

BEFORE THE BOARD OF PLUMBERS  
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2016-PLU-LIC-823 REGARDING:

THE PROPOSED DISCIPLINARY	)	Case No. 1236-2017
TREATMENT OF THE LICENSE OF	)	
JEFFREY HILL,	)	
Master Plumber, License No. 3128.	)	
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**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

On January 24, 2017, the Department’s Office of Legal Services issued a *Notice of Proposed Board Action and Opportunity for Hearing* (Notice), serving a copy on Jeffrey Hill, a plumber. In the Notice, the Department asserted that Respondent committed unprofessional conduct by failing to obtain a permit for plumbing work as required by state law.

Respondent requested an administrative hearing to contest the proposed disciplinary action against his plumbing license, and the Department transferred the matter to the Office of Administrative Hearings (OAH) for the purpose of conducting the administrative hearing and issuing a recommended order for the Adjudication Panel of the Montana Board of Plumbers (Adjudication Panel) to consider. On February 16, 2017, OAH issued a Notice of Hearing and Telephone Conference. On February 24, 2017, the Hearing Officer held a telephonic scheduling conference and set the date of the administrative hearing and other scheduling deadlines. The Hearing Officer tried to reach Respondent by phone, but Respondent did not answer the phone call and did not participate in the scheduling conference.

On April 21, 2017, the Department filed a *Motion for Partial Summary Judgment*, as well as a supporting brief and affidavit. The Department’s Motion for Partial Summary Judgment was based primarily on Respondent’s deemed admissions, pursuant to MRCivP 56(c), due to his failure to answer discovery requests including requests for admission. Respondent did not submit a response brief opposing the Department’s *Motion for Partial Summary Judgment*.

On June 7, 2017, the Hearing Officer held a telephonic pre-hearing conference with both the parties. Respondent stated that he did not respond to the Department's discovery requests or *Motion for Partial Summary Judgment* because he had not received them. Respondent further stated that he moved from 204 East Callendar Street #34 to 204 East Callendar Street #31 in Livingston, Montana. Pursuant to Mont. Code Ann. § 37-1-309(2), Respondent is required to provide the Board with his current address within 30 days of the change.

The Hearing Officer denied the Department's *Motion for Partial Summary Judgment*. The Hearing Officer confirmed with the parties that the in-person administrative hearing would be held in Helena on June 27, 2017.

On June 27, 2017, the Hearing Officer convened the administrative hearing in Helena. Respondent did not appear. The Department's Exhibits, numbered 1 – 4, were admitted without objection. Department of Labor and Industry employees Rita Reichert, Compliance Specialist; Hugh Pratt, Inspector/Investigator; and David C. Cook, Deputy Administrator for the Business Standards Division and Acting Bureau Chief of the Building Codes Bureau, presented sworn testimony in person. Mr. Cook was admitted as an expert witness in regard to the adoption of building codes and the building permitting process in Montana.

## II. FINDINGS OF FACT

1. Respondent holds a Master Plumber license, License No. 3128, issued on or about April 26, 2010. Respondent's license is active through September 1, 2017. (Notice, p. 2)

2. On or about August 9, 2016, a complaint, #2016-PLU-LIC-823, was filed against Respondent for failure to obtain a plumbing permit for plumbing work he completed at a residence located at 612 North 11th Street in Livingston, Montana (the residence). (Reichert, p. 11 and 14-15; Exhibit 1.)

3. The complaint against Respondent was based on information obtained during an investigation into a complaint against Mark Murphy, complaint #2016-PLU-UNLIC-219, filed in February 2016, by Nadia Grabiner and Eric Lane who were buying the residence. The complainants alleged that Mr. Murphy, acting as a construction contractor, performed plumbing work at the residence without being a licensed plumber. (Reichert, p. 14-16; Pratt, p. 23-24; Exhibit 3.)

4. The Screening Panel of the Board requested an investigation of the complaint against Mark Murphy, complaint #2016-PLU-UNLIC-219. (Reichert, p. 15.)

5. During the investigation into the complaint against Mr. Murphy, both Mr. Murphy and Respondent admitted to the Department Investigator that Mr. Murphy subcontracted with Respondent on or about February 3, 2016, to complete plumbing work at the residence. (Pratt, p. 26; Exhibit 2; Exhibit 4.) Additionally, Respondent provided a written statement to the Department Investigator stating that he was hired by Mr. Murphy to perform the plumbing work at the residence. (Pratt, p. 26; Exhibit 2.) The Department Investigator did not locate any other witnesses who saw the plumbing work being performed at the residence. (Pratt, p. 26-27.)

6. Respondent completed the following plumbing work at the residence: installed a new toilet, fixed a toilet, fixed broken piping, and replaced a broken hose bibb. (Pratt, p. 24-25; Exhibit 3.)

7. Mr. Murphy paid Respondent \$500.00 cash for the plumbing work he completed at the residence. (Pratt, p. 26.)

8. Respondent failed to obtain a permit for the plumbing work he completed at the residence. (Pratt, p. 23-24.)

9. Generally, under Montana law, a plumbing permit must be obtained from the building code enforcement agency having jurisdiction before any person engages in the business, trade, or work of installing, removing, altering, or repairing plumbing and drainage systems or parts of plumbing and drainage systems. (Cook, p. 35-42.) Mont. Code Ann. § 50-60-505.

10. The exceptions to the plumbing permit requirement were not applicable to Respondent, the scope of the plumbing work Respondent completed, or the physical location of the plumbing work Respondent completed. (Cook, p. 35-38.) Mont. Code Ann. § 50-60-506.

11. Respondent was required to obtain a permit from the Building Codes Bureau of the Department for the plumbing work he completed at the residence. (Cook, p. 35-42.)

12. Previously, the Board has imposed disciplinary action against licensed master plumbers for engaging in unprofessional conduct by failing to obtain necessary plumbing permits. (Reichert, p. 18-19.) In 2010, the Board imposed an administrative fine of \$500.00 on Roger Abell, *In re Roger Abell*, complaint #2010-194-PLU, Docket #CC-11-0062-PLU, for failing to obtain two plumbing permits. (Reichert, p. 18.) In 2015, the Board issued a Final Order by Default against Darren Engel, *In re Darren Engel*, complaint #2014-PLU-LIC-1020,

indefinitely suspending his master plumber license until he paid an administrative fine of \$500.00 for failing to obtain a plumbing permit. (Reichert, p. 19.)

### III. 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. 69. For disciplinary purposes, the Board retains jurisdiction over the license for two years after lapse. Mont. Code Ann. § 37-1-141.

2. The Department bears the burden of proving by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. *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.

3. The Hearing Officer may use his or her experience, technical competence, and specialized knowledge in evaluating the evidence. *Durbin v. Ross* (1996), 276 Mont. 463, 476-77, 916 P.2d 758, 766; Mont. Code Ann. § 2-4-612(7).

4. Montana law generally requires that a person obtain a plumbing permit from the building code enforcement agency with jurisdiction before engaging in the business, trade, or work of installing, removing, altering, or repairing plumbing and drainage systems or parts of plumbing and drainage systems. Mont. Code Ann. §§ 50-60-505 and 50-60-506 (exceptions listed).

5. Additionally, the Uniform Plumbing Code (2012 edition) (UPC), adopted by reference in Admin. R. Mont. 24.301.301, provides in Section 103.1.1 that it is unlawful for any person to make any installation, alteration, repair, replacement, or remodel any plumbing system covered by the UPC without first obtaining a plumbing permit.

6. Respondent was required to obtain a permit from the Building Codes Bureau of the Department for the plumbing work he completed at the residence. Mont. Code Ann. §§ 50-60-505 and 50-60-506; UPC Section 103.1.1 adopted in Admin. R. Mont. 24.301.301.

7. Respondent committed unprofessional conduct in violation of Mont. Code Ann. § 37-1-316(18) (conduct that does not meet the generally accepted standards of practice), by violating the following statutes and rule:

**Mont. Code Ann. § 37-69-320. License and endorsement discipline.**

(1) The board may revoke, suspend, restrict, censure, or apply any other disciplinary treatment contemplated by [37-1-136](#) to any occupational licensee or endorsee under this chapter for any one or more of the following causes:

(a) performance of plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

**Mont. Code Ann. § 50-60-505. Permit required.**

(1) It is unlawful for any person to engage in the business, trade, or work of installing, removing, altering, or repairing plumbing and drainage systems or parts of plumbing and drainage systems without first obtaining a permit from the Department of Labor and Industry.

**Admin. R. Mont. 24.301.361. Plumbing Permits.**

(1) Any person who is required under [50-60-505](#), MCA, to obtain a plumbing permit, and the work is not covered by a local government inspection program, shall do so prior to installation through the department.

8. Discipline of Respondent's plumbing license is appropriate in this matter to protect the welfare of the public and will serve to rehabilitate the Respondent and ensure that he is able to practice in a manner that is consistent with Montana law. Mont. Code Ann. § 37-1-312(2).

#### **IV. RECOMMENDED ORDER**

1. Based on the foregoing findings of fact and conclusions of law, the Hearing Officer recommends the Board impose the following sanctions:

a. Respondent shall pay an administrative fine in the amount of \$500.00 to the Montana Board of Plumbers no later than 30 days following the date the Final Order is entered. Mont. Code Ann. § 37-1-312(1)(h).

b. Respondent's master plumber license will be placed on probation for a period of one year beginning on the date the Final Order is entered. Mont. Code Ann. § 37-1-312(1)(g). During the term of this probation, the Respondent shall:

1. Obtain a plumbing permit for the work he completed at 612 North 11th Street in Livingston, Montana, no later than 30 days following the execution of the Final Order in this matter;
2. Correct any violations identified by the plumbing inspector of the Department's Building Codes Bureau for the work Respondent completed at 612 North 11th Street in Livingston, Montana, within 14 days of notification of the same and will not charge the property owners for his labor; and
3. Review and follow all laws and rules under the Board's jurisdiction and ensure that his conduct meets the generally accepted standards of practice.

2. Respondent's failure to strictly abide by the terms of the Final Order shall constitute a violation of the Final Order of the Board and may result in a separate disciplinary action against Respondent's license. Mont. Code Ann. § 37-1-316(8). Alternatively, Respondent's failure to strictly abide by the terms of the Stipulation may result in administrative suspension of Respondent's license until Respondent complies with the terms of the Stipulation and pays a reinstatement fee. Mont. Code Ann. § 37-1-321.

DATED this 1st day of August, 2017.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM  
DAVID A. SCRIMM  
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.