

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF PROFESSIONAL LICENSING REGARDING:

THE PROPOSED DISCIPLINARY	)	Case No. 637-2024
TREATMENT OF THE LICENSE OF	)	
SEAN HILL,	)	<b>FINAL AGENCY DECISION</b>
Sanitarian, License No. 517.	)	
	)	

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On April 17, 2025, the Hearing Officer issued Findings of Fact, Conclusions of Law, and Recommended Decision in this matter. It contained notice of that pursuant to Mont. Code Ann. § 2-4-621, the proposed order may not be made final until the parties are given opportunity to file exceptions and present briefs and oral argument.

On April 21, 2025, Sean Hill (Hill) emailed the Office of Administrative Hearings (OAH) that he disagreed with the decision, that he would appeal, and that he desired to be provided the appeal process, pursuant to Mont. Code Ann. § 2-4-621. In response, OAH indicated to Hill that he may contact the Montana Sanitarian Program with his question. OAH provided Hill two different contact numbers.

On May 13, 2025, the Department of Labor and Industry (Department), through its counsel, filed Department's Motion to Issue Final Agency Decision *Nunc Pro Tunc*. In its motion, the Department moved OAH to correct *nunc pro tunc* the procedural record in this matter by: (1) issuing its Findings of Fact, Conclusions of Law and Recommended Decision as the Final Agency Decision; and (2) giving notice to the parties of their rights to appeal directly to state district court, pursuant to Mont. Code Ann. § 2-4-702, rather than Mont. Code Ann. § 2-4-621. The Department represented Hill opposed the motion.

The Department contends that OAH is the correct office to issue a Final Agency Decision because the Sanitarian Program is a licensing program organized within the Department and the decision is not required to be referred to a board. As a consequence, where OAH has determined that Hill violated standards of professional conduct, OAH is the final decision maker with authority to issue final orders imposing sanctions, pursuant to Mont. Code Ann. § 37-1-402 and -406. The Department continues that it lacks substantive authority to take final agency action in this matter because, again, there are no

provisions in the Montana Administrative Procedure Act (MAPA) for further proceedings before the Sanitarian Program.

The Department also asserts that OAH heard the evidence directly and thereafter determined Hill violated rules of professional conduct warranting revocation of his license. The Department is correct that MAPA does not provide for exceptions briefing or arguments in prosecutions of unprofessional conduct by a program against its licensee. The Hearing Officer agrees that Mont. Code Ann. § 2-4-702 is the correct procedural appeal right rather than Mont. Code Ann. § 2-4-621. As a result, for a decision made by the Hearing Officer pursuant to sanctions under Mont. Code Ann. § 37-1-406, for a program within the Department, such decision stands as the final agency decision.

The Hearing Officer now issues this Final Agency Decision to correct the appeal rights so an appeal, if desired, may be pursued pursuant to Mont. Code Ann. § 2-4-702. This order includes the entire prior unaltered order and corrects the appeal rights.

## **I. PROCEDURAL BACKGROUND**

On May 22, 2024, the Sanitarian Licensing Program issued a Notice of Proposed Program Action and Opportunity for Hearing involving Hill's potential commission of unprofessional conduct for allegedly falsifying inspection reports for inspections he did not complete, forging signatures on inspection forms, and falsely reporting to the Montana Department of Public Health and Human Services (DPHHS) he completed inspections that he did not complete.

On June 18, 2024, Hill requested a contested case hearing in this matter. On June 24, 2024, the Department of Labor and Industry (Department) requested a Hearing Officer from the Office of Administrative Hearings be appointed to conduct a contested case hearing.

On June 25, 2024, a Notice of Hearing and Scheduling Conference was sent to the parties, setting a scheduling conference date and time. On July 3, 2024, a scheduling conference in this matter was held, which both the Department and Hill attended. Dates and deadlines were set upon the parties' agreement for expert disclosure, discovery completion, motions, motion responses, motion replies, final exchange, final pre-hearing conference, and hearing. Thereafter, on July 8, 2024, the Hearing Officer issued a Scheduling Order.

On September 6, 2024, the Department made a motion to compel discovery responses from Hill. Hill did not respond to the Department's motion to compel.

On September 24, 2024, the Hearing Officer issued an Order on the Department's motion to compel discovery responses, granting the Department's motion as it concerned Hill answering the Department's interrogatories Nos. 1-37, 39-40, and 44-45, and responding to the Department's Request for Production No. 1. The Hearing Officer ordered Hill to respond to the Department's interrogatory requests and request for production as indicated by the close of business on September 30, 2024. On September 24, 2024, the Hearing Officer also deemed admitted the Department's Requests for Admissions Nos. 8, 10-12, 16, 38, 57, and 64-65.

Hill did not provide discovery responses as ordered by close of business on September 30, 2024.

On October 3, 2024, the Department filed a motion for leave to file motion for sanctions and a motion for sanctions. Hill emailed a response requesting that his case proceed to hearing and indicating he would need additional time to answer discovery.

On October 18, 2024, the Hearing Officer issued an Order on Sanctions. In that order, the Hearing Officer delineated the information that the Department requested and was not produced by Hill; the information that the Department requested and was not answered by Hill; the information that was answered, admitted to, and denied by Hill; and the information that the Hearing Officer deemed admitted. The Hearing Officer denied the Department's motion for sanctions. The Hearing Officer also ruled that Hill was prohibited from introducing documents at the contested case hearing; from introducing evidence that the Department was not provided through its interrogatory requests and request for production; and from introducing evidence that Hill did not specifically deny when he responded to the Department's requests for admissions.

On October 21, 2024, the Department renewed its motion for default as a sanction, given that Hill failed to file his final pre-hearing disclosures. The Hearing Officer denied the Department's motion. The Department and Hill stipulated to the admission of the Department's proposed Exhibits 1-7. The Department and Hill also stipulated to certain facts, some of which are incorporated into the below-listed findings of fact.

On October 28, 2024, the Hearing Officer convened a contested case hearing in this matter. Lisa Lesofski was present as the court reporter. Hill represented himself and appeared via Zoom live video. The Department appeared in-person and was represented by attorneys Taylor Dugan and Sara J. Hansen-Baiamonte. Staci Evangeline (Evangeline), Jodi Dalbec (Dalbec), Heather Thom (Thom), Karen O'Brien (O'Brien), Susan Lamphier (Lamphier), and Jenna Fisher (Fisher) provided sworn testimony. Hill chose not to testify and, as such, was not sworn in.

The parties filed proposed findings of fact and conclusions of law on January 17, 2025. Based on the evidence adduced at hearing and the arguments of the parties in their post-hearing briefing, the following decision is rendered.

## **II. ISSUES**

1. Whether Hill committed unprofessional conduct in violation of Mont. Code Ann. § 37-1-316 (2021).<sup>1</sup>

2. If Hill committed unprofessional conduct, what sanction is appropriate to remedy said unprofessional conduct?

## **III. FINDINGS OF FACT<sup>2, 3</sup>**

1. \*On March 22, 2005, the Department issued Hill a Montana sanitarian license.

2. \*Hill's license is renewed through June 30, 2025.

3. \*Hill owns and operates Yellowstone Environmental Solutions (YES).

4. DPHHS collects licensing fees from certain required establishments in Montana. To implement the inspections required as part of the licensing program, DPHHS enters into a cooperative agreement with each relevant county, and agrees to pay the county those licensing fees in exchange for the county conducting inspections of the licensed establishments.

5. A county can contract with a health officer, sanitarian, or sanitarian-in-training to perform inspections required in the cooperative agreement between DPHHS and the county.

6. Fergus County entered into a cooperative agreement with DPHHS in January 2022.

7. The Fergus County cooperative agreement outlined that inspections of licensed establishments were to be performed on an annual or more frequent basis.

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<sup>1</sup> Citation is to the applicable statutory provision in effect at the time of Hill's conduct in 2022. No substantive difference exists between the statutory provisions of Mont. Code Ann. § 37-1-316(4) and (5) (2021) and the current Mont. Code Ann. § 37-1-410(1)(d) and (e).

<sup>2</sup> Any proposed finding of fact offered by a party not specifically addressed herein is deemed not supported by substantial competent evidence in the record.

<sup>3</sup> Findings of fact designated with an asterisk were stipulated to by the parties.

8. \*Through YES, Hill contracted with Fergus County between January 1, 2022, to December 31, 2022, to perform inspectional and regulatory services as a licensed sanitarian.

9. \*In 2022, Hill also contracted with Meagher County to perform sanitarian services as a licensed sanitarian.

10. In his agreement with Fergus County, Hill agreed to provide the services within the cooperative agreement, comply with the cooperative agreement, and provide Fergus County reporting data to verify compliance. This data included entering inspection completion dates into the DPHHS inspection database after the inspection or within two weeks after the end of each quarter.

11. \*Hill agreed to provide quarterly reports to Fergus County which included all services provided to Fergus County within the preceding quarter.

12. \*Hill agreed to make monthly accounting of all services provided.

13. Hill submitted regular invoices to Fergus County for his services.

14. DPHHS required Hill to maintain inspection reports for auditing purposes.

15. Hill was required to provide inspection reports to Fergus County to be kept on file and made available to the public.

16. Hill failed to provide any inspection reports to Fergus County.

17. DPHHS audits inspection input that is entered into the inspection database.

18. Hill had a unique password that provides him access to the DPHHS inspection database.

19. Hill entered information into the DPHHS inspection database for inspections completed between January 1, 2022, and December 31, 2022. This information was for inspections conducted in Fergus and Meagher Counties.

20. Hill entered only one completed inspection in the first quarter of 2022. He entered the remaining 231 inspections in December 2022 and January 2023 in both Fergus and Meagher Counties.

21. By waiting to enter the remaining 231 inspections until the last quarter, Hill bypassed an audit of these inspections being conducted for the

first through third quarters, because upon two weeks after the end of a quarter, the DPHHS program randomly selects inspection reports for audits.

22. As admitted by Hill, it is impossible to complete 17 inspections in one day. Although Hill admitted this fact, the inspection dates he entered into the DPHHS database show more than 17 inspections per day completed on designated days.

23. Because Hill entered more than 17 inspections for the following days and no evidence was introduced to prove any of these inspections occurred at all, the Hearing Officer finds no inspections took place on the following dates: 23 inspections on February 22, 2022; 28 inspections on May 16, 2022; 31 inspections on June 2, 2022; 19 inspections on July 27, 2022; 18 inspections on September 9, 2022; and 17 inspections on September 10, 2022.

24. Hill entered these inspections into the DPHHS database and these inspections did not occur.

25. Fisher proffered expert testimony as a licensed sanitarian for DPHHS. Fisher indicated that with a licensed sanitarian inspection, that sanitarian is looking at what the public eats, drinks, and breathes to protect the public health and prevent illness outbreaks, which can lead to death.

26. Fisher indicated it was impossible to complete more than six or seven full licensed food establishment inspections in one day during reasonable hours of operation. A full inspection for a licensed food establishment must, at a minimum, address five risk factors identified by the U.S. Food and Drug Administration (FDA) and Centers for Disease Control and Prevention (CDC) to prevent foodborne illnesses. These factors include employee health and hygiene, approved food sources, cooking temperatures, holding temperatures, and cleaning and sanitizing of equipment. Fisher acknowledged that how licensed sanitarians conduct their jobs, they have a large amount of latitude.

27. Inspection dates entered by Hill into the DPHHS database show more than six or seven licensed food establishment inspections completed by Hill in one day.

28. Because it is impossible to complete more than six or seven full licensed food establishment inspections in one day and no evidence was introduced to prove full food establishment inspections occurred, the Hearing Officer finds that no full food establishment inspections by Hill took place on the following dates: 13 inspections on July 28, 2022; and 15 inspections on July 29, 2022.

29. Hill entered these licensed food establishment inspections into the DPHHS database that did not occur.

30. Fisher conducted an audit of Hill's inspection reports. Fisher indicated that it was not possible for Hill to have conducted 31 inspections in one day on June 2, 2022, in both Fergus and Meagher Counties. The 31 inspections Hill entered into the database for that day included seven small food establishments, 11 large food establishments, one manufacturing establishment, two pools, one spa, three public accommodations of 1 to 10 rooms, two public accommodations of 11 to 25 rooms, one campground/trailer court of 1 to 10 capacity, and two campground/trailer courts of 26-plus capacity.

31. Fisher's expert opinion was that inspections of the 31 licensed establishments would not thoroughly address the risk factors applicable for those establishments within reasonable hours of operation.

32. Regarding pools, inspections address factors which include staff training, drain covers, electrical matters, chemistry of the pool, and chemical storage. Regarding campgrounds, inspections address factors which include water and wastewater. Regarding public accommodations, inspections address factors which include the washing of laundry, dryer temperatures, dish cleaning, maid carts, and water temperature.

33. Fisher's audit of a sample of Hill's last quarter of inspection reports, in her opinion, showed that he did not conduct the inspections in full faith as a licensed sanitarian; that he did not complete inspections as reported; that if he did conduct any of the inspections, the major risk factors were not addressed; and that not conducting the inspections has consequences to public health and safety.

34. Fisher's audit of a sample of Hill's last quarter of inspection reports included review of his inspections of licensed food establishments, public accommodations, a manufacturing establishment, and a pool. Of these audits selected for inspection, no full inspections took place on the following dates: 13 inspections on December 5, 2022; nine inspections on December 15, 2022; nine inspections on December 16, 2022; and 11 inspections on December 27, 2022.

35. For the inspections audited, Hill had submitted hand-signed reports that do not demonstrate full inspections were completed.

36. Hill entered licensed food establishment, public accommodation, manufacturing establishment, pool, and campground/trailer court inspections into the DPHHS database that did not occur.

37. Hill inputted that he inspected specific facilities, to include Karen's House; Stockman's Casino; Montana Tavern; Gem Casino; and Western Lounge, which are located in Fergus county.

38. Hill did not inspect Karen's house on December 16, 2022.

39. O'Brien, the owner of Karen's house, indicated that on December 16, 2022, no guest was staying at the Airbnb. No housekeeper or other help was on the property, so Hill had no way to enter or access Karen's House to perform an inspection. Hill did not contact O'Brien either.

40. O'Brien did not sign the inspection form, although the inspection form submitted by Hill contained a signature by O'Brien.

41. Lamphier is a licensed sanitarian and the certified food protection manager for the following entities in Fergus County: Vino N Brews; Stockman's Casino; Montana Tavern; Gem Casino; and Western Lounge.

42. Lamphier stated that Stockman's Casino, Montana Tavern, Gem Casino, and Western Lounge were not inspected in 2022. Hill entered into the DPHHS inspection database that they were, on July 27, 2022, July 28, 2022, September 10, 2022, and November 3, 2022, respectively.

43. Hill conducted a pre-opening inspection of Vino N Brews in May 2022, when the facility was 75 percent ready to open. Hill did not return to complete a follow-up or final inspection. Hill entered into the DPHHS inspection database that it was inspected.

44. Thom, the interim health officer for Fergus County, acknowledged that Hill attended the Fergus County board of health meetings he was required to attend; that Hill was always available via email and phone for questions; and that Hill was responsive. Thom had no evidence that Hill conducted any inspections.

45. Lamphier indicated that Hill was a good and knowledgeable licensed sanitarian in that when he conducted inspections, he was thorough. However, Lamphier had no evidence that Hill conducted any inspections besides the pre-opening inspection of Vino N Brews.

46. In total, Hill did not complete 206 inspections that Hill reported were complete.



## **IV. DISCUSSION<sup>4</sup>**

### **A. Hill's Renewed Objections and Analysis**

Hill renews his objection to having the Department hear this case. Hill contends that when the complaint was filed, it fell under the sole jurisdiction of the Board of Sanitarians. According to Hill, the complaint was heard by the Board of Sanitarians and the Board of Sanitarians failed to act on the complaint before the Board of Sanitarians was dissolved. Hill continues that the Department is acting under the authority granted to it by Senate Bill 457. According to Hill, Senate Bill 457 does not contain language giving the Department jurisdiction over complaints prior to October 2023 that were addressed by the Board of Sanitarians. Hill argues that because Senate Bill 457 does not contain language pertaining to complaints made to the Board of Sanitarians, his case should be vacated. Hill also argues that his case was not authorized by a member of the screening panel and, as such, the Hearing Officer should vacate his case. Hill renews his objection to inclusion of any information regarding Meagher County, since the original complaint before the Board was regarding only Fergus County.

With his renewed objection, Hill raises no new information upon which the Hearing Officer should reconsider the prior order issued on October 18, 2024, that addressed these issues when Hill first raised them in response to the Department's motion for sanctions. Further, as it concerns the jurisdiction of the Board of Sanitarians or inclusion of Meagher County, the Hearing Officer indicated in the October 18, 2024 Order on Sanctions that "[a]s a matter of law, the Department's authority over Hill is permitted under Mont. Code Ann. §§ 37-1-401, 37-1-403, and 37-40-203. Senate Bill 457 authorized the same." See Mont. Sen. 457, Chapter 484, 68th Leg., Reg. Sess. (2023). Moreover, the fact that the original complaint filed with the Board of Sanitarians only included Fergus County, while the Meagher County information was added after the matter was transferred from the Board to the Program, does not require a change in these proceedings. Meagher County was included in the notice of proposed program action and opportunity for hearing, so the change from the Board of Sanitarians to the Sanitarian Program is immaterial since Hill was properly on notice of the allegations against him. To the extent Hill requests leave to file a motion challenging the Department's authority, the Hearing Officer denies that request because the Department's authority is clear under the plain language of the statute.

Additionally, if the Department receives a written complaint or obtains information that a licensee may have committed unprofessional conduct, the Department may investigate to determine if reasonable cause exists that the

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<sup>4</sup> Any statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P2d 661.

licensee has committed a violation of professional conduct statutes or rules. Mont. Code Ann. §§ 37-1-307 and -308. Here, contrary to Hill's assertion that his case was not authorized, on January 17, 2024, the Sanitarian Licensing Program found reasonable cause to believe that Hill violated statutes and rules of unprofessional conduct. Thereafter, the Department issued its Notice of Proposed Program Action and Opportunity for Hearing on May 22, 2024. Therefore, Hill's renewed objection to dismiss this matter based on a perceived failure to have the matter authorized by a screening panel matter is denied.

## **B. The Department's Objection and Analysis**

The Department argues that the Hearing Officer should disregard Hill's denials that were read into the record. According to the Department, Hill's denials with no testimony or evidence proffered to support them should not be part of the record considered because Hill was given an opportunity to provide denials and testimony under oath and cross-examination. Hill chose not to testify. The Department contends that it was thereby denied the ability to cross-examine Hill on facts and subjects of his claimed denials. The Department continues that the denials Hill provided in discovery were not under oath and, as such, they should not be part of the record in this matter. Permitting Hill's denials to be part of the decision-making in this matter, the Department argues, violates the Montana Administrative Procedures Act, the Montana Rules of Civil Procedure, and the Montana Rules of Evidence. In particular, the Department argues the statutes and rules require the taking of testimony under oath. See Mont. Code Ann. § 2-4-612; Mont. R. Civ. P. 43; Mont. R. Evid. 603.

Here, upon Hill's opportunity to present testimony, he chose not to testify. As a result, the Hearing Officer did not swear him in. Instead, Hill chose to stand on the denials he had previously provided in discovery. The Hearing Officer recited those denials into the record from a prior order, inquiring of Hill whether they were accurate. Hill affirmed the prior order reflected his denials, and the Department was provided the opportunity to object to the reading of the denials into the record. The Department did not object. See *Schuff v. Jackson*, 2002 MT 215, ¶ 30, 311 Mont. 312, 55 P.3d 387 (to preserve an issue for appeal, a complaining party must object as soon as the grounds for objection are apparent).

In this matter, the Department had the burden to prove unprofessional conduct. Because it was the Department's burden, Hill was assumed to have not committed unprofessional conduct until proven otherwise. Hill's denials only have the legal effect of establishing that he did concede to the Department's case. His denials were not evidence, but established his position from the record of a prior order since he would not testify. The Department is correct that because it could not cross-examine Hill, his denials have no more effect than establishing his disagreement. As the following analysis details, the

Department proved by a preponderance of the evidence that Hill falsely reported completing inspections that he did not, in fact, complete. The Department also proved by a preponderance of the evidence that Hill falsely reported having inspected specific licensed establishments when, in fact, he did not complete those inspections. The Department also proved by a preponderance of the evidence that he forged a signature on an inspection report. Therefore, the fact that Hill's prior denials were stated for the record does not bear on the Hearing Officer's decision in this case.

## **C. Unprofessional Conduct**

### **1. Arguments of the Parties**

The Department contends that Hill committed unprofessional conduct by falsifying inspection reports for inspections that he did not complete and by forging owners' signatures on forms. The Department also contends that Hill committed unprofessional conduct by falsely submitting to DPHHS that he had completed inspections that he did not complete.

Hill contends that the Department failed to prove its allegations. Hill argues that Lamphier's testimony showed he was knowledgeable, dedicated, and followed the rules; that Thom acknowledged he was always available by phone and was present when required; that there was collusion between Fergus County and the supervisor of food and consumer safety regarding the timing of the original complaint and emails from Fergus County; that the Department's investigator contradicted himself; that there was no evidence or testimony a negative impact to public health occurred in Fergus County for 2022; that Hill protected Fergus County from foodborne illness in 2022; that Fisher acknowledged the definition of inspection and inspection time limits is not defined in the administrative rules or Montana Code Annotated; that Fisher acknowledged sanitarians have a large amount of latitude; and that Lamphier verified that an inspection of Vino N Brews was completed.

### **2. Analysis**

Unprofessional conduct for a licensee includes "signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement." Mont. Code Ann. § 37-1-316(4) (2021). Unprofessional conduct for a licensee also includes "a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation." Mont. Code Ann. § 37-1-316(5) (2021). Retail food establishments, food manufacturing establishments, and public sleeping accommodations must be inspected at least once every 12 months by the local health officer, registered sanitarian, or sanitarian-in-training. Mont. Code Ann. §§ 50-50-301(1), 50-51-301, 50-57-301; Admin. R. Mont. 37.111.106(2), 37.110.239, and

37.111.306(3). Tourist campgrounds, trailer courts, and public pools and spas are also subject to inspection requirements by sanitarians and other health officers. Mont. Code Ann. §§ 50-52-301, 50-53-104(1); Admin. R. Mont. 37.111.1232. DPHHS pays for the costs of inspections for these facilities. Mont. Code Ann. §§ 50-50-305, 50-51-303, 50-52-302, 50-53-218, and 50-57-305. To qualify for reimbursement, a local board of health will perform inspections as specified by DPHHS or enter a written, signed cooperative agreement with DPHHS. Admin. R. Mont. 37.110.243.

Here, Hill contracted with Fergus County between January 1, 2022, to December 31, 2022, to perform inspectional and regulatory services as a licensed sanitarian. In 2022, Hill also contracted with Meagher County to perform sanitarian services as a licensed sanitarian. DPHHS required Hill to maintain inspection reports for auditing purposes, and Hill had a unique password that provided him access to the DPHHS inspection database. Hill entered information into the DPHHS inspection database for inspections completed between January 1, 2022, and December 31, 2022. This information was for inspections conducted in Fergus and Meagher counties. Despite entering this information into the database, Hill admitted that it was impossible to complete 17 full inspections in one day. The Hearing Officer concludes that no health inspections took place on the following dates because those inspections include a report of 17 or more inspections being completed in one day, and because no evidence was introduced to prove any of these inspections occurred. The inspections not completed include: 23 inspections on February 22, 2022; 28 inspections on May 16, 2022; 31 inspections on June 2, 2022; 19 inspections on July 27, 2022; 18 inspections on September 9, 2022; and 17 inspections on September 10, 2022.

In addition to the evidence that proved no inspections were conducted for the above dates, the Hearing Officer also concludes it is impossible to complete more than six or seven full licensed food establishment inspections in one day during reasonable hours of operation. Hill reported on July 28, 2022, and July 29, 2022, that he inspected six or more licensed food establishments. Because it is impossible to complete more than six or seven full licensed food establishment inspections in one day and no evidence was introduced to prove full food establishment inspections occurred, the Hearing Officer concludes that no full inspections took place on the following dates: 13 inspections on July 28, 2022, and 15 inspections on July 29, 2022.

In addition, Fisher audited a sample of the fourth quarter of Hill's inspection reports. Fisher indicated that it was not possible for Hill to have inspected licensed food establishments, a manufacturing establishment, pools, a spa, public accommodations of different sizes, and campgrounds/trailer courts all in one day and in two different counties. Upon completion of the audit, Fisher opined that Hill did not conduct the inspections he reported in full faith as a licensed sanitarian; that he did not complete inspections as

reported; and that if he did conduct any of the inspections, the major risk factors were not addressed. Fisher's audit of Hill's last quarter of inspection reports included review of his inspections of licensed food establishments, public accommodations, a manufacturing establishment, and a pool. For the inspections audited, Hill submitted hand-signed reports that do not demonstrate full inspections were completed. The Hearing Officer concludes that based on Fisher's audit, no full inspections took place on the following dates: 13 inspections on December 5, 2022; nine inspections on December 15, 2022; nine inspections on December 16, 2022; and 11 inspections on December 27, 2022.

Hill also inputted that he inspected specific facilities, to include Karen's House; Stockman's Casino; Montana Tavern; Gem Casino; and Western Lounge, which are located in Fergus county. Hill did not inspect Karen's House on December 16, 2022. O'Brien did not sign the inspection form either, although her signature is contained on the form submitted by Hill. The Hearing Officer concludes this signature is forged by Hill because the form was submitted by Hill and he was responsible for the accuracy of the information in the document. The Hearing Officer also concludes that Stockman's Casino, Montana Tavern, Gem Casino, and Western Lounge were not inspected in 2022, nor did Hill return to complete a follow-up or final inspection of Vino N Brews in 2022.

In total, the Hearing Officer concludes that Hill did not complete 206 inspections that Hill reported were complete. Hill filled out and applied his signature to inspection-related paperwork for the inspections. However, he did not complete those inspections. He also entered inspection information into the DPHHS database when he did not complete the inspections and forged a signature on an inspection form. Consequently, the Department proved by a preponderance of the evidence that Hill violated Mont. Code Ann. §§ 37-1-316(4) and (5) (2021).

In sum, the number and dates of inspections Hill entered into the database, the late entry of the inspections, the audit of the inspections, and the testimony of witnesses all established by a preponderance of the evidence that Hill committed unprofessional conduct as a licensed sanitarian. Hill committed unprofessional conduct when he signed, as a licensed sanitarian, inspection forms for inspections that he did not complete. Hill also committed unprofessional conduct when he entered into the inspection database for DPHHS that he completed inspections which were not completed. Hill committed unprofessional conduct when he forged someone else's signature on an inspection report.

Hill's arguments that he is a hardworking individual who was always present and available does not change the fact that Hill committed unprofessional conduct. The Department proved as much by a preponderance

of evidence. The Hearing Officer does not find any purported collusion between the witnesses, as alleged by Hill, was shown by the evidence and, in fact, Hill provided no evidence to support this argument. The evidence is clear that Hill committed violations. That nobody got sick during the timeframe Hill indicated he was inspecting licensed establishments and, in reality, was not doing so, is fortuitous. It is not, however, evidence that Hill did not commit unprofessional conduct. Moreover, rules and statutes governing sanitarians do exist, and they include those governing the sanitarian profession that Hill violated. The fact that a sanitarian has discretion in performing work does not mean that Hill's conduct was not unprofessional conduct under the existing rules and statutes. The issue in this case is not whether Hill was a good sanitarian when he did the work, but whether he did the inspections at all when he represented he did. The preponderance of the evidence shows that Hill did not complete inspections and he falsely indicated said inspections were completed both by reporting the inspections in the database and submitting false documents with his signature and one with the forged signature of another person.

#### **D. Sanctions**

Having concluded that Hill committed unprofessional conduct, the issue becomes what sanction is appropriate for this unprofessional conduct. Upon a decision that a licensee has violated a statute or rule governing the sanitarian licensed profession, the program may issue an order entering sanctions. See Mont. Code Ann. § 37-1-406 (2021).<sup>5</sup> Various sanctions are available, whereby the Hearing Officer first considers the sanctions that are necessary to protect or compensate the public. See Mont. Code Ann. § 37-1-406(3). Only after that determination is made may requirements designed to rehabilitate the licensee be considered. Mont. Code Ann. § 37-1-406(3).

Here, the Department argues that Hill's sanitarian license should be revoked and that Hill not be permitted to reapply for ten years. The Department contends a revocation is necessary to protect the public based on the high risk of harm Hill's conduct caused; his lack of candor to the Department, State of Montana, and Fergus County; his continued failure to recognize or acknowledge the numerous risks to public health, safety, and welfare that was created by his failure to conduct inspections of licensed establishments; and his false reporting that inspections occurred and licensed establishments were compliant. The Hearing Officer agrees that a risk to the public, health, safety, and welfare existed when Hill reported that he inspected licensed establishments when he, in fact, did not, and that those establishments were compliant. A licensed sanitarian's determination that an

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<sup>5</sup> Citation is to the applicable statutory provision in effect at the time of Hill's conduct in 2022. No substantive difference exists between the statutory provisions of Mont. Code Ann. § 37-1-406 (2021) and the current Mont. Code Ann. § 37-1-406.

establishment is compliant indicates to the public that what the public eats, drinks, or breathes is safe. Hill had an obligation to address various risk factors when conducting inspections, and those factors were not assessed. In total, the Hearing Officer finds that 206 licensed establishments were entered into the DPHHS inspection database as having been inspected when they were, in fact, not inspected. The risk to the public for these actions is great, especially where foodborne illnesses may lead to death. That no licensed establishment reported a foodborne illness outbreak when they had not been inspected is fortuitous, but such action must be sanctioned. The Hearing Officer also concludes that Hill did not show the truthful candor required of a professional.

Based on that risk, the volume of inspections not conducted, Hill's lack of professional candor, and Hill's falsification of a document, the Hearing Officer agrees a revocation of Hill's license is warranted. That said, the Hearing Officer believes a reapplication limitation to seven years is appropriate by a preponderance of evidence.

## **V. CONCLUSIONS OF LAW**

1. The Program has subject matter jurisdiction and legal authority to bring an action against a licensee pursuant to Mont. Code Ann. Title 37, ch. 1 and 40, Admin. R. Mont. Title 24, ch. 101 and 217. For this case, the authority of the Board over a pending matter was properly transferred to the Program by legislative action in SB 457, Chapter 484, Chapter 484, 68th Leg., Reg. Sess. (2023). Further, the Program properly included facts regarding Meagher County.

2. The Department bears the burden of proving by a preponderance of evidence that the licensee committed an act of unprofessional conduct. *Ulrich v. State ex rel. Board of Funeral Serv.*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126.

3. Hill committed unprofessional conduct in violation of Mont. Code Ann. § 37-1-316(5) (2021) by entering into the DPHHS inspection database that he completed sanitarian inspections he did not, in fact, complete.

4. Hill committed unprofessional conduct in violation of Mont. Code Ann. § 37-1-316(4) (2021) by signing in his licensed capacity as a sanitarian that he completed sanitarian inspections he did not, in fact, complete.

5. Hill committed unprofessional conduct in violation of Mont. Code Ann. § 37-1-316(5) (2021) by forging an owner's signature on a sanitarian inspection form.

6. A revocation of Hill's license, with a seven-year reapplication limitation, is appropriate to protect the public in this case given the volume of inspections Hill did not complete.

## **VI. FINAL AGENCY DECISION**

Based on the foregoing findings and conclusions that Hill committed unprofessional conduct, the Hearing Officer imposes the following sanctions:

1. Revocation of License: Hill's sanitarian license is hereby REVOKED as resolution of this matter.

2. Hill is not eligible to reapply for a Montana sanitarian license for seven years from the date of entry of the Final Order in this matter. To be considered after seven years, Hill must:

a. Submit a new license application in compliance with all requirements contained in the application; and

b. Provide proof of compliance with any sentencing requirements related to any criminal conviction(s) occurring after entry of the Final Order in this matter.

3. The Sanitarian Program may approve with or without conditions or deny Hill's application for licensure, in its discretion.

DATED this 20th day of May, 2025.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JOSLYN HUNT  
JOSLYN HUNT  
Hearing Officer



### **NOTICE**

Mont. Code Ann. § 2-4-702 provides that a person who has exhausted all administrative remedies within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review. A petition for judicial review must be filed in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision.

Please send a copy of your filing with the district court to:

Department of Labor & Industry  
Employment Standards Division  
Sanitarian Licensing Program  
P.O. Box 200513  
Helena, MT 59620-0513