

**BEFORE THE STATE ELECTRICAL BOARD
STATE OF MONTANA**

IN THE MATTER OF DOCKET NOS. CC-04-0156-ELE, CC-06-0047-ELE, AND
CC-06-0088-ELE REGARDING:

THE PROPOSED DISCIPLINARY ACTION AGAINST THE LICENSE OF LAURENCE GILLISPIE d/b/a EAGLE CREST ELECTRIC, Licensed Master Electrician, License No. M1444) Case Nos. 1301-2006, 1302-2006) and 1303-2006) <td style="vertical-align: top; text-align: center;">PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW; AND RECOMMENDED ORDER</td>	PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW; AND RECOMMENDED ORDER
THE PROPOSED DISCIPLINARY ACTION AGAINST THE LICENSE OF EAGLE CREST ELECTRIC, Unlimited Electrical Contractor, License No. U1487.))	

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I. INTRODUCTION

The Business Standards Division of the Montana Department of Labor and Industry (BSD) seeks to impose sanctions against the licenses of Laurence Gillispie (Gillispie) for three separate incidences which allegedly violate several statutory and regulatory prohibitions. In Case CC-06-0047-ELE, BSD alleges that Gillispie violated Montana Code Annotated § 37-1-316(2) (which prohibits a licensee from permitting or aiding and abetting an unlicensed person to perform work that requires a license), Montana Code Annotated § 37-1-316(16) (assisting in the unlicensed practice of the electrical profession), Montana Code Annotated § 37-1-316(18) (which prohibits conduct that does not meet generally accepted standards of practice), Montana Code Annotated § 37-1-316(8) (which prohibits a licensee from failing to comply with a term, condition, or limitation of a license imposed by final order of the State Electrical Board) and Administrative Rule of Montana 24.141.403(5) (which prohibits a licensee from permitting a person in his or her employ to perform electrical work without being properly licensed).

In Case CC-04-0156-ELE, BSD alleges that Gillispie violated Montana Code Annotated § 37-1-316(2) (which prohibits a licensee from permitting or aiding and abetting an unlicensed person to perform work that requires a license), Montana Code Annotated § 37-1-316(16) (assisting in the unlicensed practice of the electrical

profession), Montana Code Annotated § 37-1-316(18) (which prohibits conduct that does not meet generally accepted standards of practice), Administrative Rule of Montana 24.141.403(5) (which prohibits a licensee from permitting a person in his or her employ to perform electrical work without being properly licensed) and Administrative Rule of Montana 24.141.403(6) (which holds a licensee responsible for ensuring that the work performed under his license meets State of Montana and National Electrical Code (NEC) requirements).

In Case CC-06-0088-ELE, BSD alleges that Gillispie violated Montana Code Annotated § 37-1-316(8) (which prohibits a licensee from failing to comply with a term, condition, or limitation of a license imposed by final order of the State Electrical Board) by failing to pay a fine as required by an earlier State Electrical Board Order.

Hearing Examiner Gregory L. Hanchett held hearings in each of these cases on July 25, 2006. Lorraine Schneider, agency legal counsel, represented the Department of Labor and Industry Business Standards Division. Raymond Tipp, Attorney at Law, represented Gillispie. In Case CC-06-0047-ELE, Roy Symons, George Edwards, Stephen Hutchings, Gillispie, Charles Blazevich, and Dean Myers testified under oath. Respondent's Exhibits A and B were admitted by stipulation of the parties in this case. In Case CC-04-0156-ELE, Mark Paudline, Grant Moore, George Edwards, Mike McClay, Gillispie, Charles Blazevich, and Dean Myers testified under oath. Department's Exhibit numbers 3(1) through 3(5), 3(7), 3(10) through 3(12), 3(14), and 3(17) through 3(19) were all admitted into the record in this case. In Case CC-06-0088-ELE, Gillespie and George Edwards testified under oath. Department's Exhibit 4 was admitted into evidence by stipulation of the parties in this case.

Based on the evidence and argument adduced at the hearing, the hearing examiner finds in each of the cases that Gillispie violated the statutes and administrative rules as alleged in the three complaints. As a result of those violations, as well as the fact that Gillispie's license was on probation at the time of the violations, the hearing examiner recommends that Gillispie's licenses be suspended for a period of two years and that his licenses be placed on probation for a period of five years. This determination and the accompanying recommended sanctions are supported by the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

A. *Case CC-06-0047-ELE*

1. At all times pertinent to this inquiry, Gillispie has held a masters electrician license as well as the license for Eagle Crest Electric.

2. During April, 2005, Charlie Blazevich worked as an employee for Eagle Crest Electric. Blazevich was not licensed during this time as an electrician in the State of Montana nor was he working as an apprentice under any apprentice program authorized by the State of Montana.

3. On April 14, 2005, Steve Hutchings, a licensed Montana electrician and a City of Missoula electrical inspector, conducted an inspection of a condominium project job site on Cooley Street in Missoula. Eagle Crest had been hired as a subcontractor to wire portions of the project. Hutchings went to the site in response to a complaint that the City of Missoula received regarding the electrical installation.

4. While there, Hutchings observed Blazevich installing an electrical fixture for the ceiling up to line voltage (115 volts). More specifically, Hutchings observed Blazevich standing on a step ladder attaching wire nuts between the fixture and the line voltage. There were no low voltage fixtures or lines in the area where Blazevich was working. By attaching the wire nuts to the line voltage, Blazevich was doing work which required him to be licensed as an electrician.

5. Hutchings asked Blazevich if he had an electrical license and Blazevich responded that he did not. Hutchings then informed Blazevich that he could not do that type of work and that he was "through for the day." At no time during this exchange did Blazevich indicate that he was working on low voltage electrical work. Blazevich did indicate, however, that Gillespie had told him to keep working as Gillispie was attempting to get Blazevich an electrician's license.

6. Gillespie was not at the project site during this time. Apparently he was off getting another fixture for the project to replace one that had been broken. Later, Hutchings spoke with Gillespie about Blazevich's working on high voltage at the project site. Gillespie indicated that he was having Blazevich work while working on getting Blazevich an electrician's license.

7. Gillispie's conduct of permitting an unlicensed person to engage in work requiring a license occurred while both of his electrical licenses were on probation due

to the imposition of sanctions in an earlier proceeding before the State Electrical Board (see Finding of Fact 17 below, which is incorporated herein by this reference).

B. *Case CC-04-0156-ELE*

8. Mark Pauldine (a Montana licensed general contractor) decided to build an addition to his Missoula home. Placing the addition on the home required not only running new high voltage wiring through the addition but also required that the existing home be rewired. Pauldine's regular electrician, Mike McClay, was not available to do the work. Pauldine decided to hire Gillispie and Eagle Crest Electric to complete the work.

9. Gillispie agreed to complete the electrical work for the addition and to undertake the rewire. Gillespie employed three workers at the house, Blazevich, Larry Dean, and Toby Miller. None of the three were licensed electricians.

10. While Eagle Crest was working on the project, Pauldine saw Blazevich, Miller and Dean handling and running 120 volt wire (high voltage wire) throughout the house. Gillispie was not on the project while these employees were working with the high voltage wiring. Indeed, Pauldine observed that Blazevich, Dean and Miller had to keep calling Gillespie out to the work site with issues regarding the wiring.

11. Pauldine's construction foreman, Grant Moore, also observed Blazevich running main wires (high voltage wires) for the addition's electrical outlets. During the entire time of the project, Moore only saw Gillispie on the project site three times.

12. The electrical installation completed by the Eagle Crest employees had several problems. At one point, Moore was hooking up a light fixture in the addition. All electrical power to the addition had been shut off and there should not have been any electricity flowing through the electrical lines to which the fixture was to be attached. Even though all the power to the addition was shut off, when Moore attempted to attach the fixture, he received an electrical shock, indicating that the addition was mis-wired.

13. Several other problems existed with the job. For example, the wiring for the electric range (shown in Exhibit 3(1)) was improper. The metal junction box to which the range was to be hard wired was not grounded as it should have been. Several junction boxes exhibited improper wiring and lacked protection to ensure against electrical shock. In another instance, a series of three recessed can lights were

wired in without a switch. Two of the three cans in that series had no power wired to them. The exterior fan unit for the air conditioning had no fuse disconnect as required by the National Electrical Code. Exhibit 3(19). There was an open (unprotected) junction box in the crawl space that contained an unprotected hot lead in it that could have shocked a person who came in contact with it. Exhibit 3(18). In addition, the wires in the box were wired with reverse polarity. Eagle Crest also left an exposed wire splice in a floor joist bay with no junction box around it. Exhibit 3(17).

14. In addition to the above violations, Eagle Crest installed an outlet for a trash compactor which was not installed in accord with the National Electrical Code. The conductors supplying power to the outlet were not covered with conduit or armored cables as required by the National Electrical Code. In addition, Gillispie failed to obtain a permit from the governing body having jurisdiction over the project as required. At hearing, Gillispie himself conceded that these two actions violated the National Electrical Code.

15. The problems with the wiring completed by Eagle Crest were so pervasive and so dangerous that Pauldine was forced to keep his family out of the home for a period of time. Pauldine fired Eagle Crest off the job and hired McKay to fix all of the problems and code violations.

16. McKay is a journeyman electrician licensed by Montana. He has requisite knowledge and training to identify and testify as to the numerous National Electrical Code violations committed by Eagle Crest Electric at the Pauldine home. The hearing examiner finds McKay's testimony to be credible as to the violations of the National Electrical Code committed by Eagle Crest while working on the Pauldine residence and further finds as a matter of fact that all of the violations discussed by McKay were committed by Eagle Crest. The hearing examiner further finds that McKay's testimony substantiates the numerous failures of the Eagle Crest work at the Pauldine home to conform to National Electrical Code and workmanlike standards.

C. Case CC-06-0088-ELE

17. Gillispie's licenses were previously sanctioned by the State Electrical Board in a final order dated May 13, 2004. Gillispie did not appeal that order. Among other things, the order placed Gillispie's licenses on probation for a period of one year from May 13, 2004 and Gillispie was ordered to pay a fine in the amount of \$1,000.00 no later than 30 days after the entry of the final order.

18. Gillespie did not pay the fine in a timely manner as required by the Board. He did, however, pay the fine during the pendency of this proceeding on July 14, 2006, just 10 days before the hearing.

19. At no time between the entry of the order and the filing of the complaint in this matter did Gillispie make any arrangements to pay for the fine or otherwise contact the Board to indicate why he had not paid the fine.

III. CONCLUSIONS OF LAW¹

A. *Gillispie Violated Professional Conduct Standards And His Licenses Are Subject To Sanctions.*

1. Montana Code Annotated § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

* * *

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law related to licensure or certification;

* * *

(8) failing to comply with a term, condition, or limitation of a license by final order of the State Electrical Board;

* * *

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

* * *

(18) conduct that does not meet the generally accepted standards of practice.

2. Montana Code Annotated § 37-68-301 states that the purpose of the provisions of Title 37, Chapter 68 (which regulates all electricians in Montana) is to (1) protect the public and property from the dangers of electrical shocks, fires and

¹Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

explosions, (2) establish a procedure for determining when and by whom electrical installations are made, (3) assure the public that persons making electrical installations are qualified, and to (4) insure that the electrical installations completed in Montana meet minimum safety standards.

3. Montana Code Annotated § 37-68-301 prohibits a person from engaging in or working as an electrical contractor, residential electrician, journeyman electrician or master electrician unless licensed to do so.

4. Montana Code Annotated § 37-1-320 provides that a licensee may be found to have violated a provision of Mont. Code Ann. § 37-1-316 “without proof that a licensee acted purposefully, knowingly, or negligently.”

5. Administrative Rule of Montana 24.141.403(5) prohibits the responsible electrician of a licensed electrical contractor from allowing any person to perform work unless that person is properly licensed or working with a valid temporary permit. Administrative Rule of Montana 24.141.403(6) places the responsibility for ensuring that the electrical work completed on a project is completed in conformity with the requirements of the National Electrical Code and the State of Montana.

6. BSD bears the burden of proof in this matter to show by the preponderance of the evidence that Gillispie engaged in unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126.

7. In Case Number CC-06-0047-ELE, BSD proved by a preponderance of the evidence that Gillispie violated Montana Codes Annotated § 37-1-316(2), (8), (16) and (18), Montana Codes Annotated § 37-68-301, and Administrative Rule of Montana 24.141.403(5). Gillispie’s unlicensed employee Blazevich was caught in the act of engaging in unlicensed electrical work when he was caught attaching a fixture to a high voltage line. Gillispie knew that Blazevich was doing work that required a license while unlicensed and he permitted Blazevich to do so. This is demonstrated by Gillispie’s comment to George Edwards that he was permitting Blazevich to work while attempting to get him a license. Furthermore, Gillispie was permitting this conduct at a time when Gillispie’s licenses were on probation for earlier misconduct.

8. In Case Number CC-04-0156-ELE, BSD proved by a preponderance of the evidence that Gillispie violated Montana Codes Annotated § 37-1-316(2), (16) and (18), and Administrative Rules of Montana 24.141.403(5) and (6). The credible

testimony of Pauldine, Moore and McKay establishes these violations. Gillispie's testimony itself establishes the violations of Administrative Rule of Montana 24.141.403(6). Gillispie's act of utilizing unlicensed personnel to complete work for which a license is required on the Pauldine residence created the very danger that the statutes and regulations seek to prevent.

9. In Case Number CC-06-0088-ELE, BSD proved by a preponderance of the evidence that Gillispie violated Montana Code Annotated § 37-1-316(8) by failing to timely pay the fine that had been previously imposed upon him. Gillispie took no action to either timely pay his fine or at least take the simple expedient of making arrangements to pay the fine if he indeed had financial trouble paying the fine. His failure to at least contact the Board to make arrangements undercuts the credibility of his testimony that he could not pay the fine due to financial issues. Rather, his conduct suggests a disregard for the regulatory body which governs his license.

B. *The Appropriate Sanction Is Suspension And Probation.*

10. A regulatory board may impose any sanction provided for by Montana Codes Annotated Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, Montana Code Annotated § 37-1-312 provides that a regulatory board may suspend a licensee's license and impose probation.

11. 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).

12. BSD has argued for imposition of a two year suspension and imposition of a period of probation. Gillispie's conduct in permitting unlicensed personnel to engage in work requiring a license is simply intolerable. The harm to the public is not theoretical in the matter of the rewiring of the Pauldine residence. Gillispie's conduct on that job resulted in the very harm that Title 37, Chapter 68 was designed to prevent. Gillispie tempted fate again when he permitted Blazevich to again work on high voltage wiring while unlicensed on the Missoula condominium project. And the egregiousness of Gillespie's conduct is compounded in Case Number CC-06-0047-ELE in that he committed these violations at a time when his license was already under sanction that included a term that he would adhere to all the requirements of the applicable statutes and administrative rules. Weighing all of the factors that have

been presented in this case, nothing short of an extended suspension and a lengthy period of probation will protect the public. In addition, given Gillispie's willingness to permit unlicensed personnel to engage in work requiring a license, nothing short of suspension and a lengthy period of probation will serve to rehabilitate the licensee by impressing upon him the need to stop such conduct immediately. Thus, suspension and probation should be imposed for the violations in Case Numbers CC-06-0047-ELE and CC-04-0156-ELE.

13. With respect to the violation in Case Number CC-06-0088-ELE, imposition of probation to run concurrent with the probation to be imposed in Cases CC-06-0047-ELE and CC-04-0156-ELE is appropriate to further impress upon Gillespie the need to adhere to license restrictions imposed by the Board.

IV. RECOMMENDED ORDER

Based on the foregoing, in Case Numbers CC-06-0047-ELE and CC-04-0156-ELE the hearing examiner recommends that the State Electrical Board enter its order placing Gillispie on probation for a period of five years with the terms:

- (1) That Gillispie's Licenses M1444 and U1487 shall be suspended for a period of 24 consecutive months beginning upon the entry of the final order in this matter;
- (2) That Gillispie shall, at his own expense, enroll in and successfully complete remedial education within 12 months of the entry of the final order issued in this matter, the type of education and the number of hours of education to be determined by the State Electrical Board;
- (3) That Gillispie shall obey (a) all provisions of Title 37, Chapters 1 and 68, Montana Codes Annotated, (b) all provisions of Title 24, Chapter 141, and ©) all requirements or directives imposed by the Board; and
- (4) That in the event Gillispie fails to comply with any of the above terms and conditions of his probation, that his Licenses M1444 and U1487 be revoked.

In addition, based on the foregoing, in Case Number CC-06-0088-ELE, the hearing examiner recommends that the State Electrical Board enter its order placing Gillispie's Licenses M1444 and U1487 on probation for a period of two years, to run concurrently with the probation to be imposed in Case Numbers CC-06-0047-ELE and CC-04-0156-ELE, with the term that Gillispie obey (a) all provisions of Title 37, Chapters 1 and 68, Montana Codes Annotated, (b) all provisions of Title 24, Chapter 141, and (c) all requirements or directives imposed by the Board.

DATED this 12th day of October, 2006.

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.