

AGENDA
BOARD OF HEARING AID SPECIALISTS
GENERAL BUSINESS MEETING
Caribe Royale
8101 World Center Drive
Orlando, FL 32821
(407) 238-8000
Friday, July 11, 2014 10:00 a.m.

CALL TO ORDER/ROLL CALL

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
Joseph Someillan
Douglas Moore
John Fischer
Robert Pickard, M.D.
Thomas Hollern

Member absent:

Maria Hernandez

Staff present:

Marlene Stern, Board Counsel
Sue Foster, Executive Director
Tobey Schultz, Prosecuting Attorney
Penny Johnson, Regulatory Supervisor

APPROVAL OF MINUTES

July 12, 2013 General Business Meeting
August 22, 2013, TCC General Business Meeting
October 1, 2013, TCC General Business Meeting
March 6, 2014, TCC General Business Meeting

The minutes of the July, August, October, 2013 meetings and the March, 2014 meetings were reviewed and following review, the following action was taken by the Board:

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

DISCIPLINARY PROCEEDINGS

Rosalyn Runae Johnson White, Case #2012-06027 (Lowell & Fischer)

Settlement Agreement

Ms. White was not present (settlement waives appearance) and was not represented by counsel. A second amended two count administrative complaint filed October 14, 2013, alleged violations of s. 484.056(1)(w), F.S.; s. 484.051(2), F.S. regarding failure to specify on the sales receipt the serial number of the hearing aids; and s. 484.056(1)(v), F.S. of exercising influence on patient for financial gain by selling patient (a 94 year old man with degenerative memory disorder) 4 pairs of hearing aids within 13 month time frame; by having patient purchase \$4000 worth of jewelry from Zales, \$1000 worth of advertising from Comcast, by having patient purchase a Lexus for \$40,000, by having patient loan \$20,000, by having patient obtain numerous credit cards for respondent.

A settlement agreement was presented to the Board with the following terms: reprimand, fine of \$1000, costs of \$5108.05 both payable within one year of final order; prohibition from soliciting investments in her hearing aid business with her patients, cannot accept gifts from patients which exceed \$100.

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

Motion: by Mr. Ellsworth to reject the settlement stipulation

Second: by Mr. Hollern

Vote: unanimous

Motion: by Mr. Moore to offer a counter stipulation requiring a \$10,000 fine, costs, and revocation of license

Second: by Mr. Ellsworth

Vote: unanimous

Bradley Paul Wagner Case # 2013-12793 (Lowell & Fischer)

Settlement Agreement

Mr. Wagner was not present and was not represented by counsel. A two count administrative complaint filed February 18, 2014 alleged violations of s. 484.056(1)(d), F.S. of being convicted or found guilty or entering a plea of nolo contendere concerning obtaining money from a second hand store by fraud. Respondent plead nolo contendere to one count of dealing in stolen property (stolen jewelry for drug money.) Section 456.072(1)(x), F.S. of failure to report to board in writing within 30 days after entering a plea of nolo contendere.

A settlement agreement was presented to the Board with the following terms: reprimand, fine of \$1000 payable within 30 days, costs not to exceed \$841.24. (Actual costs were \$882.02) Costs are payable within 30 days; evaluation from Professional Resource Network (PRN).

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

Motion: by Mr. Moore to accept the settlement agreement

Second: by Ms. Someillan

Vote: unanimous

Christopher C. Cafaro 2013-13567 (Lowell & Fischer)

Settlement Agreement

Mr. Cafaro was not present and was not represented by counsel. An administrative complaint filed February 18, 2014 alleged violations of s. 484.056(1)(w), F.S. of failing to produce copies of patient's medical records upon request of patient.

A settlement agreement was presented to the Board at the meeting which included the following terms: reprimand, fine of \$500 payable within one year; costs not to exceed \$1536.79 Actual costs were \$650.61 payable within one year.

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

Kevin S. Greene Case # 2009-20587 (Lowell & Fischer)

Informal Hearing

Mr. Greene was not present nor represented by counsel. A three count administrative complaint filed February 7, 2013 alleged violations of s. 484.056(1)(a), F.S. of making misleading, deceptive or fraudulent representations; s. 456.072(1)(m), making deceptive, untrue statements by promise of refund; s. 484.056(1)(v), F.S. exercising influence on patient for financial gain.

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

Motion: by Mr. Ellsworth that respondent was properly served

Second: by Mr. Someillan

Vote: unanimous

Motion: by Mr. Moore to accept the investigative file into evidence

Second: by Mr. Hollern

Vote: unanimous

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

Second: by Mr. Someillan

Vote: unanimous

Motion: by Mr. Ellsworth 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. Someillan

Vote: unanimous

Department's recommendation: reprimand, suspend until respondent provides proof of restitution, notify Department of new address of record

Motion: by Mr. Hollern to issue a reprimand, suspend until proof of restitution and notify Department of new address of record

Second: by Dr. Pickard

Vote: unanimous

A Motion to Assess Costs of \$356.92 was presented to the Board. Following discussion, the following action was taken by the Board:

Motion: by Dr. Pickard

Second: by Mr. Someillan

Vote: unanimous

**Nathan William Dotson Case # 2013-17752 (Lowell & Fischer)
Waiver/Informal Hearing**

Mr. Dotson was not present nor represented by counsel. An administrative complaint filed April 28, 2014 alleged violations of s. 484.056(1)(b), F.S. by obtaining a license to practice through fraudulent misrepresentations when he indicated on his application that he had not been convicted. He was convicted on February 27, 2013 of forgery and theft from an elderly victim in Ohio.

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

Motion: by Mr. Someillan that respondent was properly served and to accept the investigative file into evidence

Second: by Mr. Hollern

Vote: unanimous

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

Second: by Mr. Moore

Vote: unanimous

Motion: by Mr. Someillan 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

Disciplinary guidelines: minimum of \$500 fine and/or up to 2 years of probation to maximum of revocation.

Motion: by Mr. Someillan to recommend revocation

Second: by Mr. Ellsworth

Vote: unanimous

A Motion to Assess Costs of \$158.50 was presented to the Board. Following discussion, the following action was taken by the Board:

Motion: by Mr. Someillan
Second: by Mr. Ellsworth
Vote: unanimous

TOPIC DISCUSSION

Tim Tate, Office of Unlicensed Activity (file folder)

Mr. Tate, Bureau of Enforcement, Department of Health, was present to discuss the office of unlicensed activity. He encouraged the Board and audience to contact his office if they knew of unlicensed activity in any of the professions which is a third degree felony.

Chapter 484.054, F.S. Sale or Distribution of Hearing Aids Through Mail; Penalty 959

Missouri Board vs. Hearing Help Express (file folder)

The board discussed violations with the distribution of hearing aids from Walmart.com and other companies. These devices are regulated by the FDA and State law cannot be more restrictive than Federal law.

Senate Bill 50, Chapter 286.0114 Public Meetings; Reasonable Opportunity to be Heard; Attorney Fees

The Board members reviewed the draft rule (pg. 967) regarding recent legislation that became effective. Following discussion, the following action was taken by the Board:

Motion: by Mr. Moore to allow 3 minutes for public comment and groups of 5 or more

Second: by Mr. Fischer

Vote: unanimous

Statement of Estimated Regulatory Costs (SERC)

Motion: by Mr. Fischer that the rule will not have an adverse effect on small businesses

Second: by Mr. Moore

Vote: unanimous

Motion: by Mr. Someillan that the rule will not increase regulatory cost

Second: by Mr. Moore

Vote: unanimous

BOARD RATIFICATION

Trainee/Sponsor and Transfer List

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

Motion: by Mr. Fischer to approve the Trainee/Sponsor and Transfer list

Second: by Mr. Ellsworth

Vote: unanimous

REPORTS

Assistant Attorney General

Rules Report

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

Hearing Aid Specialists 2014-2015 Annual Regulatory Plan (file folder)

Motion: by Mr. Ellsworth to accept the Regulatory Plan

Second: by Mr. Fischer

Vote: unanimous

Assistant General Counsel, Prosecution Services Unit

Mr. Schultz reported there were 11 cases currently under the Prosecution Services Unit's review.

Board Executive Director

Budget Information

Ms. Foster reviewed the budget and discussed reduction of renewal fees.

Scenarios on renewal fees and Licensure statistics

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

Motion: by Mr. Someillan to reduce the initial license fee to \$500.00

Second: by Mr. Ellsworth

Vote: unanimous

Motion: by Mr. Ellsworth that the rule will not have an adverse effect on small businesses

Second: by Mr. Moore

Vote: unanimous

Motion: by Mr. Fischer that the rule will not increase regulatory cost

Second: by Mr. Someillan

Vote: unanimous

Motion: by Mr. Ellsworth to reduce the biennial renewal fee to \$500.00

Second: by Mr. Hollern

Vote: unanimous

Motion: by Mr. Fischer that the rule will not have an adverse effect on small business

Second: by Mr. Moore

Vote: unanimous

Motion: by Mr. Fischer that the rule will not increase regulatory cost

Second: by Mr. Ellsworth

Vote: unanimous

Board Members

There were no reports given by board members.

OTHER BUSINESS

Election of Officers

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

Second: by Mr. Moore

Vote: unanimous

Motion: by Mr. Someillan to nominate Mr. Ellsworth as Vice-Chair
Second: by Mr. Hollern
Vote: unanimous

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. Someillan to approve the delegation memo
Second: by Mr. Ellsworth
Vote: unanimous

2015 Meeting Date/Location

The board stated that their annual meeting was scheduled for September 11, 2015 at the Orlando Swan Hotel.

FYI

**Department of Health, Continuing Education Integration Project
Board of Hearing Aid Specialists, Website Statistics
Tampa Bay Times, Online Hearing Aid Sales Against Florida Law
Healthiest Weight Liaison Meeting**

ADJOURNMENT

The meeting was adjourned at 12:56 p.m.