

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE BIG GAME COMMERCIAL SERVICES BOARD**

IN THE MATTER OF:)	
)	
JAMES A. SMITH)	OAH No. 08-0424-GUI
d/b/a Alaska Extreme Adventures & Safaris)	Agency File No. 1700-06-002
_____)	

DECISION

I. Introduction

This case involves a disciplinary action against James A. Smith, a licensed guide-outfitter and transporter. The Division of Corporations, Business and Professional Licensing filed an Amended Accusation dated July 25, 2008, alleging 13 statutory and regulatory violations that it asserts are grounds for discipline.¹ Mr. Smith timely filed a notice of defense and requested a hearing.

On October 7, 2008, the division moved for partial summary adjudication on Counts I-VIII. Partial summary adjudication was granted on October 20, 2008, subject to confirmation by the Board. A hearing on Counts IX-XIII and the appropriate disciplinary sanctions was held on November 4, 2008.² Mr. Smith participated telephonically and represented himself. Robert C. Auth, Assistant Attorney General, represented the division.

The record developed at the hearing consists of testimony from Mr. Smith, two division witnesses and exhibits 1 through 10. All exhibits were admitted at the hearing without objection. This decision is based on the evidence taken at the hearing, which presented a slightly different and fuller picture of the circumstances than had been available during the prior informal settlement presentation to the Board.

There is little factual dispute between the parties. As expanded upon below: 1) in 2004 Mr. Smith committed 12 unlawful acts – eight resulted in state criminal convictions, four resulted in federal violation notices; 2) after committing the unlawful acts Mr. Smith renewed his licenses revealing some but not all of his unlawful acts in the renewal process; and 3) the state

¹ The original Accusation was issued March 29, 2007 and contained eight alleged violations.

² At the start of the hearing, Mr. Smith requested the hearing be continued so he could obtain counsel. Mr. Smith's request was denied after questioning by the tribunal.

convictions, but not the nondisclosure, are grounds for discipline under AS 08.54.710(a)(1) and (2).³

The dispute is over the legal consequences of Mr. Smith's conduct and the appropriate level of discipline to be imposed. The conduct at issue here is not the type of conduct that in the past Alaska boards have categorized as a "serious offense" such as violations of same day airborne prohibitions.⁴ Prior decisions sanctioning guides who have committed unlawful acts similar to Mr. Smith's have resulted in sanctions ranging from a reprimand to a short suspension of a license.⁵ When considering prior decisions and the evidence developed through the hearing process, Mr. Smith's conduct should result in the following disciplinary sanctions: 1) a written reprimand, 2) a \$5,000 fine with a \$5,000 suspended, and 3) a six month suspension followed by a five year probationary period. Any violation of any state or federal statute or regulation relating to hunting or the provision of big game hunting or transporting within the five year probationary period should result in immediate revocation of Mr. Smith's licenses, with no right to seek relicensure for at least 5 years.

II. Facts

Mr. Smith, now age 47, became a licensed guide after serving 20 years in the Army where he received the Silver Star and a Purple Heart. While serving his country it was always his dream to live and guide in Alaska. Upon retiring with the rank of Master Sergeant, he became a licensed guide and transporter in Alaska. Family obligations required that he move with his wife and three young children from Alaska to Texas where he presently resides. In

³ AS 08.54.710 Discipline of Guides and Transporters (a)The board may impose a disciplinary sanction in a timely manner under (c) of this section if the board finds, after a hearing, that a licensee

- (1) is convicted of a violation of any state or federal statute or regulation relating to hunting or to provision of big game hunting services or transportation services;
- (2) has failed to file records or reports required under this chapter;
- (3) has negligently misrepresented or omitted a material fact on an application for any class of guide license or a transporter license; or
- (4) has breached a contract to provide big game hunting services or transportation services to a client.

⁴ See, e.g., *In re Vaden*, GB 87L-30 (Guide Licensing and Control Board 1988) at 2 (Guide convicted of killing and transporting caribou same day airborne; Board revoked license for five years reasoning: "The Guide Licensing and Control Board considers taking game same day airborne as one of the most serious offenses a guide can commit").

⁵ See, e.g., *In re Langvardt* GL 84-17 (Guide Licensing and Control Board 1983) (Guide convicted of failure to report a violation of his client; license suspended for one year w/ three year probation.); *In re Herscher*, 1700-92-021 (Big Game Commercial Services Board 1994) (Guide convicted of hunting outside certified area; reprimand and \$3,000 fine, license suspended until fine is paid).

addition to guiding, Mr. Smith works preparing troops for deployment. He is the sole provider for the household.⁶

Mr. Smith holds Registered Guide-Outfitter License No. 1100.⁷ He also holds Transporter License No. 673.⁸ He has been a licensed Guide-Outfitter since 2002 and a licensed Transporter since 2001. These licenses must be renewed bi-annually. Both licenses were last renewed effective December 24, 2007 and will expire December 31, 2009. By holding both a Guide-Outfitter License and a Transporter License, Mr. Smith can transport and guide hunters.⁹

Alaska is divided into 26 Game Management Units (GMUs).¹⁰ Each GMU is separated into Guide Use Areas (GUAs). Guides are registered for specific GUAs within a GMU. A guide is limited to three GUAs per year. A guide must pass an examination for each GMU in which he or she seeks registration. The examination is GMU-specific and tests the guide's knowledge of the game rules and regulations applicable to a specific area as well as the topography of the area.¹¹ To hunt on federal national forest land, a guide must first obtain Forest Service Special Use Authorization. A registered guide may not guide in more than three GMUs during a calendar year or guide in an area that the guide is not certified.¹² Mr. Smith is certified for units 6, 21, 22, & 23.¹³

Mr. Smith's first few years of guiding were unremarkable. The events which are the foundation of the division's Amended Accusation all occurred in 2004. The division does not challenge Mr. Smith's version of the facts.

A. *The Events of 2004*

To be licensed as a registered guide, a guide must have experience as a licensed assistant guide or licensed class-A assistant guide working for other registered guide-outfitters. Prior to becoming a licensed guide, Mr. Smith had worked with Wayne Woods.¹⁴ In the spring of 2004,

⁶ Smith Testimony.

⁷ Guide-Outfitter License No. 1100, Exhibit 1 at 0181. Exhibit pages will be identified by the Bates No. at the bottom of the page which does not correspond to the Exhibit page number. For example, the first page of Exhibit 8 is Bates No. 0358.

⁸ Transporter License No. 673, Exhibit 8 at 0361. Licensed Transporters may only transport hunters and their guides. This license does not allow the license holder to participate in the hunt. Smith Testimony.

⁹ Smith Testimony.

¹⁰ <http://www.commerce.state.ak.us/occ/guideusemaps/mainpage.cfm>.

¹¹ Smith Testimony.

¹² AS 08.54.720(a)(5)(b); AS 08.54.750(b)(1).

¹³ Guide-Outfitter License No. 1100, Exhibit 1 at 0181.

¹⁴ Exhibit 1 at 0294.

Mr. Smith met Mr. Woods for coffee to discuss the upcoming guiding season. For the 2004 season, Mr. Smith had several hunts lined up including two mountain goat hunts scheduled in September 2004 and three bear hunts scheduled in October 2004. Mr. Smith had intended to take his bear clients to GUA 06-03, an area where he was registered to guide. Mr. Woods was registered to guide in GUA 06-06 and GUA 06-03 and he already had a guiding operation in GUA 06-03.¹⁵ Mr. Woods offered to let Mr. Smith guide in GUA 06-06 under Mr. Woods' registration so Mr. Smith would not interfere with Mr. Woods' GUA 06-03 guiding operation. Mr. Smith was not registered to guide in GUA 06-06.¹⁶ Additionally, Mr. Woods suggested that Mr. Smith use Mr. Woods' Forest Service Special Use Authorization for the scheduled goat hunts.¹⁷ Mr. Smith agreed. In 2004, this type of verbal agreement was not uncommon.¹⁸

Believing he was guiding under Mr. Woods' special use authorization, Mr. Smith did not obtain his own special use authorization. On September 16, 2004, Mr. Smith guided Toby Medley on a mountain goat hunt on national forest lands.¹⁹ On September 18, 2004, Mr. Smith knowingly guided Robert Allen on a mountain goat hunt on national forest lands.²⁰

In October 2004, relying on Mr. Woods' promise to sign off on Mr. Smith's reports, Mr. Smith took his three bear hunt clients to Hinchinbrook Island in GUA 06-06 to hunt bear. One client, Dean Hatten, hunted with Mr. Smith but did not kill a bear. On October 15, 2004 client Bernard Wilkerson did kill a bear as did client John McAlister on October 19, 2004.

Mr. Smith testified that after the hunts he took the required paperwork to Mr. Woods for signature. When Mr. Woods refused to sign the documents, Mr. Smith was unprepared and considered his options. He knew that, without written authorizations, he had violated guiding statutes and regulations and that he was required to self-report the violations. He also knew some of his clients had saved for years to go on their hunts and he did not want to see them lose their trophies. He believed that if he reported Mr. Woods' refusal to follow through on the verbal agreement his clients would forfeit their trophies. Therefore, rather than go to the authorities and report what had occurred, Mr. Smith falsified information on his bear sealing certificates for the two bears, claiming they were taken in guide use area 06-03, and failed to

¹⁵ Smith Testimony. The division has not challenged or otherwise disputed Mr. Smith's testimony on this point.

¹⁶ Smith Testimony.

¹⁷ Smith Testimony.

¹⁸ Smith Testimony.

¹⁹ Exhibit 7 at 0354, 0356.

submit the required hunt reports.²¹ Mr. Smith explained that he did not submit the required reports because he did not want to file a false report. Mr. Smith later found out that had he gone to the authorities, his clients would not have lost their trophies. Had he known Wilkerson and McAlister would not have lost their trophies; Mr. Smith testified that he would have self-reported his violations.

Neither side called Mr. Woods to testify. Mr. Smith did not explain why Mr. Woods refused to sign the reports or why he would not permit Mr. Smith to guide under his special use authorization. The division did not challenge Mr. Smith's testimony regarding Mr. Woods or the role he played in Mr. Smith's illegal acts.

B. State Criminal Convictions Based on Events of 2004

On November 30, 2005, Mr. Smith plead no contest to and was found guilty of eight counts of unlawful acts by a guide associated with the October 2004 bear hunts.²² Specifically, the court found that Mr. Smith:

- 1) on three occasions provided guiding services outside of his licensed area violating AS 8.54.720(a)(5)(B).²³
- 2) on three occasions failed to submit a hunt report within 30 days violating AS 8.54.760(a) and AS 8.54.720(a)(8)(A);²⁴ and
- 3) on two occasions failed to comply with board regulation 5 AAC 92.165(f),²⁵ by knowingly provided false information on sealing certificates violating AS 8.54.720(a)(8)(A).

The prosecutor noted Mr. Smith was cooperative.²⁶ Upon finding Mr. Smith guilty, the court fined him a total of \$7,200 with \$3,200 suspended (\$900 with \$400 suspended on each count)

²⁰ Exhibit 7 at 0355, 0357.

²¹ Smith Testimony.

²² Exhibit 2 (Certified Judgments).

²³ AS 8.54.720 provides in part: "(a)It is unlawful for a ... (5) registered guide-outfitter to knowingly engage in providing big game hunting services outside of ... (B) a use area for which the registered guide-outfitter is registered under AS 08.54.750 unless the registration requirement for the area has been suspended by the Department of Fish and Game;..."

²⁴ Prior to December 5, 2005, AS 8.54.760(a) required hunt records to be submitted within 30 days of the completion of the hunt. Effective December 5, 2005, the time period was expanded and hunt records are required to be submitted within 60 days of the completion of the hunt. AS 8.54.720 provides in part: "(a)It is unlawful for a ... (8) person who is licensed under this chapter to knowingly (A) commit or aid in the commission of a violation of this chapter, a regulation adopted under this chapter, or a state or federal wildlife or game statute or regulation;..."

²⁵ 5 AAC 92.165 addresses the sealing of bear skins and skulls. Subsection (f) proscribes the falsification of any information required on the sealing certificate or temporary sealing form.

²⁶ Court Log Notes, Exhibit 1 at 0207.

and placed him on probation for two years.²⁷ Mr. Smith paid his \$4000 fine and has completed his probation.

C. *Mr. Smith's 2005 Applications for Renewal and 2006 MOA*²⁸

Mr. Smith's licenses are on a biannual renewal schedule. He signed his January 1, 2006 – December 31, 2007 license renewal forms on December 25, 2005.²⁹ Both application forms contain almost identical questions to which the applicant is to respond “yes” or “no.”³⁰ Any “yes” answer is to be explained on a separate sheet of paper. The following questions appear on each form:

SINCE YOUR LAST LICENSE WAS ISSUED:

...

3. Are you aware of any investigations against you, in any state, jurisdiction or in Canada?

...

HAVE YOU:

...

6. been convicted of a state or federal hunting, guiding, or transportation services statute or regulation within the last 12 months, for which you received an unsuspended fine of more than \$2,000?
 7. been convicted of a state or federal hunting, guiding, or transportation services statute or regulation within the last 36 months, for which you received an unsuspended fine of more than \$3,000?
- ...
9. provided big game commercial services illegally?

²⁷ Exhibit 2.

²⁸ Memorandum of Agreement a/k/a Consent Agreement.

²⁹ Renewal Form for Guide License, Exhibit 1 at 0192-0194; Renewal Form for Transporter License, Exhibit 8 at 0393, 0394.

³⁰ The guide application contains a series of questions related to hunt records not asked on the Transporter License form. Specifically if the applicant provided big game commercial services in 2004 or 2005, had the applicant submitted all hunt records? Exhibit 1 at 0193. Mr. Smith answered “yes” even though he was found guilty of failing to submit the 2004 hunt reports.

The record does not establish whether or not Mr. Smith subsequently submitted the required hunt records. As written the question does not ask if the reports were timely submitted. Therefore, the question could be read to allow an affirmative answer by a guide who failed to timely submit a hunt report, was convicted for failing to submit and subsequently filed the report.

Mr. Smith answered “no” to each of these questions.³¹

On a separate piece of paper Mr. Smith, by memorandum dated January 15, 2006, informed licensing examiner Cindy Roccodero of his eight misdemeanor convictions and the resulting fines.³² Mr. Smith explained that a guide (Mr. Woods) had asked him to move to another area so as to not disrupt that guide’s operation; Mr. Smith said that he would if the guide would sign his hunt report, and then the guide refused to sign the report. Mr. Smith wrote that he “should have gone to the troopers and turned myself in, but I did not. So here is the lesson I learned.”³³ The division received Mr. Smith’s applications and the accompanying memorandum March 8, 2006. His licenses were renewed effective March 6, 2006 through December 31, 2007.³⁴

Shortly thereafter, on March 24, 2006, the division and Mr. Smith entered into negotiations regarding a memorandum of agreement (MOA) regarding Board action on his eight state convictions.³⁵ By April 2006 an MOA was signed and submitted to the Board. If accepted, Mr. Smith would pay a \$500 fine and two years probation. At its June 2, 2006 meeting the Board rejected the MOA and indicated it would consider an MOA that required a \$5,000 fine and a 10 year probation.³⁶ Mr. Smith and the division continued to negotiate terms of a mutually acceptable MOA.

On March 9, 2007, the division issued an accusation against Mr. Smith seeking revocation or suspension of his licenses based on his eight misdemeanor convictions.³⁷

D. *Federal Violation Notices Based on Events of 2004*

On May 1, 2007, four federal violation notices were sworn out against Mr. Smith. The violations stemmed from the activities associated with the two goat hunts he guided in September 2004 on federal property.³⁸ For each hunt he was cited for conducting a commercial activity on national forest lands without special use authorization violating 36 CFR § 261.10(c)³⁹

³¹ Renewal Form for Guide License, Exhibit 1 at 0192; Renewal Form for Transporter License, Exhibit 8 at 0393.

³² Exhibit 1 at 0196; Exhibit 8 at 0397.

³³ *Id.*

³⁴ Exhibit 1 at 0190; Exhibit 8 at 0377.

³⁵ Exhibit 10 at 4.

³⁶ Exhibit 10 at 5.

³⁷ Exhibit 3.

³⁸ Exhibit 7 at 0354 – 0357.

³⁹ It is unlawful to conduct any kind of work activity or service on federal lands unless authorized by federal law, regulation, or special use authorization.

and providing guiding services in violation of 36 CFR § 261.10(c), thereby violating 16 USC § 3372(a)(1).⁴⁰

Mr. Smith did not oppose the violations and paid a total of \$3,500 in fines and \$100 in processing fees because he understood that the violations were no different than a traffic ticket; if he paid them they would just go away. He was adamant on this point because Mr. Smith was concerned that the federal violations would negatively impact his security clearance, which was necessary for his other source of income, preparing troops for deployment. It was important to Mr. Smith that he not suffer any negative consequences if he simply paid the fine and did not contest the violations.

Dennis Deason, Assistant Special Agent for U.S. Forest Service, testified for the division. He was not involved in the issuance of resolution of Mr. Smith's federal violations. Mr. Deason considered Mr. Smith's violations to be akin to a traffic ticket, not a criminal offense. The federal matters were considered closed by the federal authorities as of May 18, 2007 and June 1, 2007.⁴¹

E. *May 2007 MOA*

On May 17, 2007, Mr. Smith signed an MOA he believed would be acceptable to the division, agreeing to a \$5,000 fine and a five-year probation.⁴² The MOA was intended to resolve the March 9, 2007 accusation. The division received the signed MOA on May 24, 2007, but did not submit it to the Board for approval because in the interim the division had become aware of Mr. Smith's four federal violations and with the knowledge of these new violations, it believed, that an MOA was inappropriate.⁴³ Mr. Smith was unaware that the division was no longer interested in entering into an MOA, until he received a letter dated March 10, 2008 informing him that the Board, not the division staff, rejected the proposed May 2007 MOA and returning a check dated April 3, 2007 in the amount of \$5,000.⁴⁴

⁴⁰ It is unlawful to import, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the U.S.

⁴¹ Exhibit 7 at 0350 – 0353.

⁴² Exhibit 4.

⁴³ Testimony of Quinton Warren, Division Investigator.

⁴⁴ Exhibit 10 at 1, 2. The record does not contain an explanation regarding the April check predating the May 2007 MOA. Therefore, it is unclear if the rejected MOA referenced in the letter was the May 2007 MOA or an earlier MOA.

F. *2007 Renewal Applications*

In November 2007, the division revised its renewal applications. The revised applications asked, in addition to the questions contained in previous applications set forth above, whether, since Mr. Smith's last license was issued (March 2006), had he:

4. been convicted of a felony or other crime (convictions include: suspended imposition of sentence, no contest, nolo contend[er], etc.)?⁴⁵

On December 3, 2007, Mr. Smith submitted his license renewal applications using the revised form. They were received by the division on December 10, 2007.⁴⁶ As before, Mr. Smith answered "no" to all the questions regarding knowledge of investigations and convictions, including the new question regarding criminal convictions since the date of his last application. The division renewed Mr. Smith's licenses effective December 24, 2007 through December 31, 2009.⁴⁷

On July 25, 2008, the division issued an amended accusation. The amended accusation added five additional violations or counts to the original eight. Four counts are based on the federal violations in response to question 4, which the division believed were grounds for discipline pursuant to AS 8.54.710(a)(1).⁴⁸ The fifth count alleged that because Mr. Smith did not reveal either his federal violations or any state or federal investigation in response to question 3 on his most recent renewal application, he negligently misrepresented or omitted a material fact on the application, which is a ground for discipline under AS 8.54.710(a)(3).⁴⁹

Other than the events of 2004, Mr. Smith has had no further violations related to hunting or to the provision of big game hunting services or transportation services.

III. Discussion

This case is governed by the Administrative Procedure Act (APA)⁵⁰ and by the statutes and regulations governing licensure of Big Game Guides and Transporters.⁵¹ In general, the division has the burden to prove by a preponderance of the evidence that Mr. Smith was

⁴⁵ Exhibit 1 at 0183 (The new form was revised November 23, 2007).

⁴⁶ Exhibit 1 at 0182 – 0185; Exhibit 8 at 0362 – 0365.

⁴⁷ Exhibit 1 at 0181; Exhibit 8 at 0361.

⁴⁸ See *supra* note 3.

⁴⁹ *Id.*

⁵⁰ The APA, found in AS 44.62, is made applicable by AS 44.62.330(a)(21).

⁵¹ See AS 08.01, AS 08.54, and 12 AAC 75.

convicted of violating any state or federal law relating to hunting, guiding, or transportation services; failed to file required reports; or negligently misrepresented or omitted a material fact on an application for license.⁵²

A. *Counts I- VIII – State Violations*

It is undisputed that on November 30, 2005, Mr. Smith pled no contest to and was convicted of eight criminal acts associated with the October bear hunts and that his actions are grounds for discipline under AS 8.54.710(a).⁵³ These eight counts form the basis for the first eight counts in the Amended Accusation. Counts I - III allege that Mr. Smith guided outside of his licensed district in violation of AS 8.54.720(a)(5)(B).⁵⁴ Counts IV and V allege that Mr. Smith violated a game regulation, 5 AAC 92.165(f),⁵⁵ by knowingly providing false information on sealing certificates in violation of AS 8.54.720(a)(8)(A).⁵⁶ Counts VI – VII allege that Mr. Smith failed to submit hunt reports within the 30 days in violation of AS 8.54.760(a) and AS 8.54.720(a)(8)(A).⁵⁷

Mr. Smith agrees that some form of discipline should be imposed for the eight misdemeanor convictions but asks that the facts and circumstances surrounding these violations be taken into consideration by the Board.

B. *Counts IX – XII –Federal Violations*

Mr. Smith does not deny the facts supporting the federal violations: on September 16 and 18, 2004 he knowingly guided two clients on national forest lands without obtaining the required special use permit. He does, however, dispute whether the violations are criminal convictions that he was required to report on his renewal form.

⁵² AS 8.54.710(a)(1)-(3). Although not applicable under the facts of this case or alleged by the division, a licensee may also be disciplined for breaching a contract to provide hunting or transportation services or for acting unethically. AS 8.54.710(a)(4) and (b).

⁵³ Order Granting Partial Summary Judgment (October 20, 2008); Agency Record at 199 – 210, 332 - 339.

⁵⁴ AS 8.54.720 provides in part: “(a)It is unlawful for a ... (5) registered guide-outfitter to knowingly engage in providing big game hunting services outside of ... (B) a use area for which the registered guide-outfitter is registered under AS 08.54.750 unless the registration requirement for the area has been suspended by the Department of Fish and Game;...”

⁵⁵ 5 AAC 92.165 addresses the sealing of bear skins and skulls. Subsection (f) proscribes the falsification of any information required on the sealing certificate or temporary sealing form.

⁵⁶ AS 8.54.720(a)(8)(A) provides that it “is unlawful for a ... (8) person who is licensed under this chapter to knowingly (A) commit or aid in the commission of a violation of this chapter, a regulation adopted under this chapter, or a state or federal wildlife or game statute or regulation;...”

⁵⁷ AS 8.54.760(a), prior to December 5, 2005, required hunt records to be submitted within 30 days of the completion of the hunt. Effective December 5, 2005, the time period was expanded and hunt records had to be submitted within 60 days of the completion of the hunt.

The division argues that the violations were criminal. As support, the division argues that the size of the fine should have put Mr. Smith on notice of the seriousness of his violations. The division argues that because a violation of 16 USC § 3372(a)(1) may result in criminal penalties, Mr. Smith’s violation must be criminal.⁵⁸ The division also argues that under *United States v. Strong*,⁵⁹ to prove a violation of 36 CFR §261.10(c) the government “must prove beyond a reasonable doubt that Smith conducted, for consideration, some kind of work activity or service on National Forest Lands and that he was not authorized by federal law, regulation or special – use authorization to conduct that activity.”⁶⁰

The division’s reliance on *Strong* is misplaced. Mr. Strong was appealing his criminal conviction in United States District Court. The issue before the Ninth Circuit Court of Appeals was whether the evidence was sufficient to support a conviction. Here, the issue is whether the division has met its burden of establishing that Mr. Smith’s violations were criminal convictions.

The division is correct that the violations for which Mr. Smith was cited may be prosecuted as criminal offenses. It has not, however, established that the violations were prosecuted as criminal offenses. The division has failed to submit evidence sufficient to support a finding that the federal violations were more likely than not prosecuted as criminal offenses.

First, the division submitted certified copies of documents from the Bureau of Central Violations. “The Central Violations Bureau (CVB) is a national center charged with processing violation notices (tickets) issued and payments received for petty offenses committed on federal property.”⁶¹ Hence, a document indicating processing through the CVB is not, in itself, proof that the matter was prosecuted criminally. Second, nowhere on the Notices of Violation does it indicate that Mr. Smith was charged with a criminal offense. Third, none of the citation numbers (F3795631, F3795632, F3795633, and F3795633) indicates that they would be considered criminal on their face. While a violation of these regulations may be charged as a misdemeanor offense, without further evidence it does not necessarily follow that the violations were charged as a criminal offense. The division’s own witness, Mr. Deason, considered these violations to be akin to a traffic ticket, not a criminal offense. Finally, the division has not submitted a certified

⁵⁸ Division’s Hearing Brief at. 3.
⁵⁹ 79 F.3d 925, 928 (9th Circuit 1995).
⁶⁰ Division’s Hearing Brief at. 3.
⁶¹ <http://www.cvb.uscourts.gov/index.html>.

criminal judgment in any of the four violations.⁶² Therefore, the division has not provided persuasive evidence that it is more likely than not that by agreeing to pay the fine, Mr. Smith was criminally convicted. However, the unchallenged evidence establishes that it is more likely than not that Mr. Smith knowingly violated federal law and thereby committed an unlawful act under AS 08.54.720(a)(8)(A), which prohibits guides from violating federal game regulations.

C. *Count XIII – Failure to Disclose*

As to Count XIII, the division alleges that:

Knowing that he had an unresolved investigation with the Division, as well as an investigation with the United States Forest Service (USFS) which resulted in the ... 2007 federal convictions, Smith still checked “No” to question 3 that asked since his last license was issued, whether he was aware of any investigations against him in any state, jurisdiction or in Canada. Likewise, knowing that he had three federal misdemeanor convictions in 2007, Smith still checked ‘No’ to question 4 that asked since his last license was issued whether he had been convicted of a ‘felony or other crime.’⁶³

The division concludes that by answering “no” to questions 3 and 4, Mr. Smith “negligently misrepresented or omitted a material fact” on his application which is grounds for discipline under AS 08.54.710(a)(3).⁶⁴

Mr. Smith disputes whether, under the circumstances as they existed at the time of his most recent application, he negligently misrepresented or omitted a material fact on his application when he answered “no” to question 3 asking if he was aware of any investigations against him. The division contends that he should have disclosed to the division the division’s investigation growing out of the 2004 events, as well as a federal investigation. The division reasons that because Mr. Smith knew the May 2007 MOA had not been acted upon by the Board,

⁶² AS 8.54.710(f) provides:

A certified copy of a judgment of conviction of a licensee for an offense is conclusive evidence of the commission of that offense in a disciplinary proceeding instituted against the licensee under this section based on that conviction, regardless of whether the conviction resulted from a plea of *nolo contendere* or the conviction is under appeal, unless the conviction is overturned on appeal.”

⁶³ Amended Accusation, ¶ 33. This paragraph refers to “three federal misdemeanor convictions in 2007.” It is believed that this is in error as there were four federal violations, not three.

⁶⁴ By requiring “negligent misrepresentation” as a prerequisite to imposing disciplinary sanctions rather than “intentional misrepresentation” the legislature has eliminated any need for the division to prove Mr. Smith intended to misrepresent material facts on his application. *Cf.* AS 08.64.326(a)(1) which provides for a disciplinary sanction if the medical board finds that a medical licensee “secured a license through deceit, fraud, or *intentional* misrepresentation.” (emphasis added).

his disciplinary matter was still unresolved and he should have considered himself to be under investigation. Similarly, the division argues that because there were four federal violations it necessarily follows that Mr. Smith must have been “under investigation” by the federal government.

Unfortunately, question number 3, inquiring whether Mr. Smith was “aware of any investigations against [him], in any state, jurisdiction or in Canada” since his last license was issued (March 2007) lacks specificity. For example, it is unclear whether the question is inquiring about active investigations, investigations that have been concluded but did not result in disciplinary action, etc.

An occupational license is an important property interest. Sound public policy, reasonableness and fairness dictate that, before a Board may deprive someone of their ability to earn a living in their chosen profession based on an answer to a question on a government form, it is necessary that there be no ambiguity in the question upon which the disciplinary action is based, i.e. the question must be specific and unequivocal.⁶⁵ An express wording of question 3 would be “are you aware of any administrative, civil or criminal matter or proceeding where you were the subject of an investigation, action, violation, citation, disciplinary action, complaint or allegation, in any state, jurisdiction, or Canada (this includes new, ongoing, unresolved, or matters that have been resolved since your last license was issued)?”

The division’s arguments are unpersuasive. “Investigation” is defined as the “process of inquiring into or tracking down through inquiry, inspection, observation and search.”⁶⁶ Investigate is defined as “[t]o follow up step by step by patient inquiry or observation. To trace or track; to search into....”⁶⁷ The division has failed to place into the record evidence sufficient to establish that there was an inquiry, inspection, observation or search that would rise to the level of an investigation associated with Mr. Smith’s federal violations. When an individual receives a traffic ticket, it is not always preceded by an investigation. Therefore, without more, it can not be concluded by a preponderance of the evidence that Mr. Smith had been under investigation for his federal violations.

⁶⁵ *In re Kohler*, OAH No. 07-0367-MED (Alaska State Medical Board 2008), at 16 (information was material because the Board “specifically and unequivocally asked for it”).

⁶⁶ Black’s Law Dictionary Abridged 6th Ed. (1997) page 572.

⁶⁷ *Id.*

As to the division's investigation, Mr. Smith had actively been negotiating an MOA since March 2006. He did not know the May 2007 MOA had been rejected by the board until 2008. The renewal form asked about investigations since his March 2006 license was issued. It was reasonable for Mr. Smith to believe the license was asking about ongoing investigations. It was also reasonable for Mr. Smith to believe that he was no longer under investigation because he was in the resolution phase. Therefore, it has not been established that it is more likely than not that Mr. Smith negligently omitted the division's investigation.

While question 3 is not precisely worded, question 4 is express and unequivocal. Question 4, asks whether an applicant had "been convicted of a felony or other crime (convictions include: suspended imposition of sentence, no contest, nolo contend[er], etc.)" since the last license was issued. The word "conviction" is a term of art. A conviction as defined by the list of "convictions" in question 4 demonstrates that an applicant is required to report that which is "the result of a criminal trial which ends in a judgment or sentence that the accused is guilty as charged."⁶⁸ As discussed above, it has not been established that the federal violations were criminal. Since they are not required to be reported, their omission is not grounds for discipline under AS 8.54.710(a)(1).⁶⁹

D. *The Appropriate Disciplinary Sanction*

This Board, the Big Game Commercial Services Board, was statutorily constituted in 2005 for "the purposes of licensing and regulating the activities of providers of commercial services to big game hunters in the interest of the state's wildlife resources, ..." ⁷⁰ Prior to 2005, this Board's duties were performed by predecessor boards with different names such as: the Guide Licensing and Control Board, the Guide Board, the Big Game Guide Board, and the Big Game Commercial Services Board.

This Board has authority to administer a range of disciplinary sanctions, singularly or in combination, including reprimand, censure, probation, license limitations or conditions, and civil fines. ⁷¹ Its authority derives from two statutes, AS 08.01.075 addressing the disciplinary powers

⁶⁸ Black's Law Dictionary Abridged 6th Ed. (1997) page 232 (emphasis added).

⁶⁹ Given the ambiguity of question 3 and the nature of his violation (an offense directly related to guiding), Mr. Smith should have inquired whether the violation was one the division believed he should report. He did not. While this may indicate a lapse in judgment, it does not rise to a negligent misrepresentation or omission by Mr. Smith of a material fact.

⁷⁰ AS 08.54.591.

⁷¹ AS 08.54.710; AS 08.01.075.

of boards under centralized licensing,⁷² and AS 08.54.710 addressing the discipline of guides and transporters. Under AS 08.01.075(f):

A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction.

Because AS 08.01.075(f) does not refer to “*the* board,” but the general “*a* board,” a recently constituted board such as this Board is required to “be consistent” with the prior boards’ application of disciplinary sanctions.⁷³ This does not mean that a Board cannot change its policy over time, but if this Board decides upon a significant departure from a prior board’s decision involving similar facts, it must explain the departure.⁷⁴

This and prior guide boards have formally addressed the issues of sanctioning unlawful guide actions in two ways. First, boards have approved a number of memoranda of agreement (“MOAs”) or stipulations between the division and guides for a wide range of violations. Second, they have issued several written decisions after a hearing. Of the two, the written decisions after hearing are the more significant, in that they represent a fully considered board action with all relevant facts described in detail. The MOAs are negotiated settlements, with less complete exposition of the facts and potentially with unstated elements that were negotiated but left out of the record. A selection of MOAs over the past 20 years is summarized in Appendix A. A selection of decisions after hearing issued over the past 27 years is summarized in Appendix B.

A review of prior board actions reveal that there are no other cases concerning the same combination of violations presented here. However, several themes emerge from a review of the prior MOAs and decisions:

1. The boards have historically reserved the sanction of revocation for “serious offenses” such as same day airborne hunting, violating a specific Board order, wasting meat or illegal baiting; and
2. The boards have not insisted upon revocation for guiding violations for hunting outside of his or her registered area, failing to report, and improper tagging or transporting.

⁷² AS 08.01.010(7)

⁷³ AS 08.01.075(f).

⁷⁴ AS 08.01.075(f).

The boards have reasoned the sanction of revocation was appropriate where there is a need to protect the public, to deter others from similar conduct, and to reaffirm professional standards of behavior.⁷⁵

Guides and transporters work in remote areas and without immediate oversight. The public and the Board must be able to trust that a guide will self-police and self-report their activities even when it may not be in the guide's or the guide's client's immediate self interest. When Mr. Smith testified that if he had known his clients would keep their trophies he would have reported that they were taken outside of his assigned area, he demonstrated he did not have a complete understanding of the rules and regulations governing guiding. He also demonstrated a lack of good judgment and a willingness to place his clients' and his own interests above the rules and regulations governing the guiding and transporting profession.

From the moment Mr. Smith realized he had violated the law, his actions were aimed at hiding his violations. He attempted to do so by knowingly providing false information on sealing certificates in violation of AS 8.54.720(a)(8)(A) and by failing to timely submit hunt reports within the 30 days in violation of AS 8.54.760(a) and AS 8.54.720(a)(8)(A). His reason for not submitting the hunt report was because he did not want to have to either reveal the violation or submit false reports.

Mr. Smith does not dispute that his actions warrant some level of discipline. He believes that consideration should be given for the fact that he cooperated with the prosecution, he notified the licensing examiner of his state criminal convictions, his unlawful actions were lawful until Mr. Woods failed to sign the reports, and he has had no further violations since 2004. Mr. Smith's mitigating factors are, for the most part, unpersuasive.

Mr. Smith cooperated with the prosecution only after he had been caught. Mr. Smith's assertion that he committed no unlawful act until Mr. Woods failed to sign the hunt reports is not persuasive. Once Mr. Woods failed to sign the reports, Mr. Smith intentionally, through action or omission, committed unlawful acts by providing false information on sealing certificates and failure to timely submit hunt reports. These unlawful acts overshadow any precipitating "unintentional" unlawful act.

⁷⁵ *In re Wirschem* 1700-89-025 (Big Game Commercial Services Board 1992); See also 51 Am. Jur. 2d Licenses and Permits § 90 ("Revocation of a license for cause has been said to contemplate such causes as would render the licensee unfit to engage in the licensed activity, with fitness being judged in the light of the potential evil with which the legislature was concerned in enacting the licensing legislation").

The appropriate inquiry when a licensee's actions demonstrate a lack of good judgment, competency, and integrity is whether the conduct reveals the licensee to be unfit to continue the licensed activity. If so, then revocation or suspension would be appropriate to protect the public and reform the licensee's behavior.⁷⁶

Mr. Smith's actions demonstrate a disregard for the professional standards of his profession. They do not however, reveal him unfit to continue guiding or transporting. Moreover, there has been a significant passage of time since the unlawful acts with no further violations. For this reason, a lengthy revocation or suspension may not be necessary to reform Mr. Smith. However, a period of suspension is appropriate to deter others from similar conduct and reaffirm professional standards expected by the Board and the public.

It should be clear to Mr. Smith that he must faithfully follow the law from now on. He does not need any more warnings. Thus, any violation of hunting, guiding, or transporter rules and regulations in any jurisdiction within the five year probationary period should result in an immediate revocation of Mr. Smith's licenses. The revocation should preclude reinstatement for at least a period of no less than five years, regardless of when in the probationary period the violation occurs⁷⁷ and Mr. Smith should be permitted to reapply after his five year revocation is complete.

Mr. Smith has already paid incurred fines totaling \$10,700 with \$3,200 suspended for the

⁷⁶ In a 1993 decision, *IMO Andreis Case No. 1700-91-031* at 15 (1993), the board found the guide failed to properly supervise assistant guides and that the guide was responsible for assistant guide's subsequent conviction of violating state statutes. The board sanctioned with a written reprimand and \$4,500 payment to Alaska Safeguard Program. Failure to pay w/in one year would result in suspension of the guide's license. When considering the appropriate sanction the board reasoned:

The imposition of a sanction in professional disciplinary proceedings may fulfill a variety of functions, such as: deterring the Respondent and other licensees from similar conduct, affirming professional standards and norms of reasonable conduct, and rehabilitation of the licensee.... Of course, the overriding purpose of any sanction is to protect the public.

A license revocation, or refusal to renew a license, protects the public by removing dangerously incompetent or unethical licensees from the profession and would be inappropriate in the instant case.

Fines and suspensions may also serve as deterrents to less serious breaches of law or ethical standards, or to reinforce standards of conduct. Here, we must affirm professional and ethical standards of conduct for the Respondent and other, as well as deter similar conduct in the future.

⁷⁷ For example, if the actions giving rise to a violation occur after four years of probation then Mr. Smith should not be allowed to seek relicensure for five years.

eight state convictions. This is a substantial amount of money. Mr. Smith will suffer financial consequences as a result of a six month suspension. Because of these other consequences, it is reasonable to impose a fine of \$5,000 with \$5,000 suspended, conditioned upon Mr. Smith having no violation of the hunting, guiding, or transporter rules and regulations in any jurisdiction during his period of suspension and probation.

Mr. Smith should also receive a written reprimand from the Board and, if available, he should be required to take a class on a guide's legal and ethical obligations. A reprimand is appropriate because it has the benefit of making a clear record of what the licensee is being disciplined for and of making it plain to the licensee and others what he or she must do differently in the future.

IV. Conclusion

Mr. Smith was been convicted of eight violations of state statutes, has knowingly violated state and federal statutes and regulations, and has intentionally failed to file reports required by law. These actions or inactions are grounds for discipline. Accordingly, with respect to Mr. Smith's guide-outfitter and transporter licenses the following discipline is imposed:

- Mr. Smith's licenses should be suspended for 6 months effective the date the Board takes action to adopt the recommended suspension.
- Mr. Smith should be on probation for five years beginning the date the suspension ends. Any violation of hunting, guiding, or transporter rules and regulations in any jurisdiction within the five year probationary period should result in an immediate revocation of Mr. Smith's licenses with no right to seek relicensure for at least five years, regardless of when in the probationary period the violation occurs.
- A \$5,000 fine with \$5,000 suspended conditioned upon Mr. Smith having no violation of any hunting, guiding, or transporter rules and regulations in any jurisdiction during his period of suspension and probation.
- The following reprimand shall be placed Mr. Smith's licensing files:

The Board hereby reprimands you, James A. Smith, for failure to follow the rules and regulations relating to hunting, the provision of big game hunting services and transportation services. You are specifically reprimanded for: providing guiding services outside of your licensed area, entering federal land

without prior authorization, failure to timely submit a hunt report and providing false information on sealing certificates.

Registered Guides-Outfitters are required to maintain Professional Ethics and Standards, which includes meeting a level of conduct that satisfactorily and safely implements under field conditions, the knowledge, skills, qualifications, and judgment required for the license issued to you. The Board hopes you learn from this experience and enhance your knowledge and skills as a Registered Guide-Outfitter.

- If available, Mr. Smith is required to take a class on a guide's legal and ethical obligations prior to the expiration of his six month suspension.

DATED this 16th day of January, 2009.

By: Signed _____
Rebecca L. Pauli
Administrative Law Judge

[Unused options not shown]

Non-Adoption Options

4. The undersigned, in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

The Board resolved to reject the Administrative Law Judge's Decision For Final Action, choose option four in accordance with AS 44.64.060(e)(5), in the matter of James A. Smith, Agency File #1700-06-002 and modify the decision as follows: change suspension from six (6) months to nine (9) months beginning April 1, 2009; add a statement that Mr. Smith is not to be involved in the guiding/transporting industry in any form while license is suspended and require the \$5,000 fine to be paid in full.

The Board stated that land use violations are very serious and a violation of public trust.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 24th day of March, 2009.

By: Signed
Signature
Paul Johnson
Name
Chairman
Title

APPENDIX A
Summary of Select Disciplinary Matters Resolved Through MOA

<u>Case</u>	<u>Date</u>	<u>Misconduct</u>	<u>Sanction</u>
<i>Yeiter</i> GL 87L-17	1988	Guiding outside assigned area.	\$2,500 fine and a written reprimand.
<i>Heinz</i> GB 87-L-27	1988	Guide convicted of Failure to Comply with Conditions of Permit and False Statement on Brown Bear Sealing Certificate.	Six month suspension and a \$1,000 fine.
<i>Frazier</i> 1700-89-007	1992	Guide convicted of four counts Guide Aid in Violation of Guiding Statute or Regulation and 2 counts of Unlawful Possession/Transportation of Game. Court imposed fines totaling \$6,000, 40 days w/30 days suspended, license suspended for two years and five years probation.	Two year suspension, satisfaction of court imposed fines, and three years probation with conditions.
<i>Sisson</i> 1700-91-032 1700-92-002	1993	Guide failed to provide proof of insurance for two contracted hunts and carry minimum required insurance. Also convicted of possession of horns without meat, failure to transport meat and permitting the commission of a violation.	One year suspension, a \$3,000 fine, and three years probation with conditions.
<i>Webster, Neil and Keith</i> 1700-92-024 1700-92-025	1994	Failure to maintain required insurance.	\$500 fine each.
<i>Walker</i> 1700-93-009	1994	Stipulation does not identify nature of violation other than compliance with the terms of probation set out in his federal criminal case.	Minimum of two year suspension and a \$5,000 fine.
<i>Confer</i> 1700-91-035 1700-92-018	1995	Guide convicted of failing to be present in the field with clients and falsifying reports.	One year suspension, \$2,000 restitution, a \$500 fine, four years probation with conditions, and alcohol treatment program.
<i>Richardson</i> 1700-00-001	2000	Guide conducted four guided hunts in an area where he did not have land use registration to conduct the hunts.	\$500 fine.

<i>McCrary</i> 1707-02-001	2003	Transporter continued to operate as a transporter after being advised that his license had lapsed due to his failure to provide proof of financial responsibility.	Six month suspension and a \$1,000 fine.
<i>Bowden</i> 1700-02-035	2004	Guide convicted of failure to be present in the field and knowingly violating game statute. Court imposed \$900 fine and one year probation	Written reprimand.
<i>Jairell</i> 1700-05-004	2005	Negligent misrepresentation of experience and residency on Class A Assistant Guide License application.	One year suspension, a \$999 fine, and proof of qualification.
<i>Morgan</i> 1700-05-005	2005	Licensed Registered Guide convicted in 2004 of AS 11.41.220(a)(1)(A), crime against a person, class C Felony. AS 08.54.605(a) provides "...a person may not receive or renew a . . . license if (1) person has been convicted of . . . (B) a felony with in the last five years; or (C) a felony offense against the person . . .within the last 10 years."	Eight month probation.
<i>Martin</i> 1704-07-005	2007	Assistant Guide convicted of AS 08.54.720(1), failure to report violation within 20 days. Assistant guide had been contacted within the 20 days and did not disclose violation until several months later.	Written reprimand and \$750 fine.
<i>Mayeur</i> 1700-07-010	2007	Guide convicted of guiding outside licensed area and failure to submit required hunt reports. Court imposed \$2,000 fine w/ \$1,000 suspended and two years probation.	Written reprimand and a \$4,000 fine w/ \$3,000 suspended.
<i>Rhudy</i> 1704-07-002	2007	Assistant Guide convicted of violating 5 AAC 85.055(A)(4), taking a sub-legal dall sheep for which he was fined \$500. Guide believes cause of the violation is the inconsistencies in the year to year judging of sheep by the State.	Written reprimand and a \$1000 fine.
<i>Danford</i> 1700-07-001	2007	Guide convicted of violating 5 AAC 85.055(A)(4), taking a sub-legal dall sheep for which he was fined \$500. Guide believed violation was attributable to the inconsistencies in the year to year judging of sheep by the State.	Written reprimand, a \$2,500 fine w/ \$1,500 suspended, and education on judging dall sheep.

<i>Byler</i> 1700-07-033	2008	Guide convicted of knowingly allowing client to kill a brown bear out of season. Court imposed \$10,000 fine w/ \$7,500 suspended, 30 days in jail w/ 30 suspended, license suspended for five years and may not reapply for ten years.	Board adopted the court imposed penalties.
<i>Baxter</i> 1704-08-006	2008	Assistant guide convicted of knowingly guiding on public or private land without prior authorization.	Written reprimand and a \$1,000 fine w/ \$500 suspended.
<i>May</i> 1700-08-021	2008	Guide allowed client to harvest a brown bear in violation of AS 08.54.720(a) and failure to report violation (AS 08.54.720(a)(8)(B)(ii) and 12 AAC 75.340).	Written reprimand, a \$7,000 fine w/ \$4,000 suspended, and a three year probation
<i>Burwell</i> 1700-08-029	2008	Master Big Game Guide-Outfitter found guilty of Unlawful Acts by Guide, AS 08.54.720(a)(4) (guiding on private or public land without prior authorization) and Guide Responsibility for Violation, AS 08.54.740(a). Court imposed \$3,000 in fines w/ \$1,500 suspended. Guide failed to notify Division within 30 days of conviction.	Written reprimand, and a \$12,000 fine w/ \$7,000 suspended, a five year probation, and a letter of explanation to Board.
<i>Galla</i> 1700-08-011	2008	Guide had client who took more than his limit of black bear. Guide immediately reported incident to state troopers. Prosecutor referred to Board to handle administratively.	Written reprimand, a \$3,000 fine w/ \$2,000 suspended, a letter of explanation to Board, and \$600 to Safeguard Fund.
<i>Boniek</i> 1700-08-008	2008	Guide Outfitter failed to fulfill his transportation and supervision requirements. Prosecutor referred to Board to handle administratively.	Written reprimand, a \$1,500 fine w/ \$1,000 suspended, and a letter of explanation to Board.

APPENDIX B

Summary of Select Disciplinary Matters Resolved by Hearing and Written Board Decision

<u>Case</u>	<u>Date</u>	<u>Misconduct</u>	<u>Sanction</u>
<i>Pease</i> GL81-43	1981	Failed to salvage meat on three different occasions, permitted clients to hunt without licensed guides, and failed to assure safety and comfort of clients. Board concluded that Pease had been "engaged in unethical activity, unsafe activity, and activity which adversely effects the natural resources of the state, ..." (page 9).	License revoked for five years.
<i>Hendricks</i> GL 82-62	1982	Failed to guide hunts (left clients for several days without a guide or with unregistered guides).	License revoked for five years.
<i>Foldager</i> GL 83-16	1983	Plead no contest to three criminal charges re: taking a bear the same day airborne, transporting bear same-day airborne, and aiding hunter to take bear same-day airborne. Court sentence: 180 days in jail w/ 180 suspended, five year revocation and five years probation.	License revoked for five years.
<i>Bryant</i> GL 83-18	1983	Plead guilty to four criminal counts re: same-day airborne hunt, taking game out of season, and transportation thereof. Court sentence: \$1,000 fine -suspended, 180 days in jail w/ 180 suspended, five year revocation and five years probation. Forfeiture of aircraft.	License revoked for five years.
<i>Mason</i> GB 84-16	1983	Guide conducted six hunts resulting in 15 criminal convictions: illegally taking game, falsifying reports, possession and transportation of illegal game. Court sentence: 20 year revocation of guide license, 10 year revocation of hunting license, six months jail w/ six months suspended. Payment of \$25,000 in lieu of forfeiture of ownership interest in plane.	License revoked for 20 years.
<i>Langvardt</i> GL 84-17	1983	Guide convicted of failure to report a violation of his client. Court imposed \$1,000 fine, 60 days jail time w/ 50 suspended, one-year suspension and three years probation.	License suspended for one year w/ three year probation.
<i>Pangborn</i> GB 84-38	1983	Guide convicted of taking a bear cub, failure to salvage, and failure to assure safety and comfort of clients. Court sentence: five year revocation.	License revoked for five years.

<i>Smith</i> GL 87L-32	1987	Board had previously issued order precluding Mr. Smith from guiding in a specified area. Smith violated the order.	License revoked. Decision silent on ability to reapply.
<i>Pease</i> GB 87L-41	1987	Guide convicted for waste of a food animal. Court fined \$1,000 w/ \$500 suspended and two years probation.	Board revoked license. Decision silent on ability to reapply.
<i>Ware</i> GB87L-25	1988	Assistant Guide convicted of taking bear without tags.	Prohibited from guiding during next spring brown bear season.
<i>Gay</i> GB 87L-11	1988	Same-day airborne hunting.	Master Guide License revoked for three years and upon reinstatement Board recommends Guide not be granted a Master Guide License.
<i>Vaden</i> GB 87L-30	1988	Master Guide convicted of killing and transporting caribou same day airborne. Court suspended license for a period of two years.	Board revoked license for five years reasoning: "The Guide Licensing and Control Board considers taking game same day airborne as one of the most serious offenses a guide can commit." (page 2). Upon reinstatement recommends Guide not be granted a Master Guide License.
<i>Keeline</i> GL 87L-38	1988	Board found misrepresentation in advertising and brochure constituted unethical activity by Guide.	License suspended for six months and \$2,500 fine.
<i>Roberts</i> GP 88-AI-46	1989	Guide convicted of taking game out of season, bearbaiting, and failure to salvage. Court suspended license for two years.	Board revoked license "due to the severity of the offenses ..., and the disregard for the fish and game and guiding laws evidenced by these convictions." (page 6) Decision silent on ability to reapply.

<i>Englund</i> GB 89L-19	1989	Board found Guide violated federal statute prohibiting killing and transportation same day airborne and illegal transportation of game.	Board revoked license. Decision silent on ability to reapply.
<i>Bridenback</i> 1704-90-09	1991	Assistant Guide convicted of providing transportation services for compensation without license and providing big-game commercial service is for compensation without an appropriate use permit.	Six-month suspension and two years probation.
<i>Wirskem</i> 1700-89-025	1992	Guide convicted of unlawful taking of wildlife in a national park, hunting in a closed area, transportation of wildlife taken in violation of law, unlawful airborne hunting, and several counts unlawful taking of wildlife.	License revoked "[i]n light of his unlawful conduct, the need to deter others from similar conduct, and to reaffirm professional standards of behavior." (Page 14) Decision silent on ability to reapply.
<i>Neel</i> 1700-90-02	1992	Guide convicted of same day airborne hunting. Court sentence: 90 days jail w/ 90 suspended, 200 hours of community service, \$10,000 fine w/ \$7,500 suspended and \$2,500 to Alaska Safeguard Program.	License revoked for three years. Decision silent on ability to reapply.
<i>Porter</i> 1700-91-025	1992	Guide was guiding without a current license. Court ordered Guide to reimburse deposit received from client, \$1,000 fine and \$2,000 to Alaska Safeguard Program.	License suspended six months or until all fines and compensation paid.
<i>Andreis</i> 1700-91-031	1993	Guide failed to properly supervise Assistant Guides and Guide responsible for Assistant Guide's subsequent conviction of violating state statutes.	Written reprimand and \$4,500 to Alaska Safeguard Program. Failure to pay w/in one year will result in suspension of license.
<i>Lazer</i> 1700-92-039	1993	Master Guide convicted of failing to ensure proper tagging, taking a game animals while he had clients in the field, and falsifying a document. Court sentence: total fine \$2,100 w/ \$1,050 suspended, forfeit hides and federal permit revoked for five years.	Master Guide designation revoked. License suspended for six months and \$500 fine.

<i>Herscher</i> 1700-92-021	1994	Guide convicted of hunting outside certified area. Court sentence: one year suspension, \$3,000 fine w/ \$1,000 suspended.	Written reprimand and \$3,000 fine. License suspended until fine is paid.
<i>Munoz</i> 1700-93-022	1995	Guide acting as an Assistant Guide convicted of unlawfully and knowingly transporting in interstate commerce wildlife which was taken in violation of state and federal law. Court sentence: two years probation during which time he could not hunt or guide and forfeited his \$12,500 interest in an airplane.	License suspended from November 18, 1993 through May 18, 1996, 40 hours community service, must work under supervision of another guide until December 31, 1997.
<i>Holleman</i> 1700-93-017	1995	Guide convicted of federal and state violations re: same day airborne and use of aircraft to harass bear on federal property. Court sentence: five months jail, five months community treatment center, one year supervised release, \$30,000 fine and forfeit plane.	Permanent Revocation and \$5,000 fine.

[This document has been modified to conform to technical standards for publication.]