

IN THE MATTER OF	*	BEFORE THE BOARD OF EXAMINERS
JOHN M. KOCHAN,	*	FOR AUDIOLOGISTS, HEARING AID
Respondent	*	DISPENSERS, AND SPEECH-
	*	LANGUAGE PATHOLOGISTS
License No.: 02398	*	Case No.: 03-BP-027

* * * * *

ORDER OF REVOCATION

The State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists (the "Board") notified John M. Kochan, H.A.D. (the "Respondent"), of its intent to PERMANENTLY REVOKE his license to dispense hearing aids in the State of Maryland. The Board based this action on the following provisions of Md. Health Occ. Code Ann. ("Health Occ."), Title 2 (the "Act"):

Health Occ. § 2-314:

Subject to the hearing provisions of §2-315 of this subtitle, the Board may deny a license or limited license to any applicant, reprimand any licensee or holder of a limited license, place any licensee or holder of a limited license on probation or suspend or revoke a license or limited license if the applicant, licensee, or holder:

(10) Commits any act of unprofessional conduct in the practice of audiology, the provision of hearing aid services, or the practice of speech-language pathology; or

(11) Violates any lawful order given or regulation adopted by the Board.

The Board informed the Respondent that a Final Order would be executed THIRTY (30) DAYS from the Respondent's receipt of the Board's notice, unless the Respondent requested a hearing.

On October 24, 2006, the Respondent received the Board's Notice of Intent to Revoke. The Board notified the Respondent in that Notice that this Final Order would be executed thirty (30) days from the Respondent's receipt of the Notice unless the Respondent requested a hearing. The Respondent's written request was due on November 27, 2006. The Respondent did not request a hearing by November 27, 2006.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. The Respondent was issued license number 02398 by the Board on or about July 31, 1995.
2. On or around November 20, 2003, the Board summarily suspended the Respondent's license to dispense hearing aids pursuant to Md. State Gov't Code Ann. § 10-226(c)(2) which provides that the Board may summarily suspend the license of an individual if the Board finds that the public health, safety, or welfare imperatively requires emergency action.
3. Also on or about November 20, 2003, the Board issued Charges alleging that the Respondent had violated numerous provisions of the statutes and regulations which govern the dispensing of hearing aids.
4. On or about January 15, 2004, the Board ratified a Consent Order which resolved both the Summary Suspension of the Respondent's license and the Charges that were then pending against him. The Consent Order set forth numerous Findings of Fact made by the Board including, but not limited to, findings that the Respondent engaged in fraudulent sales practices, failed to

make refunds to patients totaling more than \$36,805, failed to comply with a Consumer Protection Division Assurance of Discontinuance, acted in an inconsiderate and unprofessional manner regarding both sales and service of hearing aids, engaged in unlicensed practice between March 3, 2003 and April 22, 2003, failed to cooperate with the Board's investigation, and employed unlicensed personnel to dispense hearing aids. That Consent Order is attached hereto as Attachment A and incorporated herein.

5. As a result of the Board's Findings of Fact, the Respondent agreed to numerous sanctions, including a suspension of his license and significant terms and conditions for the reinstatement of his license.
6. The Consent Order required, *inter alia*, that the Respondent's license remain suspended for at least nine (9) months. The Consent Order further provided that after nine (9) months of active suspension and compliance with all of the following conditions the Respondent may petition the Board for a STAY of the suspension at the Board's discretion:¹
 - a. The Respondent shall pay refunds due to all patients;
 - b. The Respondent shall, within thirty (30) days of th[e] Order, submit a list of all patients due refunds to the Board;
 - c. The Respondent shall submit documentation to the Board that he is in 100% compliance with the terms of the Consumer Protection Division's Assurance of Discontinuance;
 - d. The Respondent shall create and submit proof of having an escrow account that will preclude commingling of patient payments until after the statutory refund period has run;
 - e. The Respondent shall attend and submit proof of completion of a Board approved ethics course; and
 - f. The Respondent shall attend and submit proof of completion of a Board approved business management course.

¹ The Consent Order provided that the Board's decision to stay the suspension was discretionary and unappealable.

7. The Respondent voluntarily entered into the January 15, 2004 Consent Order.
8. The Respondent's license to dispense hearing aids has remained actively suspended since he entered into the Consent Order on January 15, 2004. He as not petitioned for a stay of the suspension.
9. As of the date of this Order, the Respondent has not and cannot comply with the terms and conditions of the Consent Order.
10. The Respondent has not submitted documentation to the Board that he is in 100% compliance with the terms of the Consumer Protection Division's Assurance of Discontinuance (the "Assurance".)
11. On or about July 21, 2006, the Circuit Court for Montgomery County entered an Order and Judgment in favor of the Consumer Protection Division based on that Division's action to enforce the Assurance. [See Complaint, Motion for Summary Judgment, Memorandum in Support of Motion for Summary Judgment, and July 17, 2006 Order and Judgment filed in *Consumer Protection Division, Office of the Attorney General, State of Maryland v. Better Hearing Centers, et al*, Case no. 269171-V which are attached as Attachment B.]
12. In *Consumer Protection Division, Office of the Attorney General, State of Maryland v. Better Hearing Centers, et al*, the Consumer Protection Division described that the Respondent had violated the Assurance by:
 - a. Failing to advise consumers of their cancellation rights and failing to timely pay refunds
 - b. Failing to cease offering and selling hearing aids until a \$20,000 surety bond, letter of credit or cash payment was made to the Consumer

Protection Division to protect consumers harmed by Respondent's future acts;

- c. Failing to provide the Consumer Protection Division with business records for the three year period prior to the date of the Assurance of Discontinuance;
- d. Failing to provide the Consumer Protection Division with all of their business records regarding hearing aid sales, the payments they received in connection with the sales, and the refunds they paid to consumers who cancelled their orders;
- e. Failing to provide the Consumer Protection Division with a list that identified (i) each consumer who had purchased a hearing aid from him during the three years prior to the date of the Assurance; (ii) the payment made by each such consumer; and (iii) whether the consumer either received a hearing aid or cancelled their order and received a refund;
- f. Failing to provide the Consumer Protection Division with a list of customers who had received their hearing aids or cancelled their orders for hearing aids;

13. The Circuit Court's final order finding that the Respondent has not complied with the Assurance has not been and cannot be appealed. Therefore, the Respondent violated the Board's Consent Order which required that he submit documentation to the Board that he is 100% in compliance with the terms of the Assurance of Discontinuance.

14. In addition to the fact that the Respondent has not, and cannot in the future comply with the Board's Order because he failed to comply with the terms of the Assurance, the Respondent has also not complied with several of the other terms of the Board's Order which would be prerequisites for the Respondent to return to practice.
15. He has not submitted proof to the Board of having created an escrow account that will preclude commingling of patient payments until after the statutory refund period has run. [See Affidavit of Gwendolyn Wheatley attached hereto as Attachment C.]
16. The Respondent has also not submitted proof to the Board of having attended and completed a Board approved ethics course. *Id.*
17. Similarly, the Respondent has not submitted proof to the Board of having attended and completed a Board approved business management course. *Id.*
18. The Respondent's failure to comply with the terms and conditions of the January 15, 2004 Consent Order he voluntarily agreed to enter into with the Board constitutes violations of Health Occ. § 2-314(11) which prohibits violation of any lawful order given or regulation adopted by the Board and (10) which prohibits any act of unprofessional conduct in the provision of hearing aid services.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the violated Health Occ. § 2-314 (10) and (11) by engaging in unprofessional conduct and failing to comply with the terms of the Board's January 15, 2004 Consent Order.

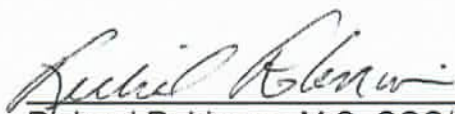
ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 30th day of Nov., 2006, by a majority of a quorum of the Board considering this case,

ORDERED that the Respondent's license to dispense hearing aids be and hereby is **PERMANENTLY REVOKED**; and it is further

ORDERED that this is a **FINAL ORDER** of the Maryland State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists and as such is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't. Code Ann. §§ 10-611 *et seq.* (2004).

11/30/06
Date


Richard Robinson, M.S. CCC/SLP
Chair, Board of Examiners for
Audiologists, Hearing Aid Dispensers, and
Speech-Language Pathologists

NOTICE OF RIGHT OF APPEAL

Pursuant to Md. State Gov't. Code Ann. §10-222, the Applicant has the right to take a direct judicial appeal. Any appeal shall be made as provided for judicial review of a final decision in the State Government Article and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Respondent files an appeal, the Board is a party and should be served with the court's process. In addition, the Respondent should send a copy to the Board's counsel, Delia T. Schadt, Assistant Attorney General, at the Office of the Attorney General, 300 West Preston Street, Suite 302, Baltimore, Maryland 21201. The Administrative Prosecutor is not involved in the circuit court process and need not be served or copied on pleadings filed in that court.