

- One-year suspension with six months suspended, during which time Mr. Reel may hire a registered guide to book and guide hunts.
- Three-year probationary period which if violated may result in the board's sole discretion, in an immediate revocation of Mr. Reel's license.
- Payment of the previously unsuspended portion of his civil fine, \$3,000 to be paid within 180 days of the effective date of the board's order.
- A \$10,000 fine, of which \$8,000 suspended to be paid within 180 days of the effective date of the board's order.
- Public written reprimand
- Education on a guide's legal and ethical obligations and on the judging of sheep.

II. Discussion

In the fall of 2010 registered guide-outfitter Chad Reel had several sheep and moose hunts contracted. However, the division's allegations all relate to one sheep hunt in August and one moose hunt in September. The division contends that the August sheep hunt started with the taking of a sub-legal ram and resulted in an elaborate plan to substitute legal horns for sealing in an attempt to hide the taking. The division has alleged that Mr. Reel directed or had knowledge of the plan to conceal the sub-legal horns. The division also contends that in association with a September moose hunt, Mr. Reel knowingly had a packer guide without a license. Finally, the division believes that because at the time of the alleged violations Mr. Reel was on probation under a December 2009 Consent Agreement in which he agreed to commit no further violations, his violations are a failure to fulfill a requirement of a disciplinary sanction and therefore an unethical activity.

A. Dan Davis's Sheep Hunt, August 2010

In 2007, Dan Davis agreed to trade the equivalent of \$8,500 worth of taxidermy services for a sheep hunt with Mr. Reel to take place the following year. Mr. Davis encountered health problems which required him to delay the hunt. Finally August 2010 was to be his opportunity. Mr. Davis was familiar with hunting in Alaska, as he had participated in two other guided hunts that were successful for bear, moose, and caribou.¹ On this hunt Mr. Davis was looking for a sheep. He wanted a big sheep with horns in excess of 36 inches.

¹ These other hunts also included some form of trade for all or a portion of the services provided.

Mr. Reel assigned assistant guide Randall Piper to Mr. Davis. After a few days of looking for a legal ram, they saw a likely candidate. In the game management unit (GMU) where Mr. Davis was hunting, a legal ram is defined as either a full curl, at least eight years of age, or double broomed (both tips broken). Mr. Davis expressed some concern regarding the size of the horns (not big enough) and made it clear that he did not want to depend upon aging the ram to ensure it was legal because of the horror stories he had heard regarding differences of opinions on the age of an animal based on horn growth annuli. In Mr. Davis's mind there was too much room for differing opinions on age-legal animals and he did not want to deal with it.² After receiving assurances from Mr. Piper that the ram was legal, Mr. Davis took the shot.

As they approached the ram Mr. Davis was "not too happy."³ He was not thinking about whether the ram was legal or sub legal; he was upset with the size of the horns. He was mad at himself for taking the shot because "once you pull the trigger you cannot go back."⁴ As required, the horns were tagged for identification. They also needed to be "sealed" within 30 days by the appropriate authority. Only legal horns may be sealed. Mr. Piper and Mr. Davis knew the ram was close, but they thought the horns were legal. They also knew that whether they were legal would be the call of the official doing the sealing.

Mr. Reel picked up Mr. Davis, congratulated him on taking the first sheep of the season, and flew him to base camp with the horns, cape, and meat before returning to pick up Mr. Reel.

Mr. Davis did not stay at base camp. He returned to Wasilla where he waited for Mr. Reel so he could go on an unguided caribou hunt with Mr. Reel and Mr. Piper in the Brooks Range. Mr. Reel and his girlfriend went for sheep. Mr. Piper testified that he was going to hunt bear even though the area was not particularly known for its bear hunting. Mr. Piper was not successful in his bear hunt. Mr. Reel and his girlfriend took their sheep and Mr. Davis shot a caribou.

When they returned to Wasilla, Mr. Davis left for home (Idaho) within a day. He transferred possession of the horns to Mr. Piper so Mr. Piper could get them sealed.⁵ Mr. Davis explained that he had not taken the horns in to be sealed because he was mad about the size and

² Davis Testimony.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

wanted Mr. Piper to take them in.⁶ Horns are required to be sealed within 30 days of the harvest and there were a few weeks remaining on the sealing window so he was not concerned. Mr. Piper had assured Mr. Davis he would get the horns sealed and returned to him.⁷

Mr. Piper took the horns to his cabin in Willow and did not get them sealed. Shortly after Mr. Davis left, Mr. Reel flew Mr. Piper back to the Alaska Range to go on a sheep hunt. The record did not establish whether this was a prearranged hunt or a last minute hunt. As part of the deal, Mr. Reel made it clear to Mr. Piper that when he picked up Mr. Piper, Mr. Piper had to be ready to go directly to a moose camp. Mr. Piper agreed and packed up all of his gear including a plastic tote that is used for storing horns. Mr. Reel presumed Mr. Piper had Mr. Davis's horns because Mr. Piper had the transfer of possession and it was his responsibility to get them sealed. When Mr. Reel picked up Mr. Piper, he had all of his gear including sheep horns. Mr. Reel did not recall Mr. Piper having any meat so it appeared the hunt was unsuccessful and, in fact, Mr. Piper reported that he did not take any sheep in 2010. Mr. Piper later recanted that report in his testimony and admitted that the report he filed was false because he had taken a sheep after being dropped off in the Alaska Range.

Upon arriving in moose camp, Mr. Reel became aware that the horns were not sealed, the required hunt report was not with the horns, and time was running out. Mr. Davis expressed- mailed the hunt report to Mr. Reel. However, the only way they could get sealed in time was to have Trooper Darryl Hildebrand fly out to moose camp and seal them. When Trooper Hildebrand was asked to seal the horns he said he would but needed to obtain a sheep sealing kit from Fairbanks. It took several weeks for the sealing kit to arrive and the 30 day deadline had passed. Trooper Hildebrand assured Mr. Reel that the 30 day deadline was not an issue because he had attempted to timely seal the horns and that if he would bring them to Galena and Trooper Hildebrand would seal them. Trooper Hildebrand knew Mr. Reel did not have the transfer of possession from Mr. Davis when he asked Mr. Reel to fly the horns in.

Trooper Hildebrand sealed the horns and finished completing the hunt report. Several items in the hunt report indicating that the horns were legal (double broomed, full curl, and 9 years of age) were completed on the form when given to Trooper Hildebrand. Trooper

⁶ *Id.*
⁷ Davis Testimony.

Hildebrand recalled that he double checked the measurements making sure that he agreed with the notation on the hunt report before signing and sealing.

As promised, the horns were returned to Mr. Davis. Mr. Davis was still angry when the horns arrived. He looked at them briefly, and put them away, not giving them another thought until law enforcement arrived at his house with a search warrant and the horns were seized.⁸ Mr. Davis recalled Alaska Wildlife Trooper Todd Machacek indicating that the horns were not nine years old but closer to seven and a-half or eight.

The horns were examined by Alaska Fish and Game Wildlife biologist Rebecca Schwanke. Ms. Schwanke compared the seized horns with the horns in the photographs of Mr. Davis's hunt and concluded that they were not from the same sheep. She also concluded that Mr. Davis's sheep was not legal but the horns that were sealed and seized were legal. Somewhere along the way everyone agrees the horns had been switched.

The mystery is how and who switched the horns. It is at this juncture that the parties disagree. Mr. Piper testified that the switching of the horns, the removal of the tag and reattaching to the legal set was Mr. Reel's idea and that there was only one conversation regarding the plan to switch. Mr. Piper asserted that Mr. Reel instructed him to switch the horns during a brief conversation at the airstrip at base camp. From this brief conversation, Mr. Piper says he understood that Mr. Reel wanted to make Mr. Davis happy and that they would be going on another sheep hunt in the Brooks Range to see if Mr. Davis could get a bigger ram. Also, he says that Mr. Reel did not want to have him take the original horns in to be sealed because he was on probation and it would be a violation of his probation. He testified that as part of the hunt, Mr. Piper was to remove the tag from Mr. Davis's horns so it could be reattached to the substitute horns and those horns would be presented for sealing. At other times in his testimony Mr. Piper said he recalled receiving further direction from Mr. Reel but could not recall when the conversations took place.

Mr. Piper testified that after Mr. Davis returned from the Brooks Rang with a caribou but no sheep, Mr. Reel directed Mr. Piper to take the tag from Mr. Davis's sheep, shoot a replacement sheep that was legal, place the tag on the substitute horns and present them for sealing. He explained that this was done at Mr. Reel's direction and that had Mr. Reel instructed

⁸ Davis Testimony.

him to report the sub-legal horns, Mr. Piper would have done so. Mr. Piper stated that he did what he did knowing it was wrong but he wanted to keep Mr. Reel and Mr. Davis happy.

Mr. Reel testified that he knew the horns were close and that Mr. Davis was not happy with his sheep. He saw it as Mr. Piper and Davis's responsibility to get the horns sealed and determine if they were legal or not. If the horns were legal they would be sealed and if not then they would not be sealed. Mr. Reel denies taking a close look at either the original horns or the substitute horns so he did not realize there was any difference. Mr. Reel adamantly denies ever directing Mr. Piper to remove the tags or substitute horns.

B. Ryan Huitt's Moose Hunt

The Huitt family contracted with Mr. Reel for a moose hunt in September 2010. The family was split between several different assistant guides and spike camps. Mr. Reel sent assistant guide Brett Reigle with client Ryan Huitt to a spike camp. Packer Daniel Pepin was also at that spike camp. Shortly after arriving at their spike camp, an assistant guide from another spike camp, Dwayne Magnusson, was seriously injured when he stabbed his leg while salvaging meat. Mr. Reigle had advanced first aid training so Mr. Reel took him to help Mr. Magnusson.

After taking care of Mr. Magnusson and salvaging the meat, Mr. Reigle returned to base camp for a few days. This left Mr. Huitt without a licensed guide at the spike camp. Mr. Reel asked Mr. Pepin, who had his assistant guide license pending, to stay with Mr. Huitt and go with him and see if they could get a moose. Mr. Reel emphasized that they were not to shoot a bear, as it required a licensed guide to hunt bear in the area but a licensed guide was not required for moose. Mr. Reel continued to check on them over the next few days until Mr. Reigle returned. Shortly after Mr. Reigle returned, Mr. Huitt harvested a moose. Mr. Huitt's father tipped Mr. Pepin \$1,000.

C. Post Hunt

For reasons not expressly made clear at the hearing, a multi-state investigation into Mr. Reel's activities was initiated. During the time of the sheep hunt there was an undercover agent in the group. Several individuals in several states, including Mr. Reel and Mr. Davis, had search warrants served upon them and as a result had their computers, horns, records, photos, etc. seized. During the course of the investigation, which is still ongoing, Wildlife Trooper Machacek contacted the division to let them know about the investigation and to see what the

division would need to take action on Mr. Reel's license. Other than Mr. Piper's testimony, very little of the evidence gathered in the ongoing investigation was admitted in this proceeding.⁹

D. Mr. Piper's Credibility

Mr. Piper was questioned several times by investigators. Throughout Mr. Reel's cross examination of Mr. Piper's testimony, Mr. Piper's testimony was constantly evolving. At times Mr. Piper was questioned regarding the contradictions between his testimony in this proceeding and his interviews with the investigators. This resulted in the need for further explanation by Mr. Piper as to what happened when and at times further contradiction.

For example, Mr. Piper initially testified that Mr. Reel had removed the tag from Mr. Davis's sub-legal horns. Then, when Mr. Piper was reminded that during the time in question Mr. Reel was not around, Mr. Piper testified that he took the tags off at Mr. Reel's direction and that it took a lot of effort for Mr. Piper to remove the tags. As an another example, in both of Mr. Piper's proffer letters it is represented that Mr. Davis gave Mr. Reel, not Mr. Piper, the transfer of possession paperwork. Both Mr. Davis and Mr. Reel contradict this statement. Moreover, the paperwork contains the signature of a Randy Piper and is dated on a date that Mr. Reel was out in the field but that Mr. Piper and Mr. Davis were both in Wasilla. Mr. Piper could not, however, recall signing the transfer of possession nor could he deny or admit that it was his signature. Finally, Mr. Piper testified that he had the sub-legal horns at his cabin and placed them somewhere where he was sure to remember, but now he can't find them and says he does not know where they went.

The day before the hearing Mr. Piper and the State of Alaska entered into a cooperation agreement. In exchange for Mr. Piper's testimony and cooperation throughout the state and federal investigation, the state agreed not to pursue further charges, including felony offenses, and Mr. Piper agreed to plead guilty to two misdemeanor offenses (failure to report a violation by a client – AS 08.54.710(a)(1) and possession of a sub-legal sheep – 5 AAC 92.140) for which he would receive \$1,500 fine on each offense with \$750 suspended (total fine paid \$1,500), 30 days in jail with all 30 suspended, five years informal probation, one year license revocation with the year suspended and no action on his license provided he commits no new violations during

⁹ Most of the evidence sought to be admitted by the division was inadmissible hearsay under AS 44.62.460(d).

the probation period. Mr. Piper testified that he was looking into a registered guide-outfitter license.

III. Discussion

In general, the division has the burden to prove by a preponderance of the evidence the allegations set forth in its accusation.¹⁰ To prove something by a preponderance of the evidence is to establish that something is more likely than not true, or, that there is a greater than 50 percent chance it is true.¹¹ The division has asserted 12 counts in its accusation. Most counts require the person act knowingly. For example, it is unlawful for a licensed guide to “knowingly fail to promptly report” a violation.¹² To act knowingly is not the same as to act intentionally.

A person acts ‘intentionally’ if he desires to cause consequences of his act or he believes consequences are substantially certain to result.”¹³ To prove that a person acted “intentionally,” the division must establish by a preponderance of the evidence that the actor’s conscious objective is to cause that result.¹⁴ AS 11.81.900(a). By contrast, a person acts “knowingly” when he knows that a particular result will occur even if his objective is not to cause that result. AS 11.81.900(a)(2). “Knowingly” does not require definite knowledge. Rather, “when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes that it does not exist.”¹⁵

The specific statutes and regulations cited repeatedly throughout the division’s accusation are:

- AS 08.54.710(a)(2) provides that failure to file records or reports required under AS 08.54 is a disciplinable offense. (*Counts II & XI*)

¹⁰ AS 44.62.460(e).

¹¹ See *Dairy Queen of Fairbanks, Inc. v. Travelers Indemnity Co. of America*, 748 P.2d 1169, 1170-72 (Alaska 1988).

¹² AS 08.54.720(a)(1).

¹³ *In re L.H.*, OAH No. 07-0325-PFD at 4 (October 30, 2007) citing BLACK’S LAW DICTIONARY p. 560 (Abridged 6th ed. 1991) (discussing whether a permanent fund applicant intended to claim or maintain a property tax exemption).

¹⁴ AS 11.81.900(a);¹⁴

¹⁵ AS 11.81.900(a)(2). While these definitions are found in the criminal statutes they are properly applied to a regulatory scheme where the conduct may result in criminal sanctions. Moreover, words that have acquired a peculiar and appropriate meaning by legislative definition should be construed according to the peculiar and appropriate meaning. AS 01.10.040(a).

- AS 08.54.720(a)(1) provides that it is unlawful for a licensed guide to *knowingly* fail to report within 20 days, a violation of wildlife, game, guiding, or transportation statutes, that the guide reasonably believes was committed by a client or employee. (*Counts II & XI*)
- AS 08.54.720(a)(8)(A) it is unlawful for a licensed guide to *knowingly* commit or aide in the commission of a violation of wildlife, game, guiding, or transportation statute or regulation. (*Counts II – XII*)
- AS 08.54.720(a)(8)(B) it is unlawful for a licensed guide to *knowingly* permit the commission of a violation of wildlife, game, guiding, or transportation statute or regulation without attempting to prevent or report it. (*Counts I, IX, & X*)
- AS 08.540.720(a)(6) it is unlawful for a person to *knowingly* guide without having a license. (*Count X*)
- AS 08.54.740(a) A registered guide is equally responsible under AS 08.54.710 for violation of wildlife, game, guiding, or transportation statute or regulation committed by an employee in the course of their employment. (*Count IX*)
- 12 AAC 75.340(a)(2)(B) it is unethical for a licensed guide to fail to “fulfill a condition or requirement established as a disciplinary sanction” (*Count XII*)
- 12 AAC 75.340(a)(2)(C) it is unethical for a licensed guide to fail to fulfill “the supervision, hunt participation, and other requirements of this chapter. . . .” (*Counts I – XII*)
- 12 AAC 75.340(b)(1) a licensed guide is to comply with all state and federal statutes and regulations. (*Counts I – XII*)
- 12 AAC 75.340(c)(5) all guides are to ensure that the proper tags are attached and all game is sealed and marked as required by 5 AAC 92. (*Counts IV & V*)
- 12 AAC 75.340(e)(1) a licensed guide shall cooperate with law enforcement. (*Count VIII*)
- 5 AAC 92.171 a person may not possess, transport, or export from the state, the horns of a Dall sheep ram unless the horns have been permanently sealed within 30 days after harvest. (*Count VI*)

Mr. Reel maintains that he has done nothing to warrant the imposition of discipline by the board. He contends that the acts complained of relating to the moose hunt were not violations

under the applicable rules and regulations or, as in the case of the taking of the sub-legal ram, he had no knowledge of the violations. Finally, he reasons that because there were no violations, he did not violate the terms of the December 2009 Consent Agreement.

Conversely, the division contends that Mr. Reel has engaged in behavior which was a violation of his Consent Agreement and that supports a suspension of his license.¹⁶ Because the division asserts that Mr. Reel is culpable for his actions or inactions as a registered guide as well as subject to discipline for the actions of his employees, the statutory obligations and responsibilities of the different classes of guides will be addressed first, followed by an application of the facts to the violations alleged by the division.

A. *Statutory Obligations and Responsibilities of Registered Guides and Assistant Guides*

What sets a registered guide apart from a class-A assistant guide or an assistant guide? The answer is knowledge, experience, and responsibility.

1. Registered Guides

Before a registered guide may be licensed he is required to demonstrate to the board that he is “qualified to provide guided and outfitted hunts and, in particular, possesses knowledge of fishing, hunting, and guiding laws and regulations. . . .”¹⁷ When a registered guide applies for a license he is claiming that he is ready, able, and willing to accept the responsibilities of that license. In the statutes governing licensure of registered guide-outfitters, this is referred to as “essential duties associated with guiding and outfitting.” These essential duties must be provided in the field by either the registered guide or though an assistant who is accompanying or present with the hunter and include: contracting to guide big game hunts; stalking, pursuing, tracking, killing, or attempting to kill big game; packing, preparing, salvaging, or caring for meat; field preparation of trophies; using spotting scopes and firearms, for the benefit of a hunter; and providing camping or hunting equipment or supplies that are already located in the field.¹⁸ Only a registered guide-outfitter is statutorily obligated perform these essential duties. Finally, only a registered guide is vicariously liable and is subject to discipline for the violations of his

¹⁶ At hearing, when asked what relief the division was seeking, it indicated a suspension of Mr. Reel’s license.

¹⁷ AS 08.54.600(a)(1)(A).

¹⁸ AS 08.54.790(8) – (10); 12 AAC 75.990(a)(4).

employees not just those employed as assistant or class-A assistant guides.¹⁹ Therefore, as alleged in *Count IX*, if it is determined that any of the alleged violations were committed by Mr. Reel's employees then those violations are grounds for discipline against Mr. Reel's license.

2. Class-A Assistant Guides and Assistant Guides

Class-A assistant guides and assistant guides must be employed by and under the supervision of a registered guide.²⁰ A class-A guide may work with less supervision than an assistant guide. The class-A guide may be in charge of a camp and provide guide services from that camp without the registered guide being in the field provided the registered guide is supervising the guiding activities.²¹ An assistant guide, when in the field on a guided hunt, works under the supervision of a registered guide or a class-A assistant guide. An assistant guide may not take charge of camp or provide guide services unless the registered guide is in the field and participating in the hunt or the registered guide's class A assistant guide is physically present and supervising the hunt.²²

B. *The Sub-legal Ram*

In *Counts I – IX* the division asserts that:

1. Mr. Piper and Mr. Davis knowingly took a sub legal ram,
2. Mr. Reel, Mr. Piper, and Mr. Davis knowingly failed to timely report the harvesting of a sub-legal ram,
3. Mr. Reel knowingly attempted to conceal the harvest by removing the metal locking tag from the horns of the sub-legal ram and attach it to the substitute horns;
4. Mr. Reel knowingly failed to properly and timely seal the horns,
5. Mr. Reel knowingly transported a sub-legal ram knowing that it was taken in violation of applicable statutes and regulations,
6. Mr. Reel failed to cooperate with law enforcement officers by attempting to conceal the sub-legal ram and switch horns, and

¹⁹ AS 08.54.740 (a) ("A registered guide-outfitter . . . is equally responsible under AS 08.54.710 for a violation of a . . . wildlife or game or guiding statute or regulation committed by a person while in the course of the person's employment for the registered guide-outfitter.") *See also Godfrey v. State, Dept. of Community and Economic Development*, 175 P.3d 1198 (Alaska 2007) (no violation of due process when employer is vicariously liable in tobacco licensing action for an employee's illegal acts).

²⁰ AS 08.54.620(b)(2); AS 08.54.630(b)(2).

²¹ AS 08.54.620(b)(3).

²² AS 08.54.630(b)(3).

7. that to the extent these acts were performed by Mr. Piper, Mr. Reel is vicariously liable under AS 08.54.710.

It is undisputed that assistant guide Randall Piper, while in the employ of Mr. Reel, was guiding Mr. Reel's client, Dan J. Davis, on a sheep hunt. It is also undisputed that Mr. Piper saw a ram, and believing it was legal, instructed Mr. Davis to shoot. Upon closer inspection it became apparent that it was questionable as to whether the ram was legal. It does not appear that anyone associated with the hunt made any effort to ascertain if the ram was sub-legal even though they all thought it would be "close." With the benefit of hindsight the following facts have been established by a preponderance of the evidence.

- Mr. Piper and Mr. Davis took a sub-legal ram.
- Mr. Piper was Mr. Reel's employee and Mr. Davis was Mr. Reel's client.
- Mr. Piper removed the tags from Mr. Davis's ram and placed them on a legal ram.
- Mr. Piper switched the sub-legal ram for a legal ram.
- The legal ram was taken to Trooper Hildebrand for sealing by Mr. Reel who did not have a transfer of possession.
- Mr. Davis's ram was not timely sealed.
- The taking of the sub-legal ram was never reported.
- When all of this transpired, Mr. Reel was on probation under the terms of his Consent Agreement.

At the time Mr. Piper and Mr. Davis took the ram they believed it to be legal. There is no convincing evidence that when Mr. Piper told Mr. Davis to pull the trigger and that when Mr. Davis did pull the trigger that either knew Mr. Davis was shooting a sub-legal ram. Nor has the division presented convincing evidence that the taking of the ram was a failure to fulfill the supervision and participation requirements of a licensed guide.

Although not expressly argued as such, it appears the conclusion the division would like the finder of fact to draw is that the taking of the sub-legal ram must be due to a failure to properly supervise or participate in the hunt. Had the division presented testimony establishing what is the industry standard for properly supervising and participating in a hunt or otherwise establish that the way the hunt was conducted was unethical or improper, the result might be different. However, the evidence presented is insufficient to permit the conclusion that the taking of a sub-legal ram without more is conclusive evidence of a failure to properly supervise.

However, contrary to Mr. Reel's belief that he had no responsibility for ensuring the horns were properly tagged and sealed, it is a guide's responsibility to "ensure that the appropriate tags are attached to any game taken by a client and all game is sealed or marked as required by 5 AAC 92."²³ Applicable regulation 5 AAC 92.171 requires that Dall sheep horns be sealed within 30 days of taking. Mr. Piper failed to ensure "the appropriate tags were attached" when he removed them from Mr. Davis's sheep. Both Mr. Piper and Mr. Reel failed to ensure that the horns were timely sealed.

Mr. Piper admitted that his actions related to hiding the taking of the sub-legal ram were improper and a violation of wildlife, game, guiding, or transportation statutes or regulations. He also testified that he believed he was substituting legal horns for sub-legal horns. Therefore, he knowingly failed to report a violation, he knowingly committed or aided in the commission of a violation, he attempted to hide a violation, and he knowingly committed or aided in the commission of a violation.

What is less clear is whether Mr. Reel knew or was substantially aware of what was going on. The division has presented evidence sufficient to establish that it is probable that Mr. Reel could have deduced that something was amiss, in that the horns were not sealed in Willow and that Mr. Piper was packing the sheep horns on a hunt and to moose camp. Also, Mr. Reel could not say with any certainty that the horns were legal. As he testified, it would be up to the sealer to determine.

At that point perhaps Mr. Reel should have made an effort to ascertain the legal status of the horns, but his explanations for his actions—that he thought they had enough time to still get them sealed and that it was Mr. Piper's responsibility since he had the transfer of possession—were not challenged by testimony or other evidence establishing that Mr. Reel's or Mr. Piper's actions were unusual for a registered guide or his assistant guides. Had the division presented evidence in the form of expert testimony as to just what about Mr. Reel's or Mr. Piper's actions were not reasonable guiding practices, perhaps it could be found that Mr. Piper's actions should have placed Mr. Reel on notice that he was committing violations. It did not, and therefore the division has not established that, other than Mr. Reel knowing that the sealing was not timely and

²³ 12 AAC 75.340(c)(5).

he transported horns without having a transfer of possession, that he knowingly committed any violation associated with the sheep hunt.²⁴

As to Mr. Reel's supposed involvement in the plan to substitute legal horns for Mr. Davis's, Mr. Piper's manner was evasive, as was his body language, and his testimony was fraught with inconsistencies. Also detracting from the credibility of his testimony was Mr. Piper's claim that he could not recall conversations with investigators that took place less than a week prior to the hearing. A second interview with an investigator about the subject of a hearing to take place within a week is a significant event in someone's life and it is not unreasonable to expect the interviewee would remember with some specificity what he understood he was being asked and his answers.

Finally, the division offered that Mr. Reel had motive to conceal the taking of a sub-legal ram because of the terms of his Consent Agreement. Under the terms of the Consent Agreement, any violation could result in suspension of Mr. Reel's license. While this is true, it is also true that Mr. Piper had strong motives of his own to conceal. He had only been licensed as an assistant guide for four years and did not have long history of guiding in Alaska. If it became known that a client he was in charge of took a sub-legal ram, there could be negative ramifications to his reputation and his employment prospects. If it had been known that Mr. Piper took a sub-legal ram, it is possible that he would not be kept on by Mr. Reel and that he would miss out on moose season and its income. Thus, Mr. Piper also had motive to ensure the horns that were sealed were legal. Moreover, Mr. Piper had a powerful motive to shift blame to Mr. Reel in his testimony, regardless of what truly occurred. By doing so, he avoided felony prosecution and almost certain loss of his license. Instead of these consequences, he obtained a result that included a small fine, not a single day in jail, and not a single day of lost licensure.

Regardless, Mr. Reel is liable for the acts of his employees committed while in the course of their employment under AS 08.54.740(a)(1). Therefore, if Mr. Piper committed a knowing violation in the course of employment, Mr. Reel cannot escape responsibility by claiming he did not know what was going on.

Guiding is a unique profession where the licensed activity takes place without observers. For the wildlife, game, and guiding statutes and regulations to have any meaning it is up to those in the field to self-police and self-report violations. As stated above a Mr. Reel, as a registered

²⁴ Mr. Reel was in possession and transporting the horns at Trooper Hildebrand's request.

guide-outfitter, represents to the public that he is the one in charge of a hunt. By holding a registered guide-outfitter license, Mr. Reel is holding himself out to the public as having more experience, knowledge and responsibility than his employees. The legislature, by providing Mr. Reel be statutorily vicariously liable for the acts of his employees has indicted that a registered guide cannot be shielded by lack of knowledge of what his employees are doing when they are not with him.²⁵ Rather, a registered guide-outfitter who opts not to ask the question no one wants asked or make an unpopular decision does so at his own peril. In short, the legislature saw fit to remove plausible deniability as a defense to an employee's actions.

C. *The Moose Hunt*

In *Counts X* and *XI* the division contends that Mr. Pepin was knowingly guiding without a license when Mr. Reel left him with Mr. Huitt and that Mr. Reel, by putting Mr. Pepin in that position, knowingly aided Mr. Pepin in violating AS 08.54.720(a)(6)²⁶ and then knowingly failed to report the violation. However, for Mr. Reel to be in violation the division must first prove by a preponderance of the evidence that Mr. Pepin was knowingly guiding without a license.

1. Mr. Pepin Knowingly Guided Without a License

Mr. Reel contends that Mr. Pepin was not guiding Mr. Huitt because Mr. Huitt was hunting moose in an area that does not require a hunter to have a guide. This argument fails. The statute defining the duties of a guide do not require that to "guide" the activities must only take place where a guide is required to hunt. Rather, to guide is to perform certain services with for pay and to accept certain responsibilities "by a person who accompanies or is present with the big game hunter in the field either personally or through an assistant . . ."²⁷ Services includes:

- (A) contracting to guide or outfit big game hunts;
- (B) stalking, pursuing, tracking, killing, or attempting to kill big game;
- (C) packing, preparing, salvaging, or caring for meat, except that which is required to properly and safely load the meat on the mode of transportation being used by a transporter;
- (D) field preparation of trophies, including skinning and caping;
- (E) selling, leasing, or renting goods when the transaction occurs in the field;

²⁵ Mr. Reel did not argue that the violations committed by Mr. Piper were outside the course of his employment.

²⁶ AS 08.54.720(a)(6) provides that it is unlawful for a "person to knowingly guide without having a current registered guide-outfitter, class-A assistant guide, or assistant guide license and a valid Alaska hunting license in actual possession. . . ."

²⁷ AS 08.54.790(8).

- (F) using guiding or outfitting equipment, including spotting scopes and firearms, for the benefit of a hunter; and
- (G) providing camping or hunting equipment or supplies that are already located in the field. . . .²⁸

Mr. Reel had asked Mr. Pepin to stay with Mr. Huitt and fill in until someone else showed up. Mr. Pepin did not recall if there was any discussion about Mr. Pepin not having a license. Mr. Pepin considered whether he needed a license or not to be “kind of a grey area” and was not sure of the “technical” definition of guiding.²⁹ What he did know was that he was filling in so the client would not be left alone. Mr. Pepin described his activities over the few days he was alone with Mr. Huitt as “just kind of hanging out with him until another guide could come and hunt some more.” He was trying to help Mr. Huitt stalk a moose, hanging out at night and hiking around during the day. During this time, Mr. Reel would fly in and check on them periodically.

If he had not been asked to stay with Mr. Huitt, Mr. Pepin thought he would likely have been setting up other spike camps, moving gear, cooking, or doing whatever needed doing. His primary duty would not have been to accompany a paying client while he was hunting. It was clear that Mr. Pepin was not hired to guide. However, under the situation described, Mr. Pepin was acting for Mr. Reel as his representative at the spike camp. Mr. Pepin was performing the same duties of any other assistant guide, including assisting in the stalking of a moose, and he was paid to perform those services. Mr. Pepin was paid \$200 per day (\$100 for packing services and \$100 to have his plane on standby) and received \$1,000 as a tip from Mr. Huitt’s father. Mr. Pepin’s characterization of his duties as a “grey” area and whether he was “technically” guiding establishes by a preponderance of the evidence that Mr. Pepin was aware there was a substantial probability that he was “guiding.” Mr. Pepin knew he did not have a license, and therefore Mr. Pepin was knowingly guiding without a license in violation of AS 08.54.720(a)(6).

2. Mr. Reel Knowingly Permitted Mr. Pepin to Guide Without a License and Aided Mr. Pepin in the Commission of his Violation

Mr. Reel is the registered guide-outfitter. He is the person in charge and responsible for the acts of his employees.³⁰ Mr. Reel testified that he could have pulled Mr. Huitt from the field

²⁸

Id.

²⁹

Pepin Testimony.

³⁰

AS 08.54.740(a)(1).

but knew that was not what Mr. Huitt wanted. As Mr. Reel stated when testifying regarding whether he flew Mr. Davis out before Mr. Piper, “obviously you don’t leave the client out in the field.” Such was the case here. Mr. Reel did not want Mr. Huitt left out in the field so he had Mr. Pepin accompany him.

When questioned about Mr. Pepin’s need to be licensed, Mr. Reel explained that he did not consider Mr. Pepin to be acting as a guide because he was not licensed. In Mr. Reel’s mind a packer does all the same things as a guide except that he does not have a guide license.³¹ Mr. Reel is incorrect.

For example, an assistant guide may not take charge of camp or provide guide services unless the registered guide is in the field and participating in the hunt or the registered guide’s class A assistant guide is physically present and supervising the hunt.³² Mr. Reel made an argument that as long as he or his assistant guides were not in a metropolitan area they were in the “field” and that it is not necessary that the guide be right in camp with a hunter.³³ Even if Mr. Pepin had been licensed as an assistant guide he could not have been left in charge of the spike camp or provide guide services unless Mr. Reel was both in the field AND participating in the hunt (which he was not) and he could not have left Mr. Pepin in charge of the spike camp unless a class-A assistant guide was physically present and supervising he hunt. Neither of these occurred. To say that a registered guide-outfitter may place greater responsibility upon a packer than he may a licensed guide is nonsensical and contrary to the statutory scheme adopted by the legislature.

Mr. Reel is a businessman. He has difficult decisions to make, and what occurred is understandable. However, it was what happened after the fact that is most disturbing. Had Mr. Reel simply reported how the situation arose and what was done and why, it is possible that there would have been minimal ramifications for either he or Mr. Pepin. But rather than make the tough decisions a person with his title and experience is expected to make, placing his professional standards above all else, he acted as if he was unaware of his professional responsibilities. In doing so, not only did Mr. Reel knowingly aide in the commission of a violation but also failed to fulfill his ethical responsibility by failing to supervise his employee.

³¹ Reel Testimony.

³² AS 08.54.630(b)(3).

³³ Field is defined as “an area outside of established year-round dwellings, businesses, or other developments associated with a city, town, or village; . . . “ As 08.54.990(6).

D. *Mr. Reel Failed to Fulfill a Condition or Requirement of his Consent Agreement*

Mr. Reel's Consent Agreement requires that he obey all laws governing his license. As set forth above, Mr. Reel has violated several laws governing his license. His failure to do so is a violation of his professional ethical standards and the probationary requirements of his Consent Agreement.³⁴

E. *The Appropriate Disciplinary Sanction*

1. The Range of the Board's Discretion

This board has authority to administer a range of disciplinary sanctions, singularly or in combination, including reprimand, censure, probation, license limitations or conditions, and civil fines.³⁵ Its authority derives from two statutes, AS 08.01.075 addressing the disciplinary powers of boards under centralized licensing,³⁶ and AS 08.54.710 addressing the discipline of guides and transporters. Under AS 08.01.075(f):

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

The requirement to "be consistent" with prior application of disciplinary sanctions does not mean that a board cannot change its policy over time, but if this board decides upon a significant departure from a prior decision involving similar facts, it must explain the departure.³⁷ Therefore, it is instructive to look at other instances in which the board has imposed discipline for similar actions.

This board and prior guide boards have formally addressed the issues of sanctioning guides in two ways. First, boards have approved a number of memoranda of agreement ("MOAs") or consent agreements between the division and guides for a wide range of violations. Second, they have issued written decisions after a hearing. Of the two, the written decisions after hearing are the more significant, in that they represent a fully considered board action with all relevant facts described in detail. The MOAs are negotiated settlements, with less complete

³⁴ 12 AAC 75.340(a)(2)(B), (C).

³⁵ AS 08.54.710; AS 08.01.075.

³⁶ AS 08.01.010(7).

³⁷ AS 08.01.075(f).

exposition of the facts and potentially with unstated elements that were negotiated but left out of the record. They are, however, instructive as examples of what the board has found acceptable discipline for certain violations.

A review of prior board actions reveals that there are no other cases concerning the same combination of violations presented here. When considering the appropriate sanction the board should consider whether the disciplinable conduct reveals the licensee is unfit to continue the licensed activity.

Regarding the purpose of the sanctioning options that are available, this board's predecessor had observed:

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

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

Fines and suspensions may also serve as deterrents to less serious breaches of law or ethical standard, or to reinforce standards of conduct. Here, we must affirm professional and ethical standards of conduct for the Respondent and others, as well as deter similar conduct in the future.³⁸

2. Recent Board Decisions and MOAs Regarding Discipline Imposed for Similar Violations

In a decision involving improper supervision of assistant guides, *In re Andreis* (Big Game Board March 1993), this board's predecessor found that the guide was responsible for the assistant guides' subsequent conviction of violating guiding statutes. That board sanctioned the guide with a written reprimand and \$4,500 fine. It also directed the guide to pay the fine within one year or face suspension of the guide's license. In *In re Lazer* (Big Game Board December 2003), before going to the board the court found a master guide guilty of failing to ensure proper tagging, taking a game animal while he had clients in the field, and falsifying a document. He was sentenced to a fine of \$2,100 with \$1,050 suspended, and forfeiture of hides, and he had his

³⁸ *In re Andreis*, Case No. 1700-91-031 (Big Game Board March 1993), at 15 .

federal permit revoked for five years. The board revoked the licensee's master guide designation, suspended his license for six months and imposed a \$500 fine.

In 2009, the board approved two a MOAs imposing discipline for the taking of sub-legal game where both respondents had entered into prior consent agreements. In one case, *In re Danford*, the guide had been caught twice taking sublegal sheep. The first offense resulted in a 2007 MOA. For that offense he was convicted by the court of taking a sub-legal ram for which he was fined \$500. Mr. Danford believed the violation was attributable to the inconsistencies in the year to year judging of sheep by the State. The board sanctioned Mr. Danford with a written reprimand, a \$2,500 fine with \$1,500 suspended, and a class on judging sheep. Subsequently, Mr. Danford's assistant guide and client harvested another sub-legal ram. This resulted in another court action where Mr. Danford pled guilty to unlawful acts by a guide and was fined \$2,999 with \$999 suspended and placed on a two year probation. In the 2009 MOA the board imposed a two-year probation, a written reprimand, and a \$5,000 fine with all \$5,000 suspended, and directed Mr. Danford to prepare an extensive training curriculum on the judging of sheep.

The second MOA approved in 2009 is procedurally and factually similar to Mr. Reel's situation. The MOA in *In re Bailey* (December 2009) involved master guide-outfitter James K. Bailey's assistant guide's taking of a sub-legal ram and issues with the renewal application. As with Mr. Reel, at the time of the sub-legal ram taking, Mr. Bailey was subject to probation under a 2006 MOA. The parties entered into an agreement that was intended to address Mr. Bailey's probationary status at the time the ram was taken and the importance of promoting public confidence in the profession.³⁹

To achieve these goals the board suspended Mr. Bailey's license from June 2009 through December 2009. During the period of suspension, Mr. Bailey was permitted to employ a registered guide who would book and guide hunts during the period of suspension. Mr. Bailey was placed on a three year probation and directed to pay the previously suspended portion of his fine under the 2006 MOA. In addition the board fined Mr. Bailey \$20,000 with \$15,000 suspended. To avoid similar violations in the future, Mr. Bailey was directed to submit a plan of supervision for approval by the board to explain how he would address the supervision of and communication with his assistant guides and ensure the proper submission of reports or other

³⁹ *In re Bailey* (December 2009 Consent Agreement) at 2, ¶3.c.

documents. Finally, while on probation, Mr. Bailey was required to submit to reviews of his compliance with the probation.

A review of prior boards' decisions reveals that when considering the appropriate sanction when there is a prior MOA that has been violated, the board consistently collects the prior suspended portions of previously imposed fines, and additionally focuses on educating the guide to avoid violations in the future.

Mr. Reel's prior MOA did not impose a period of suspension. However, under the facts of this case a period of suspension of one year with six months suspended is appropriate to emphasize the seriousness of Mr. Reel's conduct and his obligation to the public as a registered guide-outfitter. During his period of suspension, as with Mr. Bailey, Mr. Reel should be permitted to employ a registered guide who would book and guide hunts during the period of suspension. However, if a future violation occurs it will be at that board's sole discretion to determine whether Mr. Reel will be permitted to employ a registered guide to carry on his business.

A period of probation is appropriate to provide Mr. Reel with an opportunity to demonstrate to the board that its trust in his registered guide abilities is not misplaced and to act as a deterrent. Three years should be sufficient, to commence after the 6 months of unsuspended suspension is complete. Any finding of omission, misrepresentation, or violation of wildlife, hunting, guiding, or transporter rules and regulations in any jurisdiction found to have taken place within the three year probationary period may result at the board's sole discretion, in an immediate revocation of Mr. Reel's license.

In keeping with the board's prior action involving Mr. Bailey's probation violation, Mr. Reel should pay the previously unsuspended portion of his civil fine, \$3,000, and an additional \$10,000 with \$8,000 suspended. Failure to pay the \$8,000 within 180 days of the effective date of this order should result in the imposition of the unsuspended suspension and Mr. Reel should not have the ability to hire a registered guide during the period of suspension.

Consistent with prior decisions, Mr. Reel should also receive a public written reprimand from the board and, if available, he should be required to take a class on a guide's legal and ethical obligations. Additionally, he should be required to take a class on the judging of sheep. A reprimand is appropriate because it has the benefit of making a clear record of what the

licensee is being disciplined for and of making it plain to the licensee and others what he or she must do differently in the future.

IV. Conclusion

The division has met its burden on the majority of the allegations set forth in its Accusation. The preponderance of the evidence establishes that Mr. Reel has either directly or through the vicarious actions of his employee's violated state statutes and regulations regarding his chosen profession and so doing has committed unethical acts.

Mr. Reel's actions are grounds for discipline against his registered guide-outfitter license. Failure to fulfill any of the following may result in revocation of Mr. Reel's license. Accordingly, with respect to Mr. Reel's registered guide-outfitter license the following discipline should be imposed:

1. Mr. Reel shall be on probation for three years from the date the board adopts this decision. Any misrepresentation or omission to a licensing authority or violation of wildlife, hunting, guiding, or transporter rules and regulations in any jurisdiction that is discovered to have occurred within the three year probationary period may result, in the board's sole discretion, in an immediate revocation of Mr. Reel's license.
2. Mr. Reel is to pay the portion of his \$4,000 fine which was suspended in Case No. 1700-08-016 and 1700-08-038, that is, \$3,000. Failure to pay the \$3,000 within 180 days of the effective date of this order should result in the imposition of unsuspended portion of the suspension and the remaining six month suspension and Mr. Reel may not hire a registered guide during this period of suspension.
3. Additionally, Mr. Reel shall be assessed a civil fine of \$10,000. \$8,000 shall be due within 180 days of the effective date of this decision. The remaining \$8,000 shall be suspended. If Mr. Reel commits no other violations of wildlife, hunting, guiding, or transporter rules and regulations in any jurisdiction before the end of the three-year probationary period, his obligation to pay the remaining \$5,000 is extinguished. If Mr. Reel does commit a violation of wildlife, hunting, guiding, or transporter rules and regulations in any jurisdiction before the end of the three-year period, the remaining \$5,000 fine amount becomes due and payable immediately upon a final determination by the board that Mr. Reel has committed the violation.

4. The following public reprimand shall be issued and placed Mr. Reel's licensing files:

The Board hereby reprimands you, Chad A. Reel, for failure to follow the rules and regulations relating to hunting and the provision of big game hunting services. Specifically you failed to recognize your obligation as a registered guide-outfitter to the public, law-enforcement, and your clients when you aided and allowed an employee to guide without a license and when you failed to exercise appropriate supervision over those in your employ. Registered guide-outfitters are required to maintain Professional Ethics and Standards, which includes meeting a level of conduct that satisfactorily and safely implements under field conditions, the knowledge, skills, qualifications, and judgment required for the license issued to you. The Board hopes you learn from this experience and enhance your knowledge and skills through further education.

5. The Big Game Commercial Services Board concludes that Mr. Reel will benefit from additional education on guides' legal and ethical obligations as well as additional education on the judging of sheep. Therefore:

- a. Within six months from the date the board adopts this decision, Mr. Reel shall identify and submit for the board to approve a class on guides' legal and ethical obligations.
- b. Within six months from the date the board adopts this decision, Mr. Reel shall identify and submit for the board to approve a class on the judging of sheep in the field.
- c. Once approved, Mr. Reel will have nine months from the date of approval of the classes to successfully complete the classes.
- d. Within two months of completion, Mr. Reel shall file with the board, through the division, proof of successful completion.
- e. If Mr. Reel is unable to locate a class on guides' legal and ethical obligations or on the judging of sheep in the field within six months from the date the board adopts this decision, he shall file with the division a request to vacate and release him from the requirements of ordering ¶ 5. The request shall be accompanied by a sworn statement setting forth the efforts taken to locate the class.

DATED this 20th day of July, 2011.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

Non-Adoption Options

A. The undersigned, in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

take additional evidence about _____;

make additional findings about _____;

conduct the following specific proceedings: _____.

DATED this _____ day of _____, 2011.

By: _____

Signature

Name

Title

B. The undersigned, in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

The division has met its burden on the majority of the allegations set forth in its Accusation. The preponderance of the evidence establishes that Mr. Reel has either directly or through the vicarious actions of his employee's violated state statutes and regulations regarding his chosen profession and so doing has committed unethical acts.

Mr. Reel's actions are grounds for discipline against his registered guide-outfitter license. The Board does not take revocation of a license lightly. However, Mr. Reel has failed to take his responsibility as a registered guide-outfitter seriously. The Board takes its responsibility to the public and the guiding profession very seriously. Therefore to achieve the goals of deterring Mr. Reel and other licensees from similar conduct, affirm professional standards and norms of reasonable conduct, and rehabilitation of the licensee the Board finds it appropriate to revoke Mr. Reel's license for a period of three years effective the date the board adopts this decision. The Board also finds it appropriate to impose the following disciplinary sanctions:

1. Mr. Reel is to pay the portion of his \$4,000 fine which was suspended in Case No. 1700-08-016 and 1700-08-038, that is, \$3,000. This fine must be paid within 180 days of the effective date of this order.
2. Additionally, Mr. Reel shall be assessed a civil fine of \$5,000 in this matter. \$2,000 shall be due within 180 days of the effective date of this order. The remaining \$3,000 shall be suspended. If Mr. Reel commits no other violations of wildlife, hunting, guiding, or transporter rules and regulations in any jurisdiction before the end of the three-year revocation period, his obligation to pay the remaining \$3,000 is extinguished. If Mr. Reel does commit a violation of wildlife, hunting, guiding, or transporter rules and regulations in any jurisdiction before the end of the three-year period, the remaining \$3,000 fine amount becomes due and payable immediately upon a final determination by the board that Mr. Reel has committed the violation.
3. The following public reprimand shall be issued and placed Mr. Reel's licensing files:

The Board hereby reprimands you, Chad A. Reel, for failure to follow the rules and regulations relating to hunting and the provision of big game hunting services. Specifically you failed to recognize your obligation as a registered guide-outfitter to the public, law-enforcement, and your clients when you aided and allowed an employee to guide without a license and when you failed to exercise appropriate supervision over those in your employ. Registered guide-outfitters are required to maintain Professional Ethics and Standards, which includes meeting a level of conduct that satisfactorily and safely implements under field conditions, the knowledge, skills, qualifications, and judgment required for the license issued to you. The Board hopes you learn from this experience and enhance your knowledge and skills through further education.

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

DATED this 3rd day of August, 2011.

By: Signed
Signature
Leif Wilson
Name
Vice-Chairmen
Title

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