

BEFORE THE BOARD OF OUTFITTERS
STATE OF MONTANA

IN THE MATTER OF CASE NO. 2013-OUT-LIC-1549 REGARDING:

THE PROPOSED DISCIPLINARY)	Case No. 1664-2014
TREATMENT OF THE LICENSE OF)	
SHAWN WENGERD,)	FINDINGS OF FACT;
Guide, License No. 11368.)	CONCLUSIONS OF LAW; AND
)	RECOMMENDED ORDER

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I. INTRODUCTION

The Montana Department of Labor and Industry Business Standards Division filed a complaint against the outfitting license of Shawn Wengerd (Licensee) alleging violations of Mont. Code Ann. § 37-47-341(5) (conviction based on the violation of the fish and game laws of any state) and Admin. R. Mont. 24.171.2301 (committing an act of unprofessional conduct). Hearing Officer David A. Scrimm held a contested case hearing in this matter on June 10, 2014. Mark Jette, agency legal counsel, appeared on behalf of the Department of Labor and Industry. Wengerd was self represented.

During the pre-hearing conference and at hearing, Wengerd stipulated to the Department’s Proposed Stipulated Facts which resulted in an admission to the alleged violations. Based on Wengerd’s admissions, the matter proceeded to hearing solely on the question of the appropriate sanction to be imposed. Department Exhibits 1 through 10 were admitted into evidence by stipulation of the parties. The Department did not offer any witnesses. Wengerd testified under oath on his own behalf. Based on the evidence adduced at the hearing, the following findings of fact, conclusions of law, and recommended order are made.

II. FINDINGS OF FACT

1. At all times pertinent to this case, the Licensee has been a licensed outfitter in Montana.

2. On September 9, 2012, FWP cited Licensee for violating Mont. Code Ann. § 87-6-204 – hunting and killing a mountain lion after chasing it up a tree with dogs during a closed season. (Stipulated).

3. On April 17, 2013, in Sanders County Justice Court, Licensee agreed to plead guilty to the violation in exchange for a sentence of: 1) pay a total of \$1,085 (\$500 fine; \$500 restitution; \$50 fee to C.A.O.; and \$35 surcharge); and, 2) suspension of his FWP privileges for two years. However, the Justice of the Peace allowed Licensee to purchase a conservation license for employment purposes. (Stipulated).

4. In October 2013, Licensee marked “yes” to the question on his guide license renewal application about whether any legal or disciplinary actions have been taken against him. In response to the Board of Outfitters’ (Board) request for more information, he sent a copy of the citation and the Justice Court’s final sentence and order. (Stipulated).

5. On November 2, 2013, the Board filed a Board-generated complaint based on his self-report and information he provided. (Stipulated).

6. Licensee’s conduct violated Mont. Code Ann. § 37-47-341(5) and Admin. R. Mont. 24.17.2301(3)(l). (Stipulated).

7. On September 9, 2012, Wengerd’s younger brother spotted a mountain lion near the family home and attempted to scare it away by firing in its general direction. The mountain lion was undeterred. When Wengerd heard the shots, he investigated and learned what was happening. At this point he unleashed one or more of his dogs who very quickly treed the animal and Wengerd shot and killed it.

8. Wengerd immediately realized that he had shot the lion in violation of the fish and game laws and reported the violation at that time.

9. Wengerd’s outfitting business is primarily focused on elk and deer hunting. He has had no violations of the fish and game laws with respect to those big game species.

III. CONCLUSIONS OF LAW

1. Jurisdiction of this matter is vested in the Montana Board of Outfitters under Mont. Code Ann. § 37-47-201(6).

2. To impose sanctions, the Board must find that the preponderance of the evidence supports the allegations contained in the complaint. Mont. Code Ann. § 37-3-311; *Ulrich v. ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126.

3. Mont. Code Ann. § 37-47-341 provides that 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:

. . . .

(5) one conviction or bond forfeiture for a violation of the fish and game or outfitting laws or regulations of any state, the United States, or other jurisdictions; Mont. Code Ann. § 37-47-347 prohibits a licensee from hiring or retaining a guide who does not hold a current license.

Wengerd admitted he violated Montana's fish and game laws and therefore became subject to the provisions of this statute.

4. Mont. Code Ann. § 37-1-312(1) provides that upon a determination that the licensee has committed a violation, the Board may issue an order providing for, among other things, payment of a fine not to exceed \$1,000.00 per occurrence, remedial education, and suspension of the licensee's license for a fixed or indefinite term.

5. Mont. Code Ann. § 37-1-312(2) provides that in determining which sanctions are appropriate, the Board must first consider sanctions that are necessary to protect the public and only after that determination has been made may the Board then consider and implement requirements designed to rehabilitate the licensee.

6. The public is protected when outfitters licensed by the State of Montana follow all the laws and rules governing their profession and those that conserve wildlife for the benefit of its citizens.

7. As indicated in the findings of fact, there are both aggravating and mitigating circumstances to be considered in arriving at an appropriate sanction in this case. The killing of the mountain lion came about in unusual circumstances when it was found in relatively close proximity to Wengerd's home. However, Wengerd did chase the animal down with dogs and then dispatched it. There did not appear to be an immediate threat and from Wengerd's testimony he knew and could have called FWP personnel before taking the action he did. As an experienced and armed hunter he could have maintained a watch on the animal with his dogs as added protection until FWP arrived and took appropriate and legal action.

The record does not indicate Wengerd has ever had any violations with respect to the main focus of his outfitting business; elk and deer hunting.

8. On balance, the facts in this case demonstrate that sanctions are required both to protect the public and to rehabilitate the Licensee. A term of probation; limiting the scope of Wengerd's outfitting license so that he is prevented from offering or conducting mountain lion hunts; and remedial training are necessary to ensure that the Licensee complies with the laws in the future.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing officer recommends that the Montana Board of Outfitters:

- (1) condition Wengerd's outfitter license to disallow the offering, outfitting or guiding of mountain lion hunts for one (1) year;
- (2) place the Licensee on probation for a period of 18 months from the date of the entry of the final order in this matter with the terms that the Licensee:
 - (a) obey all provisions of Title 37, Chapters 1 and 47, and Title 8, Chapter 39 of the Administrative Rules of Montana;
 - (b) pay a fine of \$500.00 to the Board of Outfitters by cashier's check or money order no later than 30 days after the entry of the final order in this matter; and
 - (c) pay for, attend, and successfully complete additional remedial training as directed by the Board;
- (3) in the event the Licensee fails to pay the fine or complete the remedial education in the manner and within the time frames as set out above, that his outfitter's license be suspended until such time as both the fine is paid and the remedial education directed by the Board is completed successfully.

DATED this 13th day of June, 2014.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

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