

BEFORE THE BOARD OF OUTFITTERS  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-07-0229-OUT REGARDING:

THE PROPOSED DISCIPLINARY	)	Case No. 1848-2007
TREATMENT OF THE LICENSE OF	)	
DAVID WARWOOD,	)	<b>FINDINGS OF FACT;</b>
Outfitter License No. 431.	)	<b>CONCLUSIONS OF LAW;</b>
	)	<b>AND PROPOSED ORDER</b>
	)	

\* \* \* \* \*

**I. INTRODUCTION**

In this matter, the Department of Labor and Industry (hereinafter Department) seeks to impose sanctions against David Warwood's (hereinafter Licensee) outfitter license, License No. 431, issued by the Montana Board of Outfitters. The hearing in this matter occurred on September 19, 2007. Don Harris, agency legal counsel, represented the Department. The Licensee failed to appear despite having received proper notice of the hearing. Exhibits 1 and 5 were admitted into evidence. Wayne Johnston and Kristy Bosworth testified under oath on behalf of the Department. Based on the evidence and arguments adduced at the hearing in this matter, the hearing examiner makes the following findings of fact, conclusions of law, and proposed order recommending probation and rehabilitation of the Licensee's outfitting license.

**II. FINDINGS OF FACT**

1. At all times relevant to this proceeding, the Licensee was an outfitter registered in the State of Montana holding License No. 431.
2. In February 2005, the Licensee donated a guided elk hunt to the Rocky Mountain Elk Foundation (RMEF) for its fundraising event held in Portland, Oregon. At the event, Bryan Poston, Jr., a resident of Louisiana, purchased the hunt for \$4,000.00. The Licensee received no part of the proceeds of the purchase. The hunt included accommodations in a primitive cabin.
3. Poston and the Licensee agreed that the hunt would take place the last ten days of the 2005 hunting season.
4. Poston was unable to contact the Licensee to arrange a meeting place upon his arrival from Louisiana. Once in Montana, Poston again attempted to contact the Licensee. Approximately three hours later, the Licensee called back and informed Poston that the ranch where the hunt was to take place was not taking anymore hunters.
5. The Licensee did not have a written contract with the ranch owner.

6. The Licensee failed to inform Poston of the problem prior to his arrival in Montana.
7. The Licensee attempted to find other hunting opportunities for Poston and only contacted RMEF after talking with him.
8. RMEF was able to locate another outfitter, Russ Kipp, to provide a hunt for Poston. RMEF paid Kipp \$3,000.00 for the hunt for Poston.
9. Poston had to provide for his own lodging in Montana prior to hunting with Kipp.
10. In response to Poston's complaint, Warwood stated "For the Record, much of the information he included, seems to be accurate, but, I did have a rancher verbally agree to a hunt donation with RMEF."

### III. CONCLUSIONS OF LAW

1. Jurisdiction of this matter is vested in the Montana Board of Outfitters under § 37-1-121, MCA, Title 37, Chapter 1, Part 3, MCA, and § 37-47-201, MCA.
2. As the Department seeks to impose sanctions against a license, it must demonstrate the existence of the allegations contained in the complaint by a preponderance of the evidence. § 37-3-311, MCA; *Ulrich v. State ex rel. Board of Funeral Service*, 289 Mont. 407, 961 P.2d 126 (1998).
3. Section 37-1-316, MCA, provides in pertinent part:  
  
The following is unprofessional conduct for a licensee . . . governed by this chapter:  
  
. . .  
  
(18) conduct that does not meet generally accepted standards of practice.
4. Section 37-47-301(6), MCA, provides "[o]utfitters and their employees, agents, and representatives shall take every reasonable measure to provide their advertised services to their clients."
5. The uncontroverted evidence presented in this matter shows that the Licensee has committed unprofessional conduct under §§ 37-1-316(18) and 37-47-301(6), MCA. The Licensee's failure to secure a written agreement for the hunting lands to be used for Poston's hunt and his failure to communicate the loss of the hunting lands until Poston arrived in Montana, not knowing what, if any, arrangements Warwood had made for his lodging or transportation, evidences a failure to conduct himself according to the generally accepted standards of practice and is a failure to take every reasonable measure to provide advertised services.

It is only through luck, the efforts of the RMEF, and the professionalism of Kipp that Poston was able to have a successful hunting experience in Montana. Warwood's failure to secure hunting lands for the hunt and his failure to communicate his loss of those lands for the hunt indicate a lack of concern for the welfare of the hunting public and the outfitting profession. Warwood's license is thus vulnerable to the imposition of the sanctions provided in § 37-1-312, MCA.

6. To determine which sanctions are appropriate, the regulatory 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).

7. Section 37-1-312, MCA, provides that upon a determination that the licensee has violated Title 37, Chapter 1, Part 3, the board may issue an order providing for, among other things, suspension of a professional license for a fixed or indefinite term, compliance with conditions of probation, and satisfactory completion of a specific program of treatment.

8. Probation and remedial education is appropriate in this case. Warwood has been the subject of three previous letters of instruction regarding deficiencies in his production of client services. This is also not the first time he has lost property where hunts were planned and others had to step in to help his clients find other places to hunt. These warnings and experiences do not appear to have improved his conduct as an outfitter. While communication skills improvement is not a current part of the Board's remedial education program, its review of the laws and standards may help rehabilitate the Licensee. In the absence of monitoring and remedial education, the public cannot be assured that the Licensee will conduct his outfitting business in a way that protects its health, safety, and welfare. The Licensee seems to think that since Poston got his elk all his conduct is excusable. It is not. Thus, in the event of his failure to adhere to the terms of his probation, his license must be suspended until such time as he complies with the terms.

#### **IV. PROPOSED ORDER**

Based on the foregoing, the hearing examiner recommends that the Board enter its order placing Warwood on probation for a period of two years with the terms:

(1) That Warwood shall, at his own expense, enroll in and successfully complete the Board's remedial education class prior to the 2008 big game hunting season;

(2) That Warwood shall comply with any monitoring of his profession implemented by the Board;

(3) That Warwood shall obey (a) all provisions of Title 37, Chapters 1 and 47, Montana Code Annotated, (b) all provisions of Title 24, Chapter 171, Mont. Admin. R., and (c) and all requirements or directives imposed by the Board; and

(4) That in the event Warwood fails to comply with any of the above terms and conditions of his probation, that his license be summarily suspended until such time as he comports with the terms and conditions of his probation.

DATED this 21st day of September, 2007.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

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

**NOTICE**

The parties to this proceeding are notified that §2-4-621, MCA, provides that the proposed order in this matter, if adverse to a party other than the agency itself, 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.