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

In the matter of .	)	
	)	
CLARENCE KEITH SKAFLESTAD	)	OAH No. 13-0661-GUI
	)	Agency No. 2011-000695

Decision

I. Introduction

Clarence Keith Skaflestad holds a license as a class-A assistant guide, and in 2004 he was also licensed as a transporter. In 2005, Mr. Skaflestad was convicted of guiding-related state crimes relating to a bear hunt of a client whom he had transported to a hunt in September 2004. Mr. Skaflestad did not report these convictions on his subsequent Assistant Guide renewal applications, but did admit to convictions when he applied for a Registered Guide-Outfitter license in 2010. On April 19, 2013, the Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, and Economic Development, issued a seven-count accusation against Mr. Skaflestad. The accusation sought discipline against Mr. Skaflestad for the guiding law violations that occurred in 2004, and for his failure to report those violations in a 2006 license renewal application. Both parties filed motions for summary adjudication regarding some or all of the counts, and the Division's motion that the two state-law convictions were conclusive evidence of the violations of guiding laws was granted. At the hearing, the Division proved that Mr. Skaflestad committed three guiding law violations and that he negligently failed to disclose the investigations and violations on his renewal application.

II. Facts

Mr. Skaflestad is a resident of Hoonah, Alaska. His father was a registered guide, and Mr. Skaflestad worked as an assistant guide for his father for many years.[1] Mr. Skaflestad has long hoped and intended to become a registered guide-outfitter himself.[2] Mr. Skaflestad testified to the many obstacles in his path in pursuit of this dream. For example, he has a learning disability that makes reading difficult for him, and he often has his wife or children fill out forms on his behalf.[3] And for many year, Mr. Skaflestad struggled with drug usage and alcohol abuse.

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1 Skaflestad testimony.

2 *Id.*

3 *Id.*

He proudly testified at the hearing, however, that those days are behind him and he has been sober for 16 years.[4]

In 2004, the year when the first set of events that gave rise to the current accusation occurred, Mr. Skaflestad held a class-A assistant guide license for Game Management Unit 4, which he had held since 1999.[5] A class-A assistant guide license allowed Mr. Skaflestad to guide in the game-management unit in which he lived if he was supervised by the registered guide-outfitter who contracted with the client for the guiding services.[6]

In 2004, Mr. Skaflestad started a business, known as TECKK Outfitters & Guiding.[7] He intended to offer whale watching, sport fish, and coffee shop services. TECKK has been a successful business venture.[8]

Max Dick is Mr. Skaflestad's wife's cousin, and a friend of Mr. Skaflestad.[9] In 2004, Mr. Dick was a class-A assistant guide. Mr. Dick's role in TECKK was a contested issue in this hearing. According to Mr. Skaflestad, during the years preceding 2004, Mr. Dick was experiencing many problems, including mental health and substance abuse issues.[10] The Skaflestads wanted to help Mr. Dick. Mr. Dick had a commercial fishing license, and would use Mr. Skaflestad's boat to commercially fish. Mr. Skaflestad included Mr. Dick on TECKK's insurance policy. TECKK's insurance information states "Max E.W. Dick will be working for me," signed by Clarence K. Skaflestad.[11] In addition, TECKK's Alaska Business license application lists Max Dick as a partner in TECKK.[12] Yet, at the hearing, Mr. Skaflestad strongly denied that Mr. Dick was an owner or employee of TECKK Outfitters.[13]

During the fall of 2004, E S, a resident of Pennsylvania, called Mr. Skaflestad's father on behalf of a group of three potential clients from the midwest, seeking the services of a registered guide for hunting bear and deer in the Hoonah area.[14] Because Mr. Skaflestad's father was planning to retire, and Mr. Skaflestad was trying to obtain a license as a registered guide-

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4 *Id.*
5 Record at 390.
6 AS 08.54.620.
7 Skaflestad testimony; Record at 109.
8 Skaflestad testimony
9 *Id.*
10 Skaflestad testimony.
11 *Id.* at 44.
12 Admin. Rec. 53.
13 Skaflestad testimony.
14 Skaflestad testimony; Record at 30-40.

outfitter, Mr. S was referred to Mr. Skaflestad. Mr. Skaflestad told Mr. S that he would provide the guiding services for the bear hunt if he was able to obtain his guide-outfitter's license.[15] When Mr. Skaflestad failed to obtain a registered guide-outfitter license, he notified Mr. S that he could not provide a guided hunt. As an alternative, Mr. Skaflestad suggested that he could obtain a transporter's license, and then could provide transporter services, but not guiding services.[16] Mr. S agreed to run that proposal by his friends. Eventually, only Mr. S remained interested.[17]

Mr. Skaflestad obtained the transporter's license for his business, TECKK, on September 14, 2004.[18] This license allowed Mr. Skaflestad and his employees to transport a client to the field for a hunt.[19] When providing services as a transporter, however, neither he nor his employees could remain in the field with the client or provide any guiding services.[20]

Mr. S came to Hoonah on September 17, 2004.[21] That day, Mr. Skaflestad and Max Dick transported Mr. S by boat to an area on the southwest side of the Chilkat Peninsula known as "Homeshore."[22] Homeshore is in Game Management Unit 1(C). Mr. Skaflestad testified that while at Homeshore, he and Mr. Dick were going to set up a moose-hunting camp for later use by his family.[23]

Late in the afternoon of the day they arrived at Homeshore, Mr. Skaflestad and Mr. S rode into the Homeshore area on a four wheeler that was already in the area.[24] Mr. S brought his gun.[25] Mr. Skaflestad testified at the hearing that the reason he went with Mr. S into the proposed hunting grounds was to check out a slide area, which Mr. Skaflestad believed was a potential safety concern.[26] Nothing in the record corroborates this testimony, however. When interviewed shortly after the hunt, neither Mr. Skaflestad nor Mr. S ever mentioned a safety

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15 Skafletad testimony. Mr. Skaflestad testified that he told Mr. S that he would not provide guiding service for a deer hunt. *Id.*

16 *Id.*

17 *Id.*

18 Record at 54.

19 AS 08.54.650.

20 AS 08.54.720(19).

21 Record at 31.

22 Skaflestad testimony; Record at 30.

23 Skaflestad testimony.

24 *Id.*; Record at 31.

25 Skaflestad testimony. Mr. Skaflestad testified that the gun was for safety.

26 Skaflestad testimony.

check as the reason that Mr. Skaflestad took Mr. S out into the hunting area.[27] The contemporaneous interviews indicate that the purpose of the trip was to show Mr. S the area.[28] Mr. Skaflestad told Trooper Savland that he went with Mr. S because he (Skaflestad) believed that Mr. S could not hunt on the same day that he had flown into Hoonah.[29] This was not accurate—Mr. S could have hunted on the same day he flew on a commercial flight.

The next day, Mr. S left with Mr. Dick on a four wheeler. The original four-wheeler had broken down, so Mr. Skaflestad had gone back in a skiff the night before to get a second one, because he knew they were going to use it the next day.[30] Mr. Skaflestad remained on the dock.[31] During the time that Mr. S was out bear hunting, Mr. Dick was going to go moose hunting.[32] While Mr. S was by himself, he shot and killed a black bear.[33] Mr. S then skinned the bear, and packed it out to the road by himself.[34] Mr. Dick then gave Mr. S a ride back to the dock on the four-wheeler.[35] At the dock, Mr. Skaflestad skinned the bear's paws.[36]

The hunting party's activities had been observed in part by Alaska State Trooper Andy Savland.[37] Trooper Savland observed Mr. Skaflestad skinning the bear paws, and asked about the whereabouts of Mr. Dick, whom he knew worked with Mr. Skaflestad.[38] He was concerned that Mr. Skaflestad or Mr. Dick might have violated guiding laws.[39] He gathered additional information by interviewing Mr. S and Mr. Skaflestad, and other individuals, and by executing a search warrant on Mr. Skaflestad's house.[40] Eventually, Trooper Savland filed criminal charges against Mr. Skaflestad and Mr. Dick. The final Criminal Information document charged Mr.

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27 *See, e.g.*, Record at 31-33. Mr. S told Trooper Savland that he had his rifle with him on the 17th. He also said that Mr. Skaflestad was just along for the ride and was just showing him the area. *Id.* at 33.

28 *Id.* at 31.

29 *Id.* at 32; Skaflestad testimony.

30 Skaflestad testimony.

31 *Id.*

32 *Id.*

33 *Id.*

34 *Id.* at 30.

35 *Id.*; Savland testimony.

36 *Id.*; Record at 31. After the bear hunt, they returned to Hoonah. While in Hoonah, Mr. S went out with Mr. Dick on a deer hunt. Mr. Dick showed Mr. S how to make and use a deer call. On the second day of deer hunting, Mr. S killed a small buck. Mr. Skaflestad did not participate in the deer hunt and did not record the deer hunt in TECKK's transporter log. Record at 31. Although the deer hunt appears to have been important in the investigation, it was not incorporated into the final criminal action against Mr. Skaflestad and will not be considered further in this decision.

37 Savland testimony.

38 *Id.*

39 *Id.*

40 *Id.*; Record at 33.

Skaflestad with two class A misdemeanor offenses. The first count alleged a violation of AS 08.54.720(a)(19), which prohibits a transporter from remaining in the field with a client beyond the time necessary for disembarking.[41] The second count alleged a violation of AS 08.54.720(a)(3), which prohibits a class-A assistant guide from knowingly guiding a big game hunt when not employed and supervised by a registered guide.[42]

Mr. Skaflestad hired attorney David George to represent him in the criminal case.[43] Eventually, he pled no contest to both counts, and on April 8, 2005, the Hoonah district court entered judgment on both counts against Mr. Skaflestad.[44] Mr. Skaflestad was fined $1948.98 for the two convictions.[45] He was sentenced to five days in jail, with all five suspended.[46] His hunting, guiding, and transporter licenses were suspended for two years, but the suspensions were suspended subject to compliance with the probationary conditions.[47] He was placed on probation for two years, and his conditions of probation included no violations of law, completion of 200 hours of community work service, and payment of $1,000 of restitution to the court.[48] On April 10, 2007, the court certified that Mr. Skaflestad had complied with all of the terms of his probation.[49]

During the time that the state-law criminal proceedings against Mr. Skaflestad were taking place, an issue regarding federal law arose. The federal issue concerned Mr. Skaflestad's special use permit with the National Forest Service, which permitted him to enter and use certain National Forest lands, including the Homeshore area.[50] On January 3, 2005, Mr. Skaflestad sent the Forest Service a notice that his use of the National Forest in 2004 had been "0," and asking that his "$ balance be carried over to next year."[51] Forest Service Officer Michael Mills saw Mr. Skaflestad's federal report, and he knew it was inaccurate because he was aware of Mr. Skaflestad's activity in Homeshore with Mr. S.[52] He wrote a Violation Notice charging that Mr. Skaflestad violated 36 C.F.R. 261.10(1) and his special use permit by "providing a fraudulent

41 Savland testimony; Record at 158.
42 Record at 158-59.
43 Skaflestad testimony.
44 Record at 155-56.
45 *Id.*
46 *Id.*
47 *Id.*
48 *Id.*
49 *Id.* at 154.
50 Mills testimony; Record at 112-21.
51 Mills testimony; Record at 95.
52 Mills testimony.

Actual Use Report."[53] On September 15, 2005, Mr. Skaflestad paid the $350 fine assessed by the Notice of Violation.

At the end of 2005, Mr. Skaflestad's class-A assistant guide license expired, and on February 5, 2006, he applied to renew it.[54] On his application, Mr. Skaflestad answered "no" to the question that asked whether he had provided big game commercial services illegally since his last license was issued.[55] He also answered "no" to the question that asked whether he was aware of any investigations against him in any state jurisdiction or Canada since his last license was issued.[56] Mr. Skaflestad testified at the hearing that he remembers going to the desk at the Division's office in the State Office Building to fill out this form, and that he recalls being confused by these questions.[57] He remembers asking the attendant at the counter for direction on how to answer the confusing questions, but did not receive any assistance.[58] He then called his attorney for help, and he testified that he went through each question on the form with his attorney, and affirmed the answers.[59] Neither the counter attendant nor Mr. Skaflestad's attorney testified at the hearing.

On February 14, 2006, his class-A assistant guide license was renewed for another two-year period to December 31, 2007. After it lapsed in 2007, Mr. Skaflestad did not apply to renew it again until January 28, 2010.[60] His class-A assistant guide license was renewed the next day, January 29, and again on March 9, 2012.[61] He did not renew his transporter license after it lapsed in December 2005.[62]

On August 12, 2010, Mr. Skaflestad applied for a registered guide-outfitter license.[63] On his application, he answered "yes" to the question that asked whether he had ever been convicted of a crime, and disclosed the two state-law convictions.[64] The Division obtained a copy of his arrest and conviction records, including a copy of his two 2006 guiding law convictions in

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53 Mills testimony; Record at 94.
54 Strout testimony. Lee Strout is an investigator for the Division.
55 Strout testimony; Record at 362.
56 Record at 362.
57 Skaflestad testimony.
58 *Id.*
59 *Id.*
60 Strout testimony; Record at 356-58.
61 Strout testimony; Record at 355.
62 Skaflestad testimony.
63 Strout testimony; Record at 216-19.
64 Record at 217; Strout testimony. It is not clear from the documents how Mr. Skaflestad disclosed the state-law convictions in the application, but Mr. Strout affirmed that they were disclosed in the application. Mr. Strout did not learn that the 2006 application was deficient however, until a year later, in July 2011. Strout testimony.

Hoonah District Court.[65] The Division learned about Mr. Skaflestad's federal violation when Officer Mills called Chief Investigator Quinten Warren.[66]

After the investigation into Mr. Skaflestad's actions was complete, the Division filed an accusation initiating this case on April 19, 2013. Mr. Skaflestad filed a timely notice of defense. The accusation charged seven counts against Mr. Skaflestad. The first three Counts were based on Mr. Skaflestad's convictions relating to the S hunt, as follows:

- Count I: Mr. Skaflestad was convicted of violating AS 08.54.720(a)(1)(19), which makes it unlawful for a transporter to remain in field with a big game hunter client except as necessary for embarking or disembarking.
- Count II: Mr. Skaflestad was convicted of violating AS 08.54.720(a)(3), which makes it unlawful for a class-A assistant guide to knowingly guide a big game hunt unless employed and supervised by a registered guide-outfitter.
- Count III: Mr. Skaflestad was convicted of violating 36 C.F.R. § 261.10(1), which made it unlawful for Mr. Skaflestad to violate the terms of his forest service special use authorization.[67]

The remaining four counts address the issue of Mr. Skaflestad's two "No" answers on his 2006 class-A assistant guide license application regarding whether, since his previous license, he was aware of any investigations or had provided big game services illegally. These four counts are alleged as two sets of alternative theories, only two of which would apply:

- Count IV: Mr. Skaflestad committed fraud, deceit, or misrepresentation because he knowingly failed to disclose on his 2006 application that he had been investigated by Trooper Savland.
- Count V: In the alternative, Mr. Skaflestad's failure to disclose on his 2006

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65 *Id.* at 219-74.

66 Warren testimony. The date of this call is not clear, but Mr. Strout's notes reflect a call to Mr. Mills on August 1, 2011. Record at 18.

67 The original accusation did not specifically allege that Mr. Skaflestad was *convicted* of this federal violation. The Order on the Cross Motions for Summary Adjudication, however, ruled that the only route for imposing discipline for a violation of a federal regulation is through AS 08.54.710(a), which requires that the licensee be *convicted* of the violation of federal law before the Board imposes discipline for the federal offense. AS 08.54.720(c) does not provide an independent route to discipline because that subsection cross-references AS 08.54.710. Further, although 12 AAC 75.340 (Professional Ethics Standards for Guides) might well provide an independent route to discipline under current law, this regulation does not apply because it was adopted after the events that gave rise to this hearing occurred. After the Administrative Law Judge ruled that the Division had to allege a conviction to pursue discipline under Count III, the Division and Mr. Skaflestad agreed that they would interpret Count III to be alleging a conviction.

application that he had been investigated by Trooper Savland was negligent.

- Count VI: Mr. Skaflestad committed fraud, deceit, or misrepresentation because he knowingly failed to disclose on his 2006 application that he had been convicted of crimes involving guiding.
- Count VII: In the alternative, Mr. Skaflestad's failure to disclose on his 2006 application that he had been convicted of crimes involving guiding was negligent.

Both parties filed motions for summary adjudication, seeking legal rulings on the accusation and the agreed-upon facts.[68] A ruling on the motions was issued on August 9, 2013, and the rulings and the bases for the rulings are discussed below. Because the ruling on summary adjudication did not dispose of the case, a two-day hearing was held in Juneau on August 14-15. The record was held open for Mr. Skaflestad to do additional research on the issue of whether he was convicted on the federal violation. The record closed on October 30, 2013.

III. Discussion

A. The accusation was not untimely

Mr. Skaflestad points out that many years have passed since 2004, the year in which the events that gave rise to the accusation against him occurred. He argued in his motion for summary adjudication, and at the hearing, that Counts I, II, III, V, and VII of the accusation—all counts except the two that charge a knowing failure to disclose—are untimely and must be dismissed.[69]

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[68] Summary adjudication under 2 AAC 64.250 in an administrative proceeding permits the decision maker to issue a decision without an evidentiary hearing when facts are not in dispute. Here materials facts were in dispute regarding Mr. Skaflestad's motion to dismiss on timeliness grounds, so that motion was not granted. The rulings that were issued on summary adjudication were that

- Under AS 08.54.710(f), Mr. Skaflestad could not deny that he committed the offenses alleged in Counts I and II (the state law convictions), although he could put on evidence regarding the gravity of his conduct for purposes of mitigating the discipline;
- The questions on the 2006 application that formed the basis for Counts IV-VII were not so vague or ambiguous that an incorrect answer could not be a ground for discipline;
- For discipline to be imposed under Count III, the Division had to allege that Mr. Skaflestad was convicted of a violation of a federal regulation. This ruling distinguished *In re Smith*, in which the Board declared that a violation of a federal regulation had occurred, but imposed discipline only for the state law violations. *In re Smith*, OAH No. 08-0424-GUI at 12, 18 (Alaska Big Game Commercial Services Board 2008). The declaration of a violation without a conviction did not provide an independent ground for discipline. *Id.*

See Order on Cross-Motions for Summary Adjudication.

[69] Skaflestad's Motion for Summary Adjudication at 5 (citing *In re Lyon*, OAH No. 11-0272-GUI (Alaska Big Game Commercial Services Board 2011)).

Under statute, the Board must "impose a disciplinary sanction in a timely manner" for offenses charged under AS 08.710(a).[70] Mr. Skaflestad is correct that the offenses charged in Counts I-III, V, and VII must meet this timeliness requirement.[71] Mr. Skaflestad has raised the timeliness issue in two different ways. First, he has argued that these counts are untimely as a matter of law. Under this argument, in his view, the timeliness requirement of AS 08.54.710(a) simply would not permit the Board to impose discipline for something that happened eight or nine years previously. Second, Mr. Skaflestad has argued that under the facts of this case, these four counts are untimely. Under this argument, Mr. Skaflestad believes that the facts show that he has been prejudiced and that the Division should have acted sooner. These two arguments are discussed below.

1. The Board's decision in *In re Lyon* provides guidance on the issue of timeliness of the discipline

The Board has not defined "timely" in regulation, but it extensively discussed the meaning of the term in a previous case called *In re Lyon*.[72] The respondent in that case, Mr. Lyon, was licensed as a registered guide-outfitter when he committed the offense of failing to promptly tag a bear in 2003.[73] After consulting with the Division about the effect the charges would have on his license, he pled no contest to two criminal charges in 2006.[74] The court imposed a fine of $7,500, with $6,500 suspended, and sentenced him to five days in jail for each offense. All of the jail time was suspended.[75] His guide license was suspended for one year. Notably, Mr. Lyon never renewed his guide license, but instead, two years later, in 2008, he applied for and obtained a license as a transporter.[76] On the 2008 transporter application, he falsely answered "no" to questions about whether he had guiding-related convictions and punishment. In 2011, the Division filed a six-count accusation against Mr. Lyon. Similar to the accusation against Mr. Skaflestad, the accusation charged two counts of hunting/guiding law violations, and four counts related to the failure to disclose, two alleging knowing failures to

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70 AS 08.54.710(a). The offenses charged in Counts IV and VI allege that Mr. Skaflestad obtained his 2006 license through fraud, deceit, or misrepresentation. These offenses are not covered by the timeliness requirement of subsection 710(a). *See* AS 08.54.710(d).

71 Although the Division has not cited to AS 08.54.710(a) as the route for imposing discipline in Count III, as explained below in part C of this decision, Count III is subject to the timeliness requirement of AS 08.54.710(a).

72 *In re Lyon*, OAH No. 11-0272-GUI at 9-15 (Alaska Big Game Commercial Services Board 2011)

73 *Id.* at 2.

74 *Id.*

75 *Id.*

76 *Id.* at 3.

disclose, and the other two, in the alternative, alleging negligent failures to disclose.[77] Mr. Lyon argued that the charges of hunting and guiding law violations and of negligent failure to disclose were untimely.

In addressing Mr. Lyon's untimeliness argument, *Lyon* concluded that determining timeliness would depend on the nature of the charge and the prejudice to the respondent.[78] This balancing of the governmental interest against the prejudice to the respondent is consistent with other cases on timeliness of an administrative agency's action.[79]

The Board first addressed the start date for determining timeliness. For the counts based on charges of negligent failure to disclose, the Board advised that the timeliness clock should start "when the division learned of the false answers."[80] The Board was concerned that choosing an earlier triggering event would "encourage[] licensees to engage in continued concealment in the hope of running out the timely-manner clock."[81] In considering the three-year investigation period before the Division issued the accusation against Mr. Lyon, and weighing the public interest in having applicants be truthful on applications against the prejudice to the applicant from delay in imposing discipline, the Board determined that the Division did not unreasonably delay.[82] Therefore, with regard to the counts alleging a failure to report his criminal charges on a renewal application, the Board found that the accusation was timely.[83]

With regard to the two counts that sought to discipline Mr. Lyon for the two actual hunting violations, however, the Board considered it "more appropriate to gauge the reasonableness of the delay over a longer period."[84] It suggested that any delay after the date that the "division knew or should have known of the potential violation" would trigger the analysis for untimeliness."[85] The Board stated that delay would be unreasonable if it caused "actual prejudice, for example, by impairing the ability to mount a defense because the evidence

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77 *Id.* at 6.

78 *Id.* at 12-13.

79 *E.g.*, *Brandal v. State, Comm. Fish. Entry Comm'n*, 128 P.3d 732, 738-40 (Alaska 2006) (balancing importance of private interest, harm to private interest, government interest in and justification of delay, and likelihood that interim decision was mistaken, to find no violation of due process in 22 year delay). *Brandal* is cited here only to support the use of balancing tests in determining timeliness. *Brandal* is not precedent for the ultimate issue of timeliness in a guiding license case, because *Brandal* was decided under the due process clause, not under a legislative mandate that the agency act in a timely manner.

80 *Lyon* at 13.

81 *Id.*

82 *Id.* at 13-14.

83 *Id.*

84 *Id.* at 13.

85 *Id.*

becomes stale or is lost altogether."[86]

Under the facts in *Lyon*, the Board found that Mr. Lyon would be prejudiced by having his transporter license sanctioned in 2011 for acts committed as a registered guide in 2003.[87] Mr. Lyon's change in license type to a lower-level license is key to the holding in *Lyon.* After the time for punishing the original license had expired, the Board held that Mr. Lyon would be prejudiced if the Board were to impose sanctions on a transporter's license for an offense that he did not commit—and could not commit—as a transporter.[88] The Board was also concerned that allowing delayed punishment against the new license could open the door to circumventing AS 08.54.710(e), which prohibits the Board from adding an additional suspension of a license that the court had already suspended.[89] Accordingly, the Board held that the two counts relating to the 2006 convictions were untimely.[90]

2. Counts IV–VII are not untimely

Under the holdings of *Lyon*, Counts IV–VII of the 2013 accusation against Mr. Skaflestad were not untimely. First, Counts IV and VI—the counts that allege that the failure to disclose was done knowingly—are not untimely because the timeliness requirement of AS 08.54.710(a) does not apply to the offense of obtaining a license by fraud or misrepresentation under AS 08.54.710(c).

For Counts V and VII—the counts alleging Mr. Skaflestad negligently failed to disclose the truth in his answers on his 2006 application—the timeliness requirement of AS 08.54.710(a) do apply. Under *Lyon*, however, the timeliness clock on these counts did not begin to tick until the Division had *actual notice* that Mr. Skaflestad had not reported his convictions on his 2006 application. For the state law convictions, that date is July 19, 2011, the date that Lee Strout, an investigator for the Division, talked to Mr. Skaflestad and became aware of the failure to disclose the two state law convictions on his 2006 applications. [91] Although Mr. Skaflestad disclosed the existence of two state-law convictions in his August 12, 2010, application to be a registered guide-outfitter, he did not disclose that he had failed to report those convictions on the 2006 application. The Division staff member who processed the August 12, 2010, application had no

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86 *Id.*

87 *Id.* at 15.

88 *Id.*

89 *Id.* at 15-16. Nothing in this discussion or in *Lyon* implies that a violation of one license type under AS 08.54 is not relevant to a person's eligibility or discipline for a different license type under AS 08.54.

90 *Id.*

91 Strout testimony.

reason to refer the "yes" answers for further investigation of failure to disclose because she did not know that Mr. Skaflestad had failed to disclose the convictions.[92] Therefore, July 19, 2011, is the date of actual notice of his 2006 failure to disclose the state-law convictions.

Mr. Skaflestad argued in his motion for summary adjudication that the delay was *per se* untimely. With regard to these two counts, however, the delay between actual notice in July 2011 and filing of an accusation in April 2013 is not unreasonable. Investigations take time, and government agencies have competing demands on their time. Taking two years to investigate and pursue settlement before filing an accusation is not *per se* untimely.[93]

At the hearing, Mr. Skaflestad argued that under the facts of his case the accusation was untimely because the passage of time prejudiced his ability to present a defense. His defense against the charge of negligent failure to disclose rested largely on his own testimony that his attorney had given him guidance in how to answer the questions, and that he assumed these questions did not apply because, in his view, the Division already knew about the convictions. Although he argued that he could not call his former attorney as a witness because his former attorney is now a superior court judge, he did not make a showing that he had attempted to obtain verification of the advice from his former attorney. On these facts, Mr. Skaflestad has not shown prejudice. The counts charging the negligent failures to disclose are not untimely under AS 08.54.710(a).

3. Counts I-III are not untimely because the facts do not establish unreasonable delay or that the delay caused Mr. Skaflestad any prejudice

Counts I-III seek to impose discipline for the underlying violations of law, rather than for the allegedly untruthful applications. For these counts, the timeliness clock starts earlier than it does for the failure-to-disclose counts—under *Lyon*, the timeliness clock should start when the Division knew or should have known about the underlying offense.[94] In *Lyon*, the facts indicated that the Division knew or should have known of the criminal charges and likely outcome at the time of the plea agreement because Mr. Lyon consulted with the Division about the effect a guilty plea would have on his license.[95] Therefore, it appears that in *Lyon*, timeliness for charges relating to the underlying conviction dated from the date of conviction. Here,

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92 *Id.*

93 Even if August 2010 is taken as the date of actual notice, taking three years to investigate and charge would also not be *per se* untimely.

94 *Lyon* at 13.

95 *Id.* at 2. Here, whether the Division had notice was a fact issue, which was a factor in denying Mr. Skaflestad's motion for summary adjudication on the timeliness issue.

although Mr. Skaflestad testified that at various times he had discussed his issues with the counter attendant at the Division, and with the Board Chair, he did not call any corroborating witness or submit any documentary evidence regarding when the Division knew or should have known about his convictions.[96] Investigator Strout testified that there was no evidence that the Division knew of the convictions before the August 2010 application.[97] In closing argument, Mr. Skaflestad's counsel asserted that "it is possible that the agency was notified." Although it is possible, nothing in this record proves that the Division knew or should have known about Mr. Skaflestad's convictions before Mr. Skaflestad applied for a registered guide-outfitter license. Therefore, the timeliness clock for the state convictions would start on August 12, 2010. For the federal conviction, it would start around August 1, 2011, when the Division learned of the federal conviction from Agent Mills.[98]

Mr. Skaflestad argued that the timeliness requirement imposes an affirmative burden on the Division to search out possible convictions, and suggested that this could be quickly done through on-line searches. A more common interpretation of timeliness requirements, however, is that they impose a burden on a party to take action after the party knew or should have known of the triggering event. Here, that would mean that the timeliness requirement of AS 08.54.710(a) requires a timely investigation and prompt filing of charges after the Division knew or should have known of the possible violation. It does not, however, require that the Division investigate all applications to uncover undisclosed criminal charges. The Division should have known about the underlying events when Mr. Skaflestad filed his application to be a registered guide-outfitter on August 12, 2010. Given that start date, the Division's April 19, 2013, accusation was not untimely. Mr. Strout's testimony revealed that the Division took reasonable steps to complete the investigation in a timely fashion, and did not ignore it or let it founder.[99]

As *Lyon* shows, however, having a timely investigation is only part of the story. If a party can show actual prejudice by delay, a party may be able to have a count dismissed as untimely. The concerns discussed in *Lyon,* however, are not present in this case.

In *Lyon,* the prejudice to Mr. Lyon was related to the unfairness that would occur if Mr. Lyon was to be sanctioned as a transporter for an offense committed many years earlier as a

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96 Skaflestad testimony.
97 Strout testimony.
98 Strout testimony; Warren testimony; record at 19.
99 Strout testimony.

guide-outfitter. Here, however, except for a short period of time, Mr. Skaflestad has retained his class-A Assistant Guide license, which was renewed again as recently as March 2012. Because he has not given up the license under which he committed a violation to work under a less valuable license unrelated to his violation, the concern about bootstrapping a penalty from a higher license type to a lower license type is not present. In addition, because the court did not actually suspend any of Mr. Skaflestad's licenses under AS 08.54.710(e), an end-run around the double-suspension prohibition of AS 08.54.710(e) could not occur. Therefore, none of the prejudice that the Board found to be persuasive in the *Lyon* case is present in this case.

Mr. Skaflestad acknowledges that none of the concerns expressed in *Lyon* directly applies to his case. He argues, however, that the holding of *Lyon* is that a respondent is entitled to dismissal for untimeliness whenever the respondent is prejudiced. He further claims that the passage of time was prejudicial because memories have faded, which, in his view, impeded his ability to contest the facts that involve his underlying offense.

Yet, at the hearing, the witnesses were able to paint an adequate picture of the events in 2004. Mr. Skaflestad's memory was intact. He was able to recall his conversations with Mr. S, Mr. Dick, and Trooper Savland. And he had a very clear memory of the weather—remembering that it was warm on the day that Mr. S shot the bear and that a storm was brewing so a planned two-day hunt became a one-day hunt.[100] In addition, the record contains considerable documentation of the events, all of which was available to help refresh memories.

Two other considerations affect the timeliness/prejudice analysis. First, as explained below, the grounds for discipline are established by the convictions.[101] Therefore, the memory of the events that underlie the convictions goes only to the proper discipline, not to whether discipline is warranted. The passage of time and effect of faded memories can be taken into account in prescribing the appropriate discipline. Second, Mr. Skaflestad is responsible for any prejudice caused by the passage of time. Had Mr. Skaflestad wanted the Board to take immediate action, when memories were fresh, Mr. Skaflestad could have reported the

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100 Skaflestad testimony.

101 AS 08.54.710(f) ("[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*.").

convictions to the Board shortly after they occurred.[102] Here, the Board's interest in protecting the public by imposing discipline for violations relating to guiding or hunting laws, and in not rewarding violators' failures to report, outweigh any prejudice caused to Mr. Skaflestad by the degradation of memory due to delay.

B. The offenses charged in Counts I-III are established as a matter of law because Mr. Skaflestad was convicted of committing the offenses charged by these counts

Under AS 08.54.710(a)(1), the Board may impose a disciplinary sanction if a licensee is "convicted of a violation of any state or federal statute or regulation relating to hunting or to provision of big game hunting services or transportation services." Counts I-III each charge that Mr. Skaflestad violated a law related to hunting, guiding, or transportation services, and that he was convicted of a violation of that law. Under AS 08.54.710(f), "[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*." Based on this statute, the Division was granted summary adjudication, pending approval of the Board, that the state law convictions alleged in Counts I-II were established as a matter of law under AS 08.54.710(f). Summary adjudication was not granted for Count III, in order to give Mr. Skaflestad an opportunity to prove that the federal violation was not a conviction.[103] After the hearing, Mr. Skaflestad conceded that he was convicted of the federal violation alleged in Count III. Accordingly, the ground for discipline alleged in Count III is also established as a matter of law.

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[102] *C.f., e.g., Brandal,* 128 P.3d at 740 (holding that prejudice caused by respondent's own action is not considered in balancing test for when delay is violation of due process). In addition, the Division has cited to cases that hold that diminishment of memory is not necessarily prejudicial in a criminal context because some delay and some memory loss is inevitable in every case. Division's Opposition to Skaflestad's Motion for Summary Adjudication at 2 (citing *Wilson v. State,* 756 P.2d 307, 311 (Alaska 1988); *Dixon v. State,* 605 P.2d 882, 892 (Alaska 1980)). These cases are useful, but not dispositive because they involve criminal matters and shorter delay than the delay at issue here.

[103] In *In re Smith,* the Board held that the Division had failed to prove that a similar violation of federal law was a conviction. That holding was based on testimony from the Division's own witness that Smith's federal violations were not criminal convictions. Here, at the summary adjudication stage, the Division had cited the local federal rules, which establish that payment of the fines "constitutes an admission of guilt." *See* United States District Court, District of Alaska, Local Federal Criminal Rule 58.2(a)(2); available at http://www.akd.uscourts.gov/reference/rules/lr/criminal.pdf#page=22. This shifted the burden to Mr. Skaflestad to prove that the violation was not a conviction. After the hearing ended, Mr. Skaflestad conceded that federal documents indicated that he was convicted of a crime. In addition, the Division provided cites to several federal cases to confirm this finding. *See* Division's Post Hearing Brief Regarding Count III of the accusation.

C. The Division has not proved that Mr. Skaflestad knowingly gave false answers but it has proved that he negligently gave false answers on his 2006 application

1. The questions on the application are not inherently ambiguous

Mr. Skaflestad requested summary adjudication that he cannot be held to account for his allegedly false answers to questions on the 2006 renewal application because the questions were so vague that they did not put him on notice of what was being asked.[104] The two questions at issue are numbers two and eight. In the 2006 version of the application, these questions asked the following:

> **SINCE YOUR LAST LICENSE WAS ISSUED:**
>
> . . .
>
> 2. Are you aware of any investigations against you in any state, jurisdiction or in Canada?
>
> HAVE YOU:
>
> . . .
>
> 8. provided big game commercial services illegally?[105]

With regard to Question 2, Mr. Skaflestad argues that the Board's decision in *In re James A. Smith* held that Question 2 was ambiguous as a matter of law because it could easily be read to mean only current, ongoing investigations. Given the alleged ambiguity, and that the investigations into Mr. Skaflestad's offenses were over at the time he answered the questions in 2006, he believes he cannot be charged with omitting or misrepresenting a material fact on an application based on his answers on Question 2.

In the *Smith* case, the Board found that the Division had not proved that the respondent, Mr. Smith, was negligent when he answered "no" to Question 3 regarding the existence of an investigation (which, on the 2007 application, was the same as Question 2 on Mr. Skaflestad's 2006 application). In reviewing the issue, the Board noted that the question lacked specificity—an applicant could read the question to apply to only ongoing investigations. [106] The lack of specificity, however, is merely one factor that the Board discussed. In Mr. Smith's case, he had disclosed the underlying state-law investigations in his previous license renewal, he reasonably believed a settlement had been finalized, and he reasonably concluded that the pending federal

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104 Skaflestad's Motion at 7.

105 Record at 362 (bolding and capitalization in original).

106 *Id.* at 13. *Smith* did not find similar ambiguity in question 8, which is worded in the past tense.

violations were processed like parking tickets—issued based on known facts, with no investigation.[107] Based on these facts, the Board held that the Division had not met its burden of proving that Mr. Smith had negligently misrepresented or omitted the existence of an investigation.[108]

Smith did not, however, hold that Question 2 was so inherently ambiguous that it could never be the basis for discipline under AS 08.54.710(a)(1). And, indeed, with a close reading of the question, the ambiguity is slight. The question covers a time period—the span of time since "your last license was issued."[109] As the Division points out, it would be unnecessary to ask about the time interval if the question meant "are you aware of any *ongoing* investigations against you?"[110] The danger of misinterpreting Question 2 arises only if a reader fails to connect the lead-in language of "[s]ince your last license was issued" to Question 2. This might happen because several lines of text intervene between Question 2 and the lead in language, and if a reader is not paying close attention, the reader might overlook the fact that the lead-in language applies to all questions. An applicant making that mistake would read Question 2 as, "[a]re you aware of any investigations against you," which, in the absence of the lead-in language, could be taken to mean "ongoing" or "current" investigations.

2. The Division has not met its burden of proving that Mr. Skaflestad obtained a license through fraud, deceit, or misrepresentation

The law requires the Board to distinguish between an applicant who "has negligently misrepresented or omitted a material fact on an application" and one who "obtained [a license] through fraud, deceit, or misrepresentation."[111] If an applicant is merely negligent regarding a material fact on an application, the Board has the discretion to impose a disciplinary sanction on the applicant.[112] If the licensee obtained the license through fraud or deceit, the Board must permanently revoke the license.[113]

In analyzing whether a licensee committed fraud, deceit, or misrepresentation, the Board has required that the Division prove that the applicant knew that the representation of fact was

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107 *Id.* at 14.
108 *Id.*
109 Record at 362.
110 Division's Opposition at 7-8.
111 *Compare* AS 08.54.710(a)(3) (negligence standard) *with* AS 08.54.710(c) (fraud standard).
112 AS 08.54.710(a).
113 AS 08.54.710(d).

false and intended to induce the agency to rely on the false statement.[114] Given the severity and finality of the punishment for a fraudulent application, the Board's cases reflect a cautious and careful approach to making a finding of fraud or deceit. In *Lyon*, for example, the Board accepted Mr. Lyon's representation that he had read the questions quickly and failed to recognize that although some questions track eligibility standards, two of the questions on investigations and convictions were broad, catch-all questions.[115] Given that explanation, and the fact that Mr. Lyon had corresponded with the Division about the convictions, the Board found no intent to deceive.[116] In *In re Hill*, the Board again did not find intentional misrepresentation in Mr. Hill's six incorrect "no" answers.[117] In *In re Fernandez*, however, the Board concluded that Mr. Fernandez's failure to disclose his recent conviction for possession of illegal game, for which he was sentenced to 90 days in jail, and which occurred one month before one inaccurate application, and 14 months before the second, was intentional and fraudulent.[118]

Here, the Division argued that Mr. Skaflestad clearly knew of the investigation and the convictions. Mr. Savland's investigation involved the serving of a search warrant on Mr. Skaflestad, and his convictions involved considerable negotiations and dealings with the court. Mr. Skaflestad was not likely to forget these events. Knowledge of the facts, however, is only one element of proof that the Division must meet to show fraud, deceit, or misrepresentation. The Division must also show an intent to deceive. Here, the facts show that Mr. Skaflestad has a reading disability. A person with a reading disability might well read Question 2 to be asking only about awareness of current, ongoing investigations. Under these circumstances, the evidence supporting an inference that Mr. Skaflestad misread Question 2 is stronger than evidence supporting the inference that he deliberately answered it falsely. With regard to whether Mr. Skaflestad intended to deceive by answering "no" to Question 8, Mr. Skaflestad testified that he was confused and asked the counter attendant and his attorney for advice on how

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114 *In re Fernandez*, OAH No. 09-0395-GUI (Big Game Commercial Serv. Bd. 2009) at 7; *See also In re Muir*, OAH No. 04-0268-MED (Alaska State Medical Board 2006) at 5 (holding that doctor's failure to answer yes to question asking whether he had "ever been under investigation" when he had been investigated nine times was intentional deceit; and stating that "[t]he elements for knowing misrepresentation or deceit include 'a false representation of fact, scienter, intention to induce reliance, justifiable reliance, and damages.' The scienter element requires that the individual knew the falsity of the representation. Intent is a question of fact that may be proven by inference through circumstantial evidence." (quoting *Barber v. National Bank of Alaska*, 815 P.3d 857, 862 (Alaska 1991))

115 *Lyons*, OAH No. 11-0272-GUI at 4, 8.

116 *Id.*

117 *In re Hill*, OAH No. 10-0250/0387-GUI at 15-20 (Big Game Commercial Services Board 2011)

118 OAH No. 09-0395-GUI at 7 (Big Game Commercial Services Board 2009).

to answer the question. This evidence supports an inference that Mr. Skaflestad wanted to answer the questions correctly and did not intend to deceive. The Division did not refute this evidence or offer other evidence of intent.[119] Therefore, the Division has not proved that Mr. Skaflestad obtained a license through fraud, deceit, or misrepresentation, and Counts IV and VI should be dismissed.

The Division has, however, proved that Mr. Skaflestad was negligent with regard to his answers to questions two and eight in 2006.[120] A careful reader would have known that Question 2 was asking about any investigations since his or her last license. Mr. Skaflestad knew he had a reading disability and he often relied on others to assist him in reading important documents. A reasonable person with a reading disability would have filled out the application in advance with assistance, rather than filling it out in a state office. With regard to Question 8, Mr. Skaflestad's duty to fill out the form accurately was "non-delegable," which means that he has a duty to make sure it is correct.[121] Here, it is difficult to believe that his attorney would have advised Mr. Skaflestad to answer "no" to Question 8 if Mr. Skaflestad had clearly and distinctly communicated to the attorney that he was being asked if he had provided guiding services illegally since his last license. If Mr. Skaflestad did not know whether the guiding/transporting violations for which he pled no contest would be considered illegal, he was negligent in not seeking out the answer in a way that would have avoided the error. Moreover, a reasonable person in Mr. Skaflestad's shoes would have been aware that negligent misrepresentation or omission of a material fact would be grounds for discipline, and that he had been sentenced by a court for violations of guiding statutes. Armed with this knowledge, a reasonable person would have disclosed the convictions in response to Question 8. In sum, the Division has met its burden of proof for Counts V and VII.

D. The appropriate discipline for Counts I-III

Mr. Skaflestad's main focus in this hearing has been to show that his convictions were not warranted. He asserted that the only reason he pled no contest to the state charges, and paid the federal fine, was that it would have been too expensive to fight the charges. He testified that

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119 Intent may be proved by circumstantial evidence. *In re Muir*, OAH No. 04-0268-MED.

120 Mr. Skaflestad argued that the standard for negligence in AS 08.54.710(a)(3) should be a criminal negligence or recklessness standard. Mr. Skaflestad did not provide any support for this argument, and the Board's previous cases apply the civil negligence standard of carelessness. *See Lyon*, OAH No. 11-0272 at 17. This decision applies the civil negligence standard, and holds that the Division has met that standard.

121 *Cf., e.g., In re Moser*, OAH No. 04-0294-REC at 12 (Real Estate Comm'n 2005) ("The applicant's obligation to provide accurate information to a licensing authority is non-delegable.")

in his mind, he never did anything wrong (although he later admitted that his skinning of the bear paws while at the dock was a technical violation of the regulation).[122] He therefore believes that, although the grounds for discipline under Counts I-III are established as a matter of law, no discipline should be conferred for these three counts.

Mr. Skaflestad's argument that he is innocent of wrongdoing is not persuasive. He committed the offense of guiding without a license, and being a transporter in the field with a client when he (1) provided a four-wheeler to a client, and accompanied an armed client over the grounds on which the client was planning to hunt, on a day when the client could legally have hunted; and (2) skinned the paws of the bear shot by the client while remaining in the field. Both of those actions—providing and riding the four wheeler with the client and skinning the paws—are guiding.[123] Both constitute remaining in the field with a client.[124] With regard to the federal issue, he did commit the offense—he wrongly reported no use of the Homeshore area when, in fact, he had made use of the area. Accordingly, the Board should impose discipline for these three offenses.

At closing argument, Mr. Skaflestad's counsel argued that Mr. Skaflestad is more comfortable in the woods than in the courtroom, and given his skills Mr. Skaflestad is *the* person you would want with you on a hunt. That might be true for a person accompanying Mr. Skaflestad as a friend. But a client hiring a person licensed under AS 08.54 is looking for more than a friend who is a good woodsman. A person licensed under AS 08.54 is supposed to know the law, respect the law, and keep the client (and him or herself) from violating the law. A person of Mr. Skaflestad's experience and aspirations should know that guiding is more than assisting in the shot and processing the kill. That he should deny wrongdoing for his actions during the S hunt is a cause for concern—it indicates that he does not understand how far the law reaches.

Also disturbing is Mr. Skaflestad's tendency to blame others for his predicament. He

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[122] Skaflestad testimony.

[123] AS 08.54.790(8). Under this statute, guiding includes "field preparation of trophies, including skinning and caping," and "using guiding or outfitting equipment" and "providing camping or hunting equipment" that are already in the field.

[124] Mr. Skaflestad also argued that the law is a catch-22—he is required to keep his client safe and to ensure against waste, but his attempts to do so (a safety check of the area and the skinning of the paws that would otherwise have been wasted due to the unusually warm weather) led to his criminal charges. These arguments are rejected. Mr. Skaflestad has not established the factual foundation that his actions were necessary for safety or preserving of the meat/hide. Nor has he established that other possible (and legal) actions could not have been undertaken to ensure safety and preservation of the game.

believes that Trooper Savland and Agent Mills have a vendetta against him. He blames others for thinking that Mr. Dick was either his partner or his employee when he himself filed official documents that described Mr. Dick as his partner or employee. He believes that his failure to disclose was pursuant to advice from his attorney, when the duty to fill out the form was his. Here, neither Trooper Savland nor Agent Mills are to blame for any of the proceedings against Mr. Skaflestad. Mr. Skaflestad committed the acts that led to the charges against him, and he, and he alone, is responsible for the consequences.

Yet, Mr. Skaflestad has made a case for moderating the discipline for Counts I-III. The following mitigating factors should be considered:

- Mr. Skaflestad's violations are not among those that would be considered the most serious offenses, such as same day airborne hunting, violating a specific order, wasting meat, or illegal baiting.
- Mr. Skaflestad deliberately and consciously avoided doing any of the big-picture actions that a lay person would associate with the service of "guiding."[125] He did not actually accompany the client in the field on the day that the client was hunting. He did not help the client locate the game, set up the shot, or otherwise assist in the field where the kill took place.[126]
- Mr. Skaflestad's actions show an intent to avoid committing the offenses. He told Mr. S that he could not provide a guided hunt. While his client was out hunting, Mr. Skaflestad remained on the boat/dock. He believed that he could ride the

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[125] Trooper Savland testified that the price charged by Mr. Skaflestad was higher than would normally be charged by a transporter, which, if true, could provide some support for an inference that Mr. Skaflestad intended all along to provide a *de facto* guided hunt. The price comparisons in the record, however, are very weak evidence of intent, particularly given that Mr. Skaflestad testified that he provided value in ways other than transportation, such as sight-seeing and meals.

[126] The questionnaire that is mailed to clients of an assistant guide who is seeking to be licensed as a registered guide-outfitter identifies the following as the important duties of a guide for purposes of the questionnaire:

> Stalking, pursuing, tracking of big game (includes use of spotting scope)
> Packing, salvaging, or caring of harvested big game
> Field preparation of big game trophy, including skinning and caping
> Camp activities (i.e. setting up camp, camp organization, cooking, cleaning; removal of garbage and human waste.

See, e.g., Record at 296. Here, Mr. Skaflestad tried to avoid doing any of these major guiding activities. He was mistaken in thinking that he could perform the guiding activity of skinning the paws if he remained on the boat/dock, in providing a four-wheeler to a client, in taking Mr. S through the hunting area on a four-wheeler, and in letting Mr. Dick transport Mr. S on a four-wheeler provided by Mr. Skaflestad. The point is not to pardon Mr. Skaflestad for making these errors, but to note that he took steps to avoid doing activities that he believed would constitute providing a guided hunt.

four-wheeler with the client on the day that his client had been airborne on a commercial flight. He believed that he could skin the paws on the dock because he considered himself to be out of the field.[127]

- His federal violation involved a failure to report a very small usage and dollar amount.
- Mr. Skaflestad has a long history of being licensed under AS 08.54, and it appears that this is the only time that he has been found subject to discipline by the Board. All of his infractions occurred in one hunt, and this was apparently the only time that he served as a transporter. In addition, he has continued to serve as an assistant guide since this one incident occurred in 2004 without any other incidents.

The picture of Mr. Skaflestad that emerges from the hearing is two-fold. He presents as a confident person with considerable skill, affable and amiable with clients, a good community member, with the potential to be a credit to the guiding profession. He also presents, however, as a person sloppy with details, including the law, with a chip on his shoulder (especially regarding authority figures), who does not take responsibility for his actions.[128]

Although Mr. Skaflestad's denial of wrongdoing and failure to take responsibility for his action are disturbing, they are not grounds for enhancing his discipline at this time. His failure to understand the law and his failure to take responsibility are issues that raise questions about his fitness to be licensed, but this record does not answer those questions. This decision will serve as notice that here, Mr. Skaflestad was unaware of the extent of the law, that he committed violations, and that he has failed to take responsibility for his actions. Should similar conduct occur in the future, it will raise doubt about whether Mr. Skaflestad should continue to be licensed under AS 08.54. If, on the other hand, Mr. Skaflestad is fully educated about the law, avoids further violations, and takes responsibility for his actions, then his conduct will show that he is fit to be a licensed guiding professional.

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[127] Mr. Skaflestad also testified to having a relationship with a taxidermist, which he seemed to believe would further support his argument that he was allowed to skin out the paws while on the dock. This argument is not persuasive. As stated above, his attempt to avoid breaking the law by staying on the dock is taken as a mitigating factor. The fact that he did, in fact, violate the law, is ground for discipline. That he may not understand the law is ground for concern.

[128] Mr. Skaflestad represented that he has been a "gadfly" with the Board, but he does not explain what he means by "gadfly." Being a gadfly and engaging in debate with policymakers and authorities is a fine activity in the American tradition. The concerns noted here are not related to any activity that resembles being a gadfly.

In short, discipline here is necessary to serve as a wake-up call to Mr. Skaflestad that he needs to take seriously all of his responsibilities as a licensed professional. This includes his responsibility to be

- scrupulously honest in filling out forms and to self-report any violation;
- aware of the full reach of the law, and to avoid even minor violations.

Discipline should be consistent with other guide cases, so that all licensed guiding professionals get the same message that Mr. Skaflestad receives.

Mr. Skaflestad requested that any discipline should not include a probation period. His reasoning was that he did not want a long probation that would interfere with his ability to obtain his license as a registered guide-outfitter. Yet, a long probation period is precisely what is called for in this case. Here, Mr. Skaflestad's original violations did not involve participation in the hunt, and occurred when he was actually trying to avoid violating the law. What the Board needs here is not to punish Mr. Skaflestad extensively. Instead, the Board needs assurance that he will not continue to be sloppy about the law or his duty to self-report. The best way to assure that Mr. Skaflestad has received this message and is now being more careful about the law and the reporting requirements is a long probation period. Assuming no further violations, however, the fact that he is *on* probation should not prevent Mr. Skaflestad from being eligible to obtain a license as a registered guide-outfitter.[129]

In searching for comparable cases for purposes of being consistent in imposing discipline, most cases involve violations that are either more serious or less serious than those of Mr. Skaflestad. With regard to Count I (transporter remaining in the field), no comparable cases are available. Mr. Skaflestad's remaining in the field with the client is an obvious violation of which he should have been aware. It was, however, the first and only time he served as a transporter, and the fact that he has given up this license type reduces the need for significant discipline. With regards to Count II (unlawful guiding by an assistant guide without supervision of a registered guide), a review of the other cases of the Board does not reveal any cases where an assistant guide was convicted of guiding without a license when the assistant guide did not actually provide extensive services that would be commonly recognized as guiding. This count would normally be the most serious count, but here, the services provided were not extensive and

[129] The Board will take this decision into account in evaluating any future application from Mr. Skaflestad for a registered guide-outfitted license. The fact that he is on probation, however, standing alone, will not be fatal to his application.

with slightly more care would not have amounted to guiding. With regard to Count III, Mr. Skaflestad's failure to be accurate in his forest service report involved a small usage for which a small dollar amount was due, and for which he has already been fined.

In a 2000 case, the Commissioner of Community and Economic Development accepted a memorandum of agreement that imposed a $500 fine on a guide who conducted four guided hunts in an area where, at the start of the hunts, he did not have the appropriate land-use registration to conduct the hunts. [130] That offense would generally be considered less serious than those committed by Mr. Skaflestad. In a 2007 case, the Board accepted a settlement in a Memorandum of Agreement that imposed a fine of $750 on an assistant guide who was convicted of failing to report a violation involving a client who knowingly failed to validate his tag after shooting a caribou.[131] Under the circumstances of Mr. Skaflestad's violation, that case would appear to be a more serious case than this one, although because it was settled through a Memorandum of Agreement, some of the facts and circumstances that led to the size of the fine may not be known. Using these cases as rough guides to the appropriate discipline, Mr. Skaflestad should be fined as follows:

- Count I: $1,000 with $750 suspended for a three-year probation period;
- Count II: $1,000 with $750 suspended for a three-year probation period;
- Count III: $500 with $400 suspended for a two-year probation period.[132]

This discipline is subject to the following:

1. Mr. Skaflestad does not violate a hunting or guiding law during a probation period.
2. The fact that Mr. Skaflestad is on probation will not be an automatic bar to Mr. Skaflestad's ability to obtain a registered guide-outfitted license.

E. The appropriate discipline for Counts V and VII

With regards to for Counts V and VII, Mr. Skaflestad did not specifically address whether discipline should be mitigated on these counts. He did argue vigorously, however, that his failure to disclose was not negligent. Applying his argument to the issue of mitigation, he would no doubt argue that, given his relatively minor degree of fault on the underlying counts,

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130 *See In re Richardson*, Case No. 1700-00-001 (Alaska Dep't of Community and Economic Dev., Div. of Occ. Lic. 2000) (MOA on file at OAH). (*Richardson* was resolved at a time when no guide board existed.) In *In re Katzeek*, OAH No. 08-0533-GUI (Big Game Commercial Services Board 2009), the Board imposed a $500 fine with $100 suspended for a failure to include all written information in a written contract. Mr. Skaflestad's offenses are more serious than that in *Katzeek*.

131 *In re Martin*, Case No. 1704-07-005 (Big Game Commercial Services Board 2007) (MOA on file at OAH).

132 This totals $600 out of pocket, which is more than the fine in *Richardson* but less than the fine in *Martin*.

and his efforts to fill out the 2006 application correctly with help from his lawyer, little or no discipline should be imposed for Counts V and VII.

Mr. Skaflestad's reading disability serves to some extent as a mitigating factor, particularly with regard to Count V, where the possible ambiguity of Question 2 would be heightened by a reading disability. His testimony regarding his attempts to seek assistance in answering the questions, however, is not a mitigating factor. This testimony was already used once, to help refute the Division's assertion that Mr. Skaflestad's failures to disclose were intentional, and for purposes of mitigating Counts V and VII, this testimony is played out. For the same reasons that this testimony did not negate negligence—Mr. Skaflestad is personally responsible for correctly filling out the form, he did not take proper care to fill out the form, and whatever last-minute assistance he may have received from his attorney, it is unlikely that an attorney would instruct Mr. Skaflestad to give the incorrect answers he gave—this testimony does not mitigate his negligence.

Failure to disclose is a serious violation for all licensed professionals. In the guiding industry in particular, enforcement depends on self-reporting because guiding is an activity that takes place outside of common traffic and viewing areas. The *Lyon* case is an apt precedent for determining the proper discipline for a negligent failure to disclose. In *Lyon*, the Board was required to balance the importance of having licensed professionals be accurate and diligent about self-reporting with the fact that the licensee was merely negligent about his duty to fully answer the questions on the application. In *Lyon*, the Board, after reviewing other cases of failure to disclose, imposed a fine of $2,000 per failure to disclose, with 75 percent suspended for a one year probationary period. Following this precedent, but with a longer probationary period for Mr. Skaflestad, Mr. Skaflestad is fined as follows:

- Count VII (the failure to disclose a conviction): $2,000, with $1,500 suspended for a two-year probation period.
- Count V (the failure to disclose an investigation, which is mitigated somewhat by Mr. Skaflestad's reading disability and the potential ambiguity of the application): $1,000 with $750 suspended for a two-year probation period.

The probationary conditions listed above apply here also.

IV. Conclusion

The Division has proved the allegations in Counts I-III, V, and VII. Counts IV and VI

are dismissed. Mr. Skaflestad is fined the following amounts:

- Count I: $1,000 with $750 suspended for a three-year probation period;
- Count II: $1,000 with $750 suspended for a three-year probation period;
- Count III: $500 with $400 suspended for a two-year probation period.
- Count VII: $2,000, with $1,500 suspended for a two-year probation period.
- Count V: $1,000 with $750 suspended for a two-year probation period.

This discipline is subject to the following condition:

- If Mr. Skaflestad violates a hunting or guiding law (statute or regulation, in any jurisdiction) during a probation period, the full fine for each count still under probation may be imposed.
- The fine is due 30 days after the date the decision is adopted by the Board.
- The probation periods begin to run on the day after the Board adopts the decision.
- The fact that Mr. Skaflestad is on probation will not be an automatic bar to Mr. Skaflestad's ability to obtain a registered guide-outfitter license.

Dated: January 14, 2014

Signed
Stephen C. (Neil) Slotnick
Administrative Law Judge

Adoption

The undersigned adopts this Decision under the authority of AS 44.64.060(e)(1), 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 5th day of March, 2014.

By: *Signed*
Kelly Vrem
Chair, Alaska Big Game Commercial Services Board

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