

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

IN THE MATTER OF )  
 )  
JOHN KATZEEK )  
 )  
\_\_\_\_\_ )

Case No. OAH-08-0533-GUI  
Agency Case No. 1700-08-010

**DECISION**

**I. Introduction**

The Division of Corporations, Business and Professional Licensing (“the division”) filed a six-count accusation to initiate proceedings against a registered guide-outfitter license held by John Katzeek. Mr. Katzeek filed a notice of defense. A hearing was held on June 10 and 11, 2009. Mr. Katzeek appeared in person with his attorney, Campbell Jackson. Assistant Attorney General Robert Auth represented the division.

The first five counts are all related to an incident in which Mr. Katzeek shot a sow with cubs in September of 2006 and to the ensuing criminal case, in which some charges were dropped and Mr. Katzeek was acquitted of the others. The division has not met its burden of proving the first five counts.

Count VI alleges that the written contract Mr. Katzeek used during the hunt did not include all legally required elements of a written guide contract, including the client’s signature before the hunt. Mr. Katzeek does not dispute Count VI. An appropriate penalty is a \$500.00 fine with \$400 suspended on conditions that Mr. Katzeek provide proof of familiarity with the statutes containing contract requirements, that he submit a revised form for use with future clients that contains all statutorily required contract information, and that he have no other violations for two years.

**II. Facts**

*A. September 2006 Bear Hunt*

Mr. Katzeek is a licensed guide-outfitter sixty years of age. Mr. Katzeek learned his profession from his father, and his hunting experience and knowledge of his area goes back to his early childhood. Mr. Katzeek has been hunting and guiding in the Klehini river drainage out of Haines for forty years without incident.

In September of 2006, Mr. Katzeek was guiding a client named Randall Schrader on a ten-day brown bear hunt in the area of the Klehini river. Mr. Katzeek prefers to provide clients with rifles rather than have them bring their own, and Mr. Katzeek outfitted Mr. Schrader with a .416 Rigby, while Mr. Katzeek carried a .375 Remington. Mr. Schrader was from Pennsylvania and had never hunted bears in Alaska before, but he told Mr. Katzeek that he did have experience deer hunting in the Lower 48. Before beginning the hunt, Mr. Katzeek took Mr. Schrader to a nearby rifle range and went over the use of the rifle. After Mr. Schrader fired a number of rounds under Mr. Katzeek's supervision, Mr. Katzeek assessed Mr. Schrader to be comfortable and competent in use of the rifle, and a credible shot as well.

On September 23, 2006, Mr. Katzeek decided to take Mr. Schrader up an unpaved road along the Klehini River. Mr. Katzeek testified that he chose this area for the day's hunt because he knew from experience that it was an area likely to be frequented by brown bears, but not moose. Because it was moose season, Mr. Katzeek wished to avoid areas where moose hunters might be present.

As they drove along the river, Mr. Katzeek and Mr. Schrader sighted a bear along the opposite side of the river. Mr. Katzeek stopped the vehicle, and the men exited and proceeded toward the river to get a better look at the bear. To get to the river from the road, it was first necessary to walk down into and back out of two ditches six to ten feet deep, and then down through a riparian area of brush and scattered logs that gives way to a large area of open river bottom made up of sand, gravel, and scattered rocks that is close to half a mile across. In the distance of the river bottom, channels and dry creek beds cut through the flats, until eventually the forest resumes and ascends up the hills on the opposite side of the river.

As Mr. Katzeek and Mr. Schrader walked out of the brush and into the open river bottom, they did not see the bear. The men crouched or got on their knees, watching and waiting for the bear to appear. For the remainder of this decision, all references to the time of the bear's "first appearance" will refer to when they saw the bear while they were on the river bottom hunting after they had left the truck, not the initial sighting while they were driving.

After a period while the men waited on the rocks and gravel of the river bottom, the bear emerged at a distance from a dry channel or cut in the river bottom (the bear's "first appearance"). There are disputes about distances, direction and precise movements of the bear, but no dispute that at the time the bear emerged into view, it was no more than about 400 feet away from the hunters. It is also undisputed that at the time the bear came into view, it was

moving closer to the hunters, but not towards them. If the bear had continued moving in a straight line as it emerged from the cut, it would have come closer to the hunters, but then passed on by them from right to left as it continued up the river.

As the bear emerged from the cut, it was carrying a fish carcass in its mouth. After briefly studying the bear, Mr. Katzeek determined that it was a harvestable bear, but he directed Mr. Schrader to wait for a better shot as the bear came closer and presented its side. After the bear had moved some distance, a cub emerged into view from the cut where the sow had been, followed by two more cubs. This was the first time the hunters were aware that the bear was with cubs.

What happened next is the basis of the principal dispute in this case. According to Mr. Katzeek, as soon as he spotted the cub, he knew the bear was not harvestable and he immediately pointed out the cub to Mr. Schrader and said, "we have to get out of here." Mr. Katzeek testified that both men slowly stood partway up and began to retreat backwards towards their vehicle. The men's movement toward the vehicle was not a direct retreat at 180 degrees from the bear's position, but rather an angled retreat backwards at perhaps 110 or 120 degrees from the direction of the bear. Mr. Katzeek testified that as the hunters stood up and began to retreat, the sow noticed the movement and became aware of their presence for the first time. Mr. Katzeek testified that the sow had been moving in a straight line, but when it became aware of them the sow immediately dropped the fish in her mouth, locked her gaze on the hunters, and changed direction, coming directly towards the men. Mr. Katzeek testified that at this point the bear was not merely moving in the general direction of the hunters; the bear had obviously perceived the men and visually locked onto them, and it was intentionally coming toward them.

Mr. Katzeek testified that his first response was to talk to the bear and urge it go off in another direction. Mr. Katzeek stated that as he talked or shouted, rather than slowing down or moving in another direction the bear seemed to focus its attention on him and increase its pace. At this point, Mr. Katzeek raised his rifle and, using his scope, fired a warning shot next to the bear that sent sand and gravel flying beside it. Rather than stopping its advance, as Mr. Katzeek had hoped, at the warning shot the bear immediately "kicked it into another gear" and increased its speed until it was in a full charge directly at the men. With the bear charging, Mr. Katzeek told Mr. Schrader to fire, but to avoid hitting the cubs. Mr. Katzeek fired first, and Mr. Schrader fired immediately after. Both shots hit the bear in the chest, stopping the charge and dropping the bear to a position perpendicular to the hunters. A final shot hit the bear in the shoulder. The

cubs, a total of three of them, continued across the river and entered the woods upstream, on the same side of the river that Mr. Katzeek and Mr. Schrader approached from, and were not seen again.

The division disputes Mr. Katzeek's version of events. The division does not directly dispute that Mr. Katzeek ultimately shot the sow out of necessity, but it argues that Mr. Katzeek created the dangerous situation by lingering an excessive time after the cubs appeared, watching the bears for entertainment or thrill-seeking until it became necessary to shoot the sow. This accusation is based solely on the investigating trooper's observations of the bear's tracks, and his sense that Mr. Katzeek's "body demeanor," "lack of emotion," and apparent unwillingness to identify where he was standing when he first saw the bear and when he shot it all indicated that Mr. Katzeek was being untruthful from the moment he flagged down the officer and self-reported the shooting.

The remaining facts are not in dispute. After ascertaining that the bear was dead, Mr. Katzeek and Mr. Schrader returned to the vehicle. In retreating from the bear, Mr. Katzeek had seriously twisted or sprained his leg, and he was in a great deal of pain. Mr. Katzeek immediately went to the nearby house of a friend and called in to report the shooting. Nobody was in the Troopers' office when Mr. Katzeek called, so he left a recorded message stating that he had shot a bear with cubs in self-defense, and describing the area. Back on the Haines Highway, Mr. Katzeek and Mr. Schrader passed the vehicle of Trooper Todd Machacek, who was traveling in the opposite direction on a routine patrol. By flashing his headlights or waving, Mr. Katzeek signaled Trooper Machacek to stop. Mr. Katzeek reported to Trooper Machacek that he had shot a bear with cubs in self defense, and he described where the incident occurred. Trooper Machacek suggested that they return to the scene. Mr. Katzeek initially wanted to first return to Haines because his leg was swelling and in increasing pain. Because they were very close to the scene of the incident and little time had passed since the shooting, Trooper Machacek urged Mr. Katzeek to first go with him to where the bear was. Mr. Katzeek agreed, and all three men returned to the scene.

At the scene of the incident, the bear was immediately apparent, lying on its side in the river bottom. Mr. Katzeek explained in general terms what had happened. Trooper Machacek interviewed both Mr. Katzeek and Mr. Schrader separately, but the tape recorder in the trooper's pocket apparently malfunctioned and the interviews were not recorded. The trooper agreed that Mr. Katzeek's and Mr. Schrader's accounts were "fairly consistent."

Trooper Machacek inspected the bear carcass, and followed the bear's tracks back to where they emerged from the creek bed. Trooper Machacek indicated to Mr. Katzeek that he did not believe that Mr. Katzeek had shot the bear in self-defense after exhausting all other options, and that he intended to cite Mr. Katzeek for shooting a sow with cubs.

In spite of the fact that the men answered all of Trooper Machacek's questions, Trooper Machacek testified that Mr. Katzeek was not forthcoming with information, and that he would not tell Trooper Machacek where he had been when he fired, other than gesturing to a general area of about twenty or twenty-five yards in diameter in an open area of hard sand, gravel and scattered rocks.<sup>1</sup> In the twenty-yard area Mr. Katzeek described as the point from which he shot the bear, Trooper Machacek suggested they look for spent shell casings, and Mr. Katzeek helped Trooper Machacek search the ground. Within a few minutes, both men simultaneously spotted a casing from Mr. Schrader's rifle on the ground, marking the spot at which the shots were fired. Mr. Katzeek also told Trooper Machacek he had picked up one of his own shell casings, and he produced the shell casing from his pocket and asked if the trooper wanted it. Trooper Machacek said yes, and Mr. Katzeek handed it to him. Trooper Machacek conceded that at nine minutes before sunrise, on an overcast day, on fairly even hard ground in an open area, it could be more difficult to precisely locate where events transpired, but he nevertheless felt that the men were being uncooperative by offering "vague and generic" answers to these two key questions, and he indicated that he continued to be troubled by their "demeanor."

Trooper Machacek denied calling Mr. Katzeek a liar:

Q. After their initial statements, didn't you say something to them that could possibly have been construed as saying that they were lying to you?

A. No. I don't ever say anybody is lying. I said, "the evidence doesn't support what you're telling me," but I don't call anybody a liar.

Q. Well, no, but I guess, let me rephrase, did you say, "why don't you guys tell me what really happened?"

A. Um, I don't know that I used those exact, I don't know that I said, I think I said, "is that what really happened?" that's what I recall saying.

Mr. Katzeek testified that he understood Trooper Machacek's obvious implication to be that Mr. Katzeek was lying.

After Trooper Machacek had taken statements, Mr. Katzeek and Trooper Machacek agreed that Mr. Katzeek would return to Haines, take care of his leg, and then return with help to

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<sup>1</sup> Exhibit 6, page 73 is a photo depicting the ground in the area, showing where the shell casing was found.

skin and dress the bear carcass at noon. Trooper Machacek testified that Mr. Katzeek was limping at this point and in apparent pain. Mr. Katzeek returned to the site as promised at noon with help and he proceeded to skin, dress and transport the bear carcass back to Haines. Trooper Machacek continued to investigate by pacing the various distances and recording his estimates in a notebook and by looking for other evidence. When the bear was dressed, everyone returned to Haines. At his office, Trooper Machacek provided both Mr. Katzeek and Mr. Schrader the proper paperwork to report the killing of a bear in defense of life or property (“DLP”). The trooper separated them as they completed the forms, to prevent collusion. Part B of the form directs the person reporting to “please explain why this animal was killed and what, if anything, was done to prevent killing it.” Mr. Katzeek wrote,

We were hunting brn bear seen on the river flats so it went out of site in the river bed so we snuck out there to harvest it when it came up over the bank it had a fish in its mouth I told the hunter to wait it walk a little ways angling towards us we were on are knees then a cub came over the bank so I told the hunter don’t shoot then two more cubs came up over the bank so I told the hunter we have to get out of here the bear then seen us and starts coming towards us I yell at it while we are trying to get out of there she then start faster at us so I put a bullet be side her she stood up then came at us full bore I shot from the hip & hit her I told my hunter to shoot. We hit her till she was down. I tore my calf muscles away from my bone in my calf trying to get out of there.<sup>2</sup>

In answer to the question, “please provide any comments or suggestions about what might have been done differently to avoid the need to kill this animal,” Mr. Katzeek wrote, “there was nothing we could have done were hunting & we went to harvest the animal & did not see the cubs in the fish stream bed until it was too late.”<sup>3</sup>

In his report, Mr. Schrader wrote,

I was on a guided hunt with John Katzeek. We saw a single bear out in the gravel river bed. We began to sneak out closer when it went out of sight. The bear came up out of a creek bed in front of us. The bear traveled several yards before we saw the cubs come up from the creek bed. We began to back away. We were backing up when the sow spotted us. She started coming toward us when John yelled at the bear. She continued to close on us when John shot near the bear hoping to stop her. The bear then came full out right at us. John shot trying to stop her. I shot next trying to do the same. We continued to shoot until the bear was stopped.

In answer to question 12 on the form, which asks “what action were taken prior to killing animal?” (*sic*), Mr. Schrader circled numbers indicating “Warning shot (did not hit animal)” and “shouted, talked, sang and/or banged on pots or other noise makers.” Under “Other (describe),”

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<sup>2</sup> Exhibit 6, page 96.

<sup>3</sup> Exhibit 6, page 99.

Mr. Schrader wrote, “tried to move away quickly.” In the space to provide comments about what could have been done differently, Mr. Schrader wrote, “Nothing could have been done differently. If the bear wasn’t shot we would have been mauled or killed!”<sup>4</sup>

Trooper Machacek drew a rough sketch at the scene, and within a week or two created more legible graphic descriptions with a computer that contained his measurements. Other than Mr. Katzeek’s testimony, the only evidence of how fast the bear might have been moving is Trooper Machacek’s description of the bear’s tracks. According to Trooper Machacek’s testimony on cross examination at the hearing:

Q. You’re saying that two individuals walking backwards could cover that distance faster than a trotting bear?

A. Um, well, one, the tracks wasn’t indicating that the bear was trotting, that it was walking fast. Faster after it dropped the fish. The question is—

Q. The tracks were torn up.

A. The question is, what?

Q. The tracks were torn up. The bear wasn’t walking slowly, obviously. The tracks were torn up.

A. Yeah, he picked up, she picked up her speed.

Q. Enough that she was tearing up the soil.

A. Well, again, tearing up soil depends on the terrain. You know, you’ve got hard ground, you’ve got asphalt, obviously there’s not going to be much torn up soil—

Q. Sure. But in this case—

A. So the terrain varies and it depends on the moisture in the ground and how wet and if it’s sand, if it’s mud, if it’s hard ground, rocks—

Q. Right. But if a bear’s at a dead walk, it leaves a footprint, correct?

A. Depending on the surface.

Q. Okay. But when it’s running, it doesn’t leave a footprint on any surface, does it?

A. No, not the whole pad.

Q. Okay. Alright. And the tracks in this case were not whole pad tracks, correct?

A. The majority of ‘em were the claws, because of the terrain.

Q. Okay. But the bear was, but not dead pad, just—

A. Just a few in the soft spots.

Trooper Machacek testified that as it emerged from the cut or dry creek bed the bear’s tracks indicate that it traveled a distance of about 300 feet, but it did so on a curved path that would

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<sup>4</sup> Exhibit 6, page 105.

actually be somewhat more than 300 feet because of the curve. The fish carcass was lying roughly halfway along this curve. After the fish carcass, the tracks curved around toward the point where the shot was fired from. At the point measured 300 feet from the bear's first appearance on the scene, the tracks changed to what Trooper Machacek described as "lunge tracks" that proceeded ten feet in a straight line toward the point from which the shots were fired. The lunge tracks then continue for another fourteen feet accompanied by blood spatters, until the bear's final resting point approximately 72 feet from the point where the shots were fired.

There was some controversy at the hearing about the path the bear traveled before it was shot. Mr. Katzeek testified that the bear was moving in a straight line from Mr. Katzeek's left to his right until the bear sensed his presence, at which time it dropped the fish and began coming straight at him. Trooper Machacek testified that the bear's tracks revealed a curved arc, with the bear gradually changing its direction towards Mr. Katzeek, the fish having been dropped halfway along this arc. There is no dispute that at the point where the "lunge tracks" begin the bear was moving in a straight line towards Mr. Katzeek and Mr. Schrader. There is also no dispute that the point where Trooper Machacek found the shell casings represents the point, within a few feet, of where the shots were fired. The shots were fired from a point 105 feet from Mr. Katzeek's vehicle.

Although there was a somewhat heated dispute at the hearing about these conflicting accounts, the testimony of Trooper Machacek and Mr. Katzeek was not as inconsistent as it might seem. There was a great deal of reference to a computer-generated diagram that Trooper Machacek had prepared.<sup>5</sup> This diagram shows a broad arc, followed by a very short straight line marking the bear's final charge. The trooper's field notes suggest more of a triangle, with an obvious change in direction at the point the fish was dropped. Trooper Machacek testified that he was certain the bear's course was curved, but he pointed out that if one considered the degree of curve in the arc before the fish was dropped and after, each represents such a slight curve that it is not inconsistent with his hand drawings. Even on the curve described by Trooper Machacek's drawings, the bear's path does appear to change its general direction toward Mr. Katzeek at the point where the bear dropped the fish.

Trooper Machacek testified that the computer drawing was not to scale, and in fact the words "not to scale" are written on the upper left hand corner of the drawing. It is likely that the controversy would have been considerably less if the drawing had been to scale. On the

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<sup>5</sup> Exhibit 3.



drawing, a 105-foot line is shown as being about half as long as a 96-foot line, and the 96-foot line is shown about two-thirds the length of a 300-foot line showing the straight distance between the beginning and end of the arc. Had it been drawn to scale, the arc would have been considerably closer to a straight line than it appears in the diagram.

It does not appear to be unreasonable to view all of this testimony as consistent. From Mr. Katzeek's position on the ground in the pre-dawn light, any arc in the bear's path may have been imperceptible and appeared as travel in a straight line. If the bear sighted Mr. Katzeek at the point of the dropped fish and, keeping a visual lock on the hunters, accelerated while curving its path around toward Mr. Katzeek, then lunging toward the hunters when it came within 96 feet of them, all of the evidence would be consistent.

After taking the statements of the hunters, Trooper Machacek cited Mr. Katzeek for taking a bear with cubs, having decided that the shooting was not a Defense of Life or Property situation. Mr. Katzeek pleaded not guilty. After a trial, a Haines jury returned a verdict of guilty on August 7, 2007. However, Mr. Katzeek immediately moved for a new trial. The trial judge did not issue a judgment, and he put off sentencing until after he considered Mr. Katzeek's request. The trial judge determined that Trooper Machacek had failed to produce his field notes and drawings before the trial, and that this evidence could have resulted in the jury reaching a different verdict. The judge therefore granted a new trial. Notably, this was not a reversal on appeal; it was corrective action by the original court trying the case, before issuance of a judgment.

After the court granted the motion for a new trial, the state reduced the charge to a non-criminal violation of 5 AAC 92.260, taking a sow with cubs. As a non-criminal charge, there was no right to a trial by jury, and the trial was held before a judge only. After the second trial on the reduced charge the court found Mr. Katzeek not guilty and issued a judgment acquitting him on March 13, 2008, thus concluding the criminal case.<sup>6</sup>

Between the two trials, Mr. Katzeek applied to renew his guide license. Mr. Katzeek answered "no" to a question on the application form asking whether he was aware of any pending investigations against him, but he answered "yes" to a question asking whether he had any criminal charges pending against him.<sup>7</sup> The division requested more information, and

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<sup>6</sup> Exhibit 6, page 421.

<sup>7</sup> Exhibit 7, page 385.

initially determined that Mr. Katzeek was not eligible to have his license renewed.<sup>8</sup> After Mr. Katzeek was acquitted and division did some further investigating, it determined that Mr. Katzeek was eligible to renew his license, and it issued the license some time in April, 2008, effective March 20, 2008.

*B. Hunting Contract*

On the day that Mr. Katzeek shot the sow, he provided the written contract for the hunt with Mr. Schrader to Trooper Machacek on the trooper's request. Because the trooper did not have access to a copier, Mr. Katzeek brought the contract to the trooper later in the afternoon when he was filling out the DLP forms in Haines. The trooper photocopied the form and returned it to Mr. Katzeek.<sup>9</sup>

Mr. Katzeek uses a blank contract form that his wife obtained for him; Mr. Katzeek was not sure where she got the form. The form advises clients that "Alaska State law requires a big game registered Guide-Outfitter to document terms and services provided to client and document items, for which the client is responsible." The form has spaces for "business name" and the client's name. For business name, "KGT" had been written into the blank. Mr. Katzeek and his wife testified that KGT is a name they use both for Mr. Katzeek's guided hunts and for other tours and guiding services that Mr. Katzeek sometimes provides to non-hunters.

While the form has the virtue of fitting on just one page, the print is relatively small, some of the language and the blanks are confusing, and the form doesn't necessarily provide spaces for all information required. For example, the contract is required by law to provide the total cost and the payment schedule, but the form provides just the following space for the cost:

NOW, THEREFORE, in consideration in the amount of \$ \_\_\_\_\_ and in reliance on the mutual agreements contained herein, that parties agree that the following big game services will be provided by \_\_\_\_\_ to the Client.  
Business Name

While this legal-sounding language may be impressive to a non-lawyer, it does not convey much information about the payment schedule. In a blank that would be appropriate for the guide's name, fine print under the line reads "license name." In a space that would be appropriate for the guide's license number, fine print under the line reads "Guide-Outfitter." Mr. Katzeek wrote his license number in the line marked "license name" and left the line marked "Guide-Outfitter" blank; possibly because of the fineness of the print and how close together the lines are, Mr.

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<sup>8</sup> Exhibit 7, page 392.

<sup>9</sup> Exhibit 6, page 72.



heavily on his oral communications with his clients to ensure that both parties understand what the guide will provide and what the client is responsible for providing. Mr. Katzeek testified that he talks with prospective clients at length before accepting them for hunts, discussing every element of the trip. Mr. Katzeek testified that he does not require deposits from clients in advance, but many choose to send him deposits to guarantee their hunting times.

### **III. Discussion**

This case is governed by the Administrative Procedure Act<sup>10</sup> and by statutes and regulations governing licensure of big game guides and transporters.<sup>11</sup> The division has the burden of proving, by a preponderance of the evidence, that Mr. Katzeek has violated the law as alleged in each count.<sup>12</sup>

The Second Amended Accusation levels six allegations against Mr. Katzeek. These counts are addressed in the order they appear in the accusation.

#### Count I

Count I accuses Mr. Katzeek of violating 12 AAC 75.340(a)(1), (c)(1), and (c)(2). Those regulations provide:

(a) **Unethical activities.** As used in AS 08.54.710 (b) and this chapter, in reference to a registered guide-outfitter, assistant guide, or class-A assistant guide, "unethical"

(1) means failing to or being unfit to meet a professional standard of conduct that satisfactorily and safely implements, under field conditions, the knowledge, skills, qualifications, and judgment required for the license held; and

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(c) **Client and employee care standards.** All classes of guides shall

(1) take every reasonable measure to assure the safety and comfort of the client, including ensuring that during the hunt

(A) adequate supplies are present to provide first aid for injuries that are reasonably expected in the field;

(B) sufficient supplies are present to provide for emergencies, including food, clothing, and a source of heat; and

(C) food and shelter are present that are normally considered satisfactory under field conditions;

(2) avoid intentionally, recklessly, or carelessly exposing an employee or client to undue hazards;

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<sup>10</sup> AS 44.62.330(a)(21).

<sup>11</sup> AS 08.01; AS 08.54; 12 AAC 75.

<sup>12</sup> AS 44.62.460(e)(1).

Count I asserts that violations of the above regulations are grounds for discipline under AS 08.54.720(a)(8)(A), AS 08.54.720(c), and AS 08.54.710.

AS 08.54.720(a)(8)(A) states that it is unlawful for a licensee to knowingly commit a violation of the laws governing guides or a state or federal wildlife or game law. Thus, for licensees, even minor violations of game rules can become serious criminal and disciplinary matters, but only if it can be shown that the licensee knowingly committed the underlying offense. AS 08.54.720(c) provides that, in addition to criminal sanctions imposed by the court, the board may impose sanctions listed in AS 08.54.710.

A further issue is that one of the regulations that Count I alleges Mr. Katzeek violated is a definition of an “unethical activity.” Until recently, the board had the authority to impose limited discipline for findings of unethical activity under AS 08.54.710(b). That statute was repealed by the legislature in 2008, after the alleged incident, raising the issue of whether a licensee may be disciplined under a statute that was in effect at the time of the incident, but was repealed before a hearing on the matter was held. This issue need not be finally resolved, because the facts do not support a finding that Mr. Katzeek violated any of the regulations. The specific factual allegation supporting Count I is that “Katzeek failed to lead his client, Randall Shrader, safely away from the bear. Trooper Machacek’s investigation discovered that Katzeek and Shrader had ample time to leave the area safely.”

Trooper Machacek agreed that until the cubs appeared, Mr. Katzeek’s conduct was entirely appropriate for a guide leading a hunter to kill a bear. The essence of Count I is that after the cubs appeared, Mr. Katzeek dallied to watch the bears instead of retreating. The trooper’s testimony initially implied that this occurred:

A. When you see a sow and cubs there is no reason in the world to stay around any longer than you have to because everybody knows that that situation can potentially become dangerous. And as a hunter and as a sportsman there’s only one thing you can do when you see a sow and cub and that is exit the situation as fast as you can without any delay. There is no reason to stand around and view, and Mr. Katzeek and his client should have done a one-eighty and walked the opposite direction and put distance between him, him and his client, and the bear as soon as possible. They had plenty of open terrain, they could have backed away, walked away, they had visual on the bear, um, there is no reason they could not have walked the opposite direction and put distance between them right away.”

The evidence in the record does not support the allegation that Mr. Katzeek stood around to view the bears, or even hesitated before retreating after the cubs appeared. The only evidence available is the testimony of Mr. Katzeek, the prior statements of Mr. Katzeek and Mr. Schrader,

and Trooper Machacek's testimony about the bear's tracks. Mr. Katzeek and Mr. Schrader both told the trooper that they were crouched or on their knees in open terrain when they saw the sow appear, they waited for a better shot as she walked from their right to their left, then when the cubs appeared the men immediately stood up and began to retreat, at which point the sow sensed their presence, dropped the fish she was carrying, made visual contact with the men, and immediately started coming directly at them. Mr. Katzeek offered credible consistent testimony at the hearing.

Although the accusation states that Mr. Katzeek had "ample time" to leave the area before the bear charged, the division offers no estimate of how much time Mr. Katzeek had to work with before the bear sensed his presence and started running toward him. There is no evidence that identifies with any specificity how fast the bear was moving. Based on his observation of the tracks, Trooper Machacek opined that the bear was "walking fast" after it emerged into view, and that it started walking faster after it dropped the fish, the point at which Mr. Katzeek testified that the bear perceived him. Trooper Machacek opined that, based on the tracks, at a point approximately 96 feet from where the shots were fired, the bear began lunging directly at Mr. Katzeek, either in a charge or because it had already been shot. The trooper testified that he could not tell if the bear lunged before or after it was shot from the tracks; Mr. Katzeek testified that the bear was in a full charge when he shot it, and it went down immediately.

Although unnecessary delay is the essence of the accusation against Mr. Katzeek, Trooper Machacek was somewhat non-committal in answering questions about the actual time that may have been available to Mr. Katzeek:

Q. How fast do bears run?

A. Thirty, thirty-five miles an hour, so they say.

Q. Roughly, how many feet per second is that?

A. I don't know.

Q. Isn't it about 75 feet per second? I mean, you've done accident reconstructions, right?

A. No, I haven't.

Q. I mean, if you go, um, we did this exact calculation in the second trial, do you recall that?

A. I recall but I don't recall what speed it is or isn't. When a bear starts from a dead stop he's not going thirty-five miles per hour. He can eventually work up to thirty-five miles per hour. But it's like a track star coming out of the blocks. He don't start thirty-five

miles per hour. When he runs fifty, sixty yards he might get up to thirty-five miles per hour.

Q. They get up to speed pretty quick, don't they?

A. I, eventually they do, but not out of the gate.

Q. Well, that means they'd be going a mile roughly every, a little bit better than two minutes.

A. I'm just telling you that from the start they don't go thirty-five miles per hour.

Q. Right. I'm asking, thirty-five miles per hour, thirty, let's call it thirty, is a mile every two minutes?

A. I, yeah. I guess.

Q. I mean, sixty miles an hour, you go a mile a minute, correct?

A. That's fine.

Q. And so at thirty miles an hour you'd go a mile every two minutes.

A. Okay.

Q. Correct?

A. Yeah.

Q. And so that's, what's half a mile, twenty-six hundred feet?

A. Something like that.

Q. Five thousand two hundred and eighty would be a mile, correct? And so they can go twenty-six hundred feet in, uh, in thirty minutes. Or excuse me, in thirty seconds, correct?

A. I guess, yeah.

Q. So about seventy-five or eighty feet per second, correct? We're talking about an animal that weighs six hundred pounds going eighty feet per second.

A. I guess. I guess, well, I don't know what you're getting at. I mean I'm not disagreeing, I just don't get—

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Q. And so you're saying, their failure to negotiate what amounts to three hundred feet from the cut bank, right, so say it was half of that, you're saying that two people in semi-darkness could walk backwards over this kind of terrain faster than a bear that was going faster than a walk, could traverse it?

A. I don't get the darkness and all that. That's not, you threw the darkness in, so I guess I'm a little confused about what the question is.

At this point the testimony shifted to the ambient daylight available at the time. Neither Trooper Machacek nor any other witness presented an estimate of how much time Mr. Katzeek had to retreat, other than Mr. Katzeek's testimony that he began to retreat immediately after the cubs emerged into view.

Trooper Machacek testified that the point from where the bear first came into view to the point where it dropped the fish measured 159 feet in a straight line, with another 141 feet from the fish to where the bear began its lunge. Trooper Machacek described the path of the bear as a “half-moon arc.” A great deal was made at the hearing of the bear’s alleged curved path, but because Trooper Machacek did not measure the distance of the fish relative to the other points, nor did he pace off the distance of the curved track; thus, it cannot be calculated how much of a curve was involved. To the extent the division relies on the curve of the bear’s path as evidence of Mr. Katzeek’s alleged delay, the lack of reliable information about how far the bear actually traveled raises troubling questions when the division has the burden of proof.

While admittedly not to scale, Trooper Machacek’s computerized drawing shows the bear changing direction by about ninety degrees as she curved from her original path towards the hunters, although this angle may overstate the sharpness of the bear’s turn. A ninety-degree arc over a 300-foot line would have a length of 333 feet.<sup>13</sup> The curve from the first appearance to the dropped fish would be 176.5 feet, and the curve from the fish to the beginning of the lunge would be 156.5 feet.

If the bear was merely walking at a conservative pace of four miles per hour when it appeared, a brisk walking pace for a typical human, the bear would have covered the curved distance to the fish in 30 seconds. During part of this time the men were fairly hunting the bear, because the cubs had not yet appeared, and during the last part of this time the men stood up and retreated some distance back toward the truck.

Mr. Katzeek testified that after the bear dropped the fish, it started coming straight towards him. Trooper Machacek testified that after it dropped the fish, the bear’s tracks became further apart, indicating that the bear had accelerated. If the bear continued along the curve and increased its speed to just six miles per hour, still a very conservative figure, only twenty seconds would have passed before the bear was in a full charge. If the bear was traveling at a relatively slow running pace of 15 miles per hour after dropping the fish, less than half of its top running speed, it would have covered the 156.5-foot curve in 7.1 seconds. During this time, Mr. Katzeek shouted at the bear, fired a warning shot, rechambered his rifle, and instructed Mr. Schrader. These times would be slightly less if, as Mr. Katzeek testified, the bear traveled in straight lines.

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<sup>13</sup> An arc describing a 90-degree turn would be the arc of a circle with a diameter equal to the diagonal of a square that is 300’ on a side. The diameter of that circle is square root of 18,000, or 424 feet. The imaginary circle would be about 1332 feet in circumference, and the full arc from first sighting to the beginning of the straight charge would be a quarter of the circumference, or 333 feet.



The speeds and times involved are necessarily speculative, but it is difficult to believe that under any circumstances Mr. Katzeek was unnecessarily dallying instead of trying to get out of the area after the cubs appeared, as he and Mr. Schrader consistently stated they were doing. It is undisputed that the bear's tracks show forward movement of at least a fast walk from the time the sow appeared, and that about halfway to its final resting point the bear's pace increased. Even if the bear's initial "fast walk" was four miles per hour, which is only a moderately brisk walking pace for a human, it is more likely than not that Mr. Katzeek did not see this bear alive for more than one minute, including the time he was fairly stalking it before the cubs appeared and the time in which he was trying to discourage its charge. Considering the possible range of times that Mr. Katzeek had available to him before he shot the bear, the division has not proved that Mr. Katzeek "had ample time to leave the area safely."

During part of his testimony at the hearing, Trooper Machacek ultimately appeared to concede that Mr. Katzeek's error was not dallying to watch the bears, but rather was in choosing an incorrect escape route:

Q. This [photo] was taken from where their vehicle was parked, correct?

A. Correct.

Q. And you can't really see it on here, but that's actually between about an eight and twelve foot ditch between the road and bank, correct?

A. Well, I don't know if it was that deep, I would say it was probably was, I would say five to six feet. But I don't know that I would say eight to ten.

Q. Well, do you think you could run through it?

A. Well, there again, running is, I mean, you can move through it quickly, I don't know about running.

Q. Okay.

A. I don't know that it's a good thing to run aimlessly.

Q. Okay. Now in the center of the photograph there's a black, or brown, band, and that's the bear carcass, is that correct?

A. Correct.

Q. So if they were going to try to run from the bear, they would have had to run through this area to return to their vehicle, is that correct?

A. Well, you're under the presumption that they have to run from that spot. They were out further in the gravel bar when they saw the bear. They should have been moving way before they got to that point.

Q. Right. But they would have had to go through this area. Is that right?

A. No. They wouldn't have had to go through that area.

Q. To get to the truck?

A. No. They wouldn't.

Q. They could have gone around?

A. They could have gone out to the right in the photo into the open creek bed and circled around back to the road. They didn't have to take that direct line. That's the issue in the case.

\* \* \* \* \*

Q. In both your synopsis of Mr. Schrader's interview and your interview with Mr. Katzeek, in both instances, they both said as soon as they saw cubs, they turned and started to leave.

A. Yeah, they went back to the truck instead of the opposite direction; that's the mistake.

Mr. Katzeek testified that as he and Mr. Schrader were retreating, they were moving toward Mr. Katzeek's vehicle. By the time they were forced to shoot, they were quite close to the vehicle, which according to Trooper Machacek was located about 105 feet from where the shots were fired. This was a reasonable refuge to seek. Other than the vehicle, there was no other safe refuge, such as a building or climbable tree, in the vicinity. While retreating straight backwards away from the sow instead of off to an angle toward the vehicle would have placed slightly more distance between the men and the sow, it does not appear that it would have increased the distance between the hunters and the cubs. Given the short times and distances involved in this case, it cannot be said that it was unreasonable to angle backwards across the familiar path to the vehicle, instead of to retreat directly backwards across an unfamiliar path to an area that provided no safety other than a slightly greater distance from the bear.

Trooper Machacek testified that the correct action in any situation involving a sow with cubs is to gain as much distance as possible from the bear, even, in some cases, turning directly from the bear and running. Mr. Katzeek testified that one should never run from a bear, particularly if the bear has sensed the person's presence or is approaching the person. Trooper Machacek testified that he has had no training in the behavior of bears, other than his experience, and that in some cases he has run away from bears. Trooper Machacek testified that he had never seen any signs posted by the state advising people not to run from bears, but that he thought there were different opinions on the subject. The division offered no expert testimony or any other evidence other than Trooper Machacek's opinion to suggest that Mr. Katzeek exercised bad judgment in his decision, after seeing the cubs, to retreat backwards slowly to his vehicle until the bear sensed him, to then stop retreating, shout in a deep voice to the bear, to then fire a

warning shot, and finally to shoot the bear as it was charging at he and his client from a distance of about 80 or 90 feet.

There is no evidence that Mr. Katzeek's actions were in any way deficient or that his judgment was unsound. The division has not proved that Mr. Katzeek failed to implement, under field conditions, the knowledge, skills, qualifications, and judgment required of a registered guide. While Mr. Katzeek's client was obviously in some degree of danger, Mr. Katzeek did not intentionally, recklessly, or carelessly expose his client to undue hazard beyond the inherent risk of brown bear hunting, which may include any erratic or unpredictable behavior on the part of the prey in spite of exercising accepted methods of discouraging a bear from charging.

### Count II

Count II accuses Mr. Katzeek of violating 5 AAC 92.260, which states that "no person may take a cub bear or a female bear accompanied by a cub bear." Mr. Katzeek admits taking a female bear accompanied by a cub bear, but relies in his defense on 5 AAC 92.410, which states in part that "nothing in 5 AAC prohibits a person from taking game in defense of life or property if...all other practicable means to protect life and property are exhausted before the game is taken."

As in Count I, AS 08.54.720(a)(8)(A) states that it is unlawful for a licensee to knowingly commit a violation of the laws governing guides or a state or federal wildlife or game law. AS 08.54.720(c) provides that, in addition to criminal sanctions, the board may impose sanctions listed in AS 08.54.710.

Like Count I, Count II is based on a suspicion that after sighting the cubs, Mr. Katzeek lingered for unknown reasons before leaving, and then chose to withdraw from the bear at an angle towards his truck instead of directly away from the bear. Though he expressed some doubts, Trooper Machacek did not directly dispute that at the time Mr. Katzeek shot the bear it was necessary to do so in order to defend the lives of both men. The trooper asserted, however, that if Mr. Katzeek had retreated directly away from the sow as soon as the cubs appeared, the sow would not have seen him and there would have been no need to shoot it. Mr. Katzeek testified that he did begin to retreat as soon as he sighted the cubs, and the bear saw him anyway. Further, Mr. Katzeek testified, the bear decided to come after him, and could not be persuaded to do otherwise, in spite of reasonable actions to discourage the bear's advance, which was very unusual behavior for a bear. Thus, the division's position is based on an alleged failure to timely retreat after the appearance of the cubs, and then on a decision to retreat in an incorrect direction.

The discussion in Count I sheds light on the division's accusation, or at least implication, that Mr. Katzeek created the unsafe situation by not retreating immediately when the cubs appeared. The division has not proved that undue delay on Mr. Katzeek's part constituted a failure to exhaust other practicable means to protect his life and his client's life.

It is undisputed that, for reasons of its own, this bear continued coming after Mr. Katzeek and Mr. Schrader in spite of having a clear opportunity to retreat in all other directions, in spite of shouts, and in spite of a warning shot. There is no evidence contradicting the view that the faulty behavior in this case was entirely the bear's, not Mr. Katzeek's.

Mr. Katzeek tried to retreat within seconds of when the cubs appeared. He shouted to the bear, and left the bear with a wide field of escape. Mr. Katzeek fired a warning shot at the bear. Trooper Machacek opined that doing so was improper and negligent, because the guide should not fire a warning shot unless there is time to reload and shoot accurately to put down the bear if necessary.<sup>14</sup> Even if this were true, the warning shot merely underscores that Mr. Katzeek was taking every possible measure to avoid shooting the bear. Trooper Machacek suggested that, with Mr. Katzeek's superior knowledge of bears, he might have waited until the bear was even closer before shooting to see if the charge was a bluff, though the trooper was unwilling to positively assert that, under the circumstances, doing so would be reasonable. Considering the sow's speed, proximity, that she was protecting cubs, and Mr. Katzeek's duty to protect his client, it is not reasonable to require him to wait longer.

A preponderance of the evidence shows that Mr. Katzeek's actions were reasonable and necessary to fulfill his legal duty to ensure the safety of his client. The division has not proved the allegations in Count II.

### Count III

Count III alleges that Mr. Katzeek violated 12 AAC 75.340(e)(1) and (2):

All classes of guides shall

- (1) cooperate with state or federal law enforcement officers;
- (2) provide any information to assist law enforcement or state and federal wildlife officials....

The division alleges that "Katzeek failed to cooperate with Trooper Machacek's investigation by not committing to where he was standing when he first saw the sow and cubs and when he shot. Katzeek was not forthcoming with information as to how the brown bear sow was shot behind

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<sup>14</sup> In fact, Mr. Katzeek was able to reload and fire a killing shot to the bear's chest after he fired the warning shot.

the shoulder if the bear was proceeding in a forward motion as he stated.” As in the first two counts, the facts do not support disciplinary action for Count III.

According to Trooper Machacek’s testimony, Mr. Katzeek indicated where he was standing when he first saw the bear and where he was when he shot the bear by indicating a general area with diameter of twenty to twenty-five yards. This area was a wide area of rocky river bottom with few nearby landmarks and a hard enough surface that humans left few or no tracks. It was an overcast day before sunrise when the event happened. Trooper Machacek testified that he found it unusual that Mr. Katzeek could not tell him with greater precision where he had been located:

Q. Was Mr. Katzeek able to tell you, or did he tell you, where he and his client were initially standing when the saw the sow and cubs?

A. The answers were vague and generic. I mean we walked out to the scene, um, Mr. Katzeek I said tell me where you first saw the bear, where were you out there with your client. And they were pretty vague and generic. Only a twenty-five yard circle somewhere out here. I understand we’re probably not going to go the exact foot or two. But twenty or twenty-five yard generic radius was somewhat significant when you’re talking the overall scene. So, I guess I was a little surprised that we couldn’t get a better, a closer location, than a generic one.”

\* \* \* \* \*

Q. Did you ask Mr. Katzeek to tell you where he and his client were standing when they actually shot the bear?

A. And again, that was a generic answer, to “somewhere in here,” which again, is a twenty-yard radius, and I understand that you’re not probably going to get the exact foot spot, but I guess he was at the edge of a brush line, so that’s where the shell casing was found, so I guess I was a little surprised that we couldn’t be more exact than what ended up happening, which was finding the one spent casing.

Trooper Machacek testified that, while questioning Mr. Katzeek, he suggested they look for the spent shell casings. Mr. Katzeek helped Trooper Machacek look for casings in the area that Mr. Katzeek had indicated, and after looking for a few minutes Trooper Machacek and Mr. Katzeek both spotted a shell casing on the ground at about the same moment. Mr. Katzeek also pulled a shell casing out of his pocket that he had picked up after shooting the bear, and he asked if Trooper Machacek wanted that one also. When Trooper Machacek said yes, he did want that one too, Mr. Katzeek handed it to him.

Trooper Machacek testified several times that he found it “unusual” that someone would pick up a shell casing after the excitement of being charged by a bear. Mr. Katzeek testified that he loads his own ammunition and does not leave empty brass lying around in the field. Trooper

Machacek also testified several times that he thought it “unusual” that a person could not say exactly where he was standing when he first saw a bear and when he shot it. Trooper Machacek never states that Mr. Katzeek was intentionally refusing to provide information, but he seems to invite speculation about improper motives for unexplained “unusual” behavior:

Q. So based on his picking up of the spent casing and his, his, based on your, as you describe, his vague responses to where he was standing when he saw the sow and cubs and where he was when he shot the sow, did you believe that Mr. Katzeek was fully cooperating with your investigation?

A. No. I mean, from the get-go, the whole body demeanor, their lack of emotions and concerns, this, this, both the client, who is a nonresident and an inexperienced big game hunter overall, certainly to Alaska big game hunting, and bear hunting, which would be his first bear hunt, um, their emotionless reaction, their lackadaisical demeanor if you want to call it that, I just didn't understand.

Photographs of the terrain where Mr. Katzeek first saw the bear and where the shell casing was found show a broad, flat, relatively featureless landscape with no human footprints.<sup>15</sup> Trooper Machacek testified that usually when he investigates DLP incidents, they have occurred at very close range in thick forest or brush. Some time had passed since the incident when Trooper Machacek was questioning Mr. Katzeek, and Mr. Katzeek had left the scene to report and then returned again with the trooper. Under these circumstances, the fact that Mr. Katzeek could not pinpoint the two precise locations within less than a 20-yard circle does not seem particularly surprising. The fact that Mr. Katzeek actively helped Trooper Machacek locate the shell casing in the twenty-yard circle that identified the point of shooting is not consistent with a refusal to assist in the investigation.

While accusing Mr. Katzeek of vagueness, Trooper Machacek himself did not specifically identify conduct constituting a failure to cooperate, other than Mr. Katzeek's inability to identify precisely enough the points where he saw the bear and where he shot it from, and references to “body demeanor” and “lack of emotions.” On cross examination, Mr. Katzeek testified about his answers to the trooper:

Q. Well, he spent a lot of time trying to determine distances between all these various activities, correct? And he was asking you where you were standing when you first saw the bear come out of the creek bed, and where you were standing when you shot the bear, and he testified that you were not very precise about either of those.

A. Well, he has a line there, I don't know what that is, that's pretty close to the area because the bear was moving, going toward our left, we had backed that far out, but we still had that far to go. We were heading back. And then she seen us, and she started to

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<sup>15</sup> Exhibit 6, pages 73, 76.

move at us. And I'm not, if we went out there sir, and we stood on the flats, got the tape back out, I can tell you pretty darn close how many yards it is or how many feet. But to have something like this, we just got charged by a sow brown bear doing thirty, thirty-five miles an hour, sir, we weren't in a happy mood because the hunt went sour. I killed a sow that has three young ones, stuff I make my living on when I'm guiding, and I didn't feel too well that day sir, at that moment. I didn't feel that my life was worth a stink because I had to do this to protect my client and myself. And so, I'm not going to be excited, I'm not going to be joyful that I had to do this. I'm not looking at distances, I'm looking at a dead bear that I had to kill. And I knew that we were lucky, and I knew, in my experience, that I'm glad he's glad that I was there, because I did not turn my back on that bear at one time. There's people that turn their backs on their bears that get in trouble. Guides do. That's not a good practice. If you have a rifle, you do not run when you're guiding. And I was told I could have ran out of there. And that's the way I feel about it. That's why I wasn't excited when he come to me and told me I was, basically, that I wasn't telling him the truth. I felt resentment at that point, I felt terrible, and I still do today. Because it's been a long process, and I told the truth every time.

The second factual allegation in Count III is that "Katzeek was not forthcoming with information as to how the brown bear sow was shot behind the shoulder if the bear was proceeding in a forward motion as he stated." Though framed as a failure to provide information, the allegation contains an implication that Mr. Katzeek was lying; that he shot bear in the shoulder and then lied when he reported that the bear had charged him and he had shot it head-on. Mr. Katzeek consistently stated that he fired the first shot into the bear's chest as it was rapidly approaching him, that Mr. Schrader immediately followed with another shot, that the bear then "nose-dived" and went down, rolled, and came to rest broadside to him, at which point Mr. Katzeek fired another shot to the shoulder to ensure that the bear was dead. At the hearing, Trooper Machacek testified as follows:

Q. [referring Trooper Machacek to photos in the exhibits.]

A. This is after the first trial and before the second trial.

Q. Why were you taking these photographs?

A. Well there was questions in the first trial about how many times the bear was shot or not shot, so I wanted to make sure because I never examined the hide in the field.

Q. And what was the result of your examination?

A. As it turns out there was an additional bullet that I missed in the field, that the bear was shot twice in the chest instead of once.

\* \* \* \* \*

Q. So what conclusions did you draw as a result of this examination?

A. The conclusion was the bear was hit a total of four times instead of three, two in the chest, one in the leg, the wrist, and one in the shoulder.

Q. So could you determine which ones were, as they describe it, as killing shots?

A. Which ones were killing shots? Well the two chest shots, were both killing shots, and the shoulder shot was a killing shot too. So there was three killing shots.

Q. Could you determine where they, who shot, so there was an extra shot in the chest that you didn't notice in the field?

A. Yes, we, because only one slug was found in the chest shot, which was from the client, we would never know where the second round came from. However, we agreed in the second trial with the defense, that we gave Mr. Katzeek the benefit of the doubt that that round was more likely his, or we agreed that that was his round. Now we have no evidence to support that, but that's what we agreed in the second trial.

Q. That both Mr. Katzeek and Mr. Schrader shot the bear in the chest.

A. Correct.

Hence, the impression that Mr. Katzeek was lying about the timing of the shoulder shot was based on overlooking an entry wound during the field investigation. The evidence shows that Mr. Katzeek told Trooper Machacek the truth from the beginning about "how the brown bear sow was shot behind the shoulder if the bear was proceeding in a forward motion as he stated."

The evidence shows that Mr. Katzeek identified the areas where he was when he first saw the bear and where he was when he shot the bear to the best of his ability under the circumstances. Mr. Katzeek assisted Trooper Machacek by helping him look for the spent shell casing that identified where the shot was fired. Mr. Katzeek was forthcoming at all times with truthful information explaining why the bear was shot in the shoulder even though it had been advancing toward him, specifically that he and his client had both first shot the bear in the chest as it approached, and that Mr. Katzeek only fired the shoulder shot as a safety measure after the bear was down. On cross examination, Trooper Machacek admitted that Mr. Katzeek immediately self-reported the incident, answered every question the trooper asked, provided every bit of evidence the trooper requested, and followed the trooper's directions during the investigation. The division has not proved Count III.

#### Count IV

The division alleges that Mr. Katzeek violated 12 AAC 75.340(a)(2)(D)(ii):

(a) **Unethical activities.** As used in AS 08.54.710(b) and this chapter, in reference to a registered guide-outfitter, assistant guide, or class-A assistant guide, "unethical"

(1) means failing to or being unfit to meet a professional standard of conduct that satisfactorily and safely implements, under field conditions, the knowledge, skills, qualifications, and judgment required for the license held; and

(2) includes



\* \* \* \* \*

(D) failing to report to the board, within 30 days after the date of conviction, a conviction in this state, another state, or the United States for a

(i) violation of a state or federal statute or regulation related to hunting;

(ii) violation of a state or federal statute or regulation relating to guiding, outfitting, transportation, or other hunting services; or

(iii) felony.

Specifically, the division alleges that Mr. Katzeek failed to report within thirty days that he had been convicted when a jury found him guilty on August 7, 2009.

The board had the authority to impose limited discipline for unethical activities until 2008. The issue of whether the board may now discipline a licensee for unethical activities that occurred before the legislature repealed the board's authority to do so need not be addressed, because the evidence does not support the factual allegation that Mr. Katzeek failed to report a conviction.

Mr. Katzeek testified that after the jury returned a verdict of guilty on August 7, 2009, he did not consider the matter over. He and his attorney felt there were problems with the trial, and they decided to challenge the verdict immediately. On Mr. Katzeek's motion, the judge declined to issue a judgment or sentence Mr. Katzeek, but rather released him on bail with conditions while considering Mr. Katzeek's request for a new trial. Mr. Katzeek argues that in fact, although a jury returned a verdict against him, he never was "convicted." Instead of convicting Mr. Katzeek on the jury's verdict by issuing a sentence and a judgment against Mr. Katzeek, the judge continued the matter, heard motions, and then granted a new trial because of prosecutorial misconduct. The state reduced the charges, and after a bench trial the judge acquitted Mr. Katzeek on March 13, 2008. The division argues that Mr. Katzeek should have reported to the board that he had been "convicted" after the jury returned its verdict, even though the court did not issue a judgment or sentence against Mr. Katzeek, and the case was still open at the trial court level.

"Conviction" and "date of conviction" are not defined as used in 12 AAC 75.340(a)(2)(D)(ii). According to Black's Law Dictionary, a "conviction" is "the judgment (as by a jury verdict) that a person is guilty of a crime."<sup>16</sup> Thus, the dictionary refers to a jury verdict but suggests that a conviction entails a "judgment," something that was never entered here. The word appears to be used somewhat loosely. In the order granting Mr. Katzeek a new

trial, the judge stated in his introduction that “following a jury trial John Katzeek was *convicted* of “unlawful acts” in violation of AS 08.54.720” (emphasis added). And yet the judge’s order granting Mr. Katzeek a new trial lacks any provision reversing or vacating the “conviction,” because the conviction had not yet been finalized by means of a judgment. Presumably, Mr. Katzeek’s criminal record does not show that he was ever convicted, because the only judgment issued in the case, 1HA-06-108 CR, was a judgment of acquittal after the second trial.

In cases where the board may discipline licensees because of a conviction,

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.<sup>17</sup>

Thus, the board itself recognizes that the legal consequences of a conviction do not attach until the court has issued a judgment of conviction.

Criminal Rule 32(c)(1) states,

(1) *Conviction*. A judgment of conviction must, for each count, set forth the offense, including the statute or regulation violated, the defendant’s plea, the verdicts or findings, and the sentence imposed. The judge or magistrate must sign the judgment.

A person wishing to appeal a conviction must, according to Criminal Rule 32.5, do so within 30 days “from the date shown in the clerk’s certificate of distribution on the judgment appealed from.” Thus, under the court rules, there was never a “conviction” that Mr. Katzeek could have appealed to a higher court. Persons wishing to appeal a conviction have a duty to do so within thirty days, but the event that would have started that thirty day time period for Mr. Katzeek, issuance of a judgment of conviction, never happened.

The board has previously recognized that

The word “conviction” is a term of art. A conviction as defined by the list of convictions in question 4 [on a license application] 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.”<sup>18</sup>

While the division argues that people should know they have been convicted when they have heard a guilty verdict read in court, Mr. Katzeek makes the stronger argument. Defendants know they have been convicted when the court enters a judgment of conviction signed by a

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<sup>16</sup> BLACK’S LAW DICTIONARY 358, (8<sup>th</sup> ed. 2004).

<sup>17</sup> AS 08.54.710(f).

<sup>18</sup> *In the Matter of James Smith*, OAH No. 08-0424-GUI (March 24, 2009)(citing BLACK’S LAW DICTIONARY Abridged 232, (6<sup>th</sup> Ed. 1997).

judge. Mr. Katzeek accurately perceived that after the verdict had been read, the judge had yet to reach a decision as to whether Mr. Katzeek had received a fair trial, deserved to be penalized, and should have a judgment of conviction entered against him. As the matter was still being debated, Mr. Katzeek was correct to not take any actions required by a conviction, such as deciding whether to appeal or notifying the board of a conviction, until it was clear, as evidenced by a signed and dated judgment, that he had in fact been convicted. Licensees should not be required to guess or use their own understanding of legal procedure to know when obligations to report matters attach, particularly when they are subject to serious penalties for failing to do so. Licensees, and citizens accused of crimes in general, are entitled to rely on the court for official notice that their status has changed and new legal obligations have arisen. Just as the date the judgment is entered is the day that the defendant's 30-day appeal period begins to run, so should it be the starting point triggering a duty to report a "conviction" to the board or the division. As it turned out, a judgment of conviction against Mr. Katzeek never was issued in case 1HA-06-108 CR; Mr. Katzeek was found not guilty and acquitted, and therefore it was not an unethical act to fail to report the matter to the board.

The division has not proved the allegations in Count IV.

#### Count V

Count V accuses Mr. Katzeek of violating AS 08.54.710(a)(3):

The board may impose a disciplinary sanction in a timely manner under (c) of this section if the board finds that a licensee...has negligently misrepresented or omitted a material fact on an application for any class of guide license or a transporter license....

Specifically, the division alleges that

Katzeek applied to renew his guide license on January 23, 2008. Katzeek marked "no" to question 3, which asked, since his last license was issued, whether he was "aware of any investigation" against him in any state or jurisdiction. Katzeek's original conviction for Unlawful Acts under AS 08.54.720(a)(8)(A) was overturned by District Court Judge Keith Levy on November 8, 2007, and a new trial was granted. The trial date was March 12 and 13, 2008. Katzeek was aware of Trooper Machacek's ongoing investigation of his actions as of September 23, 2006. Relying upon the accuracy of the information Katzeek provided on his renewal application, the Division proceeded with the renewal process for licensure.

The board clearly has the authority to discipline licensees who negligently misrepresent or omit material facts on their applications.<sup>19</sup>

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<sup>19</sup> AS 08.54.710(a)(3).

Mr. Katzeek agrees that he stated on his application that he was not aware of any investigations against him, because he believed that the investigation of the bear incident had been concluded within a few days of the incident, or at the very least before the state took the matter to a jury trial. Mr. Katzeek points out that on his application he answered “yes” to question 1, which asked, “Do you have any criminal charges pending against you?”<sup>20</sup> Mr. Katzeek testified that he believed Trooper Machacek had concluded his investigation on or around the day of the incident, and that after that matter had progressed to a criminal case. It is not clear that Mr. Katzeek was aware at the time that Trooper Machacek might be looking for additional evidence or information about a bear shooting that had occurred a year and a half earlier.

The essence of the rule is that applicants must provide any relevant information to the division, so that the division may avoid licensing unfit applicants. By truthfully disclosing that criminal charges were currently pending against him, Mr. Katzeek alerted the division to all the information it required to look into the matter. There was no “ongoing investigation” that was not related to the criminal matter, and no reasonable expectation that any further investigating might produce additional charges not addressed in the criminal matter. Mr. Katzeek correctly argues that it is hard to imagine that criminal charges would be pending if there had not been an investigation.

The division’s statement that it “proceeded with the renewal process for licensure” in reliance “upon the accuracy of the information Katzeek provided on his renewal application” implies that it granted Mr. Katzeek’s license in reliance on his statement that he was not aware of investigations. This suggestion that Mr. Katzeek duped the division and obtained a license by deceit is misleading and incorrect. The division “proceeded with the renewal process for licensure” by demanding a written explanation of the pending criminal charges that arose from the investigation, and ultimately determining that Mr. Katzeek was not eligible to have his license renewed until the case was resolved.<sup>21</sup>

The division argued that because a line on the form two paragraphs before question 3 reads, “SINCE YOUR LAST LICENSE WAS ISSUED,” Mr. Katzeek should have answered yes to question 3 because the investigation occurred during the previous licensing period. Mr. Katzeek points out in turn that the question was in the present tense, and at the time he filled out

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<sup>20</sup> Exhibit 7.

<sup>21</sup> Exhibit 7, page 392.

the form Mr. Katzeek was not aware of any other proceedings other than the pending criminal case. He argues that question 3 appears designed to elicit information about investigations that have not yet resulted in charges that would be disclosed in question 1.

These arguments amount to quibbling over form while ignoring substance. Mr. Katzeek's reading of the form was at the very least a reasonable interpretation, and it is indisputable that he provided the division with the lead it needed to look into the criminal matter and any related investigations, if necessary. The division in fact did so. Regardless of whether any of Mr. Katzeek's answers to questions on the form were technically correct or incorrect, the issue is whether Mr. Katzeek was negligent in misrepresenting or omitting information. Mr. Katzeek's open admission that criminal charges were pending against him was reasonably calculated to alert the division to all the information available. The division has not proved that Mr. Katzeek "negligently misrepresented or omitted a material fact on an application."

#### Count VI

Count VI alleges that Mr. Katzeek violated AS 08.54.680(c) and 12 AAC 75.260(b). These laws require a guide to enter into written contracts with clients. The laws contain a number of specific items that must be included in the written contract. Count VI alleges that "Katzeek's contract with Schrader, dated September 15, 2006, did not include the name of the guide-outfitter, the signatures of the client and of the guide-outfitter, the transportation provided by the guide-outfitter, the deposit refund or transfer policy upon cancellation, the compensation for any delay of the client arriving in the field on schedule or for the client departing the field before the contracted hunt ends, or the responsibility for private land use fees...."

Mr. Katzeek does not dispute Count VI. Through his attorney, Mr. Katzeek agreed that the form was inadequate and was not filled out properly. Mr. Katzeek's attorney offered assurances that this problem would be remedied immediately.

Count VI asserts that "Katzeek's violations of AS 08.54.680(c) and 12 AAC 75.260(b) are grounds for discipline pursuant to AS 08.54.720(a)(8)(A), (c), AS 08.54.710 and AS 08.54.710(a)(4) (breach of a contract to provide big game hunting services to a client). It is not entirely clear that all of these statutes are, in fact, ground for discipline for violating the rules requiring written contracts.

The second statute cited, AS 08.54.710, provides four circumstances in which the board may impose discipline. The division specifically cites the fourth circumstance, AS 08.54.710(a)(4), which provides that "the board may impose a disciplinary sanction in a timely

manner under (c) of this section if the board finds that a licensee... (4) has breached a contract to provide big game hunting services or transportation services to a client.” While Mr. Katzeek did not properly write down all of the elements of his agreement with Mr. Schrader and have Mr. Schrader sign the document before the hunt began, there is no indication that Mr. Katzeek in any way breached his agreement with Mr. Schrader. To the contrary, the evidence showed that Mr. Schrader was quite satisfied that he got what he paid for, and in fact he has expressed interest in hunting with Mr. Katzeek again in the future. The fact that Mr. Katzeek did not put the entire agreement in writing does not mean that Mr. Katzeek failed to perform his part of the agreement.

Under AS 08.54.720(a)(8)(A), a *knowing* violation of the laws requiring certain elements in a written contract would be unlawful, and the board may impose discipline, in addition to any criminal sanctions, under AS 08.54.720(c).

Mr. Katzeek has not raised a debate about the board’s authority to sanction him for Count VI. He has conceded that his contract was deficient and that the board may discipline him for that reason. It is undisputed that the division has proved the allegations of Count VI.

#### *Disciplinary Sanctions*

The board has broad authority to impose a broad range of disciplinary sanctions, including license revocation or suspension, license limitations or conditions, probation, censure, reprimand and civil fines.<sup>22</sup> Boards governed by Alaska’s centralized licensing statutes “shall seek consistency in application of disciplinary sanctions.”<sup>23</sup>

The attached appendices show no previous cases penalizing a guide for having an inadequate written contract.<sup>24</sup> The division, the board and the public rely on guides to police themselves and maintain required standards of business conduct without supervision. Any penalty should discourage other guides from neglecting the statutory and regulatory requirements for complete written contracts. Mr. Katzeek’s case is mitigated in that it was not a case of no written contract, it was a case where Mr. Katzeek had a written contract and provided it to the division but the contract lacked required key elements, such as the client’s signature. Mr. Katzeek has expressed a willingness and desire to prepare a better standard contract form and to fully comply with the statute. In this case a penalty directed primarily at encouraging rehabilitation would serve the public interest and the guiding profession.

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<sup>22</sup> AS 08.01.075; AS 08.54.710.

<sup>23</sup> AS 08.01.075(f).

<sup>24</sup> Appendix A, *Summary of Select Disciplinary Matters Resolved Through MOA*; Appendix B, *Summary of Select Disciplinary Matters Resolved by Hearing and Written Board Decision*.

Mr. Katzeek testified that he was aware of the requirement for a written contract, but it was clear from his testimony that he was not aware of a number of the specifics that are required to be completed before the hunt begins, or the specific manner in which the way he filled out the form failed to meet the statutory and regulatory requirements. Mr. Katzeek testified that it is his policy to go over the contract with his clients after the hunt, at which time all expenses are tallied, and the client signs to acknowledge satisfaction that Mr. Katzeek has fairly provided all services as promised. Mr. Katzeek testified that he believes this approach is appropriate to ensure that the client was not in fact disappointed, and also to protect Mr. Katzeek against a later claim that he failed to provide the services promised.

Guides have a duty to understand and comply with the laws that apply to them, and Mr. Katzeek acknowledges that he failed in this duty. His testimony, particularly under cross examination, showed that Mr. Katzeek takes very seriously his duty of honesty and fair dealing with his clients, but that in addition to being unfamiliar with the specific requirements of AS 08.54.680(c) and 12 AAC 75.260(b) Mr. Katzeek may be unfamiliar with some elements of contract law. Parts of Mr. Katzeek's testimony suggested that he might be somewhat uncomfortable with formal-sounding legal language, including the somewhat obscure language in his own form. Mr. Katzeek testified that he has the client sign the contract after the hunt to protect his interests in case the client later refuses to pay. Mr. Katzeek appears unaware that his failure to strictly follow the written requirements for contracts before the hunt probably means that he would be relatively unprotected in the case of a client who failed to pay, and he would likely have difficulty obtaining the assistance of the courts in collecting money owed to him.

Arguing that Mr. Katzeek had violated all or most of the six counts, the division recommended an unspecified fine and a reprimand, but recognized that while the court case was pending the court prohibited Mr. Katzeek from using his guide license for a substantial period of time, thus imposing a *de facto* suspension for the same alleged conduct as in this licensing case. The division suggested that any period of suspension be stayed for a probationary period, subject to no further violations, or that there be no period of suspension.

There are few if any comparable cases that have come before this board or its predecessors. Review of previous cases shows that almost all of the cases involve offenses that are substantially more serious than Mr. Katzeek's failure to include all required information in a written contract.<sup>25</sup> In 1994, the Big Game Commercial Services Board approved a settlement

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<sup>25</sup> See attached Exhibit A, Exhibit B.

agreement requiring two guide-outfitters to each pay a \$500 fine with no additional sanctions for failure to maintain required insurance.

An appropriate penalty for violation of Count VI is a \$500 penalty, directed at discouraging other guides from similar conduct. In order to promote rehabilitation and the protection of Mr. Katzeek's future clients, \$400 should be suspended for a period of two years on the following conditions:

1. No further violations of any hunting or guiding laws.
2. Provide proof within thirty days, satisfactory to the division, that Mr. Katzeek has read and understands the meaning and requirements of AS 08.54.680(c) and 12 AAC 75.260(b). Such proof may be in the form of a letter from Mr. Katzeek describing his knowledge of the laws, or in the form of a letter from a licensed attorney certifying that the attorney has counseled Mr. Katzeek in the meaning and requirements of AS 08.54.680(c) and 12 AAC 75.260(b) and that the attorney is satisfied that Mr. Katzeek understood the statute and the regulation.
3. Provide within thirty days a new contract form for use with future clients that, if properly and completely filled out, would meet the requirements of AS 08.54.680(c) and 12 AAC 75.260(b) to the division's satisfaction. In addition to meeting the legal requirements for a contract, the form may:
  - a. Use easily understood plain English;
  - b. Include clear directions for filling out the form;
  - c. Be more than one page long and include appropriate attachments;
  - d. Consist of more than one contract form to be used in different kinds of hunts or expeditions, as appropriate;
  - e. Be professional in appearance, consistent with any promotional materials Mr. Katzeek uses, and use any trademarks, logos, or slogans that Mr. Katzeek uses in his business;
  - f. Include a section clearly indicating that it is to be filled out after the hunt, noting any adjustments or unforeseen changed circumstances, and including a line for the client's signature after the hunt consistent with Mr. Katzeek's current practice.

The board should recognize that Mr. Katzeek promptly self-reported the incident that gave rise to this case, and that he appears to be sincere in his desire to correct the deficiencies



noted in the one count that he concedes is a basis for discipline. Censure, reprimand, or other actions against Mr. Katzeek's license are not necessary in this case.

#### **IV. Conclusion**

The division has not proved the allegations contained in Counts I through V of the accusation. Mr. Katzeek does not dispute that he is subject to discipline for Count VI. The board imposes a \$500 fine, with \$400 suspended for two years on the following conditions:

1. No further violations of any hunting or guiding laws.
2. Mr. Katzeek shall provide proof within thirty days, satisfactory to the division, that he has read and understands the meaning and requirements of AS 08.54.680(c) and 12 AAC 75.260(b). Such proof may be in the form of a letter from Mr. Katzeek describing his knowledge of those laws, or in the form of a letter from a licensed attorney certifying that the attorney has counseled Mr. Katzeek in the meaning and requirements of AS 08.54.680(c) and 12 AAC 75.260(b) and that the attorney is satisfied that Mr. Katzeek understands the statute and the regulation.
3. Provide within thirty days a new contract form for use with future clients that, if properly and completely filled out, would meet the requirements of AS 08.54.680(c) and 12 AAC 75.260(b) to the division's satisfaction. In addition to meeting the legal requirements for a contract, the form may:
  - a. Use easily understood plain English;
  - b. Include clear directions for filling out the form;
  - c. Be more than one page long and include appropriate attachments;
  - d. Consist of more than one contract form to be used in different kinds of hunts or expeditions, as appropriate;
  - e. Be professional in appearance, consistent with any promotional materials Mr. Katzeek uses, and use any trademarks, logos, or slogans that Mr. Katzeek uses in his business;
  - f. Include a section clearly indicating that it is to be filled out after the hunt, noting any adjustments or unforeseen changed circumstances, and including an additional line for the client's signature after the hunt consistent with Mr. Katzeek's current practice.

DATED this 17th day of July, 2009.

By: Signed  
DALE WHITNEY  
Administrative Law Judge

## Adoption

This Order is issued under the authority of AS 44.62.500. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

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

DATED this 14th day of December, 2009.

By: Signed  
Signature  
Paul Johnson  
Name  
Chairman  
Title

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

[The next 8 pages may not be ADA accessible. If you have problems accessing the following pages, please contact the OAH at (907) 269-8170 for assistance.]

## 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.

Appendix A

<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.

Appendix A

<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.
<i>Babat</i> 1700-08-042	2009	Self Reported harvesting a sow bear with cubs while on a guide, to which there is an unknown disposition of the cubs.	Written Reprimand, a letter of explanation to the Board, donate \$1,300 to Wildlife Safeguard Fund

Appendix A

<p><i>Shipton</i> 1704-08-007</p>	<p>2009</p>	<p>Cited for taking a grizzly cub and that the bear was stalked prior to being shot. Failed to report the violation to division</p>	<p>Written reprimand, a \$3,000 fine w/ 2,000 suspended, 2 year probation, letter to board, \$1,300 to Safeguard Fund</p>
<p><i>Danford</i> 1700-09-002</p>	<p>2009</p>	<p>Took Sub-Legal Dall Sheep</p>	<p>Probation -2 yrs; written reprimand, a 5,000 fine w/ 5,000 suspended, extensive training</p>
<p><i>Dilley</i> 1700-07-003 1700-08-033</p>	<p>2009</p>	<p>Taking Over Limit of Caribou &amp; Unlawful Possession of illegally taken game;</p>	<p>Probation 4 yrs; fine of \$5000 w/2500 suspended; reprimand.</p>

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.

Appendix B

<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.



Appendix B

<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>Wirschem</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.

Appendix B

<p><i>Munoz</i> 1700-93-022</p>	<p>1995</p>	<p>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.</p>	<p>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.</p>
<p><i>Holleman</i> 1700-93-017</p>	<p>1995</p>	<p>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.</p>	<p>Permanent Revocation and \$5,000 fine.</p>
<p><i>Morgan</i> 1700-08-005, 006</p>	<p>2009</p>	<p>Unlawful Acts by Big Game Guide (District Ct)</p>	<p>Fine 10,000 – susp.; 10 days jail – susp; Mstr Guide license revoked – 5 yrs; prohibited from applying for Big Game Guide/ Transporter license for 10 yrs</p>
<p><i>Byler</i> 1700-07-033, 013, 014, 015, 016, 017, 020, 025, 026, 031 034, 039, 044, 045,046, 1700-08-007, 009, 012</p>	<p>2009</p>	<p>56 counts in accusation ranging from conducting hunt in unauthorized area, trespass warning, no permit to hunt in designated area where client shot goat, false info on renewal, no contract for bear hunts after fee was paid, failure to submit complete hunt records and failure to complete hunt records timely, failure to provide adequate food, drinking water &amp; first aid or communication capabilities, transporting in hazardous conditions,</p>	<p>Registered Guide-Outfitter License revoked.</p>