

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

In the Matter of)
)
JOHN WALKER) OAH No. 19-0517-GUI
) Agency No. 2016-000632 &
) 2017-001208
_____)

DECISION

I. Introduction

The Division of Corporations, Business and Professional Licensing (“Division”) initiated an action for disciplinary sanctions against John Walker’s Master Guide Outfitter license after he failed to respond to repeated contacts by a Division investigator requesting hunt records from a fall 2015 hunt, and failed to report a conviction arising out of that hunt when he applied to renew his license. Following a hearing on the allegations, this decision finds that Mr. Walker:

- was convicted of a guiding violation,
- failed to report his conviction to the Board,
- failed to complete a hunt record, and
- failed to disclose the conviction and related investigations when applying to renew his license.

In light of these violations, this decision imposes a fine of \$4,000, with \$2,000 suspended; a one-year period of probation; and a public reprimand.

II. Facts

A. Background

City A resident John Walker was first issued a master guide outfitter license in 1999; the license lapsed during the pendency of this administrative hearing, but was active at the time of the events giving rise to the Accusation in this matter.

In March 2016, Mr. Walker was cited for three violations of AS 08.54.720(a)(8)(A) – violating or aiding in the violation of hunting regulations as an AS 08 licensee – arising out of a September 2015 hunt.¹ Those violations involved improperly transporting a group of hunters within the Noatak Controlled Use Area (“NCUA”) during a time that the NCUA is closed to aircraft.²

¹ Ex. 13, pp. 29-30.

² Ex. 13, p. 1; 5 AAC 92.540(9)(A)(ii). The Noatak Controlled Use Area (NCUA) is “a five-mile corridor extending either side of the Noatak River where the use of aircraft in any manner for big game hunting is prohibited” from August 15 through September 30 each year to protect the path of migrating caribou.

The hunt in question involved three non-resident hunters: S and G X, and K N. Alaska Wildlife Trooper Justin McGinnis had begun investigating the hunt after receiving a complaint about hunters camping within the NCUA. Trooper McGinnis determined that Mr. Walker had flown the three hunters to their location, and that Walker’s plane and tents were within the NCUA.³ Trooper McGinnis also discovered that, while Mr. Walker was away from camp for the night, Mr. N had taken a bear without a guide present.

Mr. Walker ultimately pleaded guilty to a single count of violating AS 08.54.720(a)(8), “Guide – Commit, Aid, or Allow Violation.”⁴ He received a suspended imposition of sentence, a \$2,000 fine, and a one-year period of probation.⁵ As discussed further below, he did not report this conviction to the Board. The Division therefore only learned about it by happenstance in the course of trying to obtain records requested by the Troopers.

B. Division request for Hunt Records and Hunt Contracts

Trooper McGinnis’s investigation had begun while Mr. N and his clients were still in the field. Trooper McGinnis later interviewed both Mr. N and Mr. Walker separately at the City A airport on September 23, 2015. When Trooper McGinnis asked Mr. Walker for a copy of the hunt record for Mr. N’s hunt,

He said it was at home still and that he had questions on how to fill [it] out regarding N’s bear. In reference to the portion of the hunt record that asks for ‘date harvested,’ Walker asked if the bear N took was legal or not.

Trooper McGinnis confirmed that with Mr. Walker that Walker was not present when Mr. N took the bear, and told Mr. Walker that Mr. N’s bear was therefore “not legal.”⁶ McGinnis “advised Walker to fill out the hunt record accurately, and that he could make a note that the species taken, grizzly bear, was seized by the Alaska Wildlife Troopers.”⁷

As he continued his investigation, Trooper McGinnis eventually contacted Division investigator Lee Strout in May 2016. Trooper McGinnis explained he was investigating Mr. Walker’s guiding operation, and asked Investigator Strout for records pertaining to Mr. Walker’s

³ Ex. 13, pp. 7-8. Mr. Walker contended they were just outside the NCUA, but Trooper McGinnis concluded they were within the NCUA. Ex. 13, p. 8.

⁴ Ex. 15, p. 1.

⁵ Ex. 15, p. 1.

⁶ Ex. 13, p. 10.

⁷ Ex. 13, p. 10. The Troopers’ investigative report indicates that Troopers interviewed Walker at his home in City A two days later, and that during this meeting, “Walker provided us a copy of the hunt record for K N and I photographed it.” Ex. 13, p. 12. But the only version of the hunt record in the Division’s files is the incomplete version with no post-hunt information provided. Ex. 24, p. 845. Given that the after this second interview the Troopers requested the Division’s help in obtaining the hunt record, the preponderance of the evidence supports the conclusion that the hunt record referenced in the Trooper’s report was the incomplete record.

fall 2015 hunts with Mr. N and Mr. X.⁸ Accordingly, Investigator Strout began attempting to contact Mr. Walker to obtain the contracts and hunt records for these two hunts.⁹

In May 2016, Investigator Strout mailed Mr. Walker a certified letter – with the subject line “Alaska Big Game Commercial Services Board (Board) Investigation 2016-000632” – notifying him that the Division had received a complaint about his guiding operation. The letter requested that Mr. Walker provide Investigator Strout the 2015 hunt contracts and hunt records for K N and S X. The letter directed Mr. Walker to submit these materials to Mr. Strout in the Division’s Anchorage office, and provided a phone number where Mr. Strout could be reached.¹⁰

Mr. Walker signed for the letter in June 2016, but did not contact Mr. Strout.¹¹ Instead, and unbeknownst to Mr. Strout, Mr. Walker mailed his X and N hunt contracts and – in the case of N, incomplete – hunt records to the Division’s licensing office in Juneau. Unaware of the circumstances leading up to this mailing, Division licensing examiner Cindy Hansen then contacted Mr. Walker about the missing filing fees that are required to accompany hunt records when filed with the Division.¹² In the course of their email exchange, Mr. Walker told Ms. Hansen that Investigator Strout had requested the records, and also that “the hunt record for K N was not completed because he did not complete the hunt with me.”¹³ Ms. Hansen informed Mr. Walker (1) that if he had a signed contract with Mr. N, a hunt record was required, and (2) that he needed to send the records to Mr. Strout.

Mr. Walker did not send the records to Mr. Strout, and Mr. Strout, unaware of what had been sent to the licensing examiner’s office, continued attempting to contact him. Investigator Strout mailed Mr. Walker additional certified letters requesting the hunt records in September 2016 and August 2017; both letters were returned unclaimed.¹⁴

In October 2017, still having never heard back from Mr. Walker, Investigator Strout requested that the Division licensing examiner place a “do not renew” hold on Mr. Walker’s license.¹⁵ Mr. Walker contacted the Division about the hold, and Investigator Strout emailed him

⁸ Ex. 1, p. 2.

⁹ Guides are required to return all hunt records to the Division’s licensing division within 60 days of the hunt’s completion. Hunt contracts are not automatically filed with the Division, but must be provided to the Division’s investigators upon request. When Investigator Strout had searched the Division’s database for the hunt records in question, he found two copies of a hunt record for G X, and no hunt record for K N. Strout testimony.

¹⁰ Ex. 3, p. 3; Strout testimony.

¹¹ Ex. 3, p. 1; Strout testimony.

¹² Ex. 24, pp. 841-848.

¹³ Ex. 24, p. 847.

¹⁴ Ex. 4; Ex. 5; Strout testimony.

¹⁵ Strout testimony; Ex. 6.

that his renewal had been temporarily suspended pending compliance with his repeated record requests.¹⁶

In an email dated November 29, 2017, Mr. Walker told Mr. Strout that he had sent all requested records by email to the Division’s licensing examiner.¹⁷ Mr. Walker further reported that his home had since been burglarized, and all of his records stolen.¹⁸ Investigator Strout contacted the Alaska State Troopers (“AST”) to follow up on Mr. Walker’s statement about his home having been burgled. AST provided Mr. Strout with two separate reports documenting two reported break-ins at Mr. Walker’s home – once in mid-January 2016, and another time between July 4 and late September 2016.¹⁹

C. Walker 2016 Criminal Charge and Plea Agreement

Along with the burglary reports, AST also provided Investigator Strout with an investigative report involving Trooper McGinnis’s investigation into Mr. Walker’s guiding operation.²⁰ That report concluded that Mr. Walker had used his airplane “to transport moose hunters, moose meat, a class-A assistant guide, and gear” out of a camp within the Noatak Controlled Use Area.²¹ The report indicates that in March 2016, Mr. Walker was issued a summons to appear in City A District Court for a violation AS 08.54.720(a)(8)(A), which makes it unlawful for a person licensed under AS 08 to knowingly commit or aid in the commission or violation of the big game hunting statutes or regulations.

Upon reviewing these materials and looking up the status of the case on Courtview, Mr. Strout opened a second Division investigation into Mr. Walker – this one concerning an apparent guiding violation conviction. Investigator Strout obtained certified court records of Case No. 2KB-16-00181CR.²² Those records reflect that on October 31, 2016 – a full year before his license renewal was suspended due to not responding to record requests – Mr. Walker had pleaded guilty to single a violation of AS 08.54.720(a)(8).²³ Mr. Walker had not reported this conviction to the Board.

¹⁶ Ex. 7; Strout testimony.

¹⁷ As noted, hunt contracts are not filed with the licensing division. Unbeknownst to Investigator Strout, however, Mr. Walker had at some point sent the licensing Division the hunt contracts for these two hunts. Investigator Strout did not learn until the start of the hearing in this matter that the Division actually had copies of the hunt contracts he had been requesting.

¹⁸ Ex. 8; Strout testimony.

¹⁹ Ex. 9; Ex. 10.

²⁰ Ex. 11; Strout testimony.

²¹ Ex. 13, p. 1.

²² Ex. 15.

²³ Ex. 15, p. 1.

As part of a plea agreement, Mr. Walker received a suspended imposition of sentence, and was placed on probation for one year.²⁴ On January 9, 2018, his conviction was set aside pursuant to the suspended imposition of sentence.

D. Walker 2018 License Renewal Application

Mr. Walker submitted a Renewal Application for his Master Guide Outfitter license on February 9, 2018.²⁵

The renewal application form includes a series of questions about whether a guide has had certain issues arise since his or her last license renewal. The section is prefaced by the advice: “When in doubt, disclose and explain.”²⁶ The questions that follow this warning include:

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

3. Have you been convicted of a crime or are you currently charged with committing a crime. For purposes of this question, ‘crime’ includes but is not limited to a misdemeanor, felony, or military offense, including a conviction involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. ‘Convicted’ includes having been found guilty by verdict of a judge or jury, having entered a plea of guilty, nolo contendere, or no contest, or having been given probation, a suspended imposition of sentence, or a fine.

...

5. Have you been convicted of violating a state or federal hunting, guiding, or transportation services statute or regulation?

As to Questions 2 and 3, and despite having pleaded guilty in October 2016 to a violation of AS 08.54.720(a)(8), Mr. Walker checked “no.” As to Question 5, he checked yes, but added the handwritten annotation: “Reported earlier 1992.”²⁷

When he had not received a renewed license a month after submitting the February 2018 renewal application, Mr. Walker threatened legal action.²⁸ The Division’s licensing examiner explained by email that renewal was delayed because the application had failed to disclose or provide a written explanation of his October 2016 conviction.²⁹ Mr. Walker responded: “My attorney told me that I was not pleading guilty to anything. I have forwarded all your emails to

²⁴ Ex. 15, p. 13.

²⁵ Ex. 18.

²⁶ Ex. 18, p. 4.

²⁷ Ex. 18, p. 4.

²⁸ Ex. 24, p. 877. (“I filled out the paper form about a month and a half ago and still no guides license. If I don’t get confirmation or the license in the mail in the next 3 days, I will contact my attorney.”)

²⁹ Ex 24, p. 857.

him.”³⁰ Subsequent communication between Mr. Walker’s then-counsel and the Division was unproductive, and eventually the Division filed an Accusation regarding the underlying conviction, the records requests, and the renewal application.

E. Procedural History

On May 22, 2019, the Division filed a six-count Accusation seeking sanctions against Mr. Walker’s master guide license.

- Counts I and II involved the conviction itself, seeking sanctions based on Mr. Walker’s having been convicted of violating big game hunting laws (Count I), and failing to report to conviction to the Board within 30 days (Count II).
- Counts III and IV involved the records from the August 2015 hunts at issue in the October 2016 conviction, for failing to fill out and file hunt records (Count III), and failing to provide hunt contracts when requested by the Division (Count IV, which was withdrawn at hearing).
- Counts V and VI involve Mr. Walker’s alleged failure to disclose the 2016 conviction on his February 2018 license renewal application.

Mr. Walker submitted a Notice of Defense requesting a hearing on the allegations in the Accusation. Accordingly, the matter was referred to the Office of Administrative Hearings (“OAH”).

On June 21, 2019, attorney Daniel O’Phelan entered his appearance on behalf of Mr. Walker. At status conferences in July and August 2019, counsel for both parties indicated that they were attempting to resolve this matter informally, but Mr. O’Phelan indicated he was having difficulty reaching Mr. Walker. Ultimately, a case planning conference was held on September 5, 2019, at which the parties, through counsel, agreed to hold the hearing in this matter in December 2019.

At a November 5 status conference, however, Mr. O’Phelan indicated he still had not been able to reach Mr. Walker, and would likely need to withdraw from the case if he continued to be unable to reach his client. Accordingly, an Order was issued that day directing Mr. Walker to personally participate in a status conference on November 15, 2019. Although the November 5, 2019 Order was sent to Mr. Walker at the address he had provided in his request for hearing, Mr. Walker did not answer his phone for the November 15 status conference, and did not return a voice mail message left by the undersigned at the time of the status conference. Following the November 15 conference, an Order was issued confirming (1) that Mr. O’Phelan had expressed

³⁰ *Id.*

his intent to withdraw, (2) that the Division remained interested in a resolution should Mr. Walker resurface, and (3) that the December hearing would proceed as scheduled unless Mr. Walker contacted OAH.³¹

At a prehearing conference held December 5, however, both counsel participated, and informed the Administrative Law Judge (“ALJ”) that (1) Mr. Walker had been in contact with Mr. O’Phelan regarding this matter, (2) Mr. O’Phelan had not withdrawn from representation, and (3) the parties had been engaged in settlement discussions. Accordingly, it was agreed that the hearing would be rescheduled to mid-January.

The hearing convened as scheduled on January 15, 2020. Mr. Walker was unable to be reached by phone at the start of the hearing session, and did not return any of several voice mail messages left for him by the ALJ. However, his attorney actively participated in the hearing.

The hearing did not conclude on January 15, and a second hearing session was scheduled for January 27, 2020. Over the Division’s objections, the ALJ held that, if Mr. Walker were to appear for the second session, he would be allowed to testify.

Mr. Strout’s testimony was concluded during the second hearing session. Mr. Walker did not appear and so did not testify. Due to witness availability issues, a final day of testimony was scheduled. The hearing was set to conclude on February 27 with the testimony of Mr. N. That morning, however, Mr. N informed the Division’s counsel that he was unwilling to testify. The parties eventually agreed to close the evidentiary record without calling further witnesses. By agreement of the parties, the record closed on April 3, 2020.³² In its post-hearing brief, the Division affirmed that it was only pursuing Counts I, II, III, and V of the Accusation.³³

III. Discussion

A. Legal and evidentiary framework

This case is governed by the Administrative Procedure Act (APA)³⁴ and by the statutes and regulations governing licensure of Big Game Guides and Transporters.³⁵ Because the Division is seeking to impose discipline on Mr. Walker’s license, the Division has the burden of proof by a preponderance of the evidence.³⁶

³¹ As with the previous order, this order was mailed directly to Mr. Walker.

³² The parties agreed to submit post-hearing briefs in lieu of closing arguments. Mr. Walker did not submit a post-hearing brief.

³³ Division Post-Hearing Brief, p. 10.

³⁴ The APA, found at AS 44.62, is made applicable by AS 44.62.330(a)(21).

³⁵ See AS 08.01, 08.54, and 12 AAC 75.

³⁶ AS 44.62.460(e)(1).

Administrative proceedings conducted under the APA do not follow strict rules of evidence. Rather, relevant evidence is admissible “if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that makes improper the admission of the evidence over objection in a civil action.”³⁷ Under the APA, hearsay is admissible, but may not be used alone to establish a fact unless it would be admissible under the Rules of Evidence.³⁸ Otherwise inadmissible hearsay may, however, “be used to supplement or explain direct evidence.”³⁹ An additional evidentiary principle arises in this case because of Mr. Walker’s failure to testify. Specifically, where independent evidence exists regarding a fact about which a party could testify, an adverse factual inference may be drawn against the party for refusing to testify.⁴⁰ Because Mr. Walker declined to participate in the hearing, the Division is entitled in certain instances to have adverse evidentiary inferences drawn against him.

B. Did the Division meet its burden of showing that Mr. Walker’s license is subject to discipline?

1. Mr. Walker’s license is subject to discipline due to a guiding-related conviction (and his failure to report that conviction within 30 days).

Under AS 08.54.710(a)(1), the Board may impose disciplinary sanctions for a conviction or violation of any state or federal statute or regulation relating to hunting or the provision of big game hunting services. Count I of the Accusation seeks to impose discipline due to Mr. Walker’s conviction of a guiding-related violation.

The Division produced a certified copy of the judgment reflecting Respondent’s conviction under AS 08.54.270(a)(8)(A). In a licensing proceeding, a certified copy of a judgment of conviction is “conclusive evidence of the commission of that offense” for discipline based on that conviction in all circumstances “unless the conviction is overturned on appeal.”⁴¹

Unlike convictions overturned on appeal, the statute does not contain an exemption for convictions that have been “set aside.” Further, the Alaska Supreme Court has expressly rejected the argument that set aside convictions cannot form the basis for discipline by a licensing body. In *Alaska Board of Nursing v. Platt*, as here, the respondent argued that because her conviction

³⁷ AS 44.62.460(d).

³⁸ AS 44.62.460(d).

³⁹ AS 44.62.460(d).

⁴⁰ *Nelson v. State*, 273 P.3d 608, 611-612 (Alaska 2012) (citing *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976)).

⁴¹ AS 08.54.710(f).

had been set aside, it should not be regarded as a conviction within the meaning of the statute allowing for discipline (or in that case, denial of a license) based on a conviction. Mr. Walker undisputedly has a conviction within the meaning of AS 08.54. The Division met its burden of proving Count I.

In addition to the availability of discipline for a guiding-related conviction, the Board's regulations define unprofessional conduct to include failing to report a guiding-related conviction to the Board within 30 days.⁴² Count II of the Accusation seeks disciplinary sanctions due to Mr. Walker's failure to report his conviction within 30 days.

There is no dispute that Mr. Walker did not report the conviction within 30 days. At the hearing, Mr. Walker's attorney argued that, because he had accepted a plea deal in which his conviction would ultimately be set aside if he complied with the terms of probation, Mr. Walker would not have understood that he had a conviction for reporting requirement purposes. But the requirement to report a conviction is not excused by a failure to understand the requirement. Moreover, at the time that his reporting obligation arose – the first thirty days after the conviction – Walker's conviction had not yet been set aside. Thus, at the time he became obligated to report it, the conviction was undisputedly in place. That Mr. Walker anticipated it would later be set aside did not change his obligation to report his conviction within 30 days.⁴³ The Division met its burden as to Count II.

2. Mr. Walker's license is subject to discipline due to his failure to provide complete hunt records (AS 08.54.760(a); 12 AAC 75.205(a)(2)(A) and .210(f)).

Registered guide-outfitters must submit to the Division "a hunt record for each contracted hunt within 60 days after the completion of the hunt."⁴⁴ The hunt record "must include a list of all big game hunters who used the guiding or outfitting services of the registered guide-outfitter, the number of each big game species taken, and other information required by the board."⁴⁵ Count III of the Accusation seeks discipline against Mr. Walker's license for his failure to provide a complete hunt record for his September 2015 hunt with K N.⁴⁶

⁴² 12 AAC 75.340(a)(1), (2)(D).

⁴³ Cf. *In re Umpenhour*, OAH No. 14-0057-GUI (Big Game Commercial Svcs. Bd. 2014), at 13 ("Virgil's good faith belief, however, does not excuse his failure to comply with the Division's request.").

⁴⁴ AS 08.54.760(a)

⁴⁵ *Id.*

⁴⁶ At the start of the hearing, the Division withdrew Count IV, which had alleged that Mr. Walker failed to provide the September 2015 hunt contracts requested by the Division. The remaining record-related count, Count III, concerns the incomplete hunt record.

The Division’s hunt record form consists of three distinct sections – the “top portion,” labelled “must be completed prior to hunt;” the “bottom portion,” labelled “must be completed after hunt – even if hunt is unsuccessful;” and a signature block, labelled “must be signed by the contracting registered guide-outfitter.” The hunt record for Mr. N’s September 2015 hunt – form no. [redacted] – bears a Division date stamp indicating it was received in Juneau on July 5, 2016. The top portion of form [redacted] is filled out in what appears to be Mr. Walker’s handwriting. It identifies Mr. Walker as the guide, Mr. N as the client, and the hunt type as “guided,” and bears Mr. N’s signature, dated September 2015. However, the bottom portion for the form is blank, as is the guide-outfitter’s signature block.⁴⁷

Mr. Walker has suggested that he was not required to submit a hunt record because the hunt was not “completed.”⁴⁸ This argument fails because the hunt record statute requires submission of a hunt record “for each contracted hunt.” The N hunt was a “contracted” hunt – as a non-resident, Mr. N could not hunt without a contract, and Mr. Walker provided the Division with a copy of his contract to provide guide services to Mr. N. The Trooper’s report and Mr. Walker’s own conviction both further support the existence of a guide-client relationship between Mr. Walker and Mr. N.⁴⁹

As for whether the hunt was “completed,” the evidence supports the conclusion that it was. First, completed in this context does not mean successful – the form itself is clear about that. Completed must then carry its commonsense meaning here – it means over, or finished, as in: no longer taking place. A hunt is completed when the hunter returns from the field. There can be no doubt that Mr. N’s hunt was completed by the time he had returned to City A.

⁴⁷ Ex. 24, p. 845.

⁴⁸ See Ex. 24, p. 841.

⁴⁹ Mr. Walker’s counsel objected on hearsay grounds to the introduction of the statements in the Trooper’s report. Hearsay is as an out of court statement offered to prove the truth of the matter asserted. Alaska R. Evid. 801(c). However, not all hearsay is inadmissible, and only *inadmissible* hearsay is subjected to the APA’s exclusionary rule. Under Alaska Evidence Rule 804(b)(3), a “statement against interest” – that is, a statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true” – is not excluded by the hearsay rule if the declarant is unavailable as a witness. In this case, K N was unavailable as a witness because he refused to testify. Alaska R. Evid. 804(a). The statements in question – that N took a bear without a guide present – are statements against interest and therefore admissible due to Mr. N’s unavailability. More fundamentally, though, otherwise inadmissible hearsay may “be used to supplement or explain direct evidence,” and the Trooper report is used here for that purpose – specifically, to supplement or explain the direct evidence of both the conviction and the hunt contract.

Mr. Walker never submitted a completed hunt record for Mr. N's hunt, despite the statutory requirement to do so for each completed hunt,⁵⁰ and the separate regulatory requirement to do so upon request of the Division's investigator.⁵¹ The only version of the N hunt record in the Division's files or otherwise provided during the course of this administrative hearing contains only the portion filled out before the hunt began, with no information added thereafter. The Division therefore met its burden under Count III of proving that Mr. Walker failed to complete a hunt record for N's hunt, failed to submit a hunt record within the time allowed by statute, and failed to produce hunt records upon request, all of which is grounds for discipline.⁵²

3. Mr. Walker's license is subject to discipline due to misrepresentations on his renewal application (AS 08.54.710(a)(3)).

Lastly, the negligent misrepresentation or omission of a material fact on an application for a guide license (including a renewal license) is grounds for discipline.⁵³ Count V of the Accusation involves Mr. Walker's failure to disclose the 2016 conviction and related investigations on his February 9, 2018 license renewal application.

Mr. Walker checked "no" in response to Question 2's inquiry of whether he was aware of any investigations against him since his last license renewal.⁵⁴ This was at best a recklessly untrue statement. Mr. Walker signed for a registered letter from Investigator Strout in June 2016 notifying him that a complaint had been filed against him and asking for the N and X hunt contracts. Although Mr. Strout's next two letters were returned to the Division unclaimed, Mr. Strout also communicated with Mr. Walker by email about his investigation. Plainly, Mr. Walker was aware of the investigations, having been interviewed repeatedly -- and eventually cited -- by the Troopers, as well as being contacted multiple times by Investigator Strout.⁵⁵

Mr. Walker likewise failed to disclose his recent conviction on his 2018 renewal application. Question 3 asks whether the licensee has been convicted of a crime or is currently charged with a crime. The question then expressly clarifies that a conviction includes having been given a suspended imposition of sentence. Despite his October 2016 conviction, Mr. Walker checked "no."⁵⁶

⁵⁰ AS 08.54.760(a)

⁵¹ 12 AAC 75.210(f).

⁵² 12 AAC 75.205(a)(2)(A).

⁵³ AS 08.54.710(a)(3).

⁵⁴ Ex. 18, p. 4.

⁵⁵ Ex. 7.

⁵⁶ Ex. 18, p. 4.

And Mr. Walker failed to accurately and completely answer Question 5 – whether, since his license was last renewed, he had been “convicted of violating a state or federal hunting, guiding, or transportation services statute or regulation.” Mr. Walker checked the yes box, but added a handwritten notation: “Reported earlier 1992.”⁵⁷ The obvious implication from that annotation is that his only guiding-related conviction was the one he “reported earlier,” from 1992. Mr. Walker did not provide any statement or documents disclosing his far more recent 2016 conviction.

The Division met its burden of proving that Mr. Walker negligently failed to disclose (1) having a conviction, (2) having been convicted of a hunting violation, and (3) being the subject of investigations by both the Troopers and the Division’s investigator.⁵⁸

C. What discipline, if any, should be imposed?

The Division having satisfied its burden of proving violations as described above, the Board must determine what level of discipline is appropriate under the circumstances of this case.

Under AS 08.01.075(f), the Board is required to “seek consistency in the application of disciplinary sanctions.” The Board uses a matrix of criminal sanctions and previous disciplinary actions to guide its decision-making in determining the appropriate level of discipline for any particular statute or regulation.⁵⁹ Whether the offense is a first, second, or third, and the nature of the offense, as well as the totality of circumstances, all influence the appropriateness of any particular disciplinary outcome.

The key factors influencing the nature of the recommended discipline in this case are the number and nature of violations, and Mr. Walker’s failure to timely respond to the Division’s inquiries throughout the course of the case.

Only one violation – the conviction itself – directly involves the actual provision of guiding services. However, the subject of the conviction – allowing or facilitating hunting in a closed area – is a serious matter, and one which is difficult to police given the remoteness in which licensees operate. Particularly where violations implicate the need for guides to self-

⁵⁷ Ex. 18, p. 4.

⁵⁸ AS 08.54.710(a)(3). The Division elected not to pursue Count VI of the Accusation, which characterized the same omissions as knowing misrepresentations for which permanent revocation would be warranted under AS 08.54.710(d).

⁵⁹ As previous decisions have noted, the matrix has not been adopted into regulation, and so “is not binding or even necessarily authoritative.” *Umpehour, supra*, at 14, fn. 56. It can nonetheless be a useful starting point in considering the historical range of disciplinary options imposed.

police their behaviors, disciplinary sanctions are necessary and valuable to the Board's ability to regulate the profession.

While the other violations concern documentation, they also all involve the failure to provide full and accurate information to the Division and the Board – whether by not reporting matters required to be reported, not filing required forms, not responding to investigators' documentation requests, or not disclosing unfavorable information on a renewal application. Prior decisions have characterized the withholding of information from a Division investigator as a serious violation. Whether information is withheld out of a protest against the perceived unfairness of an investigation, because of distraction or the press of other business, or because of a genuine misunderstanding about one's reporting requirements, withholding information can impede investigations, as well as waste finite time and resources. Non-disclosure also impedes the Board's ability to police a profession that necessarily operates largely out of view.

A related factor weighing in favor of a higher degree of discipline is the amount of time this matter consumed due to Mr. Walker's failure to respond to contacts from the Division. Mr. Walker's repeated failure to respond to – or in some cases even pick up – communication from the Division led to unnecessarily protraction of and confusion in this matter. A mitigating factor is that Mr. Walker did produce some of the records requested by Mr. Strout, although he sent them to the wrong location (despite being repeatedly provided the correct location), which again impeded the Division's investigation. Other mitigators are the length of Mr. Walker's time of licensure and the lack of evidence of prior offenses or complaints about his provision of guiding services.

Turning to the Board's matrix of prior disciplinary decisions, first-time violations of the types at issue in this case have generally resulted in a fine ranging from \$500 to \$5000 (per violation) and a one-year period of probation. For a first-time violation of AS 08.54.710(a)(1) (conviction of a guiding violation), the matrix reflects that past case precedent supports a fine of twice the criminal fine, plus up to one year of probation.⁶⁰ For a first-time violation of AS 08.54.710(a)(2) (failure to file required reports), the matrix advises that case precedent supports a letter of advisement or a fine ranging from \$500 to \$5,000, and up to one year of probation.⁶¹ For a first-time violation of AS 08.54.710(a)(3) (negligent misrepresentation or omission of a

⁶⁰ Ex. 21, p. 19. Mr. Walker's sentence for the conviction at issue in this case included a fine of \$2,000. Ex. 15, p. 1.

⁶¹ Ex. 21, p. 19.

material fact on an application), the matrix advises that case precedent supports a fine ranging from \$500 to \$5,000, and up to one year of probation.⁶²

The Division requests that the Board impose a fine (\$4,000, with \$2,000 suspended), a one-year period of probation, and a public reprimand.⁶³ Upon weighing the conduct at issue and the historical precedent set out in the matrix, the Division's requests are well taken.

A fine of \$4,000 is twice the fine imposed in the criminal case, and would fall within the matrix's recommendations for that Count alone. As a total fine for all four violations committed by Mr. Walker, a fine of \$4,000 is on the lower end of precedential discipline. Given Mr. Walker's lengthy time of licensure, and the lack of any evidence of complaints about his service as a guide, and his apparent (albeit mistaken) belief that he had complied with Mr. Strout's request, a lower end fine is reasonable in this case. A period of probation will enhance the Board's ability to ensure compliance in the future. And a public reprimand will serve the purpose of educating Mr. Walker and the broader guiding community about the necessity of complying with both substantive law and reporting requirements.

IV. Conclusion

The Division met its burden of showing that Mr. Walker had failed to timely report a guiding-related conviction, failed to complete a hunt record, and negligently failed to make various required disclosures on his renewal application. A fine, probationary period, and reprimand are appropriately imposed, as follows:

- A fine of \$4,000, with \$2,000 suspended, is hereby imposed, with the non-suspended portion due within six months of distribution of the final decision in this matter.
- A one-year period of probation is hereby imposed, with the probationary period beginning on the date of distribution of the final decision in this matter.
- A public reprimand is hereby issued against Mr. Walker as follows:
You are hereby reprimanded by the Board for your conviction in the 2nd District Court of Alaska, City A for operating an aircraft while providing Big Game Commercial Services within the Noatak Controlled Use Area during a time when doing so is prohibited. Furthermore, you are hereby reprimanded for your failure to disclose this conviction and the Division Investigation on your 2018-2019 Renewal Application. It is your responsibility as an individual licensed under AS 08.54, specifically as a Master Guide-Outfitter, to know the

⁶² Ex. 21, p. 19.

⁶³ Mr. Walker did not file a post-hearing brief, and did not take a position at the hearing on what discipline, if any, should be imposed.

laws that govern your industry and to ensure that such an offense does not happen again.

Dated: May 26, 2020

Signed
Cheryl Mandala
Administrative Law Judge

MODIFIED ADOPTION OF PROPOSED DECISION

The Big Game Commercial Services Board, in accordance with AS 44.64.060(e)(1) and (e)(3), modifies the sanction imposed in this case to add the following detailed terms of probation, and otherwise adopts the proposed decision in its entirety.

IT IS HEREBY ORDERED that any license issued to Respondent by the Big Game Commercial Services (BGCS) Board is under probation. This license shall be subject to the following terms and conditions of license probation.

A. Duration of Probation

Respondent's license shall be on probation for one (1) years effective the date of this order. If Respondent fully complies with all the terms and conditions of this license probation, the probationary period will end as conditioned under this Order. The probationary period will not be reduced by any period in which Respondent does not hold an active license in Alaska to include periods for which Respondent's license is in suspended or lapsed status.

B. Violation of Probation

If Respondent fails to comply with any term or condition of this order regarding Probation, the Division may enforce the probation by immediately suspending Respondent's license, without an additional order from the Board or without a prior hearing, for a violation of probation. In addition, any suspended portion of the civil fine will be immediately due. If Respondent's license is suspended under this paragraph, as provided above, he will be entitled to a hearing, on an expedited basis, regarding the issue of the suspension. If Respondent's license is suspended, he will continue to be responsible for all license requirements pursuant to AS 08.54.

C. Respondent Address

It is the responsibility of the Respondent to keep the Board's agent advised, in writing, at all times of his current mailing address, physical address, telephone number, current employment and any change in employment. Failure to provide notice of any changes within 10 calendar days will constitute grounds for suspension of his license in accordance with paragraph 'B' above.

D. Compliance with Laws

Respondent shall obey all federal and state laws governing his license.

E. Address of the Board

All required reports or other communication concerning compliance with this Consent Agreement shall be addressed to:

*Attn: Probation Monitor
Division of Corporations, Business and Professional Licensing
550 West 7th Avenue, Suite 1500
Anchorage, Alaska 99501-3567
(907) 269-8174 Fax (907) 269-8195*

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 distribution of this decision.

DATED this 22nd day of July 2020.

By: Signed
Signature
Henry D. Tiffany IV
Name
Chairman, BGCSB
Title