

**BEFORE THE BOARD OF OUTFITTERS
STATE OF MONTANA**

In the Matter of Case Nos. 2015-OUT-LIC-833, 2015-OUT-LIC-845,
2015-OUT-LIC-879, 2015-OUT-LIC-909 Regarding:

The Proposed Disciplinary Treatment of the License of RICHARD WAYMAN, Outfitter, License No. 1832.	Office of Administrative Hearings Case No. 1526-2016 HEARING OFFICER’S ORDER ENTERING RESPONDENT’S DEFAULT AND PROPOSED FINAL ORDER
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This matter came before the Hearing Officer as a contested case hearing pursuant to the June 28, 2016 ORDER RESCHEDULING HEARING (“rescheduling order”).

Although Mr. Wayman (“Licensee”) renewed his license online on June 24, 2016, he failed to appear four days later at the scheduled June 28 pretrial conference in this matter; failed to contact the Office of Administrative Hearings; failed to contact counsel for the Department, or even his own previous counsel to explain why he stopped participating in the adjudication of this matter, since shortly after he requested the hearing in March 2016.

Instead of entering default judgment against the Licensee for failing to comply with the original scheduling order, the *rescheduling* order gave the Licensee an additional 20 days to hire new counsel, or appear pro se.

Although given additional time to engage in resolving the matter, Licensee once again failed to appear at the rescheduled hearing or appoint counsel to appear on his behalf. At the beginning of the hearing, the Hearing Officer called the telephone number Licensee supplied for professional correspondence. But the call went directly to voicemail. The Hearing Officer left a message advising Licensee to call immediately, if he wanted to participate. Licensee did not call or otherwise acknowledge the hearing.

Based on 1) Licensee's failure to participate; 2) the pleadings and orders of record; 3) allegations and exhibits deemed conclusively established and admitted into evidence; and, 4) supporting affidavits filed by the Department, the Hearing Officer enters the following by default:

FINDINGS OF FACT

1. On or about January 23, 1992, the Montana Board of Outfitters (Board) issued the Licensee Outfitters License No. 1832.

2. Licensee renewed his license on June 24, 2016, and it is presently valid through December 31, 2016.

3. On November 18, 2014, after discussing a potential trip over the telephone and email, Licensee emailed Mr. William Drake:

As we discussed on the phone, we are willing to provide.

1. A trip to the South Fork, going in over Lodgepole. 7 day trip, 3 nights on Youngs, 1 night at Youngs/Danaher, balance returning out through the Danher.
2. Transportation from Missoula to the Lodgepole Trailhead, and transportation back to Missoula from the North Fork Trailhead.
3. Tents, Meals, and a Cook.
4. Cost will be \$375 per person per day for those who wish to hike, \$400 per person per day for those wishing to ride. Minimum of 6 people or \$15750.

Please feel free to write or call if you have any questions.

Thanks
Kehoe

4. On behalf of his group, Mr. Drake agreed to Licensee's terms and sent a 50% deposit to reserve the dates they wanted.

5. On November 19, 2014, Licensee accepted Mr. Drake's check in the amount of \$7,900, "For 8/6-8/12/15 BOB TRIP".

6. Rather than complete the trip as agreed, however, the Board received complaints alleging non-performance, specifically from:

- 1) William Drake (Charlottesville, VA) on August 27, 2015;
- 2) William Campbell (Livingston, MT) on August 31;
- 3) Carl Frischkorn (Charlottesville, VA; 4) on September 5, 2015;
- 4) Pattie Frischkorn (Charlottesville, VA; 4) on September 5, 2015; and,
- 5) Bruce Wohleber (Elkins, WV) on September 15th.

7. The 6th client, Jack Richards, flew from Charleston, WV for the trip, but did not file a complaint.

8. The complaints generally allege that after Licensee received the initial deposit, he failed to answer the clients' repeated attempts to reach him by phone and email to help them plan for the trip.

9. Although growing concerned and somewhat suspicious, the clients nevertheless relied on Licensee's reputation as a Montana Outfitter and made final arrangements. They purchased plane tickets, altered their usual schedules, purchased specific gear and supplies, packed it all, and flew to Montana for a timely departure.

10. The night before the trip, the group stayed at the Doubletree Missoula, as the Licensee instructed.

11. However, at 4:48 a.m. on the morning scheduled to begin their adventure, just two hours before he told the clients to fly from around the country to meet him in the lobby ready to depart with all their gear, Licensee sent an email:

Good Morning Willie

We have had a serious family matter develop last night. Regretfully we need to postpone the trip by one day.

I have left a message with the shuttle service not to pick you up until tomorrow morning. If they still show up, would you please make sure they are aware it will be tomorrow morning.

I am driving to the east side, and will be out of service until later this morning. I will call then.
Kehoe

12. At 10:05 a.m., Licensee sent Mr. Drake a text message:

The smokey[sic], dusty conditions have caused my son a severe asthma episode. They are deciding now whether he needs to be sent to Seattle or Salt Lake. I will call in 30 minutes.

13. But Licensee did not call 30 minutes later, or text, or email, or respond to the clients' repeated messages throughout the day.

14. Although growing increasingly concerned about his ability to lead the trip (not to mention their frustration with losing 1 of 7 days of a trip that cost more than \$16,000), 24 hours later, the clients gathered their gear in the lobby and prepared to begin their adventure. But once again, the Licensee did not appear. This time, he did not text, call, answer, or return the clients' repeated attempts to communicate with him throughout the day.

15. Finally, after trying unsuccessfully to contact the Licensee, the clients arranged to return home. At additional expense, the clients changed plane reservations on short-notice to fly out of Missoula during Montana's busy summer travel season.

16. When they returned home, the clients tried to obtain a refund from Licensee. But, the clients apparently had even more trouble getting Licensee to respond to their requests for a refund than they did getting him to take them into the Wilderness.

17. Although Licensee eventually agreed to refund their money, the check he promised never arrived. Licensee then agreed to wire transfer the money. But, no wire transfer arrived, either.

18. The clients eventually pursued legal action in Lake County District Court to get their money back, and filed the present complaints alleging unprofessional conduct to help make sure this Licensee doesn't harm future clients the same way.

19. The Lake County Sheriff's office considered Licensee's actions as grand larceny, and issued a warrant for his arrest. The Sheriff refused to release the Licensee from jail until he refunded the clients' deposit.

20. After refunding the clients' \$7,900, Licensee successfully petitioned Lake County District Court to dismiss the civil action.

21. Although the Screening Panel initially notified Licensee that it would consider the complaints at its meeting on December 3, 2015, the Panel accommodated Licensee's request for additional time to prepare.

22. The Panel invited Licensee to respond and/or participate in a special panel meeting, just to consider these six complaints at 10:30 a.m. on Monday, December 14, 2015.

23. However, rather than supply a timely response, Licensee waited until 6:14 a.m. on December 14 to engage. Rather than explain the family medical emergency he originally claimed had prevented the trip, the Board received an email from kehoe@bigsalmonoutfitters.com, that appeared to blame *the clients*:

Montana Board of Outfitters

I understand there has been a complaint filed against me from the Willie Drake party.

The only reason I am aware of this, is I was contacted by my attorney.

The board is aware I have moved, and has my Hyattville address. Mr. Keller stated everything was mailed to Ronan.

We had over 20 groups cancel their trips this season due to low water, fire conditions, safety, etc.

One of the most basic rules regarding outfitting the public, is to provide a safe trip, not only my guests, but my employees, and my livestock used to support these trips.

I have been an outfitter for over 25 years, and worked in the Bob Marshall for over 30 years. Never in this time have I seen fire conditions as dry, it was also smokey, and dusty, with low visibility at times this past year.

Several years ago we were camped and Gordon Creek the night before the Salmon Point fire burned up the river 11 miles in one night. The conditions weren't nearly as dry when this occurred....what if we had been camped there one day longer?

I informed Mr. Drake of the conditions 2 weeks prior to his scheduled trip, and informed him we may need to arrange a different trip if weather conditions didn't improve.

3 days prior to the trip I told him I felt it was no longer safe to continue with our planned trip, I knew he had other folks who were traveling, and would need to make other arrangements. His response was that it is not up to me, he was in Missoula, and the conditions seemed fine, and besides "with the low water they could really hammer the bulls".

2 days prior to the trip the conditions became so smokey, and so dusty, at times visibility was less than a half a mile. Guests coming out this day had a very unpleasant trip, 1 employee, and 1 guest had severe asthma symptoms.

Informed Mr. Drake of the conditions, as well as our problems on the prior trip, he became very irrational, his only concern was he had people coming.

Our deposit refund policy is on file with the Board of Outfitters, as well as posted on our web site.

In this instance, going against our policy I felt it was best to just refund the deposit, as I had seen Mr. Drakes nature.

Sincerely

Kehoe Wayman

Big Salmon Outfitters

406-676-3999

www.bigsalmonoutfitters.com

24. The Panel met as planned on December 14th. After considering the complaints and response from Licensee, including his email above and participation from his attorney, the Panel found reasonable cause to believe discipline is warranted because Licensee violated Mont Code Ann. §§ 37-1-316(5), (9), and (18); 37-47-341(9) and (10); and Admin. R. Mont.

24.171.2301(3)(a) and (q), and instructed the Department to initiate disciplinary proceedings.

25. The Department issued its Notice of Proposed Board Action and Opportunity for Hearing, along with a Proposed Stipulation on February 4, 2016.

26. In response, Licensee requested a hearing on March 1 (renewed April 5, 2016).

27. On March 22, 2016, the Hearing Officer issued a scheduling order for a hearing to occur on June 28, 2016.

28. Between April 11 and May 24, the parties exchanged discovery. However, Licensee's response included a letter from counsel to indicate:

Attached are the Responses to the Department's discovery requests prepared by my office based on the information we have; . . . I have not yet received any input on the requests from Licensee, but wanted to provide what responses we could and avoid the admissions being admitted for lack of response.

29. Then, on May 26, 2016, Licensee's attorney sent a NOTICE OF WITHDRAWAL OF COUNSEL to the Board and Licensee, and directed all correspondence relating to this matter to Licensee at his addresses in Ronan, MT and Hyattville, WY (Exhibit 9). Unfortunately, counsel did not also send notice of withdrawal to the Hearing Officer.

30. On June 21, 2016, the Hearing Officer held the final pre-hearing conference as previously scheduled. Licensee did not appear in person or through counsel, and was not available by phone.

31. Because the Hearing Officer did not receive counsel's timely notice of withdrawal, the Hearing Officer called counsel for the pre-trial conference.

32. Counsel indicated that he withdrew, because Licensee failed to return his phone calls asking for help to make a litigation game plan, and/or to help respond to the Department's discovery requests. Counsel indicated he cannot be of further service, because he has no information, or authority to act on Licensee's behalf. Although Licensee and prior counsel have not been in contact, counsel was able to supply the Hearing Officer with Licensee's last known cell phone number.

33. After releasing Licensee's former counsel from the conference, the Hearing Officer and Department next called Licensee on the number supplied. However, the call went straight to automated voicemail.

34. The Hearing Officer left a voicemail instructing Licensee to contact the Hearing Officer or Department counsel.

Based upon the above Findings of Fact, the Board makes the following Conclusions of Law.

CONCLUSIONS OF LAW

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

2. The Board retains disciplinary jurisdiction over outfitter licenses for two years after expiration. Mont. Code Ann. § 37-1-141(9).

3. The Department's contentions of fact and law asserted in its *Notice of Proposed Board Action and Opportunity for Hearing* are reconfirmed.

4. As a direct consequence of failing to provide the trip he promised, failing to promptly return the clients' money, and offering deceptive excuses for both, Licensee committed violations of Montana's standards for outfitters that amount to sanctionable unprofessional conduct according to Mont. Code Ann. § 37-1-307(d), including:

Montana Code Annotated:

§ 37-1-316. Unprofessional Conduct. The following is unprofessional conduct for a licensee or license applicant governed by this part:

. . .

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

. . .

(18) conduct that does not meet the generally accepted standards of practice.

§ 37-47-301. License required – services performed – standards.

. . .

(6) Outfitters and their contractors, employees, agents, and representatives shall take every reasonable measure to provide the outfitter's advertised services.

§ 37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or

revoked or other disciplinary conditions may be applied upon any of the following grounds:

- (9) Misconduct as defined by board rule
- (10) Any violation of this chapter or a rule adopted pursuant to this chapter

Administrative Rules of Montana:

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT

(1) A violation of (1) or (3) by an outfitter, or (2) or (3) by a guide is misconduct, specified as a basis for disciplinary action under 37-47-341, MCA. Such violation is also determined by the board to be unprofessional conduct, as provided in 37-1-319, MCA, specified as a ground for disciplinary action under 37-1-312, MCA. A violation of this rule may result in any sanction provided by 37-1-312 or 37-47-341, MCA.

(3) All licensees shall:

(a) Provide services with respect for the rights of others, private and public property, and provide for the health, safety, and well-being of their clients, employees, and the general public;

(q) Not fail to comply with the statutes and rules applicable to licensees of the board.

5. Licensee should be disciplined for all of the alleged unprofessional conduct in a fashion commensurate with his prior licensure history and the seriousness of the violations.

6. The Department was prepared to offer evidence showing that combined with his disciplinary history and lack of renewal, the above actions warrant license revocation.

PROPOSED FINAL ORDER

1. Licensee's license to provide outfitting services in Montana shall be **immediately REVOKED**. Mont. Code Ann. § 37-1-312(1)(a). All licensure documentation must be returned to the Board of Outfitters in person or by mail within 24 hours of receiving this revocation notice. Mont. Code Ann. § 37-1-312(4). Licensee may mail the documents to:

Montana Board of Outfitters
301 South Park Avenue
PO Box 200514
Helena, Montana 59620-0514

2. In the event that Licensee applies for a new Montana Outfitter or Guide license, or petitions for reinstatement of his previous license, the Board may in its discretion at the time of application or petition for reinstatement, require him to present sufficient proof and to comply with certain conditions. The Board may also prohibit Licensee from re-applying or petitioning for reinstatement for a specified period of time. Mont. Code Ann. § 37-1-314.

DATED this 3rd day of August, 2016.

DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID W. EVANS
DAVID W. EVANS
Hearing Officer

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory 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 briefs and oral argument to the regulatory board.