

**BOARD OF HEARING AID SPECIALISTS
GENERAL BUSINESS MINUTES
EMBASSY SUITES ORLANDO –
(Lake Buena Vista South)
4955 Kyngs Heath Road
Kissimmee, Florida 34746
(407) 597-4000
Friday, July 14, 2017 at 10:00 a.m.**

CALL TO ORDER

The meeting was called to order at 10:00 a.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
John Fischer - excused

Staff present:

Marlene Stern, Board Counsel
Jennifer Wenhold, Executive Director
Octavio Simoes-Ponce, Prosecuting Attorney
Peter Delia, Prosecuting Attorney
Jennifer Weaver, Prosecuting Attorney
Penny Johnson, Regulatory Supervisor
Court Reporter – Diana Brundage – American Court Reporting
(407) 896-1813

APPROVAL OF MINUTES

July 8, 2016 General Business Meeting

The minutes of the July 8, 2016 meeting were reviewed and the following action was taken by the Board:

Motion: by Mr. Ellsworth to approve the July 8, 2016 minutes.

Second: by Mr. Moore

Vote: Unanimous

Ms. Polhill took the International Hearing Society (IHS) Presentation by Ms. Parady out of order of the agenda. Ms. Parady, Director of Government Affairs, International Hearing Society addressed the Board regarding the new legislative changes for HR 1652 for over-the-counter hearing aids. This bill amends the Federal Food, Drug, and Cosmetic Act to require the Food and Drug Administration (FDA) to categorize certain hearing aids as over-the-counter hearing aids and issue regulations regarding those hearing aids. Ms. Parady explained that HR 2430 has been introduced in the House which may also effect the sale of over-the-counter hearing aids.

DISCIPLINARY PROCEEDINGS

SETTLEMENT AGREEMENT

JOE CROGAN, H.A.S., SETTLEMENT AGREEMENT, CASE # 2016-18265

A continuance to the next board meeting was requested by the respondent's attorney and Ms. Polhill approved the request.

NICHOLAS R. GRAY, H.A.S., SETTLEMENT AGREEMENT, CASE # 2016-18704

Mr. Gray was present and was represented by Jamie Dokovan, Esquire. A one count administrative complaint filed on April 10, 2017 alleged violations of s. 484.056(1)(w), F.S., (2014-2015) by violating section s. 456.072(1)(o), F.S., (2014-2015) for practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

A settlement agreement was presented to the Board with the following terms: reprimand; fine of \$1,000.00 to be paid within 1 year of the final order; costs in the amount of \$2,500 to be paid within 2 years from the filing date of the final order.

Current costs of the case are \$2,572.21. Following discussion, the Board took the following action:

Motion: by Mr. Moore to table this case for a brief period of time during the meeting.

Second: by Ms. Dechmerowski

Vote: Unanimous

The Board revisited Mr. Gray's case and the following action was taken:

Motion: by Mr. Moore to reject the settlement agreement as presented in the agenda.

Second: by Ms. Dechmerowski

Vote: Unanimous

Motion: by Mr. Ellsworth to offer a counter agreement to include a fine of \$2,500, and costs of \$2,572.21 both to be paid within 1 years from the date the final order is filed with the Department of Health. Also, the agreement would include a reprimand.

Second: by Ms. Dechmerowski

Vote: Unanimous

MATTHEW CRAMER, H.A.S., SETTLEMENT AGREEMENT, CASE # 2016-18701

Mr. Cramer was present and was represented by Jamie Dokovan, Esquire. A two count administrative complaint filed on April 14, 2017 alleged violations of s. 484.056(1)(w), F.S., (2014-2015), by violating s. 484.0445, F.S. (2014-2015) and or Rule 64B6-8.001, F.A.C., and s. 484.056(1)(w), F.S., (2014-2015), by violating s. 456.072(1)(p), F.S., (2014-2015) for delegating the performance of professional responsibilities by a person when Respondent knew, or had reason to know, that the person was not qualified by training, experience, and authorization when required to perform them.

A settlement agreement was presented to the Board with the following terms: Letter of Concern, Fine of \$1,000.00 to be paid within one (1) year from the date of the final order; costs \$3,000.00 to be paid within two (2) years from the date Respondent's filing date of the Final Order.

Motion: by Mr. Ellsworth to reject the settlement agreement.

Second: by Ms. Dechmerowski

Vote: Unanimous

Motion: by Mr. Ellsworth to offer an agreement of \$3,500 each count for the two count administrative complaint, and costs of \$3,716 and require all fees be paid within 1 year from the filing date of the final order. The agreement would also include suspension of sponsor eligibility for 2 years beginning the filing date of the final order.

Second: by Mr. Moore

Vote: Unanimous

Motion: by Ms. Polhill added to the agreement to allow Mr. Cramer to request an appearance before the Board after 12 months of the filing date of the final order to request sponsor eligibility.

Second: by Ms. Dechmerowski

Vote: Unanimous.

VOLUNTARY RELINQUISHMENT

ROBERT RONGO, H.A.S., VOLUNTARY RELINQUISHMENT, CASE # 2015-08789

Mr. Rongo was not present nor represented by counsel at the meeting. A two count administrative complaint was filed on December 23, 2015 alleged violations of s. 484.056(1)(d), F.S., (2010-2013) by pleading nolo contendere to theft of state funds/failure to remit tax in violation s. 212.15(2), F.S., and/or pleading nolo contendere to grand theft in violation of s. 812.014(1)(a), F.S. also violation of s. 456.072(1)(x), F.S., (2010-2013) respondent failed to report his nolo contendere pleas in writing to the Board of Hearing Aid Specialists within 30 days.

A voluntary relinquishment was presented to the Board. After review, the board took the following action:

Motion: by Mr. Moore to accept the Voluntary Relinquishment.

Second: by Mr. Hollern

Vote: Unanimous

PETITION FOR VARIANCE OR WAIVER OF RULE

Tracy Clark - AS 4778 & Ellen Gertner – AS 2177

Ms. Clark was present but was not represented by counsel. Ms. Gertner was not present at the meeting. Both Ms. Clark and Ms. Gertner are disputing the courses they took for the Prevention of Medical Errors requirement should be approved continuing education by the Board of Hearing Aid Specialists and count toward their renewal. The continuing education courses they took were from a provider that was approved by the Florida Board of Clinical Social Work, Marriage and Family Therapy and Mental Health Counseling. CEBroker did not allow credit for the Prevention of Medical Errors course and they both were not allowed to renew which defaulted their licensees to a delinquent status. Ms. Stern explained to the Board that she had responded to Ms. Sarah Casey, Esquire indicating the petition submitted was not a proper petition and provided instruction in Chapter 120. To date a proper petition has not been received.

After discussion, the board took the following action:

Tracy Clark - AS 4778

Motion: by Mr. Ellsworth to deny the petition for variance and waiver request as the Board does not have jurisdiction over Chapter 491, F.S.

Second: by Mr. Hollern

Vote: Unanimous

B. Ellen Gartner - AS 2177

Motion: by Mr. Ellsworth to deny the petition for variance and waiver request as the Board does not have jurisdiction over Chapter 491, F.S..

Second: by Ms. Dechmerowski

Vote: Unanimous

RULE DISCUSSION

64B6-2.003 Licensure by Examination

Ms. Wenhold explained the changes that are being impacted from HB 229 which amends s. 456.0635, F.S. revising grounds for refusing to issue or renew a license in a health care profession. These changes will also effect Rules 64B6-2.003 F.A.C. and 64B6-8.002 F.A.C. She also mentioned a department wide standardized licensure application that would be presented at a future meeting. After discussion, the board made the following motions:

Motion: by Ms. Dechmerowski to open rule development for Rule 64B6-2.003 F.A.C. and bring back proposed language to the next meeting.

Second: by Mr. Ellsworth

Vote: Unanimous

64B6-8.002 Qualifications for Trainees, Sponsors and Designated Hearing Aid Specialists.

Motion: by Ms. Dechmerowski to open rule development for Rule 64B6-8.002, F.A.C. and bring back proposed language to the next meeting.

Second: by Mr. Ellsworth

Vote: Unanimous

64B6-5.003 Reporting Continuing Education Attendance

The Board reviewed the proposed language to Rule 64B6-5.003, F.A.C. which deleted the requirements for random audits of licensees, and took the following action:

Motion: by Mr. Ellsworth to approve the proposed changes to Rule 64B6-5.003, F.A.C. as listed in the agenda.

Second: by Ms. Dechmerowski

Vote: Unanimous

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

Second: by Mr. Hollern

Vote: unanimous

Motion: by Mr. Moore that this will not directly or indirectly increase regulatory costs of over \$200K in the aggregate within the first year of this rule being filed.

Second: by Ms. Dechmerowski

Vote: unanimous

Motion: by Ms. Dechmerowski that the changes to this rule would not constitute a minor violation.

Second: by Mr. Moore

Vote: Unanimous

64B6-8.003 Trainee Stages, Minimum Training Requirements, and Training Program

The Board reviewed the proposed language to require Trainees to take the International Licensing Examination within 30 days after being contact by International Hearing Society of their eligibility and took the following action:

Motion: by Mr. Ellsworth to approve the proposed changes to Rule 64B6-8.003, F.A.C.

Second: by Ms. Dechmerowski

Vote: Unanimous

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

Second: by Mr. Moore

Vote: unanimous

Motion: by Mr. Moore that this will not directly or indirectly increase regulatory costs of over \$200K in the aggregate within the first year of this rule being filed.

Second: by Ms. Dechmerowski

Vote: unanimous

Motion: by Ms. Dechmerowski that the changes to this rule would not constitute a minor violation.

Second: by Mr. Ellsworth

Vote: Unanimous

TOPIC DISCUSSION

Federal Over- the- Counter Legislation was moved to the front of the agenda.

Proposed Fee Reduction Scenarios

The Board reviewed the proposed fee reduction scenarios offered by the Department of Health. After discussion the following action was taken:

Motion: by Mr. Ellsworth to accept #4 on the fee reduction scenario chart provided in the agenda and open rule development for Rule 64B6-4.003(1) F.A.C.

Second: by Mr. Moore

Vote: Unanimous

Motion: by Ms. Dechmerowski that there is no adverse financial impact on small businesses and will not increase regulatory costs of over \$200K in the aggregate within one year of this rule being filed.

Second: by Mr. Moore

Vote: unanimous

Motion: by Ms. Dechmerowski that the changes to this rule would not constitute a minor violation.

Second: by Mr. Ellsworth

Vote: Unanimous

Motion: by Mr. Ellsworth to accept #4 on the fee reduction scenario chart provided in the agenda and open rule development for Rule 64B6-4.004 F.A.C.

Second: by Mr. Moore

Vote: Unanimous

Motion: by Ms. Dechmerowski that there is no adverse financial impact on small businesses and will not increase regulatory costs of over \$200K in the aggregate within one year of this rule being filed.

Second: by Mr. Moore

Vote: unanimous

Motion: by Ms. Dechmerowski that the changes to this rule would not constitute a minor violation.

Second: by Mr. Ellsworth

Vote: Unanimous

Ms. Wenhold explained how the Office of Fiscal Accountability and Regulatory Reform (OFARR) has tasked Medical Quality Assurance (MQA) with making additional reductions in lines of regulatory.

REPORTS

Assistant Attorney General

Ms. Stern reported on the status of the rules listed in the December 2016 Rules Report.

Prosecutor's Report

The Prosecutor's Report was addressed by Mr. Delia and indicated the Board had 17 cases which included 10 that were a year old, 4 post PCP cases, 3 of which were on today's agenda.

Motion: by Mr. Ellsworth to move that Prosecution Services to work on these cases so they may be brought up to date.

Second: by Mr. Hollern

Vote: Unanimous

Board Executive Director

The Financial Reports were provided for reference material and for proposed fee reduction discussion.

Ms. Wenhold provided information on the anti-trust issue giving an update on recent events and gave the members a chance to ask any questions regarding anti-trust.

Board Members

No action was taken

OTHER BUSINESS

Board Ratification - Initial License List

The list of initial licenses beginning with AS 5210 and ending with AS 5293 was reviewed by the board and the following action was taken:

Motion: by Mr. Moore to ratify the list of initial licenses beginning with license number AS 5210 and ending with AS 5293 .

Second: by Mr. Hollern

Vote: unanimous.

Board Ratification – Trainee/Sponsor and Transfer List

The list of trainees interring the HAS Training Program beginning with AST 615 and ending with AST 722 was reviewed by the board and the following action was taken:

Motion: by Mr. Moore to ratify the list of initial trainee licenses beginning with AST 615 and ending with AST 722.

Second: by Mr. Ellsworth

Vote: unanimous.

Delegation of Authority

The board reviewed the annual delegation of authority and after discussion the Board made the following motion:

Motion: by Ms. Dechmerowski to approve the proposed Delegation of Authority listed in the agenda with the addition of the delegation to the Executive Director to sign certifying rules indicating a minor violation.

Second: by Mr. Hollern

Vote: Unanimous

Election of Officers

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

Second: by Mr. Ellsworth

Vote: Unanimous

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

Second: by Ms. Polhill

Vote: Unanimous

New Business

No action taken.

FOR YOUR INFORMATION

- Health Care Clinic Establishments - Self-Inspection Industry Notification Letter
 - Travel Reimbursement Process Change
 - Prescription Drug Monitoring Program
 - FDA Eliminates Physician Waiver
 - Dept. of Labor's HAS Apprenticeship Training
- Ms. Polhill explained the apprenticeship training program that the Department of Labor has presented to the Board for review. However, she explained that this time, the new language had been rescinded.

ADJOURNMENT

The meeting was adjourned at 1:33 p.m.