

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

_____)	Docket No. CC-03-0043-OUT
IN THE MATTER OF THE DISCIPLINARY)	Hearings Bureau Case No. 789-2003
TREATMENT OF THE LICENSE OF)	
WILLIAM S. CRISMORE, JR.,)	FINDINGS OF FACT;
License No. 3805.)	CONCLUSIONS OF LAW;
)	AND ORDER
_____)	

I. INTRODUCTION

The Montana Department of Labor and Industry Business Standards Division filed a complaint against the outfitting license of William Crismore (Licensee) alleging violations of Mont. Code Ann. § 37-1-316(18) (committing an act of unprofessional conduct) and Mont. Code Ann. § 37-47-301(7) (hiring a professional guide who does not hold an outfitter's license). Hearing Examiner Gregory L. Hanchett held a contested case hearing in this matter on April 4, 2003. John Atkins, agency legal counsel, appeared on behalf of the Department of Labor and Industry. Suzanne Taylor, Attorney at Law, appeared on behalf of the Licensee.

Immediately prior to the hearing, the Licensee admitted that he had violated Mont. Code Ann. § 37-47-301(7) as alleged in the complaint. The Department then moved to dismiss the Mont. Code Ann. § 37-1-316(18) allegation. The hearing examiner dismissed that allegation and the matter proceeded to hearing solely on the question of the appropriate sanction to be imposed on the Mont. Code Ann. § 37-47-301(7) violation. Department Exhibits 1, 2, and 3 and Licensee's Exhibits A, B, C, and D were admitted into evidence by stipulation of the parties. Brook Jasmine testified under oath for the Department. The licensee 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 August 28, 2001, pursuant to stipulation, the Montana Board of Outfitters placed the Licensee's license on probation for a period of one year. One of the terms of that probation required the Licensee to obey all statutes and administrative rules pertaining to regulation of Montana outfitters. The Licensee was fully aware of this condition of his probation at the time the Board placed him on probation. In addition, as a term and condition of probation, the Board of Outfitters ordered the Licensee to complete a course of remedial education and pay a \$500.00

fine.

3. When placed on probation, the Licensee knew that the regulations and statutes applicable to outfitters required him to hire guides that were properly licensed by the Montana Board of Outfitters. He also aware understood that the regulations (specifically Admin. R. Mont. 8.39.514(4)) required an outfitter who using the services of a professional guide to "sign the guide's license" following completion of the guide's service on behalf of the outfitter and to specify on the license the dates during which the guide provided services for the outfitter.

4. In October 2001, the Licensee employed Justin Mack as a guide to assist the Licensee with an upcoming hunt. Mack represented to the Licensee that his (Mack's) guide license was current for the 2001 season. Mack had been a licensed guide (Montana guide license #9180) prior to the 2001 season. Mack did not produce a license for the Licensee, indicating that he had left his license with a different outfitter, Virgil Burns. Notwithstanding Mack's failure to produce a license, the Licensee utilized Mack's services as a guide.

5. In fact, Mack was not a licensed outfitter in Montana during 2001. Though Mack had left his renewal application and renewal fee with Burns to file with the Board of Outfitters, the renewal application and renewal fee were not filed with the Board of Outfitters. Thus, Mack did not have a current license when he acted as a guide for the Licensee in October 2001. The Licensee first learned that Mack did not have a valid 2001 license in January 2002 when he contacted the Board of Outfitters.

6. Certain aggravating factors which might merit imposition of an enhanced sanction exist in this case. Most notably, at the time the incident in this matter occurred, the Licensee was on probation for (1) permitting clients to hunt outside the area of his approved operations plan and (2) employing the services of unlicensed guides.

7. There are also mitigating factors that might merit a lesser sanction. At the time of the incident, the Licensee had in his possession "temporary" guide licenses (under the auspices of Admin. R. Mont. 8.39.514(5)) that the Licensee would have used for Mack had the Licensee been aware of Mack's unlicensed status. In addition, the Licensee was led to believe by Mack that Mack's license was current when in fact the license was not current. Mack believed he was a licensed guide as he had applied for and paid a fee for a license to Burns.

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. § 37-47-301 prohibits a licensee from hiring or retaining a guide who does not hold a current license. As the facts above and the Licensee's admission at the hearing demonstrate, the Licensee violated this statute by hiring Justin Mack as a guide in October 2001.

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 statutory requirement which mandates the use of properly licensed guides is not simply "bureaucratic regulation." The requirement directly affects the health, safety, and welfare of clients being served by the guide. Among other things, a licensed guide is required to demonstrate current certification in basic first aid and to have knowledge "of equipment, terrain and hazards to competently provide a safe experience for those persons he or she guides." Admin. R. Mont. 8.39.514(2); Admin. R. Mont. 8.39.515(1)(c).

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 Licensee did take some efforts to ascertain that Mack was properly licensed. He did not utilize the most prudent expedient a call to the Board of Outfitters to ascertain the status of Mack's license. The Licensee claimed that he could not do so, however, because he needed to utilize Mack's services right away (on a weekend) and he could not call the Board to ascertain Mack's licensed status. This is not a valid excuse. The protection of the citizens of Montana cannot hinge on the particular economic exigencies in which the Licensee found himself during that weekend in October 2001. Knowing that he was required by regulation to endorse Mack's license, and being informed that Mack did not have a license with him, the Licensee should have taken the extra step to verify through the Board the status of Mack's license. Furthermore, this is not the first instance in which the Licensee has utilized the services of an improperly licensed guide. The Licensee was on probation for utilizing an unlicensed guide at the time he hired Mack.

8. On balance, the facts in this case demonstrate that sanctions are required both to protect the public and to rehabilitate the Licensee. The hearing examiner notes that the Board had

previously placed the Licensee on probation for a period of one year with the terms that he pay a \$500.00 fine and attend remedial training as directed by the Board. An additional term of probation, an increased fine, and further remedial training are necessary to ensure that the Licensee uses only licensed guides.

IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the Montana Board of Outfitters 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: (1) obey all provisions of Title 37, Chapters 1 and 47, and Title 8, Chapter 39 of the Administrative Rules of Montana; (2) pay a fine of \$1,000.00 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 (3) pay for, attend, and successfully complete additional remedial training as directed by the Board.

In addition, the hearing examiner recommends that 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 17th day of April, 2003.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

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.