

**MINUTES**  
**BOARD OF HEARING AID SPECIALISTS**  
**GENERAL BUSINESS MEETING**  
**The Walt Disney Swan & Dolphin Resort**  
**1500 Epcot Resorts Blvd.**  
**Lake Buena Vista, FL 32830**  
**(407) 934-4000**

**Friday, September 11, 2015 2:00 p.m.**

**CALL TO ORDER/ROLL CALL**

The meeting was called to order at 2:00 p.m. by Ms. Polhill, Chair. Those present for all or part of the meeting included the following:

Members present:

Leanne Polhill, Chair  
Randy Ellsworth, Vice-Chair  
Pam Dechmerowski  
Douglas Moore  
Thomas Hollern  
Maria Hernandez

Member absent:

Robert Pickard, M.D. – excused absence  
John Fischer – excused absence

Staff present:

Marlene Stern, Board Counsel  
Sue Foster, Executive Director  
Octavio Simoes-Ponce, Prosecuting Attorney  
Penny Johnson, Regulatory Supervisor  
Candace Rochester, Esq., Section Manager, Prosecution Services Unit

Ms. Polhill recognized Dr. Pickard for his excellent service on the Board of Hearing Aid Specialists and for his work with Veterans. He works with his non-profit organization dedicated to helping veterans and families in need.

**APPROVAL OF MINUTES**

**July 11, 2014 General Business Meeting**

The minutes of the July, 2014 meeting were reviewed and following review, the following action was taken by the Board:

Motion: by Ms. Dechmerowski to approve the minutes

Second: by Mr. Ellsworth

Vote: unanimous

**September 24, 2014, TCC General Business Meeting**

The minutes of the September, 2014 meeting were reviewed and following review, the following action was taken by the Board:

Motion: by Mr. Ellsworth to approve  
Second: by Ms. Dechmerowski  
Vote: unanimous

**DISCIPLINARY PROCEEDINGS**

**Mariaelena I. Torres, Case #2013-13758 (Fischer & Dechmerowski)**

**Settlement Agreement**

Ms. Torres was present and was not represented by counsel. A two count administrative complaint filed November 12, 2014 alleged violations of s.456.0721(1)(a) and s.484.056(1)(a), F.S. of misleading, deceptive or fraudulent representations concerning not being able to return the hearing aid within a 30 day period. A settlement agreement was presented to the Board with the following terms: reprimand, \$3000 refund to patient within one year of final order; fine of \$500 payable within one year; costs of \$1,493.53 payable within 2 years; 2 hours in laws and rules CE within one year.

Following discussion, the following action was taken:  
Ms. Torres requested that her settlement be withdrawn and this case forwarded for a formal hearing.

**Armando I. Torres, Case # 2014-13514 (Fischer & Dechmerowski)**

**Voluntary Relinquishment**

Mr. Torres was not present nor represented by counsel. A two count administrative complaint filed November 12, 2014 alleged violations of s.456.072(1)(c), F.S. of being convicted or found guilty or entering a plea of nolo contendere to a crime which relates to the practice involving trafficking of cocaine, heroin and drug paraphernalia possession. Count II alleges failure to report within 30 days, a conviction required by 456.072(1)(x), F.S.

A Voluntary Relinquishment of License was presented to the Board in which respondent agrees to never reapply for licensure as a hearing aid specialist in the State of Florida.

Following discussion, the following action was taken by the Board:  
Motion: by Mr. Ellsworth to accept the voluntary relinquishment  
Second: by Mr. Hollern  
Vote: unanimous

**Andre J. Schmalenberger, Case # 2014-04147 (Lowell & Fischer)**

**Waiver/Informal Hearing**

Mr. Schmalenberger was not present nor represented by counsel. An administrative complaint filed September 16, 2014 alleged violations of s. 484.0512, F.S. concerning the 30 day trial and failure to refund patient.

A Motion for Determination of Waiver and For Final Order by Hearing not involving disputed issues of material fact was presented to the Board as respondent failed to file an election of rights.

Following discussion, the following action was taken by the Board:

Motion: by Mr. Moore that respondent was properly served

Second: by Ms. Dechmerowski

Vote: unanimous

Motion: by Ms. Dechmerowski to accept the investigative file into evidence

Second: by Mr. Moore

Vote: unanimous

Motion: by Ms. Dechmerowski to adopt the allegations of fact as set for the in the administrative complaint as the Board's findings of fact

Second: by Mr. Hollern

Vote: unanimous

Motion: by Ms. Dechmerowshi to adopt the conclusions of law in the administrative complaint as Board's conclusions of law and find the respondent in violation of Florida Statutes as charged in the administrative complaint

Second: by Mr. Moore

Vote: unanimous

Department's recommendation: either revocation

Motion: by Mr. Ellsworth to revoke the license

Second: by Mr. Moore

Vote: unanimous

A Motion to Assess Costs of \$ 561.38 was presented to the Board. Following discussion, the following action was taken:

The Department withdrew the motion for costs.

**Andre J. Schmalenberger, Case # 2014-09421 (Fischer & Dechmerowski)  
Waiver/Informal Hearing**

Mr. Schmalenberger was not present nor represented by counsel. A six count administrative complaint filed November 13, 2014 alleged violations of s. 484.051(2), F.S. regarding failure to include required information on receipt as to whether the hearing aids were new, used or rebuilt; s. 484.056(1)(v), F.S. of exercising influence on a patient for financial gain; s. 484.056(1)(k), F.S. showing or demonstrating a product that is unusable; s. 484.0512 regarding the 30 day trial and money back guarantee; s. 484.056(1)(w), F.S. of failure to supervise a hearing aid specialist trainee; s.484.072(1)(j), F.S. employing an unlicensed person as a hearing aid specialist trainee.

A Motion for Determination of Waiver and For Final Order by Hearing not involving disputed issues of material fact was presented to the Board as respondent failed to file an election of rights.

Following discussion, the following action was taken by the Department:

The Department withdrew this case since Board had revoked the license on the previous case.

## **APPLICATION REVIEW**

### **Training Program Application**

#### **Tara N. Briggs**

Ms. Briggs has applied for the Training program. She is appearing before the board due to an affirmative response on the applicant history section of the application.

Following discussion, the following action was taken by the Board:

Motion: by Mr. Ellsworth to approve her application for training program

Second: by Ms. Dechmerowski

Vote: unanimous

### **Training Program Application (Addendum – file folder)**

#### **Monica M. Blewitt**

Ms. Blewitt was present and was not represented by counsel. She is appearing due to an affirmative response on the applicant history section of the application.

Following discussion, the following action was taken by the Board:

The Board requested that Ms. Blewitt's sponsor be present for questions from Board members.

Ms. Blewitt waived the 90 day requirement and staff will set up a telephone conference call for additional review.

## **RULE DISCUSSION**

### **64B6-3.005 Inactive Status and Renewal of Inactive License**

Board counsel requested that this rule be withdrawn.

### **64B6-4.002 Examination and Re-examination Fees**

Board Counsel has requested that this rule be withdrawn for this meeting.

### **64B6-4.008 Unlicensed Activity Fee**

This rule is unnecessary as this fee is in statute and gives the Department the authority to collect the \$5.00 fee.

Motion: by Ms. Hernandez to repeal

Second: by Ms. Dechmerowski

Vote: unanimous

SERC: Statement of Estimated Regulatory Costs

Motion: by Mr. Ellsworth that there is no financial impact on small businesses

Second: by Ms. Dechmerowski

Vote: unanimous

### **64B6-4.011 Special Assessment Fee**

This rule is obsolete and needed to be repealed. Following discussion, the following action was taken by the Board:

Motion: by Ms. Dechmerowski

Second: by Mr. Moore

Vote: unanimous

SERC: Statement of Estimated Regulatory Costs

Motion: by Ms. Dechmerowski that there is not a financial impact on small businesses

Second: by Mr. Hollern

Vote: unanimous

**64B6-6.002 Requirements to Inform Prospective Purchasers Regarding Technologies**

This rule was removed from the agenda.

**64B6 – 4.009 Inactive and Delinquent Status Fees (Addendum)**

Board counsel requested edit and change to this rule to remove prior chapter 455, F.S.

Motion: by Ms. Dechmerowski to accept the change to this rule

Second: by Mr. Ellsworth

Vote: unanimous

SERC:

Motion: by Ms. Dechmerowski that there is no impact on small businesses

Second: by Mr. Hollern

Vote: unanimous

**TOPIC DISCUSSION**

**Matt Knispel, Bureau of Enforcement and Candace Rochester, Esq., Prosecution Services**

Matt Knispel, Central District Manager, Bureau of Enforcement, Medical Quality Assurance and Sidronio “Chilo” Casas, Chief investigator with the unlicensed activity program addressed the Board regarding investigations, unlicensed activity, and the complaint process.

Ms. Candace Rochester, Esq., Section Manager of the Allied Health Section, Prosecution Services Unit, discussed the legal process of a complaint.

**BOARD RATIFICATION**

**Trainee/Sponsor and Transfer List**

Motion: by Ms. Hernandez to approve the list

Second: by Ms. Dechmerowski

Vote: unanimous

**REPORTS**

**Assistant Attorney General**

**Rules Report**

Ms. Stern reported that there were no rules pending at this time.

**Assistant General Counsel, Prosecution Services Unit**

Ms. Rochester reported that there were 15 cases in the Legal section which were pre-probable cause; 2 in which probable cause had been found; and 8 cases that were over 1 year old.

## **Board Executive Director**

### **Budget Information**

Ms. Foster reported that the budget information is there for the Board's information and the five year outlook does not include a deficit. The ending cash balance for June 30, 2018 is over \$500,000. The Board may be able to consider another reduction in the \$500 biennial renewal fee in the future.

### **Strategic Plan**

Ms. Foster discussed strategic planning with the Board members regarding a SWOT analysis of the Board's strengths, weaknesses, opportunities and threats. It was mentioned that strengths included dedicated board members and other stakeholders, weaknesses could be budget issues, fingerprinting and background checks for future applicants; threats were mail order hearing aids, misleading editorials on licensure requirements.

Ms. Foster mentioned that the Long range planning meeting scheduled for September 23, 2015 would include the SWOT survey sent to all 150 board members. It was noted that hearing aid board members had been one of the top boards whose members had responded.

## **OTHER BUSINESS**

### **Election of Officers**

Motion: by Mr. Ellsworth to nominate Ms. Polhill as Chair

Second: by Mr. Hollern

Vote: unanimous

Motion: by Ms. Dechmerowski to nominate Mr. Ellsworth as Vice-Chair

Second: by Mr. Hollern

Vote: unanimous

### **Delegation of Authority**

Ms. Foster requested an edit to #8 and #9 to allow the Chair/Executive Director to approve the applicant or request an appearance. Approval would be if there is a minor infraction which occurred several years ago. Following discussion, the following action was taken by the Board:

Motion: by Mr. Ellsworth to approve the delegation of authority

Second: by Ms. Dechmerowski

Vote: unanimous.

## **Meeting Date and Location for 2016 - (July 8, 2016 at Clearwater)**

### **FYI**

- **The Register's Editorial and Response from Kathleen Mennillo, Executive Director, International Hearing Society**  
Ms. Polhill stated that IHS gave an excellent response to this editorial.
- **Board of Hearing Aid Specialists, Statistics**  
Ms. Foster reviewed some of the statistics with the Board members.
- **Governor Rick Scott Reappoints Hearing Aid Specialists Board Member**
- **Healthiest Weight Liaison Meeting**
- **Moving our State to its healthiest weight**
- **Final Report Boards and Councils Healthiest Weight Florida Liaison Meeting**

- **Talking with Patients about Weight Loss: Tips for Primary Care Providers**  
Ms. Polhill discussed the healthiest weight
- **Department of Health, Hearing Aid Specialists Renewal Report**
- **Department of Health, Continuing Education Integration Project Renewal Cycle**
- **March 1, 2013 – February 28, 2015**

#### **ADJOURNMENT**

The meeting was adjourned at 4:35 p.m.