

**STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC
DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL
LICENSING**

BIG GAME COMMERCIAL SERVICES BOARD

**MINUTES OF MEETING
July 22, 2016**

By the authority of AS 08.01.070(2) and AS 08.86.030, and in compliance with the provisions of AS 44.62, Article 6, a scheduled teleconference of the Big Game Commercial Services Board was held July 22, 2016.

The staff of the Division of Corporations, Business and Professional Licensing prepared these minutes. They were approved by the board in an email vote between October 21 and November 2, 2016.

AGENDA ITEM 1 CALL TO ORDER/ROLL CALL

The meeting was called to order by Kelly Vrem, Chair, at 9:09 a.m.

Board members present:

Kelly Vrem, Master Guide-Outfitter, Chair
Michele Metz, Large Private Landowner
David Brown, Board of Game Representative
Gene Peltola, Public Member
Karen Polley, Public Member
Tom Atkins, Transporter

Board members absent:

Nicholas Jackson, Large Private Landowner
David Jones, Transporter
Henry D. Tiffany IV, Master Guide-Outfitter

Board staff present:

Cindy Hansen, Licensing Examiner
Lee Strout, Investigator
Harriet Milks, Assistant Attorney General

AGENDA ITEM 2 PETITION TO AMEND 12 AAC 75.930

AAG Ms. Milks reminded the members about a potential conflict of interest and the importance of disclosure. She has a letter from March 8, 2016 from Virgil Umphenour in which he makes a few requests. The first request is for the board to “find an emergency because 12 AAC 75.930 was not written in the codified correctly to reflect the board’s intent, and it is being used illegally by the department to violate the guarantees of the 14th Amendment to the U.S. Constitution to due process, fair and equal treatment under law, and right to confront one’s accuser.” Ms. Milks stated the significance of this would change the regulation process. Unambiguous emergencies in the regulatory world are rare and used only for public safety health and welfare. In her opinion Mr. Umphenour has not made the case for an emergency; however, this decision is up to the board and will need to state the emergency.

Ms. Milks stated Mr. Umphenour requests the board “direct the department to follow the process outlined in AS 08.01.087(b) prior to initiating an investigation of persons regulated by the BGCSB.” Ms. Milk’s opinion is that it is not necessary for the board to make a finding because the state is always obligated to follow this law.

Ms. Milks stated Mr. Umphenour also asks the board to “direct the department to cease usurping the board’s duties under AS 08.54.600(a)(1)(B),(6), and (8)(c)(3) and AS 08.07.070(4).” Ms. Milk’s opinion is that it is not necessary because the state is always obligated to follow this law.

Ms. Milks stated the fourth request is to amend 12 AAC 85.75.930 to identify the person who files a complaint. The board can choose to table the discussion, which she does not recommend. The board can find the regulation is fine as is or the board could begin the amendment process.

Mr. Umphenour stated he agreed that petitions are very rarely accepted as far as finding an emergency but he has been on boards including the Board of Fisheries and they find emergencies. The emergency is the department violated 12 AAC

75.930 by opening an investigation or responding to a complaint when no complaint had been made. The department made a false statement. The trooper in Fairbanks wanted the contracts of him and his son. This board has acquired a tremendous amount of debt because the department requests contracts for frivolous or unlawful reasons. Over \$80,000 was spent on this case. That was not the intent of the board at the time the regulation was created.

Ms. Milks stated she will not argue against Mr. Umphenour. He had an avenue for relief and used it.

She read for the board Sec. 44.62.250, Emergency regulations: A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of AS 44.62.040 (c), 44.62.060, and 44.62.190 - 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after filing by the lieutenant governor the agency shall give notice of the adoption in accordance with AS 44.62.190 (a). Failure to give the required notice by the end of the 10th day automatically repeals the regulation. This is an individual issue, not something that relates to the public peace, health or welfare.

Mr. Umphenour stated he believes this meets the requirement of general welfare because the board is severely in debt. This has happened to several guides where no complaints were made.

Chairman Vrem stated he is familiar with what constitutes an emergency and he understands Mr. Umphenour's frustration but he does not believe it is an emergency. He wants to examine 12 AAC 75.930 and look at the meeting minutes for clarification. Both the division and Mr. Umphenour made mistakes and this has been an extremely unfortunate incident. He would like to see a motion to do research on the regulation and take it up at the December meeting.

Ms. Polley moved to find Mr. Umphenour's request to find an emergency because 12 AAC 75.930 was not written in the codified correctly to reflect the board's intent,

and it is being used illegally by the department to violate the guarantees of the 14th Amendment to the U.S. Constitution to due process, fair and equal treatment under law, and right to confront one's accuser, and Ms. Metz seconded.

Ms. Polley is going to vote against the motion because she doesn't believe it qualifies as an emergency.

Mr. Atkins stated he agrees with Ms. Polley although he understands Mr. Umphenour's intent. There was a lot going on behind the scenes that bother him.

Chairman Vrem stated he also believes it doesn't rise to an emergency but wants to see action for the December meeting.

Roll Call Vote:

	APPROVE	DENY	ABSTAIN	ABSENT
Kelly Vrem		X		
Karen Polley		X		
David Brown		X		
Michele Metz		X		
Nicholas Jackson				X
David Jones				X
Tom Atkins		X		
Henry D. Tiffany IV				X
Gene Peltola		X		

Upon a motion duly made by Ms. Polley, seconded by Ms. Metz and approved by roll call vote, it was:

RESOLVED, in accordance with AS 44.64.060, to decline to find Mr. Umphenour's request to find an emergency because 12 AAC 75.930 was not written in the codified correctly to reflect the board's intent, and it is being used illegally by the department to violate the guarantees of the 14th Amendment to the U.S. Constitution to due process, fair and equal treatment under law, and right to confront one's accuser.

Ms. Milks stated AAC 44.62.230, "Upon receipt of a petition requesting an amendment or appear, a state agency, within 30 days, will deny the petition in writing or schedule the matter for a public hearing under the procedures act." The board will need a motion to determine whether or not the board will deny the petition to begin a new regulation project or amend the regulation for the December meeting. The board needs to decide as a body.

Ms. Polley moved to accept Mr. Umphenour's petition to amend 12 AAC 75.930 and Mr. Atkins seconded.

Chairman Vrem stated he intends to vote in favor of the motion and wants the regulation examined.

Ms. Metz stated she also intends to vote in favor and wants the regulation as clear as possible and follow the intent of the statute.

Mr. Peltola stated he also agrees with the motion to examine the regulation.

Ms. Milks stated she will be happy to help the board in drafting language that is responsive to the ideas expressed in Mr. Umphenour's request.

Roll Call Vote:

	APPROVE	DENY	ABSTAIN	ABSENT
Kelly Vrem	X			
Karen Polley	X			
David Brown	X			
Michele Metz	X			
Nicholas Jackson				X
David Jones				X
Tom Atkins	X			
Henry D. Tiffany IV				X
Gene Peltola	X			

Upon a motion duly made by Ms. Polley, seconded by Mr. Atkins and approved by roll call vote, it was:

**RESOLVED, to accept Mr. Umphenour's petition to amend 12 AAC
75.930**

AGENDA ITEM 3 EXECUTIVE SESSION

On a motion duly made by Ms. Polley, seconded by Mr. Peltola and approved unanimously, it was

RESOLVED to enter into executive session in accordance with AS 44.62.310(c), and Alaska Constitutional Right to Privacy Provisions, for the purpose of discussing Subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion and Matters which by law, municipal charter, or ordinance are required to be confidential and for the purpose of discussing confidential disciplinary matters for the purpose of discussing investigations and reports.

Staff member Ms. Hansen remained during executive session.
Administrative Law Judge Neil Slotnick participated during the executive session.

The Board entered into executive session at 9:52am and exited out of executive session at 10:55am.

AGENDA ITEM 4 OAH NO. 15-1346-GUI

Ms. Metz moved the Alaska Big Game Commercial Services Board adopt this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter. Ms. Polley seconded.

1. Counts I, II, and V are dismissed.
2. Mr. Salitan is fined \$500 with \$250 suspended for one year of probation for his violation of Count III. The fine is due 30 days after the Board adopts this order, and is late if not paid within 30 days after it is due. The probationary period begins the day after the Board adopts this order, and ends one year later. If Mr. Salitan pays his fine on time, and completes the one-year probation period without a further violation of a guiding or hunting law, the \$250 suspended fine will be dismissed.

3. Mr. Salitan is fined \$500 for his violation of Count IV. The fine is due 30 days after the Board adopts this order, and is late if not paid within 30 days after it is due.
4. The following reprimand is placed in Mr. Salitan's file:

Mr. Salitan, during a hunt that took place in 2012, you failed to adequately plan for a change in circumstance and did not facilitate removing the clients, the meat, and the trophies from the field in a timely manner after the hunt ended and bad weather set in. Your conduct in that hunt fell below the standard of care that the board has established for licensed registered guides. You are admonished to exercise greater care in future hunts.

Chairman Vrem stated he will vote in favor of the motion.

Mr. Atkins stated he believed he could make a decision in regards to Mr. Salitan's case in a fair and impartial manner, but decided it best that he abstain, thus giving the Board the opportunity to make a decision based on the facts before them.

Roll Call Vote:

	APPROVE	DENY	ABSTAIN	ABSENT
Kelly Vrem	X			
Karen Polley	X			
David Brown	X			
Michele Metz	X			
Nicholas Jackson				X
David Jones				X
Tom Atkins			X	
Henry D. Tiffany IV				X
Gene Peltola	X			

Upon a motion duly made by Ms. Metz, seconded by Ms. Polley and approved by roll call vote, it was:

RESOLVED, to adopt this Decision under the authority of AS 44.64.060 (e)(1), as the final administrative determination in this matter.

AGENDA ITEM 5 CASE NO. 2016-000757

Ms. Polley moved to accept the consent agreement in Case No. 2016-000757 and Ms. Metz seconded.

Mr. Atkins stated this is a fair decision and he finds it hard to levy a harder fine as the Registered Guide (#1134) is an upstanding and honest person. This was purely accidental and won't happen again. He appreciates the Investigator's work on this.

Ms. Polley stated she will support this agreement because he self-reported and realized in progress he made a mistake and this is something we want to encourage. The fine is acceptable.

Roll Call Vote:

	APPROVE	DENY	ABSTAIN	ABSENT
Kelly Vrem	X			
Karen Polley	X			
David Brown	X			
Michele Metz	X			
Nicholas Jackson				X
David Jones				X
Tom Atkins	X			
Henry D. Tiffany IV				X
Gene Peltola	X			

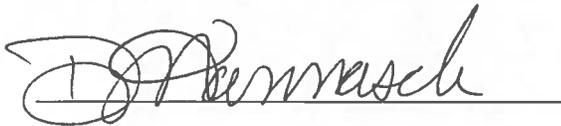
Upon a motion duly made by Ms. Metz, seconded by Ms. Polley and approved by roll call vote, it was:

RESOLVED, to accept the consent agreement in Case No. 2016-000757, Registered Guide-Outfitter#1134, Ben Stevenson.

AGENDA ITEM 6 ADJOURNMENT

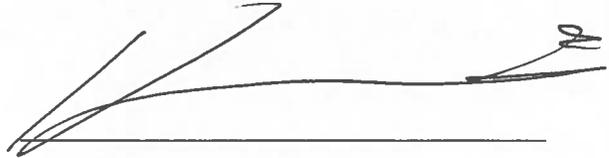
Chairman Vrem adjourned the meeting of the Alaska Big Game Commercial
Services Board at 11:10am.

Respectfully submitted:



Cindy Hansen, Licensing Examiner

Date 7/13/18



Kelly Vrem, Chairperson

Big Game Commercial Services Board

Approved Date: 11.2.16