

**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
August 3, 2011**

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 meeting of the Big Game Commercial Services Board was held August 3, 2011.

Wednesday, August 3, 2011

Item 1. Call to Order/Roll Call

The meeting of the Big Game Commercial Services Board was called to order by Paul Johnson, Chair at 8:03 a.m. Members present were:

Paul Johnson, Registered Guide-Outfitter, Chair
Leif Wilson, Transporter, Vice-Chair
Kelly Vrem, Master Guide-Outfitter
Karen Polley, Public Member
Brenda Rebne, Private Landholder
Don Quarberg, Public Member

Not in attendance were:

Dirk Nickisch, Transporter
Raymond Stoney, Private Landholder

Excused from the meeting due to a scheduling conflict were:

Ted Spraker, Board of Game

Present from the Division of Corporations, Business and Professional Licensing were:

Karl Marx, Licensing Examiner
Cynthia Spencer, Licensing Examiner
Quinten Warren, Chief Investigator
Lee Strout, Investigator

Sara Chambers, Program Coordinator

Present from State and Federal agencies were:

Kevin Saxby, Dept. of Law, Assistant Attorney General
Rebecca Pauli, Dept. of Administration, Administrative Law Judge

Present from the public were:

Kevin Fitzgerald, Attorney for Chad Reel
Chad Reel, Registered Guide-Outfitter

Paul Johnson gave the Board and attendees a brief break out of the main topic of this teleconference. Mr. Johnson relayed that the Board must complete State of Alaska case Nos. 2011-000455/0458 and that as he was consulted on this issue he would recuse himself from discussing the case, would not join the Board during executive session and would turn running the meeting over to Leif Wilson. Mr. Johnson also stressed to the Board that they should feel free to ask questions, request case tape recordings, documentation, etc. Mr. Johnson requested that Karl Marx, licensing examiner call him on his cell phone as soon as the Board returned from executive session.

Item 2. Review/Amend Agenda

Cynthia Spencer asked the Board to be aware of Item 6, application review. Ms. Spencer informed the Board that if time did not allow for the application review the applications licensing staff would send the applications to the Board for mail/email voting.

Item 3. Ethics Disclosure

The Board had no ethics violations to report.

Item 4. Executive Session

Brenda Rebne asked for clarification on the documents emailed to Board members with a letter from Judge Rebecca Pauli dated August 2, 2011 which states "Any board member who did not participate in the deliberation on the July 25, 2011 decision must refrain from participating in the board's consideration of the petition."

Judge Pauli responded that all Board members in attendance today would be able to participate in all aspects of the case with the exception of Mr. Johnson.

Mr. Wilson asked for a motion to adjourn into executive session.

On a motion duly made by Karen Polley, seconded by Don Quarberg, and approved unanimously, it was

RESOLVED to adjourn into Executive Session under the authority of AS 44.62.310 to discuss a Petition for Reconsideration and OAH No. 11-0183-GUI/Agency Nos. 2011-000455/0458.

Kevin Fitzgerald, Attorney asked if he and Chad Reel would be able to address the Board or if the Board had any questions for himself or Mr. Reel. Judge Pauli stated that addressing the Board would not be appropriate at this time as the Division would need to be invited and this address would be appropriate for a "public comment" time which had not been public noticed for this meeting in accordance with the Open Meeting act.

Sara Chambers, Program Coordinator wondering procedurally during deliberations be taking specific notes on the order so when you exit executive session the order being specifically clarified for the record what the Board wishes to take action on or if staff can be invited by the Board into executives session to capture and codify the Boards wishes to order.

Mr. Wilson stated he would prefer staff to be invited into executive session to act in a "secretarial" position to take notes; Mr. Wilson asked Judge Pauli if there would be a problem with this.

Judge Pauli informed the Board that Kevin Saxby would be the one to decide she could participate in the executive session or if staff could participate. Mr. Wilson asked Judge Pauli if it would be better/cleaner if staff did not attend. Judge Pauli agreed that not having staff participate would be better.

Ms. Chambers expressed concern to the Board that for the sake of the Board and clarity of any Board action(s) staff does not know what decision the Board makes during executive session and are expected to; having someone make note of what action(s) the Board decides on would help the Board and staff to make sure information is recorded correctly.

Mr. Wilson stated he felt the Board could get close enough and then once back on record they could get the information clarified. Ms. Chambers stated that if Mr. Wilson was referring to a "clerk" function if it is cleaner and makes more sense to the Board to not retain clerical staff for the execution session that it would make sense if a member of the Board would act in that capacity so all of the information is captured in clarity when back on the record. Mr. Wilson asked Ms. Polley if she would act in that capacity.

Judge Pauli responded that she would, however she would like to note on the record that any discussion that takes place during executive session is not subject to the open meetings act that what the Board decides to put on the public record will be stated after the Board adjourns from executive session and if for whatever reason if someone is not clear on the decision they could ask for clarification but executive session is a privileged deliberative process between the final decision makers non deliberators who are not otherwise authorized should not be present I am a non-deliberator who is permitted by statute to attend as I do not vote or argue persuasively for either side I am just there to answer questions the Board may have and remind Board and staff that this is an executive session.

Mr. Wilson thanked Judge Pauli and stated that he was sorry he was actually addressing Ms. Karen Polley in his question if she would accept acting in the “clerk” function for this session. Judge Pauli apologized

Ms. Polley stated she would take notes for the purpose of clarity on Board action. Mr. Wilson thanked Ms. Polley and stated that this would help with clarity once back on the record.

Judge Pauli informed the Board that the notes would be part of the deliberative process and not subject to public review. The Board thanked Judge Pauli.

Mr. Johnson stated that as he has asked to be called so he can re-join the Board after executive session he thought Mr. Fitzgerald and Mr. Reel may also want a call so they can re-join as well and requested Mr. Marx get their contact information and call them as well after executive session.

Mr. Wilson asked for a roll call on the entering executive session motion.

Roll Call Vote

NAME	YES	NO	Abstain
Leif Wilson	X		
Don Quarberg	X		
Kelly Vrem	X		
Brenda Rebne	X		
Karen Polley	X		
Paul Johnson			X

The Board adjourned into executive session at 8:25 a.m., and returned from executive session at 9:52 a.m.

On a motion duly made by Karen Polley, seconded by Don Quarberg, and approved unanimously, it was

RESOLVED to reject the Administrative Law Judge's Decision for Final Action, choose non-adoption option B in accordance with AS 44.64.060(e)(3), in the matter of Chad A. Reel Agency File #2011-000455/0458 and revises the enforcement action, determination of best interest, order award, remedy, sanction, penalty, or other disposition of the case as follows:

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

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

- 1. Mr. Reel is to pay the portion of his \$4,000 fine which was suspended in Case No. 1700-08-016 and 1700-08-038, that is, \$3,000. This fine must be paid within 180 days of the effective date of this order.**

- 2. Additionally, Mr. Reel shall be assessed a civil fine of \$5,000 in this matter. \$2,000 shall be due within 180 days of the effective date of this order. The remaining \$3,000 shall be suspended. If Mr. Reel commits no other violations of wildlife, hunting, guiding, or transporter rules and regulations in any jurisdiction before the end of the three-year revocation period, his obligation to pay the remaining \$3,000 is extinguished. If Mr. Reel does commit a violation of wildlife, hunting, guiding, or transporter rules and regulations in any jurisdiction before the end of the three-year period, the remaining \$3,000 fine amount becomes due and payable immediately upon a final determination by the board that Mr. Reel has committed the violation.**

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

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

Roll Call Vote

NAME	YES	NO	Abstain
Leif Wilson	X		
Brenda Rebne	X		
Don Quarberg	X		
Kelly Vrem	X		
Karen Polley	X		

Mr. Wilson turned the meeting back over to Mr. Johnson as the Board concluded Agenda Item 4.

Item 6. Application Review

- Kurt Whitehead d/b/a Alaska Glacier Adventures, Initial Transporter Applicant
- Nikkia Atkins, Registered Guide-Outfitter Examination Applicant
- Allen McKinney, Initial Assistant Guide Applicant
- Matthew Moskiewicz, Registered Guide-Outfitter Examination Applicant
- John D. Nichols, Initial Class-A Assistant Guide Applicant
- Gene L. Smith, Initial Assistant Guide Applicant

Mr. Johnson reminded the Board that they could issue licenses with limitations, probation, etc.

The Board reviewed information provided by staff regarding the assistant guide license application for Gene L. Smith.

Mr. Wilson stated he felt Mr. Smith met the requirements for licensure as an assistant guide. The Board agreed with Mr. Wilson and conducted a roll call vote.

Mr. Quarberg stated he would abstain from voting on this application as he had not received the emailed documentation.

On a motion duly made by Leif Wilson, seconded by Karen Polley, and approved unanimously, it was

RESOLVED to approve the application of Gene L. Smith for licensure as an Assistant Guide pending the receipt of the \$250.00 resident license fee.

Roll Call Vote

NAME	YES	NO	Abstain
Leif Wilson	X		
Brenda Rebne	X		
Paul Johnson	X		
Don Quarberg			X
Kelly Vrem	X		
Karen Polley	X		

The Board reviewed information provided by staff regarding the assistant guide license application for Allen McKinney.

On a motion duly made by Leif Wilson, seconded by Don Quarberg, and approved unanimously, it was

RESOLVED to approve the application of Allen McKinney for licensure as an Assistant Guide.

Roll Call Vote

NAME	YES	NO
Brenda Rebne	X	
Kelly Vrem	X	
Don Quarberg	X	
Paul Johnson	X	
Karen Polley	X	
Leif Wilson	X	

The Board reviewed information provided by staff regarding the registered guide-outfitter examination application for Matthew Moskiewicz.

Mr. Wilson reviewed the information provided relating to Mr. Moskiewicz's 2005 incident; while with a client a large two year old grizzly bear was harvested. Mr. Wilson went on to state that Mr. Moskiewicz did self reported, was convicted of a strict liability offence, paid a \$500.00 fine and was placed on probation until October 26, 2007.

Mr. Johnson stated that he felt Mr. Moskiewicz was eligible for licensure once he passed the exams; however the Board should have Mr. Moskiewicz attend one of the Sessions pertaining to Bears that are being offered during the December and March Board meetings. The Board agreed with Mr. Johnson.

Ms. Spencer asked the Board if there they had a set time frame during which Mr. Moskiewicz should take the Session. The Board responded that they had no time frame and Mr. Moskiewicz could attend the Session before or after he passed the registered guide-outfitter exams.

Ms. Polley stated that she felt Mr. Moskiewicz should definitely be more educated on bears.

Mr. Quarberg stated he would abstain from voting on this application as he had not received the emailed documentation.

On a motion duly made by Leif Wilson, seconded by Karen Polley, and approved unanimously, it was

RESOLVED to approve the application of Matthew Moskiewicz for licensure as a Registered Guide-Outfitter pending passing of the Registered Guide Qualification examinations.

Roll Call Vote

NAME	YES	NO	Abstain
Paul Johnson	X		
Don Quarberg			X
Leif Wilson	X		
Brenda Rebne	X		
Kelly Vrem	X		
Karen Polley	X		

The Board reviewed information provided by staff regarding the registered guide-outfitter examination application for Nikkia Atkins.

On a motion duly made by Leif Wilson, seconded by Karen Polley, and approved unanimously, it was

RESOLVED to approve the application of Nikkia Atkins for licensure as a Registered Guide-Outfitter pending passing of the Registered Guide Qualification examinations.

Roll Call Vote

NAME	YES	NO
Leif Wilson	X	
Brenda Rebne	X	
Paul Johnson	X	
Don Quarberg	X	
Kelly Vrem	X	
Karen Polley	X	

The Board reviewed information provided by staff regarding the class-A assistant guide license application for John D. Nichols.

Mr. Quarberg stated he would abstain from voting on this application as he had not received the emailed documentation.

On a motion duly made by Leif Wilson, seconded by Karen Polley, and approved unanimously, it was

RESOLVED to approve the application of John D. Nichols for licensure as a Class-A Assistant Guide.

Roll Call Vote

NAME	YES	NO	Abstain
Brenda Rebne	X		
Don Quarberg			X
Paul Johnson	X		
Kelly Vrem	X		
Karen Polley	X		
Leif Wilson	X		

Item 5. Investigative Report

After reviewing information provided by staff regarding Chris Cassidy's registered guide-outfitter license #1067 surrender the Board conducted a roll call vote.

Mr. Johnson asked Quinten Warren, Investigator if this surrender would allow Mr. Cassidy to re-apply for licensure as a guide or transporter at some point.

Mr. Warren informed the Board that with the wording used in the surrender documentation Mr. Cassidy would not be eligible to re-apply OR apply for a guide or transporter license.

On a motion duly made by Leif Wilson, seconded by Karen Polley Vrem, and approved unanimously, it was

RESOLVED to accept the license surrender of Chris Cassidy.

Roll Call Vote

NAME	YES	NO
Leif Wilson	X	
Brenda Rebne	X	
Paul Johnson	X	
Don Quarberg	X	
Kelly Vrem	X	
Karen Polley	X	

Item 6. Application Review Continued

The Board reviewed information provided by staff regarding the transporter license application for Kurt Whitehead d/b/a Alaska Glacier Adventures.

Mr. Wilson stated that he felt Mr. Whitehead did not qualify for licensure in accordance with AS 08.54.605 and would be voting not to issue this license.

Mr. Warren stated that Mr. Whitehead does qualify as the fines imposed are criminal fines and not fines imposed by this Board.

Mr. Johnson stated he would prefer more discussion in a face to face setting and asked the application be tabled for further review at the Boards December 2011 meeting.

Mr. Wilson stated that the Board did fine Mr. Whitehead in the amount of \$3500. Mr. Johnson agreed with Mr. Wilsons. Mr. Warren reviewed AS 08.54.605 and stated that the "conviction" is referring to "criminal court" and that if the Board wanted fines it imposes to be included in the statute, this would require a statutory change. Mr. Wilson stated that he would also prefer more face to face discussion with staff and agreed with Mr. Johnson's suggestion to table the application. Mr. Vrem agreed with Mr. Wilson.

On a motion duly made by Leif Wilson, seconded by Kelly Vrem, and approved unanimously, it was

RESOLVED to table the application of Kurt Whitehead d/b/a Alaska Glacier Adventures for further face to face discussion at the Boards December 6-8, 2011 meeting.

Roll Call Vote

NAME	YES	NO
Leif Wilson	X	
Kelly Vrem	X	
Don Quarberg	X	
Brenda Rebne	X	
Karen Polley	X	
Paul Johnson	X	

Ms. Polley asked Mr. Marx to review the information he provided relating to class-A assistant guide Craig Hill's consent agreement.

Mr. Marx informed the Board the consent agreement stated Mr. Hill must take an ethics course and within a 6-month period. Mr. Marx went on to state that Mr. Hill had been working with Terry Overly, master guide-outfitter who already has a guide training course approved by the Board to put together an ethics course that the Board might approve. Mr. Marx informed the Board that the current proposal would be offered on-line as accessibility to Mr. Overly's residence in Tok, Alaska is an issue.

Ms. Rebne asked if there would be any face to face time between Mr. Hill and Mr. Overly during the course.

Mr. Johnson stated he was not comfortable with an on-line course; however he understands the location and accessibility problems.

Mr. Vrem stated that the State of Alaska administered an on-line ethics training as part of his Board member introduction; he went on to state that there was no test just a video to watch. Mr. Vrem went on to state that he was disappointed Mr. Hill needed such a course however he was happy with the efforts made by Mr. Hill to meet the requirements of his consent agreement and that he would be ok with the on-line course. Mr. Johnson agreed with Mr. Vrem.

Mr. Quarberg stated he would prefer to see a syllabus of the course. Ms. Polley agreed with Mr. Quarberg and stated that the information provided on the course was vague.

Mr. Vrem stated that Mr. Overly already has an approved course which does state that a portion of the course would include "class room" portion and that the "class room" portion could be on-line. Mr. Vrem also stated that he understands that location is also an issue.

Mr. Johnson asked Mr. Marx to send Board members a copy of the packed Mr. Overly passed out to Board members when the Board approved his assistant guide training course. Mr. Marx stated he would get information to Board members.

Ms. Rebne stated she had some trepidation with an on-line course; she went onto state at what point does the Board feel face to face education is needed.

Mr. Johnson asked that this topic be added to the December 2011 meeting agenda for further discussion and review.

Ms. Spencer asked Mr. Johnson if the Board was going to address the "Reel Consideration Order".

The Board responded that they would not address the "Consideration" as they had already made the decision during this meeting to suspend Mr. Reel's license.

Mr. Johnson stated he was turning the meeting back over to Mr. Wilson so the Board could discuss the "Consideration Order" as he could not discuss any of Mr. Reel's issues.

Ms. Chambers addressed the Board stating that there were several problems with the Board's FY11 Annual report; these concerns would be put in writing by Don Habeger, Division Director and herself for the Board to review at its next meeting.

Mr. Johnson disconnected from the teleconference at 10:49a.m.

Mr. Wilson stated that he felt this "Reel re-consideration" was not necessary as the Board choose to adopt "non-adoption option" and stated he felt with this action no further actions were necessary. The Board agreed with Mr. Wilson.

Ms. Polley asked that a work session be added to the December 2011 meeting to review the process of Consent Agreements and Memorandum of Agreements. Mr. Wilson agreed with Ms. Polley. Ms. Polley also stated that she felt the Board was in need of training.

Mr. Wilson agreed with Ms. Polley and went on to state that it would be helpful to the Board to have more information/training for when an issue does arise that a licensee has violated a consent agreement, memorandum of agreement, etc. Mr. Wilson stated that it would be great if the Board had information and then would be able to move forward on an issue with ease.

Mr. Quarberg agreed with Ms. Polley and Mr. Wilson. Mr. Quarberg also stated that he felt it was odd that the Division didn't have the authority to deal with situations like this and went onto state that the Division should have this authority.

Mr. Wilson stated that he had spoken with Mr. Saxby about this issue and informed the Board Mr. Saxby would be working with them on this issue.

Mr. Warren informed the Board that the Division did in fact have the authority to deal with issues like this; however actions taken by this Board during its July 2011 teleconference negated that authority.

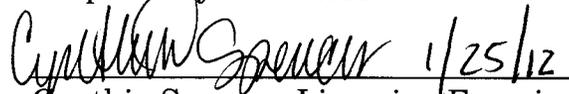
Mr. Wilson stated training was definitely needed.

Ms. Rebne stated that she was having multiple problems with information for this teleconference being emailed as she was having problems keeping the information together. Ms. Rebne asked staff that in the future to send a bullet point email listing all the documents that were emailed to Board members.

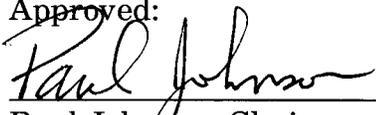
Mr. Quarberg moved to adjourn the meeting seconded by Mr. Vrem.

The Board adjourned at 11:04 a.m.

Respectfully submitted:


Cynthia Spencer, Licensing Examiner

Approved:


Paul Johnson, Chairperson
Big Game Commercial Services Board

Date: 1-30-12