close of the state's case in chief, the Hearing Officer granted dismissal of the claim, under Admin. R. Mont. 24.171.2301(3)(o), of failing to respond to Board inquiries and requests, denying dismissal at that time of the other claims.

Based on the evidence submitted, the Hearing Officer finds that Frisk has violated professional standards and recommends to the Board of Outfitters that sanctions should be imposed against his license. The factual basis and legal rationale for this recommendation is set forth below.

## **II. ISSUE**

The issue in this case is whether disciplinary action should be taken against the license of Robert Frisk, pursuant to Mont. Code Ann. § 37-1-136, and if so, the proper discipline to be taken.

## **III. FINDINGS OF FACT**

1. Six women with common interests in undertaking outfitter led horseback and camping excursions to "wild" places all over the United States filed separate complaints against Robert Frisk involving an excursion he contracted to provide for them and for which they paid. The six complaints were consolidated by the Board and tried together in this contested case hearing. The complaints and complainants are as follows:

Complaint Number	Complainant's Name
2014-OUT-LIC-1356	Marty Meiser
2014-OUT-LIC-1357	Susan Younkin
2014-OUT-LIC-1358	Karen Brooks
2014-OUT-LIC-1359	Gail Kreger
2014-OUT-LIC-1360	Nancy Antes
2014-OUT-LIC-1376	Emma Kerstetter

2. At all times relevant to these facts and circumstances, Frisk was licensed as a Montana outfitter, holding license number 22, doing business as B & D Outfitters.

3. Frisk had traveled to outdoor shows in Pennsylvania for at least the last five years, advertising that he, as B & D Outfitters, could provide hunting, fishing, and horseback riding trips to his back country camp site (“wilderness camp”) inside Montana’s Bob Marshall Wilderness Area (the Bob). He presented himself as a licensed Montana outfitter who could safely transport his clients to his wilderness camp to enjoy a week of excursions, including fishing, hiking, photography, sightseeing, and more. He owned the horses and mules for these excursions. Frisk is authorized by Montana Outfitters License #22 to guide clients to lawfully hunt or fish within the State of Montana at locations where hunting and/or fishing is permitted by the Montana Fish and Wildlife Commission or on the lands operated by said Commission under agreement with or in conjunction with a federal agency, a state agency, or a private owner. His ten-year federal permit authorized him to take and guide clients on trips into the Montana’s Bob Marshall Wilderness Area for day or overnight trips using horses or other means of transportation and required that he have a Montana outfitter’s license. Only as the holder of a Montana outfitter’s license can he obtain and offer services under such a permit.

4. Complainants Nancy Antes, Karen Brooks, Emma Lou Kerstetter, Gail Kreger, Marty Meiser, and Sue Younkin were part of a group of women who were all either mutual friends or had mutual friends within the group. The group was based in Pennsylvania, and had developed a tradition over the past decade that at least some of them met every year to embark upon an outfitter led excursion into a remote location in the USA, as an adventure. Five of the six complainants had extensive experience in owning, caring for, and riding horses, in wild places and in other settings. Meiser had also been a part-time outfitter’s assistant in Colorado.

5. Younkin was the exception. Although she is a very active outdoors woman, she only considered herself an “average” rider, had much less experience than the others, and had not herself owned or cared for horses. However, over the last decade she had been the only member who went on all ten riding excursions by members of the group, including “Montana down near Alder, Wyoming near Dubois, Idaho in the Selway Bitterroot Wilderness area, California in the High Sierras [and] . . . one in Vermont [with] Icelandic ponies.” Younkin, Tr., Vol. I, p. 51, Ins. 6-9. At hearing she testified that with the “coaching” of the other women along the way:

I feel I’m fairly competent. I have now ridden literally hundreds of miles in back country.

Younkin, Tr., Vol. I, p. 54, Ins. 12-14.

6. In early 2014, the complainants were interested in taking an excursion that summer, and were starting to explore possibilities. Younkin and some of the other members of the group had been on a previous trip near Alder, Montana, along the

Ruby River. Younkin was a fisherwoman and was the only member who had fished on that previous Montana trip. She had fished the Ruby and also fished a small nearby lake. Younkin suggested, and the other five complainants tentatively agreed, to an excursion into the Bob in Montana in 2014. As the instigator of that tentative agreement, Younkin came to the February 2014 Great American Outdoor Show in Harrisburg, Pennsylvania. She sought a Montana outfitter who could provide both the equipment and the local knowledge necessary to lead trail rides into and around the Bob, for several days, with fishing among the possible activities, and then lead the group back out of the Bob on the last day of the excursion.

7. Frisk, advertising as B & D Outfitters at that show in Pennsylvania, met Younkin there when she walked up to his booth. Younkin visited with him, took his promotional materials, and listened to his sales pitch.<sup>1</sup>

8. Younkin began the process of informing the other women, and then they all began the process of scheduling and arranging the riding excursion into the Bob. It was important to the women that Frisk was a licensed outfitter. The group had used outfitters for previous excursions and being an outfitter was, for them, an indication of being a safe and skillful guide.

9. Frisk described the trip as a 30-mile trip up and down intermittently steep, narrow, muddy, and cliff-lined trails into the rugged Montana back country. From his wilderness camp, Frisk told Younkin that the group could enjoy daily excursions to hike, fish, sightsee, and take pictures, or Frisk would custom tailor a trip for the group. Along with the contract, each client was provided a promotional document entitled “Summer Trip Information,” which included language that stated, “There is a small lake settled into the side of the mountain close to our camp that is full of native brook trout where we can catch an ample supply to make a great fish fry for supper.” Dept. Hrg. Ex. 1 at 17. Younkin, a part-time resident of Montana, held a Montana fishing license and often traveled with her fishing gear.

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<sup>1</sup> Frisk did not tell Younkin that he had taken very few guided trips into the Bob in the past few years, compared to other Montana outfitters with federal permits for the Bob. According to Mike Munoz, District Ranger for the USDA Forest Service and essentially the line officer of the Rocky Mountain Ranger District with authority for issuing permits such as outfitter guide permits, the most recent five year review of Frisk’s use of his federal permit showed very limited use. “One service day” means one day in the Bob with one client. Based upon the mandatory reports each federal permit user must file with the Forest Service, the highest use Frisk had made in the last five years was 42 service days. Since a service day is one day (with or without a night) in the Bob with one client, taking six clients into the Bob for seven days would be 42 service days. Other outfitters with similar permits reported thousands of service days per year. Munoz, Tr. Vol. I, p. 33, ln. 18 – p. 34, ln. 14. However, there is no evidence of any reason why Frisk should have disclosed to Younkin his recent paucity of actual guide trips into the Bob.

10. Younkin's correspondence with Frisk indicated that she would bring her rod if a side fishing trip would not interfere with the other riders. At hearing, counsel referred her to the "small lake" information in the promotional document and asked if she thought, "Gee, there could be fishing, and there could be a stir fry," asking her, "That was a possibility for you had you chosen to bring your pack rod?" She responded, "Certainly a possibility. I'm pretty much a catch and release, so I probably wouldn't have done that [Reel in and land the fish for dinner]." Tr. Vol. I, p. 121, Ins. 2-9. Younkin did not bring her fishing gear with her.

11. The six clients tried to check Frisk's references, but had difficulty reaching any of them. The limited contacts they were able to reach were complimentary about Frisk. The six clients timely made payments (\$1,425.00/person, totaling \$8,550.00) for Frisk to guide them on this excursion into the Bob. Had Frisk not had a current Montana outfitter's license, the six would not have entered into this agreement.

12. Frisk's wilderness camp has been under lease since 1980 and in his name since 1981. Frisk maintained his own horses since 1971, and he leased extra horses from time to time when his bookings required it. Frisk kept his horses in shape, which required riding at least once every two weeks. Before he took any animals to his trailhead camp, for a trip from the Swift Dam area into the Bob, Frisk examined each horse or mule carefully; if an animal's muscle tone was down, Frisk kept that animal's pack weight at around 50 pounds, until the animal was back in shape. A normal pack weight would be 175 pounds. Frisk has kept a relationship with the same veterinarian since 1970.

13. Frisk had left at least one of his own horses in Bigfork because the animal showed signs of illness. He leased at least one horse. He examined all of the horses (both his horses and the leased horse or horses). The horses and mules had been used on a trip prior to the one that was scheduled for August 4-8, 2014. Thus, the animals were kept at his trailhead camp for three or four weeks before the excursion scheduled to start on August 4, 2014.

14. Jere VandeBos is a farrier (blacksmith who shoes horses) with 14 years experience. He had shod animals for Frisk for 12-14 years. In late July 2014, VandeBos went to Frisk's trailhead camp and shod the front feet of all of Frisk's horses. He did not complete shoeing the animals' rear feet because he did not have time. He testified that all the animals' hooves were in good condition and none of the animals had sore feet, ragged or otherwise hazardous hooves or shoes. In essence, he testified that all of the animals looked good to go for a pack trip into the Bob.

15. Prior to the arrival of his six clients, Frisk had to set up his wilderness camp, which required five to six days to take all the camp gear to the wilderness camp, to procure enough firewood for night burning, and to set up and to prepare tents, tarps, and corrals. In addition, Frisk needed to haul in feed for the stock and

food for the people. This was a considerable undertaking, requiring at least three trips with loaded pack animals that were unloaded upon each arrival.

16. According to Frisk, the “young guy” he had hired from guide school to assist him during the August 4-8, 2014 excursion found the work to be “just too hard” and quit with no notice. Tr., Vol. III, p. 660-61. Frisk testified that after the “young guy” had “walked,” he began calling friends to get help on the excursion. One of the friends he called was Kenny. Tr., Vol. III, p. 661, ln. 5 – p. 662, ln. 10:

. . . . So I talked to Kenny. Kenny said, “Yes. I’ve got to move some cows,” because he works ranches, and he does a lot of different things. Kenny is a real versatile guy. And he said, “I’ll get the cows moved,” and he said, “I’ll come over and help set the camp up.” And he said, “If I can, I’ll find somebody to come.” And Jarred [Kenny’s 14 or 15 year old nephew] was all excited. He’d never been on the back country thing before, so Jared came with him.

We went in, got the whole entire camp set up, and we talked about it. He came over to the west side, and did some stuff while I was packing hay. Then he came back over there again, and we went back in, took some pellets in on that trip, and just kind of organized the camp and everything.

And when we got back out, Kenny said, “Well, I’m going to check and see whether I need to go home or not.” So he went up on the hill, and he actually got cell service right on the hill above the trailhead, and found out he needed to go home. And I said, “Well, I need somebody here tomorrow, because these women are coming here. You can’t just walk off,” and he said, “I’m not going to.” He said, “I’ll either make sure that somebody covers me on my end and I’ll come back, or I’ll get someone that I know that will fit what you need,” because he’s been around me enough. He knows how particular I am about everything. And so that’s the way it ended.

17. The day before his clients were due to arrive, Frisk was busy completing the final preparations for the excursion. He did not yet have an assistant (Kenny, or Kenny’s replacement) at the camp. From his testimony, it seems he had forgotten that there was an annual event, the “East Slope Back Country Horsemen’s” poker ride taking place on the same trails that led to his wilderness camp. He decided to wait until that event was off the trails, to avoid congesting the trails. He did not leave for his wilderness camp on August 3, 2014 until after 5:00 p.m. He testified that he rode one horse (“Bonehead”) and had three pack animals with him, that he left the public trailhead at approximately 5:10 p.m., and that he was at the wilderness

camp at twilight. Frisk unpacked the pack saddles and completed the preparation of the wilderness camp for the arrival of the excursion the next day. Then he rode his horse back, bringing the rest of the animals with him. He testified that he arrived back to his trailhead camp at 3:00 a.m. or perhaps later. According to Frisk, the only horse used that night that was ridden the next day by any of the women was Bonehead. Karen Brooks rode Bonehead. Frisk testified that Bonehead was “fine” and not limping when Frisk rode him back into camp early that morning of August 4, 2014. Tr., Vol. III, p. 668.

18. Kenny and Frisk had made two trips in to the base camp in the course of setting it up for the six clients. The replacement that Kenny found when he confirmed that he could not come back was Chad Nethercott, who testified about when and how he met Frisk. Tr., Vol. III, p. 597, ln. 2 – p. 599, ln. 1.

Q. When did you meet Bob Frisk?

A. Well, I met Bob through a mutual friend of mine. I’m not sure of the date. It was the day before the plaintiffs -- the ladies arrived.

Q. We can call them ladies, that’s fine, rather than complainants or anything. The ladies from Pennsylvania you’re referring to?

A. Yes, sir.

Q. So you met Bob the day before you met the ladies?

A. Yes.

MR. JETTE: Object, leading.

HEARING EXAMINER SPEAR: I’ll allow that answer. Go ahead. Stop leading, please.

Q. (BY MR. BARTLETT) What did you do to meet Bob?

A. I was recommended by a friend of mine that knew Bob.

Q. And so where did you go to meet him?

A. I went to Swift Dam to meet him.

Q. And what did you and Bob discuss?

A. He asked me about my first aid training, my horse experience; he asked me if I felt comfortable riding fifteen miles into the wilderness on horseback, and leading a pack string, and I told him I felt comfortable, and --

Q. Did you and he do anything the day before the Pennsylvania ladies show up to prepare for their arrival?

A. Him and I did not do anything the day before.

Q. What was available at camp the day before the Pennsylvania ladies arrive? What did Bob have there?

A. Well, he had all of his horses; he had his pack saddles; he had his riding saddles; he had corrals; he had a semi trailer that

we, Bob and I, stay in while we're there; he had vehicles, horse trailers, hay.

Q. Did you make a trip into the camp site before the ladies from Pennsylvania showed up?

A. No, I did not.

Q. Are you aware if Bob did or did not?

A. Yes, Bob did. I met Bob when he came out the night before.

Q. And did you see him coming out?

A. No. It was dark.

Q. So he had already made the trip by the time you met him?

A. Yes.

Necessarily, since Nethercott met Frisk when Frisk "came out" from his trip to his wilderness camp, Nethercott first met Frisk some time after 3:00 a.m. on August 4, 2014.

19. Nethercott also testified that when he arrived at the trailhead camp, while Frisk and the animals he took with him were gone to the base camp, there were two horses left at the trailhead camp. Tr., Vol. III, p. 635, lns. 3-14. According to Nethercott's testimony, Frisk must have taken all three pack animals and six out of the eight riding horses with him to the base camp during his August 3-4 trip.

20. The six clients traveled to Montana, stayed in a Chateau motel the night of August 3, 2014. They arrived in at least two vehicles at the departure point near the trailhead at approximately 9:40 a.m. on the agreed date of August 4, 2014. When they arrived and announced their presence, Frisk and his assistant for this trip, Chad Nethercott, came out of the trailer. Frisk and Nethercott appeared disheveled and dressed in dirty clothes. The six clients thought the men seemed unprepared for their arrival.

21. The clients testified that the horses were unbrushed and unsaddled when the clients arrived. The horses (and the mules) were tethered to a rail in the corral. The six clients thought that the horses seemed lethargic. Some of the horses had all four shoes and others had unshod rear legs. The clients thought that some horses seemed to have worn hooves. There were two pack mules and one pack horse for the clients' bags and anything else to go to the wilderness camp, together with eight riding horses for the six clients, Frisk, and Nethercott.

22. Frisk did not help the clients pick appropriate horses or saddles. Frisk told his clients that he had read the personal information written by the clients (provided to Frisk before starting the trip) about their heights, weights, and experience with horses, but that he had not met most of them and could not match

the information to the faces. Frisk then told the women to go ahead and pick out their horses and saddles. The substantial and credible evidence of record shows that these clients, based on their previous experiences with outfitters, expected Frisk at least to assist them by telling them which saddles (from the pile of saddles on the tarp) best fitted which horses, and perhaps even suggesting which horses might be suitable for which riders. While not liking Frisk's more laissez-faire approach, most of the clients began to pick their own horses.

23. At hearing, Frisk testified that he liked to "involve" his clients with their horses in this way. He testified that he believed it enhanced the overall experience, and that over the years most of his clients had enjoyed it. There is no evidence that he said this with these six clients before telling them to pick horses and saddles. Some of them did wonder about being told to pick any saddle for the horses they picked. In their own experience a riding horse had a "regular" saddle that was regularly worn for carrying riders, in much the same way that humans "break in" their footwear by wearing it for awhile. Frisk appeared to give no credence to that approach, viewing the saddles as interchangeable on the horses, with a few slight adjustments.

24. Brooks was only on her second excursion with the group. On her first excursion (in 2011), the outfitter had provided breakfast before the trip began, and the horses were already saddled for them after breakfast. She had assumed the horses would be ready to go when they arrived at Frisk's camp, except for loading the pack animals, and departure for his wilderness camp would take place within a couple of hours after their arrival at the trailhead camp. The slow pace of preparing to leave concerned her, because Frisk had already made a point of warning them about muddy places that could be more difficult and delay progress. She assumed it might take eight hours to ride the 15 miles and that a later departure would mean a later arrival, at the end of the evening, with night falling or having already fallen.

25. Younkin was nonplussed about not getting help picking her horse. She had noted in her personal information that she was only an average rider and that she wanted assistance with things that an experienced rider would know. That day at the trailhead, she told Frisk that she "absolutely" was not comfortable picking a horse and asked him to choose a horse and a saddle for her. He casually pointed out two of the eight horses, without picking a saddle for her and without taking her to a suitable horse himself. While she was still hesitating and hoping Frisk would take her hint and help her, she saw two of her friends pick the two horses Frisk pointed out for her. She had to ask Frisk again to pick another horse, and then ask him again to pick a saddle for her. She was left feeling that Frisk was not paying attention to what she needed and wanted, which apparently was to be told which horse and which saddle she should use, to be escorted to and introduced to her horse, and perhaps even to be briefed about the horse's personality and helped with saddling it.

26. All six clients observed that it took a long time to pack up the three pack animals, even though Frisk did not weigh their bags, but decided how to arrange them on the pack saddles simply by hefting each bag. This also was in conflict with the practice used by other outfitters, on other trips the six clients had taken. Other outfitters had weighed the bags to decide how to arrange them on the pack saddles. Nethercott was holding the pack animals reins, since he did not know how to load a pack saddle, so that Frisk had less help than he would usually have had.

27. Meiser had worked for a number of years for an outfitter in Colorado, taking trail rides and summer pack trips, and guiding elk hunts in the fall. She had retired before the current Montana trip began. Her back country experience included high elevation hunting, after a six mile horseback ride to a camp at 11,500 feet, with nights spent in tents and days horseback riding to hunt. She offered to help and did help with the loading process, in an attempt to speed up the process.

28. During and after the horses were being prepared and gear was being arranged on the pack saddles, the clients were only offered what they considered to be snacks (which were offered around or after lunch time). The next meal for the clients would seemingly come after they arrived at his wilderness camp, which looked as if it was going to be very late. These were further indications that Frisk was not the kind of outfitter they were accustomed to having. Frisk was oblivious to the reactions of his clients about how the day was developing.

29. Nethercott visited with the clients as the morning and early afternoon progressed at the trailhead camp. He mentioned that this was his first trip with Frisk. At some point he told some of the women about Frisk's trip in and out from his wilderness camp during the previous night and into the early hours of that morning. Nethercott mentioned to them that Frisk had taken all but three of the animals on that trip in and back to set up the wilderness camp. Tr., Vol. III, p. 621, lns. 19-22. Some of the clients surmised that Frisk intended for them to ride the same horses that he had used the previous night. Based upon Nethercott's testimony, on August 4, 2014, when the excursion began to leave the trailhead camp, three or four of the six clients were riding horses that had just finished that 30 mile round trip a few hours earlier.<sup>2</sup>

30. By the time the horses were prepared, saddled and ready to go, it was at least an hour and half after noon on August 4, 2014. This was over four hours after the clients had arrived at the corral. Frisk informed the clients that he was not taking

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<sup>2</sup> No one asked Nethercott during his testimony why he told the women "all but three" of the animals went with Frisk, if only two were in the corral after Frisk left for the trailhead camp. If three horses were actually left behind, then only three of the women were riding on horses that had gone on the August 3-4 30 mile round trip ride.

any food for the horses and that they would have to stop along the way to his wilderness camp to let the horses graze.

31. At hearing Frisk testified that he did not encourage or allow his clients to permit his horses to graze while they were on the trail. This was apparently offered to impeach the clients' testimony about being told they would stop on the way to the wilderness camp to let the horses graze. The Hearing Officer understood the clients to testify that Frisk told them the entourage would stop somewhere along the way as a group, to allow the horses to graze during that break in travel. Frisk seemed to be testifying that while on the trail he did not want his clients to allow his horses to slow, to wander, or to graze while the entourage was still moving. This did not contradict the testimony of the clients about a plan to stop and allow all of the horses to graze before reaching his wilderness camp. Such a grazing stop would have prolonged the time to get to the wilderness camp.

32. As the group finally set off for his wilderness camp, the clients had some trouble getting their horses to walk. Some of the horses resisted moving and seemed tired. Meiser had to hit her horse with the lead rope to force it to walk.

33. Meiser had been friends with a number of the overall excursion group members for many years – she and those friends had a common interest in horses and lived within the same general area in central Pennsylvania. She was a land surveyor who had owned her own business. Meiser had participated in all but one of the excursions over the past decade. She had arranged for the outfitter for the two excursions in Colorado. The group stayed in tents and rode horses, sometimes moving to a new location for the tents each night. She had participated in one of the two previous Montana excursions. She testified that the previous Montana excursion she had participated in was a "Ride-A-Rama," on which they actually rode around 120 miles, moving the camp each night, with some fishing opportunities. There were also pack trips in Wyoming and Idaho.

34. The group always used outfitters. Meiser expected an outfitter guiding group members to provide the equipment necessary for the trip (horses, tents, equipment), since they would be flying in from afar. She relied upon a licensed outfitter to be an experienced guide who knew the rules and regulations that were meant to be followed and was also looking out for the clients' safety:

I have a lot of back country experience myself, but if I'm going into an area that I'm unfamiliar with, I want someone who is familiar with that area, and experienced, and knows the rules and regulations, and knows how to protect me from – I don't know – all of the things that are out there in the wild.

Tr., Vol. II, p. 381 lns. 14-20.

35. Meiser had ridden and owned horses for almost 40 years. It was not credible that Meiser would be totally mistaken about whether the horse she was riding was tired and whether it was likely to take her safely to the other end of a 15 mile ride over rough wilderness country.

36. The horse Brooks was riding (Bonehead) refused to proceed past the trailhead and seemed to Brooks to be limping.

37. As noted previously, Brooks had only one excursion experience with members of the group before the current Montana trip – it had been “an awesome trip” into the Sierra Nevada range. She had been friends with Kerstetter for “probably twenty years,” had known Meiser and Antes, and had met Younkin on the 2011 excursion. She had just met Kreger before the current Montana trip.

38. Brooks had a pony in 5<sup>th</sup> grade and after that got into 4H and horses. Her youngest daughter also got into 4H and horses, with her mother’s encouragement, and was now a horse trainer. Brooks no longer had horses, and had only been riding once every couple of months except for the excursions. It still was not credible that she would report that Bonehead was limping and refusing to go at all without being kicked repeatedly in both sides unless what she reported was true. Because she was having great difficulty making Bonehead continue forward, Brooks got off the horse and complained that her horse would not go and was limping.

39. Frisk checked the horse and found nothing wrong with Bonehead’s hooves. He did find a bruise about 12 inches up the leg that was starting to swell. Frisk indicated to Brooks that even with the bruise the horse was fine, and the best thing for the horse was to ride him to prevent having the horse stiffen up. He was stunned when Brooks told him that was not satisfactory. He apparently had no idea until that moment that the women were not impressed with him and were increasingly wary about depending upon him for their safety on the excursion.

40. Brooks did not want to ride an unwilling horse, as she perceived Bonehead to be, and was now unwilling to ride another horse. Frisk offered that he or Nethercott would walk to his wilderness camp so Brooks could ride the horse assigned to either of them, and Bonehead would be left in the corral. Some of the clients balked at leaving a presumably injured horse alone in the corral.<sup>3</sup> With one member of the party on foot, the ride to the wilderness camp would be even longer, with even a later arrival.

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<sup>3</sup> If Randy Nicklaus was there for at least part of that morning, the women still had no way of knowing that he would be staying with any stock left behind.

41. Brooks announced that she was not going to go, that she would do something else and the others could go if they wanted, but she would not. Kerstetter, who was not having any trouble with her horse, had been standing and listening to Brooks, and she now said that she would not go, either.

42. Kerstetter testified that she had been involved with horses for 40 years, owning them, feeding and caring for them, and riding them. She also went on outfitter excursions with other group members, including an excursion in Montana on an all week ride (the 120 mile "Ride-A-Rama"), five days of horseback riding in Wyoming, in the Sierras in California, and riding on Icelandic horses in Vermont. She testified that the main reason she declared that if Karen wasn't going she wasn't going was that "I trust these girls, and if they, one or all of them or whatever, say that they've realized or feel that this isn't safe, that's good enough for me. So if Karen wasn't going, and was afraid of the safety, then I wasn't going either." Tr., Vol. II, p. 321, lns. 12-17.

43. The women had not had any opportunity to confer among themselves as a group. Two of them had now firmly refused to proceed. The issue of some of the horses not having four shod hooves had also been raised. Frisk was now offering other arrangements – he would get a replacement horse for the next morning, he would get the horses fully shod the next morning, and then they could leave that same day (perhaps starting a little late again). The six clients did not agree to any of his proposals. They wanted to go back to Choteau and discuss what to do. Frisk urged them to return the next day, at which point he hoped to satisfy their concerns and persuade them to begin the trip. He also suggested that he could simply postpone the trip by one day, extending the departure date one day, also, for no additional charge. To some extent his clients let him believe that might be possible, because they did not confront him as a group and adamantly declare that was not an option for them (although it probably was not). They wanted to get away from Frisk and Nethercott and talk among themselves about what they wanted to do, and to reach a consensus about what they would do.

44. Once again, Frisk was not accurately seeing how his six clients were reacting to the situation. He testified variously that either four of the six clients or all six of them agreed to come back the next morning and discuss the situation some more. In fact, none of the women agreed to come back the next morning, but they did not argue about it. As soon as they could, they retrieved all of their belongings and put them in their vehicles and left the trailhead camp to return to Choteau. On the way, they called and got rooms at the same motel where they had stayed the night before.

45. There was substantial and credible evidence of record proving that, more likely than not, Frisk had used much of the clients' payments to fund the supplies

and gear for the trip. In doing so, he had been frugal about the food he purchased and would offer the clients during the trip (like the “snacks” for lunch on August 4, which he termed “sandwiches” but which the women considered less than an acceptable meal). He was not in a very good position to refund their money, since he had already spent most of it. He was trying, once the women began to back out of the trip, to get them to agree to stay and take at least part of the trip they had hired him to guide, on whatever terms he could wrangle from them.

46. It is not credible that the six women agreed even to consider the “start and end the trip a day late” that Frisk pitched to them. It is highly implausible that they could have changed their travel departure dates on such short notice, even if they wanted to. If they could have made that change, it would have involved a substantial additional cost. In any case, at the point on August 4, 2014 when Frisk proposed this, they had lost confidence in his ability to deliver the trip he had sold them.

47. After the six clients got back to Choteau and registered at the motel, they went to the Forest Service office across the street and presented their accounts of what had happened to Kraig Lang, Wilderness Ranger, Rocky Mountain Ranger District, Choteau, Montana. They made it clear that they were not going to be using Frisk’s services as a guide. While they were having dinner, Frisk called at least twice. He called Brooks first and she told him that all six clients wanted a refund. He broke the connection or lost the signal.<sup>4</sup> Soon after that, Frisk called Meiser. She repeated the demand for a refund. That phone call also ended abruptly. Frisk may have tried to reiterate his proposal to complete the shoeing of the horses the next day and then commencing the excursion to his wilderness camp. The six clients had not agreed to that plan when he first brought it up to some or all of them before they left the trailhead camp and none of them agreed to it during the telephone conferences with Frisk that evening. Kerstetter tersely summarized their thinking, “. . . if you’ve decided he’s not safe, he’s not safe the next day.” Tr., Vol. II, p. 325, lns. 20-21. The clients generally believed the condition of the horses could not be remedied overnight, but even if it could be, they now had no confidence in Frisk.

48. Frisk was at least twice given notice on August 4, 2014 that the six clients wanted a refund and were not proceeding with the trip. Chad Nethercott testified that he was present in Frisk’s pickup and heard Frisk “call the ladies,” heard him ask them if they would come back, and on one of the calls, for which Frisk had his speakerphone feature activated, heard one of the women tell Frisk that “they decided that they did not – just did not want to go at all.” Tr., Vol. III, p. 612, lns. 20-25. When Frisk testified in his own case in chief, he admitted that Nethercott had heard

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<sup>4</sup> Frisk blamed bad cell phone reception for the abbreviated calls. According to the women who were on the phone with him during the calls, each call ended without warning soon after requests for a refund were made. It seems more likely that the calls ended because of the bad reception Frisk’s proposals were getting from the women, rather than because of bad cell phone reception.

his conversation with Meiser on August 4, 2014, in which she had told him none of the women were coming back and they wanted a full refund. This confirmed the women's testimony and established that more likely than not Frisk was told that in at least two phone calls with them that evening.

49. The next day, the six women met with District Ranger Munoz. They reported to him that they were "dissatisfied with the services that they were supposed to receive, and that the stock were not in good condition for traveling, and that they tried to determine a different date to leave, and that they couldn't arrive at that with the outfitter in question." Tr., Vol. I, p. 27, 16-22. Munoz reported that the women "were concerned about their health and safety, in terms of the stock's condition, and whether or not it would be ample for them to travel." Tr., p. 27, ln. 25 – p. 28, ln. 3. Munoz shared the information the women had provided to him about the horses with Brand Inspector Michael Hayes.

50. In addition to requesting and receiving a formal complaint from the women about Frisk, the Forest Service provided them with names of other outfitters, and they ended up purchasing a riding excursion with day trips from the Deep Canyon Ranch. They did not get to ride in the Bob and they did not get a pack trip. They had to pay for their accommodations, instead of camping out. While they remained in Montana trying to salvage their planned vacation excursion, they did not meet Frisk again after August 4, 2014. They incurred all of their travel expenses to and from Montana, had to pay for a second excursion which was arranged on short notice, and did not get any refund from Frisk.

51. On August 6, 2014, not the "next day" (August 5, 2014), Frisk's farrier, Jere VandeBos, came to the corral to resume the job of shoeing Frisk's horses, which he had started in July 2014, but had not had time to finish. Since he had known about the early August excursion, Frisk must have called VandeBos to get him back so soon. VandeBos did not finish shoeing the horses on August 6, 2014, so he came back on August 8, 2014 and completed the task. He testified that on each occasion, the animals' hooves, front and back, were in good condition, and none of the horses had any sore hooves. VandeBos testified that he had been there a hour or two on August 6, 2014 when the District Brand Inspector for the Montana Department of Livestock, for Glacier, Pondera, Toole, and Liberty Counties, Michael Hayes, and Pondera County Deputy Sheriff Ross Drishinski arrived to examine the animals.

52. Deputy Drishinski testified that his dispatch radioed him that Inspector Hayes requested Drishinski go with him to inspect Frisk's horses. Deputy Drishinski testified Hayes picked him up and that they arrived at the corral at roughly 9:00 a.m. on August 6, 2014. This would have been almost 48 hours after the six clients had

arrived at the corral on August 4.<sup>5</sup> After their visual inspection, both Drishinski and Hayes thought all the animals looked fine, not malnourished, not otherwise mistreated, and not fatigued.

53. On August 9, 2014, the women sent Frisk a letter, return receipt requested, asking for a refund, but the letter was returned without receipt. On August 24, 2014, a facsimile letter was sent by the riders to Frisk. This letter made reference to “Refund Request on behalf of Pennsylvania Group for Summer Trip Scheduled Aug. 4-8, 2014.” In the letter, Marty Meiser wrote that a full refund was due for each member of the group because after the group arrived at the trailhead camp, on time, he failed to fulfill his part of the contract by being unable to convey the clients safely, on horseback, to Frisk’s wilderness camp. The full refund was demanded by September 24, 2014.

54. On September 8, 2014, Frisk wrote a letter to the clients in response, noting that, from his perspective, a decision was made on August 4 to start the trip on August 5 and finish it on August 9, and he was ready to begin the trip on August 5 when he got a call of “no-show.” He explained that no refund was due for a no-show, but he extended an offer for a roll-over trip for six persons, treating the no-show as though it was a weather cancellation. The clients had not and did not agree to that proposal.

55. In October 2014, the Board received the six complaints against Frisk filed by the clients. The complaints alleged false and misleading advertising, breach of contract, disregard for the safety of clients and animals, and failure to provide a viable alternative to remedy the situation after Frisk recognized his error(s).

56. Frisk does not receive mail when he is away and working in the wilderness. After Frisk obtained his mail and reviewed the correspondence consisting of copies of the six complaints, notification that the Board’s Screening Panel would consider the matter at its December 11, 2014 meeting, and an invitation to Frisk to respond, he provided an alternative version of the facts, which was received by the department and its counsel after the Screening Panel had acted. The website for the Board of Outfitters, however, provides that a licensee (for all professions) is not required to respond. A licensee may do so. The Business Standards Division describes the “process” by stating that a letter requesting a response with a copy of the complaint is mailed to the licensee and the licensee “may submit a written

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<sup>5</sup> Inspector Hayes testified that the Sheriff’s Office in Pondera County called him and asked him to go with Drishinski to look at Frisk’s horses. District Ranger Munoz testified that he had told Hayes about the complaints against Frisk. Frisk testified that it was Hayes (rather than Drishinski) who told him the inspection resulted from a complaint about how Frisk was treating his horses. This confusion is typical of this case, but was not significant with regard to the recommended order.

response” addressing the complaint to the Compliance Office (emphasis added). The process continues whether or not a response is submitted.

57. The evidence established that the women reasonably concluded that it could be unsafe to proceed with Frisk and Nethercott on the excursion into the Bob on August 4, 2014, due to the condition of the stock.

58. More likely than not, some and perhaps many of the horses were tired. The evidence certainly suggested that taking the 15 mile horseback ride to the wilderness camp on August 4, 2014 could have turned out to be unsafe. Apparently, as many as three or four of the women were riding horses that had made a 30 mile round trip into the Bob and back, and now, less than 12 hours later, they were commencing another 15 mile trek back into the Bob. The state did not prove the danger was certain and the trip would have resulted in actual harm to the stock or the clients, but the clients were reasonable in their concerns that the trip could result in actual harm to the stock or the clients. Coupling these concerns with their eroded confidence in Frisk because of the way he was interacting with them, it was reasonable for them to decide not to take the trip.

59. Because their concerns were, on the facts of record, reasonable, it was also reasonable for them to request a refund. They did not get the trip they bargained and paid for. They reasonably believed, after the unfortunate morning at the trailhead camp and the behavior of some of the horses when the excursion tried to depart, that going with Frisk would not have provided the trip he had promised them. There is substantial and credible evidence that Frisk did not provide a viable alternative to remedy the situation after the excursion’s abortive start that day of August 4, 2014. After the clients refused to proceed, there was no meeting of the minds between Frisk and the clients for any modification of the agreement. There was no factual basis for Frisk to treat them as “no-show” clients. It was appropriate for him to offer a “weather check” substitute trip, but, again, once the clients lost confidence in Frisk there could not be any viable alternative, and they never had agreed to that substitute trip, and it was reasonable for them not to agree.

60. On the facts of record, Frisk did not engage in false and misleading advertising. He did not intend to renege on his promise of delivering them the trip he discussed with Younkin. Circumstances he had not anticipated forced him to embark late upon a necessary final pack trip to the wilderness camp. He and his animals made the long round trip too close to the departure date and the time for the excursion. There was no malicious intent, and there were no deliberately false and misleading statements made to Younkin or in his materials sent to the six clients. Nonetheless, there was a genuine risk that starting the excursion when it was started on August 4, 2014 could have resulted in a disaster caused by one or more tired horses being unable safely to finish the trip to the wilderness camp.

61. Frisk had faith in his animals and in himself, and did not grasp that his clients wanted a wilderness adventure but needed assurances that it was safe enough to enjoy with a certain degree of comfort, even though “roughing” it, and without fear of failure. For Frisk, pushing the envelope a bit with somewhat tired animals was not a prohibitive risk. In point of fact, it might not have led to any harm for clients or animals. His animals were quite likely used to being pushed (being “athletes,” as the brand inspector and Frisk put it). But the possibility of a catastrophic failure of performance by one or more of his animals, resulting in injury to an animal or client or guide, was not a risk the six clients wanted to take. Frisk did not appreciate that he had pushed the envelope too hard for the ease of mind of his clients, and that they were not willing to take his word for the safety of excursion.

62. Frisk did not see the growing concern of his clients until it was too late. He resisted a refund and still resists it to this day. On the facts, his failure to see the growing concerns of his clients was not in conformity with generally accepted standards of outfitting practice. It requires no expert’s opinion to recognize that a basic premise of outfitting is to provide a safe trip so that the client can savor it. The ability of the outfitter to show the clients they can and should rely upon him is part of what is required. The risk of traveling a wilderness trail in the Bob is part of the adventure, as these six clients knew very well. But it is no longer an adventure if the client(s) lose confidence in the outfitter regarding whether he is thinking of client safety and protection from dangers and pitfalls the client(s) may not know. When one or more clients reasonably fear for their safety, based on a perception that the guide is not paying attention to their wants and needs, there is a problem so big that it may prevent the trip (as it did here).

#### **IV. DISCUSSION**

##### **A. Credibility**

There were fact questions in this matter that required credibility determinations. The Hearing Officer observed the witnesses as they testified in person. He considered their demeanor and manner while testifying, as well as considering the character of each witness’s testimony, the possible interests of the licensee and his friends and business associates and employees, the possible interests of the complaining witnesses, the extent of each witness’s capacity and opportunity to perceive and to recollect or communicate any matter about which the witness testified, inconsistent statements of the witnesses, and other evidence contradicting any witness’s testimony.

The women, most of whom clearly were longtime horsewomen, concurred that the horses were tired, seemed in poor condition, and did not show any spirit for the trip. In addition, all of the women essentially agreed that they had lost confidence in

Frisk. Frisk, on the other hand, asserted that there was nothing wrong with the horses, and offered evidence that a couple of the women seemed unable to ride and direct the horses, but the rest really wanted to take the excursion without those two. Frisk's evidence was unpersuasive. Frisk's evidence failed even to establish which two women were the alleged problem, and failed credibly to establish that any of the other four actually agreed to any part of his various proposals to salvage the trip.

There were many points of disagreement on facts. The parties disagreed whether anyone other than Frisk and Nethercott was actually present and involved with providing services to the six clients on August 4, 2014. The parties disagreed about the times at which various events occurred. The parties disagreed about what the horses acted like and about how tired the horses were. The parties disagreed about whether there were "lunches" or "snacks" – "delicious sandwiches" or "Gatorade and a box of Ding Dongs and Little Debbie Cakes." Most of these disagreements are not worth resolving. But the basic question of whether Frisk was more credible or the women were more credible is one of the primary matters that made a difference in Hearing Officer credibility determinations.

There can be lapses in memory that are honest mistakes. There can be confusion about the sequence of events and even about who was talking when. But there also can be testimony that is so inconsistent with reliable basic facts that the testimony severely damages the credibility of the witness.

This case involved a confused series of events and interactions after the excursion finally began to leave the trailhead camp and slowly move toward the trailhead. There were some radical differences between the testimony of the people who were there, some of which simply cannot be blamed upon either honest mistakes or simple confusion. Some of the testimony of Frisk about what the women said and what he said during that confusing series of events and interactions, compared with some of the testimony of the women about what Frisk said and what they said during that same time, cannot be reconciled in any way other than by deciding that either Frisk was not telling the truth or else most of the women were not telling the truth.

Every witness is presumed to tell the truth, and the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact (except perjury and treason). Mont. Code Ann. §§ 26-2-301 and 302. The truth telling presumption, for any witness, can be undercut by "any matter that has a tendency to disprove the truthfulness of a witness's testimony." Mont. Code Ann. § 26-1-302. Subsections 302(1) through 302(8) list specific examples of some such matters, while subsection 302(9) notes that "other evidence contradicting the witness's testimony" can also be offered.

Frisk testified to a great number of things that he swore were discussed between him and various of the six women, in one-on-one conversations or conversations he had with more than one of his clients. There are many conflicts between Frisk's testimony about those conversations and the testimony of the clients who allegedly participated in those conversations. A good starting point is the conversation Frisk asserted he had with Sue Younkin, which is significant with regard to credibility.

Frisk testified three times on the third day of the hearing. The first time, during his direct examination by his attorney, he recounted a rather brief conversation that he allegedly had with Younkin, as an aside during a very long description he was giving about what two of the other women had been saying and doing near the beginning of the confused series of events and interactions that erupted as the excursion approached the trailhead. The long description appears at Tr., Vol. III, from p. 717, ln. 3 through p. 723, ln. 20:

Q. When does it come your attention that there is an issue?

A. I had stopped at the gate, and I was just sitting there waiting, and I heard Karen Brooks yelling.

Q. What did you hear her yelling about?

A. I just heard her voice raised yelling. I could not tell. The distance I was at, I couldn't tell exactly what she was saying.

Q. Did you respond right away or wait awhile?

A. No, I bailed off of my horse, I yelled at Chad, I said, "Please come take my string and my horse, I'll go find out what's wrong."

Q. Did you have to wait for Chad to get up there then?

A. He wasn't very far very away at that point. He had kind of come around the women at that point. So he wasn't very far away, a couple minutes.

Q. When you went back then, are you going back on your horse?

A. No, I went on foot.

Q. So you're walking back?

A. Running.

Q. Running back. You made contact with Karen?

A. Yes.

Q. What did you and she discuss?

A. All she said to me was, "I'm not riding this horse. He's lame," and I said, "Let me check it out."

Q. What did you do?

A. I checked it out.

Q. What did you find?

A. I walked around the horse, and looked at him, and he looked fine to me. So I took the reins from her, and I made him step forward, and he did have a slight little limp with his right back foot.

Q. What did that tell you?

A. It told me something – He might have had a stone in his shoe. I didn't know at that point.

Q. What did you do next then to check?

A. I walked around behind him, lifted his foot like I would if I was shoeing him, cradled it on my leg, checked the shoe, checked around his foot to make sure there was no bruise on the foot or something wrong with the shoe – like sometimes the nails get twisted or whatever, and a shoe will cock sideways, and it will cause a horse to limp – and there was nothing there. So I put his foot back down on the ground, took my hand, and started working my way up the leg. I got about to this point, say this is –

Q. This point is – you pointed at your wrist?

A. Well, that's what I was explaining. Say that's his hoof. He's on the ground. In proximity to that, it would have been about right here on his leg.

Q. Approximately how many inches from the ground going up the leg?

A. From the ground, probably twelve, thirteen, something like that.

Q. What did you find?

A. He reacted to the squeezing, so I figured there was either a bruise, or maybe something stuck in his leg, like a little stick or something. So I parted the hair, and I rubbed it all around, and yes, there was a bruise there. It was starting to swell a little bit.

Q. What's a bruise?

A. Just like a bruise you get on you. You bang into something, you get bruised.

Q. What did that tell you?

A. It told me he bumped into something.

Q. Does that make the horse lame?

A. No.

Q. Did you report that to Karen, what you found?

A. Yes, I did.

Q. What did you tell Karen?

A. I turned around to Karen and I said, "It is a very small stone bruise. Your horse is fine. The best thing you can do that for that horse is to ride him. He had a little bruise on his leg. If you don't ride him and put him in the corral, he's going to stiffen

up.” She said, “Absolutely not. That horse is lame, and I’m not going on this trip.”

Q. How do you react when a customer tells you that?

A. It shocked me. She’s not listening to my judgment at all. I’ve been doing this how many years. She’s not listening to my judgment at all.

Q. So what did you do next?

A. I just stood there for a minute thinking about it. I’m thinking, “She’s saying she’s not going, so now what do I do?” So I walked over in the proximity where Chad was, trying in my mind at that time to think up a real quick solution, because obviously we have a problem here. Chad looked at me, and Chad said, “I would be willing to walk,” and I said, “Well, maybe the best thing we could do is put that horse in the corral, let Randy take care of it, and you and I can switch off walking.” That way one guy isn’t walking the full fifteen miles. I’ve done it many times. It is not like it’s to going to hurt anything. So I presented that to the women.

Q. When you say you presented that to the women, was that while you were still out by Karen’s horse or –

A. I walked back to where Karen’s horse was. By then, the rest of them had kind of come into proximity. They weren’t on top of where her horse was, but they were within earshot basically.

Q. You’re talking to the ladies as a group then?

A. Yes.

Q. And what did you propose?

A. It is hard to say that every single one of them was there -- I’m not sure -- but it was a group.

Q. What did you say?

A. I said that to try to remedy the situation, Chad and I would be willing to walk. We would put Bonehead in the corral, and Randy could take care of him, since you’re not going [to] ride him, and we could go on to camp.

Q. What was the response to that?

A. Karen Brooks looked at me and she said, “That’s not going to happen.”

Q. At any time when you were talking, was there any vulgarity by anyone in your presence?

A. She swore once that I heard.

Q. Who is she?

A. Karen.

Q. Nothing that was offensive to you, though?

A. I've heard a lot worse.

Q. Then what happened after we got that stalemate?

A. We were all standing there, and my recollection is that it was Nancy, but I'm not going to swear to that. One lady piped up and she said, "I came here to ride. We're not going to stop this ride. I want to ride. Can you find a solution?" And I said, "I have other horses. I can go home and get another horse, and we can start tomorrow if you want to do that."

At this point, Emma Lou was up beside Karen on the buckskin – I do remember that – and she said, "No, I'm not going on this trip," Karen did. Karen Brooks said, "I'm not going on this trip." The other clients, ladies, looked at me, and they said, "Four of us would like to continue this ride. Can we work this out?" And I said, "Yes, we certainly can."

So at that point I said, "Let's go over to the corral so we're not all out here standing in the road, tie up the horses, and we'll talk about this." So when we got over there, there was no Karen, there was no Emma Lou. They were way off to the side. Susan walked with me part of the way –

At this point in the testimony, it appears that Frisk interrupted himself with something that just came to his mind, at Tr., Vol. III, p. 723, ln. 21 – p. 724, ln. 2:

Jump back just a step. I went and got my horse, and Chad brought the string, but I led my horse back. And when I did, Susan was kind of standing behind me, and she came up beside me, and I said, "I'm very sorry about this," and she said, "Bob, every time we take those two [Brooks and Kerstetter] with us, something goes wrong."

This aside is a potentially critical piece of evidence. Frisk testified to quite a number of such potentially critical pieces of evidence, that, like this aside, involved statements from one or more of the six clients who (according to Frisk) agreed with him rather than with the women who wanted to cancel the scheduled trip. Such evidence, if credible, would certainly undercut the hearing testimony of the six women that they had all together decided to cancel the trip, that none of them wanted to go ahead with the excursion with Frisk, that none of them were willing to go to Glacier while the others continued the excursion with Frisk, and that none of them said any of these things to Frisk.

For the most part, these credibility questions arose in the context of what are often called "swearing contests," in which one side (Frisk) testifies that somebody on the other side (Younkin, for the example currently under consideration) said

something favorable to Frisk, which Younkin then denies. It is his word against hers. But this particular testimony can be tested against something more certain and more objectively credible.

There really is no question that Frisk, in the quoted testimony, is identifying Brooks and Kerstetter as the two women who were refusing to go on the trip at all. It is also clear that, according to Frisk, Younkin told him when nobody else was listening, that “every time” the group took Brooks and Kerstetter with them, something had gone wrong. But there is something wrong with the statement about Brooks and Kerstetter allegedly made by Younkin.

The uncontroverted testimony of Sue Younkin was that she was the only member who had gone on all ten riding excursions by members of the group over the last decade. The uncontroverted testimony evidence of Karen Brooks was that she had gone on only one excursion with members of the group before the current Montana trip and that previous excursion was the “awesome trip” into the Sierra Nevada range. The uncontroverted testimony of Emma Lou Kerstetter was that she had gone on nine riding excursions with members of the group, including the Sierra Nevada range trip.

Thus, the evidence is uncontroverted that only once before the current excursion had Kerstetter, Brooks, and Younkin been all three together on a trip for a horseback excursion. That one time was the Sierra excursion, about which none of the group members who testified in this case had anything bad to say. There is no evidence of any kind that Kerstetter and Brooks behaved in such a way that “something went wrong” during the Sierra excursion. Yet, the Sierra excursion was the only one that Younkin, Kerstetter, and Brooks went on together before the excursion into the Bob.

With these facts, why in the world would Younkin tell Frisk that “every time we take those two [Brooks and Kerstetter] with us, something goes wrong”? Younkin had been on many excursions with Kerstetter, but only one with Brooks as well as Kerstetter, and it was apparently one of the best excursions of all. This current trip was the second time all three were on the same excursion. What sense would it have made for Younkin to make that statement to Frisk? The statement was patently untrue, and therefore very unlikely to have been said by Younkin.

It makes far better sense to distrust Frisk’s self-serving aside about what Younkin told him. He stopped in the middle of other testimony to assert that at least one of the other four women (Younkin) didn’t think Brooks and Kerstetter were justified in refusing to go on with the excursion, but instead thought of Brooks and Kerstetter as troublemakers and wet blankets. He did not know that Brooks and Kerstetter had only been together on one previous trip with Younkin.

It is so unlikely that Younkin would say this about Brooks and Kerstetter that Frisk's "oh, by the way I just remembered" testimony about Younkin's statement is not only itself incredible, but also casts doubt upon all of the rest of Frisk's testimony that he heard some of the women make several other admissions to him: about how they really wanted to go on with the excursion with him; about how they all (at least four of them, according to Frisk) now agreed to come back the next morning to check back with Frisk, and had at least agreed about how they would see what Frisk had done, and would consider starting the entire excursion over on the next morning and staying an extra day to complete it.

Unsubstantiated self-serving statements about what the other side said must always be approached with some caution, and sometimes corroboration really should be required.

The testimony of any witness is generally sufficient to establish a fact. See §26-1-301, MCA; Kovash, 893 P.2d at 864.<sup>6</sup> However, when the testimony is potentially self-serving, the court may legitimately expect the witness to offer corroborating evidence if possible.

In re Marriage of Welch (1995), 273 Mont. 497, 502, 905 P.2d 132, 135. Here, Frisk testified to several statements by various of the women that were very favorable to his case. One of those self-serving statements was that Younkin had blamed Kerstetter and Brooks, the two women rejecting continuing the excursion, saying that every time Kerstetter and Brooks were both on an excursion with her something "always" went wrong. Even aside from Frisk's testimony being self-serving and unsubstantiated by anyone else, what Younkin allegedly said makes no sense, and thus enlarges the doubts about the veracity of Frisk's other self-serving statements.

All six clients had testified that Frisk and Nethercott were the only two persons that met them at Frisk's trailhead camp, the only two persons who prepared for the trip while the clients were there, the only two persons who went with them when the excursion started, the only two persons who came back with them to Frisk's trailhead camp when the clients refused to continue on the excursion, and the only two men who interacted with them in that trailhead camp until they left the camp and returned to Choteau. On the other hand, three people – Frisk, Nethercott, and Randy Nicklaus – testified that Nicklaus was at Frisk's trailhead camp from the time the six clients arrived until the time the six clients left for the last time to go back to Choteau.

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<sup>6</sup> In re Marriage of Kovash (1995), 270 Mont. 517, 893 P.2d 860.

Randy Nicklaus is a Kalispell resident disabled due to a lower spine injury and surgical intervention thereafter. He testified that for approximately three years, including August 2014, he had assisted Frisk by taking care of his trailhead camp during his summer seasons and hunting seasons, taking care of his horses when he's in the back country, and feeding any stock left behind at the trailhead camp. It appears that Nicklaus is not an employee per se, but that Frisk encouraged him to come and help out and that Nicklaus enjoyed being of service to Frisk and enjoyed working with the horses.

The Hearing Officer ultimately gave up trying to ascertain whether Nicklaus was there or not. There were only a few points on which Nicklaus' testimony (assuming he was there) shed light on what happened. Most of his testimony did not bolster Frisk's story and did not contradict the women's stories, except for their denial that they ever met or interacted with this person at all. If Nicklaus was there, the women's failure to notice and remember his existence would be very troubling.

Parts of Nicklaus' testimony was generally a bit troubling. Nicklaus testified that he "would be" at the trailhead camp by 6:00 a.m. on the first day of the trip with the six clients, which is odd when talking about a past event. Nethercott and Frisk testified that he was there at that time. Nicklaus initially agreed that he had showed up at that time on the morning of August 5, 2014, because that was the date Frisk's attorney initially put in the question. Frisk's attorney then corrected the question to ask Nicklaus if he had arrived on the morning of August 4, 2014 around 6:00 a.m., and Nicklaus also agreed with that question and date. Tr., Vol. III, p. 560, ln. 24 – p. 561, ln. 4:

. . . . And then the morning of the trip, I would be up at the trailhead camp by 6:00 a.m.

Q. Did you show up on August 5 --

A. Yes.

Q. -- for the trip? August 4 for the trip?

A. On the 4th, yes.

It appeared that Nicklaus was primed to agree with anything suggested by Frisk's counsel, without thinking about it, and before the attorney even finished the question. These anomalies were a bit troubling.

There were other minor inconsistencies as well. Nicklaus testified that the six clients arrived "probably three, three and a half hours" after he arrived, which meant the clients arrived about 10:00 a.m. to 10:30 a.m., at which time (again according to Nicklaus) Frisk introduced Nethercott and Nicklaus to them. Nicklaus said that "right after the introductions" he walked away from the clients because clients were not his responsibility or job, he worked with the stock. He also said that by the time

the six clients arrived, one of the horses already had a halter and lead rope on and was tied to the hitching rail. He testified that after all of the horses had halters on and were tied by lead ropes to the hitching post, Frisk told the women to pick out their horses. Again, his testimony agrees with some of the general features that both sides admit were part of the scene, while conflicting with other general features.

Frisk did not confirm that when the six clients arrived, one of the horses already had a halter and lead rope on and was tied to the hitching rail. Frisk did not testify that when he told the women to pick out their horses, the horses had halters on and were tied by lead ropes to the hitching post. It makes good sense that the horses would be tied up before the women were invited to choose their rides, but Frisk did not testify that was what had happened.

A more troubling part of Nicklaus' testimony involved his assertions that he had assisted one of the six clients before the excursion set out. Tr., Vol. III, p. 565, ln. 12 -- p. 567, ln. 21:

- Q. Did you assist them in any way with getting on a horse?
- A. Yes. I helped one of the -- I can't remember her name. I'm not good with names or anything like that. One of the ladies was really nervous about riding Buck and stuff, and she had said she hadn't been on a horse for a long time, and I said okay. And so I offered, I said, "Well, we'll get you all saddled up, and we'll get you up on the horse and everything," and then I said, "I'll take you in the flats and lead you around until you feel comfortable."
- Q. What does the flats mean? "Take you out to the flats"?
- A. We just call it the flats. It is around the camp and stuff. It is down range of our shooting targets and stuff like that for sighting in rifles for the hunting season and stuff. And we just call it the flats.
- Q. The horse was called what?
- A. Buck.
- Q. What color is this horse?
- A. Buckskin horse, kind of tannish.
- Q. And did you have a conversation with this lady that was to be on it?
- A. The only conversation was after I started leading her, I told her, I says, "When you want me to take you back to the hitching rails, let me know," and I just led her around.
- Q. Did she tell you, "Let's go back"?
- A. Yes. After, I would have to say about 45 minutes of leading her all over and everything, she felt comfortable with it, and she said, "I feel comfortable with this horse," and everything,

I said okay then. So I led her back to the hitching rail, helped her off the horse, and tied Buck back up to the rail.

Q. When you were leading her around, what are you physically doing? What does that mean?

A. I just take the lead rope on the horse, and I walk beside the horse, and just lead them.

Q. And she has control of the reins?

A. No. We did not have a bridle on Buck at that time, no. She just wanted to get used to the way the horse walks and moves, because when you're on a horse, they don't walk perfectly straight or still. They're going to wobble left and right or anything, and if they slip a little bit, they jerk and jump.

Q. She was in a saddle, though?

A. Yes.

Q. So she would have been hanging onto the saddle horn?

A. Correct.

Q. And you had been walking?

A. Correct.

Q. What path do you take to walk if you're going to walk for that length of time?

A. There is no real path out there. We just started walking. It is pretty wide open.

Eventually, Nicklaus also described how he had to assist this client in mounting and dismounting Buck. *Tr.*, Vol. III, p. 568, ln. 18 – p. 569, ln. 4 and p. 569, lns. 10-17.

Q. How about her ability to lift her leg, and get in the stirrup, and get in the saddle?

A. I had to help her.

Q. How did you help her?

A. When she tried getting her foot up into the stirrup, I had to help push her foot up to it, because Buck is kind of a little taller horse. And then I just told her, I said, "Just grab the saddle horn, the back of the saddle, pull yourself up, and swing your leg over," and I said, "I'll make sure your other foot gets in the other stirrup."

....

Q. What did you do after she said, "I'm comfortable with this horse"?

A. I just told her, I said okay, and I led her back to the hitching rails; and then she swung her leg over, and I kind of stood behind her so I could kind of balance her, and then she

stepped down to the ground, and I tied Buck back up to the hitching rail.

Gail Kreger gave uncontroverted testimony that Emma Lou Kerstetter was riding the buckskin. Tr. Vol. I, p. 203, lns. 16-17: "That was the buckskin, Emma Lou's horse." Kerstetter herself testified that she had ridden a lighter color horse, sort of a buckskin, but she also testified that she had no problems with the horse or the saddle. Tr., Vol. II, p. 335.

Kerstetter gave uncontroverted testimony that she had been involved with horses for 40 years, owning them, feeding and caring for them, and riding them. She testified that she had gone on outfitter excursions with other group members, including an excursion in Montana on an all week ride (the 120 mile "Ride-A-Rama"), five days of horseback riding in Wyoming, riding in the Sierras in California, and riding on Icelandic horses in Vermont. Her companions confirmed her rides with members of the group.

It is possible that Kerstetter, who is not a tall person, might need help to get up on a tall horse. Perhaps it is possible, albeit unlikely, that a horsewoman with 40 years experience like Kerstetter would pick such a tall horse that she needed help mounting the saddle. It is not at all believable that a horsewoman with Kerstetter's experience would tell an outfitter's helper that she was really nervous about riding the horse (that she had herself picked out) because she hadn't been on a horse for a long time, and that after saying this she would welcome and be grateful for that helper walking her horse around a pasture by a lead rope, while she held onto the saddle horn, for approximately 45 minutes.

But even more troublesome is Nicklaus' testimony that Kerstetter, the lady he had helped onto and off of her horse and led around in a circle until she got comfortable on her horse (Kerstetter), came back to the trailhead camp furious that two "older women" had ruined her riding chances. Tr., Vol. III, p. 571, lns. 2 - 7, and p. 572, lns. 14-24.

Q. Could you tell the Hearing Officer how long, in your estimation, it was from the time they left before they were all back?

A. Within 45 minutes, an hour tops.

Q. How did you know they were coming back?

A. Because I could hear the horses coming.

.....

Q. Did you get involved in the conversation then?

A. The lady that I led around on Buck, when she got off the Buck she was hot, and she goes, "I'm sick and tired of going on

these trips because all those older two do is bitch, bitch, bitch about it, and they want to go do something else.” And I go, “Well, I’m sorry.” She goes, “Well, if I have my way about it, they’ll go to the park and we’ll come back and go riding tomorrow.”

Frisk had a different account of how Kerstetter felt about taking the excursion. Tr., Vol. III, p. 756, ln.14 – p. 757, ln. 1.

Q. Why not be more direct with the ladies instead of saying, “Okay. We’ll go back to the corral”? Why don’t you just say, “Here, I’m putting you on this horse,” and just taking charge of this Karen lady, and getting get going, and getting on the Appaloosa yourself?

A. I didn’t think it was appropriate.

Q. Why?

A. Because at that point Karen Brooks said she was not going. There was no ands, ifs, buts about it. And Emma Lou said she was not going. I forget her last name [Kerstetter]. She was not going to do this.

Frisk depicted Kerstetter as one of the two agitators and troublemakers, one of the two who were refusing to go on the trip. Kerstetter herself testified that she stood with Brooks and did refuse to go on the trip. Frisk’s tale was that the other four women (except Kerstetter and Brooks) wanted to ride and asked Frisk to figure out a way that they could ride the next day. But Nicklaus depicted Kerstetter as one of the four women who wanted to ride the next day and who was denouncing two “older” members of the group who were causing all the trouble and who ought to be sent to Glacier Park by themselves so the rest of the group could ride. Frisk and his most supportive witness could not agree upon who the two troublemakers were.

After the three days of testimony, and the passionate arguments in the post-hearing briefs, and the radically conflicting testimony, the Hearing Officer has found that the unprofessional conduct proved here was the refusal to give the women back their money. Resolving further fact issues would not change that determination and is therefore not being attempted.

## **B. The Refusal to Refund the Money Clearly Violated Standards of Behavior Required of an Outfitter**

One of the legal defenses raised on behalf of Frisk was that expert testimony was required to prove that he engaged in unprofessional conduct, because without expert testimony no standard of care could be established for him to have violated.

That would certainly be true with a physician accused of malpractice in surgery. It could well be true with regard to standards of care involving arcane details of outfitting. But in this case, the unprofessional conduct ultimately found was the refusal to return the payments the six clients made to take the trip Frisk described to Younkin in person, and to all six of the clients in his materials.

Nowhere in his materials or in-person presentations had Frisk warned them that if they began to fear that the trip was unsafe, he would pooh-pooh their concerns, metaphorically pat them on their heads, and dismiss their apprehensions. Had he paid attention to their reactions to what was happening at the trailhead camp on August 4, 2014, had he interacted with them and encouraged them to talk with him and ask him questions, he might have had an opportunity to explain his methods and perhaps he could have restored their trust. Then they might all have come to some agreement that would have saved the excursion, albeit in a somewhat modified fashion. Perhaps not, since the women's concerns about safety were justified, based upon their observations of the horses and what they had learned from Nethercott about what most of the horses had been doing during much of the night before. Either way, after not noticing their concerns until too late and having failed to deliver the services promised, Frisk was duty bound to return their money.

This is not a case in which Frisk was consciously patronizing his clients. He was simply too busy trying to get things moving, with a new assistant, with very little sleep, after working harder than he ordinarily would have to prepare for the trip. He was simply not on top of his game. Frisk ordinarily understood the importance of taking your clients seriously and paying attention to how they are reacting to you. If he had not ordinarily understood these basic matters, he would not have been an outfitter for as long as he has been.

It takes no expert on outfitting to recognize that guiding folks through a wilderness excursion requires the ability to inspire trust and demonstrate competence. These clients were horsewomen, with experience on outfitter led riding excursions into wilderness places. They didn't like the way the horses appeared to be treated. They were concerned about the way that they themselves were being treated. One little thing led to another, and Frisk was oblivious to the problem until it flared out of control. That can happen when an outfitter is not on top of his game. Had he responded by accepting that what was happening was not what he had promised and had taken their money to deliver, and worked out with them a way to refund their money, the dispute would have been resolved. It was unprofessional for him to remain oblivious to all the ways in which he was not meeting client expectations, and then try to keep their money despite their rejection of him as their guide. Seeing that truth does not require expert testimony from another outfitter.

As horsewomen, these clients could and did see that a number of the animals were tired and that one of them was limping. After two day's rest, the animals were fine when the brand inspector and the deputy sheriff came and looked at them. But had Frisk and Nethercott and the women taken the excursion on August 4, 2014, one or more of the horses might not have been fine. That ultimately was an unacceptable risk for these clients, in light of all the other little ways in which Frisk failed to engage their trust. They were entitled to their money back.

### **C. The Board of Outfitters Has Jurisdiction**

Licensee has challenged the jurisdiction of the Board to regulate Frisk (to discipline him) for his conduct on a trip that did not involve hunting and fishing. The evidence is clear that Frisk used his licensed outfitter status as one of his qualifications and that the six clients would never have hired him if he had not been an experienced guide with a Montana outfitter's license. In addition, the evidence is clear that Frisk could only offer trips into the Bob (on federal land) so long as he had a valid and current Montana outfitter's license – without it, he would not be eligible to apply for and get a 10-year federal permit to guide people on federal land in the Bob, for any purpose. What happened on this would-be trip into the Bob, whether or not there was fishing involved, was inconsistent with his obligations as a licensed professional outfitter.

The Board of Outfitters is charged with the responsibility to “establish outfitter standards and guide standards” by assuring that outfitters and guides are properly qualified. Mont. Code Ann. § 37-47-201. Further, the Board has a responsibility to protect public health and safety by regulating the use of licenses it issues. Mont. Code Ann. § 37-1-131. One of the uses of an outfitter's license is to qualify for a 10-year federal permit. In the course of that use – i.e., when guiding people in the Bob under the federal permit – an outfitter is using his outfitter's license, and is subject to the Board's regulation. When Frisk refused to refund the six clients' money, he was acting as an outfitter, because otherwise he could not have taken their money and promised to guide them in and out of the Bob on a multi-day horseback excursion, whether or not they fished.

## **V. CONCLUSIONS OF LAW<sup>7</sup>**

1. The Board has subject matter jurisdiction and legal authority to bring the disciplinary action under Mont Code Ann. §§ 37-1-131, 37-1-136, 37-1-307, 37-1-309, and Title 37, Chapter 47.

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<sup>7</sup> Statements of fact contained in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

2. This matter was properly referred to the Office of Administrative Hearings for a contested case hearing. Mont. Code Ann. §§ 37-1-131(1)(b); 37-1-121(1), and is a licensing disciplinary case subject to the Montana Administrative Procedure Act, which has been properly and regularly employed. Mont. Code Ann. §§ 37-1-136(2), 37-1-310.

3. The department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

4. The Board of Outfitters is charged with the responsibility to “establish outfitter standards and guide standards” by assuring that outfitters and guides are properly qualified. Mont. Code Ann. § 37-47-201. The Board also has a responsibility to protect public health and safety by regulating any and all uses of licenses it issues. Mont. Code Ann. § 37-1-131.

5. The Board of Outfitters may impose any sanction that is authorized under Title 37, Chapter 1, Mont. Code Ann., upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Unprofessional conduct includes conduct not meeting generally accepted standards of practice. Mont. Code Ann. § 37-1-316(18).

6. Frisk entered into a contract, which specified that he was doing business as an outfitter, performing duties as an outfitter, and acting as would a reasonably prudent member of the profession, while engaging in providing the services he would perform, and that he would comply with all standards adopted by Board of Outfitters rules. Only a duly licensed Montana outfitter can apply for and obtain a 10-year federal use permit to guide persons into and out of the Bob Marshall Wilderness. Having such a permit, Frisk contracted to lead the clients on a five day ride from his trailhead camp to his wilderness camp and back. By the time the excursion commenced, his clients were reasonably concerned for their safety during the excursion and refused to proceed. The evidence did not establish that they would have suffered harm had they actually proceeded (although they could have), but it did establish that they were reasonably concerned for their safety. Frisk’s conduct led to their concern, and his responses to that concern did not restore their confidence in him.

7. Beyond cavil, the professional standard applicable to an outfitter who does not deliver the services contracted with clients, due to his own failure, must return to the clients the consideration received for said undelivered services. Frisk’s failure and refusal to meet that standard constituted unprofessional conduct under the facts of this case. Mont. Code Ann. § 37-1-316(18).

8. The evidence adduced at hearing did not support sanctions against Frisk's license for the following offenses, which were not proved:

- (a) Mont. Code Ann. § 37-1-316(5) (providing misleading, deceptive, false or fraudulent advertisement or other representation in conduct of his profession);
- (b) Mont. Code Ann. § 37-1-316(18) (conduct not meeting generally accepted standards of practice), except for refusing the demanded refund;
- (c) Admin. R. Mont. 24.171.2301(3)(h) (abuse of livestock); and
- (d) Admin. R. Mont. 24.171.2301(3)(o) (failing to respond to board inquiries and requests).

9. To determine what sanctions are appropriate, the Board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the Board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

10. For the protection of the public, the six clients are entitled to their money back, paid in six equal monthly installments to each of the six clients, with Frisk routing the repayment through the Board's administrative support personnel. Should Frisk fail timely to meet any obligations imposed for the protection of the public or for the rehabilitation of Frisk (other than his completion of the Board's "Advanced Outfitter" course), his license will be immediately suspended, unless the Board, in its discretion, decides otherwise.

11. For the rehabilitation of Frisk, Frisk's license should be changed to probationary status for a period of not less than six months after issuance of the Final Order herein, with the Board appointing a mentor to work with him and assure that he is "back on his game" when providing services to clients, reporting to the Board on Frisk's progress at the end of three months and six months. After the six month report, Frisk may petition the Board for reinstatement of his full license. Further, during the same six month period, Frisk must undertake and successfully pass the Board's "Advanced Outfitter" course.

## **VI. RECOMMENDED ORDER**

Based on the foregoing, the Montana Board of Outfitters now orders, with regard to licensee Robert Frisk, Outfitter, License No. 22:

1. Robert Frisk refused to refund the money paid by his clients Sue Younkin, Marty Meiser, Nancy Antes, Karen Brooks, Gail Kreger, and Emma Lou Kerstetter, after he failed to provide the services he contracted to provide them for a riding

excursion into Montana's Bob Marshall Wilderness Area, under his 10-year federal permit that required him to be a licenced Montana outfitter. Under the facts of this case, his refusal was unprofessional conduct. Mont. Code Ann. § 37-1-316(18).

2. For the protection of the public:

a. Frisk is hereby ordered to submit cashier's checks or money orders, payable to the following individuals, each in the amount of \$237.50: Sue Younkin, Marty Meiser, Nancy Antes, Karen Brooks, Gail Kreger, and Emma Lou Kerstetter, to: **Montana Board of Outfitters, c/o Jennifer Schofield, Compliance Specialist, P.O. Box 200514, Helena, MT 59620-0514**, all of which must be received by the same date (by number) each month as the date this order issues, beginning with the month of [month after the month of issuance of the order] and ending with the month of [sixth month after the month of issuance of the order].

b. Should Frisk fail timely to make any of the required monthly payment(s) (subparagraph 1.a.), his license shall, effective the date the delinquent payment(s) were due, be suspended and the Board shall require his immediate surrender of his license. The license thereafter shall only be subject to reinstatement upon a petition by Frisk to the Board showing that all such monthly payments are now current or the total amount of all such monthly payments has been paid by Frisk and received by his clients.

c. Should Frisk fail fully to perform each and every requirement of his probation (subparagraph 3.a.), the Board may, in its discretion, immediately suspend his license and require his immediate surrender of his license. The license thereafter shall only be subject to reinstatement upon a petition by Frisk to the Board showing that he has now performed each and every requirement of his probation up through the date of his petition.

3. For the rehabilitation of the licensee:

a. Frisk's license is hereby placed on probationary status for a period of not less than six months, effective upon the date of issuance of the Final Order herein, and [name], Outfitter License No. [#] is hereby appointed as mentor, to work with Frisk regarding his course work (subparagraph 3.d.) and any necessary improvements and changes in his work as a licensed Montana outfitter, assure that he is "back on his game" when providing services to clients. Frisk must notify his mentor of any activities he will be undertaking as a licenced outfitter, and providing the mentor with all information and access requested of Frisk regarding such activities. Frisk's mentor shall file a written interim report in three months, reporting to the Board on Frisk's progress; and

a written final report in six months, which can recommend either reinstatement of the license or additional training as may be appropriate. Copies of each report should be submitted to Frisk simultaneously to their filing with the Board.

b. After the six month report, Frisk may petition the Board for conclusion of his probationary period and reinstatement of his full license. In the discretion of the Board, either reinstatement or additional training may be ordered, provided that Frisk has successfully completed the Board's "Advanced Outfitter" course (subparagraph 3.c.).

c. Within the six months, licensee must take and successfully complete the Board's "Advanced Outfitter" course, with the assistance of his mentor.

d. Any period of time during which Frisk's license is suspended (pursuant to subparagraphs 2.b. and 2.c. or either of them) shall not be credited towards the required six month probationary period.

4. At all times during his probation the licensee shall comply with all requirements applicable to outfitters under Title 37, Chapters 1 and 47 of the Montana Codes Annotated as well as all requirements applicable to outfitters under Title 24, Chapter 171 of the Administrative Rules of Montana.

DATED this 29th day of January, 2016.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ TERRY SPEAR  
Terry Spear, Hearing Officer  
Office of Administrative Hearings  
Montana Department of Labor and Industry

**NOTICE**

Mont. Code Ann. § 2-4-621 provides: this proposed order being adverse to the licensee, may not be made final by the Board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present to the Board briefs and oral argument.