

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

BRIAN J. GALLAGHER,
RESPONDENT.

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FINAL DECISION AND ORDER

ORDER 0002851

Division of Legal Services and Compliance Case No. 13 RHI 355

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Brian J. Gallagher
28735 Crabtree Corner Rd.
Cuba City, WI 53807

Division of Legal Services and Compliance
Wisconsin Department of Safety and Professional Services
P.O. Box 7190
Madison WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Department of Safety and Professional Services (Department). The Department has reviewed this Stipulation and considers it acceptable.

Accordingly, the Department adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Brian J. Gallagher (dob May 17, 1973) is registered in the State of Wisconsin as a Home Inspector, having license number 1423-106, first issued on March 3, 2004 and current through December 14, 2014. Respondent's most recent address on file with the Department is 28735 Crabtree Corner Rd., Cuba City, WI 53807.

2. In 2013, the Department conducted an audit of registered Home Inspector continuing education for the 2011-12 biennium.

3. On Respondent's 2012 renewal application, Respondent certified that he had completed 20 hours of continuing education per calendar year for a total of 40 hours of continuing education within the 2011-12 biennium.

4. Pursuant to the Department audit, Respondent was found to be noncompliant with the continuing education requirements for registered home inspectors in the 2011-12 biennium as Respondent did not complete any hours of continuing education.

5. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Safety and Professional Services has jurisdiction to act in this matter pursuant to Wis. Stat. § 440.978, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § SPS 135.02(2) by failing to complete at least 20 hours of continuing education during each calendar year for the 2011-12 biennium.

3. By the conduct described in the Findings of Fact, Respondent is subject to discipline pursuant to Wis. Stat. § 440.978(2)(a) by making a material misstatement in an application for a certificate or renewal of a certificate.

4. As a result of the violations noted in the Conclusions of Law, Respondent is subject to discipline pursuant to Wis. Stat. § 440.978(2)(a) and (m).

ORDER

1. The attached Stipulation is accepted.

2. The VOLUNTARY SURRENDER of Respondent Brian J. Gallagher's Home Inspector License (number 1423-106) is hereby ACCEPTED.

3. Respondent shall not perform home inspections in the State of Wisconsin without being licensed to do so by the Department.

4. Respondent shall not re-apply for licensure for a period of two (2) years following the date of this Order.

5. Should Respondent re-apply for licensure:

a. Respondent shall pay COSTS of this matter in the amount of \$55.00, before any such application may be considered.

b. Respondent shall successfully complete, during the biennial period immediately preceding the application, the continuing education requirements specified in Wis. Admin. Code § SPS 135.02. Respondent shall submit proof of the successful completion of the education with the application. The education completed pursuant to this limitation may not be used to satisfy any other

registered home inspector continuing education requirements with the Department.

c. Respondent shall submit a new application for licensure and meet all requirements for licensure or certification existing at the time of the application.

d. The Department may determine whether and under what terms and conditions such licensure may be granted.

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a revocation of Respondent's right to re-apply for licensure. The Department in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.

7. This Order is effective on the date of its signing.

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

by:


Michael J. Berndt, Chief Legal Counsel
On Behalf of the Department

12/13/13
Date

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

BRIAN J. GALLAGHER,
RESPONDENT.

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STIPULATION

ORDER 0002851

Division of Legal Services and Compliance Case No. 13 RHI 355

Respondent Brian J. Gallagher and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Department of Safety and Professional Services (Department). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Department's Order, if adopted in the form as attached.

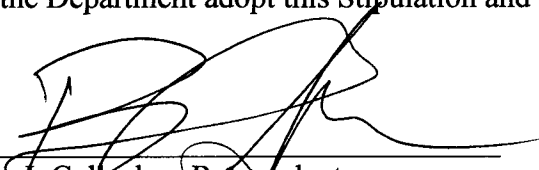
5. If the terms of this Stipulation are not acceptable to the Department, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the

Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Department, the parties agree not to contend that the Department has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance may appear before the Department, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that the Department may have in connection with deliberations on the Stipulation.

7. Respondent is informed that should the Department adopt this Stipulation, the Department's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending that the Department adopt this Stipulation and issue the attached Final Decision and Order.



Brian J. Gallagher, Respondent
28735 Crabtree Corner Rd.
Cuba City, WI 53807
License No. 1423-106

Date

6/12/13



Al Rohmeyer, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison WI 53707-7190

Date

12/10/13 AFR
~~12/5/13~~

RECEIVED

DEC 10 2013

DEPT OF SAFETY & PROFESSIONAL SERVICES
DIVISION OF ENFORCEMENT