

AGENDA
BOARD OF HEARING AID SPECIALISTS
GENERAL BUSINESS MEETING
Sheraton Sand Key Resort
1160 Gulf Boulevard
Clearwater, Florida 33767
(727) 595-1611
Friday, July 12, 2013 10:00 a.m.

I. CALL TO ORDER/ROLL CALL

The meeting was called to order at 10:00 am by Ms. Polhill, Chair. Those present for all or part of the meeting included the following:

Members present

Leanne Polhill, Chair
John Fischer
Maria Hernandez
Robert Pickard, M.D.
Douglas Moore
Thomas Hollern
Randy Ellsworth

Member absent:

Joseph Someillan

Staff Present

Marlene Stern, Board Counsel
Sue Foster, Executive Director
Penny Johnson, Regulatory Supervisor
Tobey Schultz, Prosecutor
Sharmen Hibert, Prosecutor
Court Reporter: Ann Ballstierri - Dempster Berryhill Court Reporting

APPROVAL OF MINUTES

July 13, 2012 General Business Meeting

The minutes of the July 13, 2012 meeting were reviewed. Following review, the following action was taken by the Board:

Motion: by Mr. Fischer

Second: by Mr. Ellsworth

Vote: unanimous

DISCIPLINARY PROCEEDINGS

Christopher B. Antonelli Case # 2012-10815 (Lowell & Someillan)

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Settlement Agreement

Mr. Antonelli was present and was not represented by counsel. A two count administrative complaint filed September 26, 2012 alleged violations of s. 484.056(1)(j), F.S. for advertising goods or services in manner which is fraudulent, false, deceptive or misleading by using business cards identifying him as a hearing aid specialist when he was not yet licensed; s. 484.056(1)(w), F.S. of violation of any part of Chapter 484, Part II.

A settlement agreement was presented to the Board with the following terms: letter of concern, fine of \$250, costs not to exceed \$1600. Costs of this case were \$724.39.

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

Motion: by Mr. Moore to accept the settlement agreement

Second: by Mr. Fischer

Vote: unanimous

Amy W. Ladimir Case # 2011-12412 (Lowell & Fischer)

Settlement Agreement

Ms. Ladimir was present and was not represented by counsel. A two count administrative complaint filed February 7, 2013 alleged violations of s. 484.056(1)(w), F.S. and s. 484.051(2), F.S. regarding language on the receipt that should have specified whether the hearing aid was new, used or rebuilt; and s. 484.056(1)(g), F.S. of alleged fraud, deceit, negligence, incompetency or misconduct in the practice by listing the hearing aids sold to patient as new rather than demonstrator models.

A settlement agreement was presented to the Board with the following terms: letter of concern, costs of \$1,960.87

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

Motion: by Mr. Ellsworth to accept the settlement agreement

Second: by Mr. Hollern

Vote: unanimous

Andrew Koppele Case # 2011-11298 (Lowell & Fischer)

Voluntary Relinquishment

Mr. Koppele was not present nor represented by counsel. A two count administrative complaint filed February 24, 2012 alleged violations of s. 484.056(1)(w), F.S. by offering to sell hearing aids through mail and s. 484.056 (1)(h), F.S. of violation of a lawful order of the Board in a previously entered disciplinary hearing.

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. Moore

Vote: unanimous

Andrew Koppele Case # 2009-17549 (Lowell & Fischer)

Voluntary Relinquishment

Mr. Koppele was not present nor represented by counsel. A two count administrative complaint filed January 7, 2013 alleged violations of s. 456.072(1)(w), F.S. of failure to report to the board within 30 days after licensee has been convicted or found guilty or entered a plea of nolo contendere to a crime in any jurisdiction. December, 2004, respondent entered a plea of nolo contendere to sexual assault in Rockingham County, New Hampshire; s. 484.056(1)(d), F.S. of conviction or entering a plea of nolo contendere.

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

Motion: by Mr. Ellsworth to accept the voluntary relinquishment

Second: by Mr. Moore

Vote: unanimous

Dwayne C. Frisch Case # 2011-11672 & 2011-11236 (Lowell & Fischer)

Informal Hearing

Mr. Frisch was not present and was not represented by counsel. A two count administrative complaint filed December 19, 2011 alleged violations of s.484.056(1)(d), F.S. and 456.072(1)(x), F.S. regarding entering a plea of nolo contendere to possession of methamphetamines on or about January 15, 2010; s. 456.072(1)(x), F.S. of failing to report to the Board within 30 days after a conviction, or plea of nolo contendere to a crime in any jurisdiction. An Emergency Suspension of License was issued by the State Surgeon General on December 7, 2011.

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

Motion: by Mr. Moore to find that respondent was properly served and has waived his right to a formal hearing

Second: by Mr. Hollern

Vote: unanimous

Motion: by Mr. Moore to accept the investigative report into evidence for the purposes of imposing penalty

Second: by Ms. Hernandez

Vote: unanimous

Motion: by Ms. Hernandez to adopt the findings of fact as set forth in the Administrative Complaint

Second: Mr. Moore

Vote: unanimous

Motion: by Mr. Moore to adopt the conclusions of law as set forth in the administrative complaint and make a determination that this constitutes a violation of the Hearing Aid Practice Act as set forth in the Administrative Complaint.

Second: Mr. Ellsworth

Vote: unanimous

Department recommendation: reprimand, suspend for 5 years, evaluation by PRN and compliance with any contract until safe to practice; appearance before board, 5 years probation beginning 3/8/2018, fine of \$2500,

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

Motion: by Mr. Ellsworth to accept the Department's recommendation

Second: by Dr. Pickard

Vote: unanimous

A Motion to Assess Costs of \$5134.01 was presented to the Board:

Motion: by Mr. Ellsworth to accept the Department's recommendation

Second: by Dr. Pickard

Vote: unanimous

Terry J. Morris Case # 2011-10451 (Lowell & Someillan)

Informal Hearing

Mr. Morris was not present and was not represented by counsel. A two count administrative complaint filed September 26, 2012 alleged violation of s. 484.056(1)(d), F.S. of being found guilty or entering a plea of nolo contendere concerning his plea of grand theft in May, 2008 by selling hearing aids and placing funds in personal account; s. 456.072(1)(x), F.S. of failure to report entering a plea of nolo contendere to the Board within 30 days.

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

Motion: by Mr. Ellsworth to find that respondent was properly served and has waived his right to a formal hearing

Second: by Ms. Hernandez

Vote: unanimous

Motion: by Mr. Ellsworth to accept the investigative report into evidence for the purposes of imposing penalty

Second: by Mr. Fischer

Vote: unanimous

Motion: by Mr. Ellsworth to adopt the findings of fact as set forth in the Administrative Complaint

Second: by Mr. Moore

Vote: unanimous

(It is now appropriate to hear legal arguments or mitigating evidence from respondent)

Motion: by Ms. Hernandez to adopt the conclusions of law as set forth in the administrative complaint and make a determination that this constitutes a violation of the Hearing Aid Practice Act as set forth in the Administrative Complaint.

Second: by Mr. Ellsworth

Vote: unanimous

Department recommendation: reprimand, fine of \$650; probation for 1 year with terms and conditions as set by the Board.

Motion: by Mr. Ellsworth to assess a fine of \$6500 and 1 year suspension

Second: by Ms. Hernandez

Vote: unanimous

A Motion to Assess costs of \$501.30 was presented to the Board. Following discussion, the following action was taken by the Board:

Motion for costs was withdrawn.

Curtiss R. Lowe Case # 2012-01206 (Lowell & Someillan)

Waiver/Informal Hearing

Mr. Lowe was not present nor represented by counsel. An administrative complaint filed September 26, 2012 alleged violations of s. 484.056(1)(h), F.S. for violation of a lawful order of the board issued May 10, 2006 by failure to pay entire amount of costs of \$6000 within 60 months of order. Respondent paid \$4000 of the \$6000 due and license is null and void. Respondent may have relocated to Iowa. The next 2 cases were taken together.

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

Motion: by Mr. Moore to find that the Respondent was properly served and has waived his right to a formal hearing.

Second: by Mr. Hollern

Vote: Unanimous.

Motion: by Mr. Hollern to adopt the allegations of fact in the Administrative Complaint, as the Board's findings of fact in this proceeding and accept the investigative report into evidence for purposes of imposing a penalty.

Second: by Ms. Hernandez

Vote: Unanimous.

Motion: by Mr. Fischer to adopt the allegations of law in the Administrative Complaint, as the Board's conclusions of law in this proceeding.

Second: by Mr. Ellsworth

Vote: Unanimous.

Motion: by Mr. Ellsworth to adopt the materials into evidence in this proceeding.

Second: by Mr. Moore

Vote: Unanimous.

Department recommendation: reprimand, fine of \$500 (license null/void)

Motion: by Mr. Fischer to suspend the license for 3 years, \$5000 fine

Second: by Dr. Pickard

Vote: Unanimous.

A Motion to Assess Costs of \$91.92 was presented to the Board. Following discussion, the following action was taken by the Board:

Motion was withdrawn.

Curtiss R. Lowe Case # 2012-01227 (Lowell & Someillan)

Waiver/Informal Hearing

Mr. Lowe was not present nor represented by counsel. An administrative complaint filed September 26, 2012 alleged violations of s. 484.056(1)(h), F.S. for violation of a previous final order entered in a disciplinary case. Respondent failed to pay costs of \$2000 within 60 months of the final order. This case was included with the previous case.

A Motion to Assess Costs of \$63.38 was presented to the Board.

Motion was withdrawn.

Patricia A. Mitchell Case # 2012-04101 (Lowell & Fischer)

Waiver/Informal Hearing

Ms. Mitchell was present and was not represented by counsel. A two count administrative complaint filed February 7, 2013 alleged violations of s. 484.056(1)(d), F.S. of being convicted or found guilty or entering a plea of nolo contendere to crime involving respondent's entering a plea of guilty to possession of cocaine on October 21, 2009, plea of nolo contendere to possession of drug paraphernalia on or about August 4, 2010 and entering plea of guilty to possession of cocaine on or about September 14, 2010; s. 484.056(1)(w), F.S. and s. 456.072(1)(x), F.S. of failure to report to board within 30 days of conviction, guilty or nolo contendere plea. No election of rights was received by the Department.

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

Motion: by Mr. Ellsworth to find that the Respondent was properly served and has waived his right to a formal hearing.

Second: by Dr. Pickard

Vote: Unanimous.

Motion: by Mr. Ellsworth to find that the material facts, as alleged in the Administrative Complaint, are not in dispute and to adopt the allegations of fact in the Administrative Complaint, as the Board's findings of fact in this proceeding.

Second: by Mr. Hollern

Vote: Unanimous.

Motion: by Mr. Moore to adopt the allegations of law in the Administrative Complaint, as the Board's conclusions of law in this proceeding.

Second: by Mr. Ellsworth

Vote: Unanimous.

Department recommendation: reprimand, fine of \$650 (license is delinquent) suspend for 5 years ending 9/14/2017 , evaluation by PRN and compliance with any contract until safe to practice; appearance before board.

Motion: by Mr. Ellsworth to accept Department recommendation

Second: by Dr. Pickard

Vote: Unanimous.

A Motion to Assess Costs of \$2,195.94 was presented to the Board

Motion was withdrawn

Douglas R. Staton Case # 2010-09508 (Lowell & Fischer)

Waiver/Informal Hearing

Mr. Staton was not present and was not represented by counsel. An administrative complaint filed May 31, 2011 alleged violations of s. 484.0512(1), F.S. concerning 30 day trial period and money back guarantee. Respondent failed to permit the patient to cancel the purchase after providing a valid reason to cancel the purchase within the 30 day time period. (Mr. Staton living in N.C.)

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

Motion: by Dr. Pickard to find that the Respondent was properly served and has waived his right to a formal hearing.

Second: by Mr. Moore

Vote: Unanimous.

Motion: by Mr. Moore to find that the material facts, as alleged in the Administrative Complaint, are not in dispute and to adopt the allegations of fact in the Administrative Complaint, as the Board's findings of fact in this proceeding.

Second: by Mr. Hollern

Vote: Unanimous.

Motion: by Mr. Hollern to adopt the allegations of law in the Administrative Complaint, as the Board's conclusions of law in this proceeding and to adopt the materials into evidence in this proceeding.

Second: by Mr. Moore

Vote: Unanimous

Department recommendation: reprimand, fine of \$3000 (license null/void) with restitution to patient

Motion: by Ms. Hernandez to accept Department's recommendation

Second: by Mr. Ellsworth

Vote: Unanimous.

A Motion to Assess Costs of \$989.90 was presented to the Board.

Motion was withdrawn

APPLICATION REVIEW

Christopher B. Antonelli

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Mr. Antonelli was present and was not represented by counsel. He has agreed to a settlement regarding his advertising and the Board will determine whether he should be licensed with conditions due to this infraction or whether the settlement agreement is sufficient.

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

Motion: by Mr. Ellsworth to approve application

Second: by Mr. Fischer

Vote: unanimous

Jerry S. Smith

Mr. Smith was present and was not represented by counsel. He is applying for the trainee program and has indicated prior convictions including controlled substances and wire fraud on his application.

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

Motion: by Mr. Fischer to deny the application

Second: by Mr. Moore

Vote: motion passes with Dr. Pickard, Mr. Hollern and Ms. Hernandez opposed.

RULE & APPLICATION REVIEW

64B6-2. Licensure by Examination

Changes to the rule were suggested to conform to current process. Following discussion, the following action was taken by the Board:

Motion: by Mr. Ellsworth to approve current rule drafts without time frames

Second: by Mr. Moore

Vote: unanimous

Motion: by Mr. Moore that this will not negatively impact small businesses and SERC not required

Second: by Mr. Ellsworth

Vote: unanimous

64B6-4. Examination and Re-examination Fees

Staff requested a deletion of this rule as these fees are no longer accurate. Following discussion, the following action was taken by the Board:

Motion: by Mr. Ellsworth to approve drafts

Second: by Mr. Moore

Vote: unanimous

Motion: by Mr. Moore that this will not negatively impact small businesses and SERC not required

Second: by Mr. Fischer

Vote: unanimous

64B6-8 Trainee Program

Staff requests rule changes in trainee program to conform to current process. Following discussion, the following action was taken by the Board:

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Motion: by Mr. Fischer
Second: by Mr. Moore
Vote: unanimous

Motion: by Mr. Ellsworth that this will not negatively impact small business and SERC not required
Second: by Mr. Fischer
Vote: unanimous

Definition of a “used hearing aid” 484.051(2) & Title 21 Food and Drug Administration – Medical Devices

The Chair requested that this be placed on the agenda for discussion. The Board discussed that if the hearing instrument remains in the business, it is not used. However, if there is a purchase order and the patient takes the hearing instrument off of the premises, it would be considered “used.”

Reinstatement of inactive license vs. reapplying for new license after null & void status 64B6-3.004, 484.045 & 456.036(6)

The Chair requested that this be placed on the agenda for discussion. If a license goes null and void, a new application would be required, a check list of all items is currently used in the board office to ensure that the specialist has completed all before licensure. Any changes in the programs would require that these be met by the applicant.

BOARD RATIFICATION

Trainee/Sponsor and Transfer List

The list was reviewed and following review, the following action was taken by the Board:

Motion: by Mr. Fischer to approve
Second: by Mr. Moore
Vote: unanimous

REPORTS

Assistant Attorney General

Rules Report

Ms. Stern reported that currently there are no pending rules.

Hearing Aid Specialists 2013-2014 Annual Regulatory Plan

Motion: by Mr. Fischer to accept as amended
Second: by Mr. Moore
Vote: unanimous

Assistant General Counsel, Prosecution Services Unit

Mr. Schultz gave the following report to the PSU. There are currently only 4 cases under legal review.

Board Executive Director

Budget Information

Ms. Foster referred to information in the agenda concerning the cash balance for the Board. According to the future projections, the cash balance ending 6/30/13 will be \$99,512; for 6/30/14 (\$25,539); 6/30/15 - \$265,631; 6/30/16 - \$124,831; 6/30/17- \$395,045.

Board Members

Mr. Moore requested information regarding CE Broker and Ms. Foster explained the process to be used at the next renewal. Ms. Polhill requested information on the new testing process and Ms. Johnson explained the process.

OTHER BUSINESS

Election of Officers

Motion: by Ms. Hernandez to nominate Ms. Polhill as Chair

Second: by Mr. Ellsworth

Vote: unanimous

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

Second: by Ms. Hernandez

Vote: unanimous

Senate Bill 248 Review

The board reviewed the bill which recently passed, specifically pg. 1249-E regarding the board chair's authority to determine or delegate another board member to determine whether to send a candidate for licensure to the PRN (Professional's Resource Network) when impairment is suspected due to drug or alcohol arrests/convictions.

Delegation of Authority

The board reviewed the annual delegation of authority and following discussion, the following action was taken by the Board:

Motion: by Mr. Ellsworth to approve the delegation memo

Second: by Mr. Fischer

Vote: unanimous

FYI

International Hearing Society Computer Based Testing Information

Correspondence from International Hearing Society

DOH Continuing Education Integration Project

Hearing Aid Specialists Statistics June 2011 – June 2012

Correspondence from Fla Society of Hearing Healthcare Professionals

Hearing Aid Specialists Renewal Report

SB 966 Amendment

ADJOURNMENT

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The meeting was adjourned at 12:55 p.m.