

IN THE MATTER OF  
JOHN M. KOCHAN,  
Respondent

\* BEFORE THE BOARD OF EXAMINERS  
\* FOR AUDIOLOGISTS, HEARING AID  
\* DISPENSERS, AND SPEECH-  
\* LANGUAGE PATHOLOGISTS  
\* Case No.: 03-BP-027

\* \* \* \* \*

**CONSENT ORDER**

**PROCEDURAL BACKGROUND**

Based on information received and a subsequent investigation by the State Board of Examiners for Audiologists, Hearing Aid Dispensers and Speech-Language Pathologists (the "Board") and subject to the Maryland Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists Act, codified at Md. Health Occ. Code Ann. ("Health Occ.") §2-101 et seq. (2000 Repl. Vol.) (the "Act"), the Board Summarily Suspended and charged John M. Kochan, HAD (the "Respondent"), license number 02398, with violating certain provisions of the Act. Specifically, the Board summarily suspended the Respondent pursuant to:

Md. State Gov't Code Ann. § 10-226(c)(2) which provides:

(c) *Revocation of [sic] suspension.* –

- (2) A unit may order summarily the suspension of a license if the unit:
- (i) finds that the public health, safety, or welfare imperatively requires emergency action; and
  - (ii) promptly gives the licensee:
    - 1. written notice of the suspension, the finding and the reasons that support the finding; and
    - 2. an opportunity to be heard.

The summary suspension and the charges were based on violations of the following provisions of 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:

- (3) Commits fraud or deceit in the practice of audiology, the provision of hearing aid services, or the practice of speech-language pathology;
- (5) Obtains a fee through fraud or misrepresentation;
- (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;
- (11) Violates any lawful order given or regulation adopted by the Board;
- (12) Violates any provision of this title;
- (19) Is professionally, physically, or mentally incompetent;
- (20) Promotes the sale of devices, appliances, or goods to a patient so as to exploit the patient for financial gain;
- (21) Behaves immorally in the practice of audiology, the provision of hearing aid services, or the practice of speech-language pathology.

The violations of the provisions of Health Occ. title 2 and its clarifying regulations which constitute violations of Health Occ. §2-314 (12) are as follows:

**Health Occ. §2-401. Practicing without license.**

- (a) *In general.* – Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice audiology, provide hearing aid services, or practice speech-language pathology in this State unless licensed to practice audiology, provide hearing aid services, or practice speech-language pathology by the Board.

## **Code of Maryland Regulations (“COMAR”)**

### **10.41.02 Code of Ethics**

#### **.02 Ethical Responsibilities.**

- A. The licensee shall consider paramount the welfare of individuals served professionally.
- B. Professional Conduct
  - (6) the licensee may not exploit individuals served professionally by:
    - (e) Misrepresenting services rendered, or products dispensed, or both;
- E. The licensee shall take every precaution to avoid harm to the individual served professionally.

#### **.04 Special Responsibilities**

- H. The licensee shall maintain adequate records of professional services rendered and products dispensed, and shall allow access to these records when appropriately authorized.
- K. The licensee shall cooperate fully with the Board in an investigation and adjudication of matters related to the Code of Ethics.

### **Health Occ. §2-406. Unfair or deceptive trade practices; Violation of Hearing Aid Sales Act.**

While providing hearing aid services as an audiologist or a hearing aid dispenser, a person may not:

- (1) Engage in unfair or deceptive trade practices, as defined in §13-301 of the Commercial Law Article; or
- (2) Violate any provision of Title 14, Subtitle 25 of the Commercial Law Article.

The relevant provisions of the Commercial Law Article (“Comm. Law”) are:

#### **Comm. Law II §13-301. Unfair or deceptive trade practices defined.**

Unfair or deceptive trade practices include any:

(14) Violation of a provision of:

(iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-Door Sales Act [codified at Comm. Law §§14-301 to 14-306.];

(xviii) Title 14, Subtitle 25 of this article, Hearing Aid Sales Act [codified at Comm. Law §§14-2501 to 14-2506.]

**Comm. Law §14-301. Definitions.**

(d) Door-to-door sale. – (1) “Door-to-door” sale means a sale, lease or rental of consumer goods or consumer services under single or multiple contracts with a purchase price of \$25 or more, in which;

(i) The seller or his representative personally solicits the sale, including a solicitation in response to or following an invitation by the buyer; and

(ii) The Buyer’s agreement or offer to purchase is made at a place other than the place of business of the seller.

**Comm. Law §14-302. Unlawful practices.**

It is an unfair or deceptive trade practice within the meaning of Title 13 of this article for a seller to:

(7) Fail or refuse to honor any valid notice of cancellation by a buyer and, within 10 business days after the receipt of that notice, to:

(i) Refund all payments made under the contract or sale;

(ii) Return, in substantially as good condition as when received by the seller, any goods or property traded in;

(iii) Cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction;

**Comm. Law §14-2503. Cancellation of purchase.**

(a) In general. – Within 30 days of the date of delivery, a purchaser of a hearing aid may cancel the purchase for any reason, by mailing or delivering a notice of cancellation to the seller of the hearing aid at the address specified in the contract.

(b) Refunds. – (1) Cancellation of the purchase entitles the purchaser to a refund of the entire consideration paid, less 10 percent for services.

(2) If the actual documented expenses incurred by the seller for the fitting, delivery, and return of the hearing aid to the manufacturer are in excess of 10 percent of the purchase price, the seller may retain an amount equal to these expenses only if:

(i) The amount is conspicuously identified as “nonrefundable” on the contract or bill of sale for the hearing aid; and

(ii) The total amount retained does not exceed 20 percent of the purchase price of the hearing aid.

(3) The seller shall deliver the refund to the purchaser if:

(i) The purchase is made at a place other than the place of business of the seller, within 30 days after the receipt of the notice of cancellation; and

(ii) The purchase agreement is made at the place of business of the seller, within 30 days after the return of the hearing aid.

**Comm. Law §14-2504. Deceptive trade practices.**

It is a deceptive trade practice for a seller of hearing aids to:

- (5) Fail to honor a valid notice of cancellation;
- (6) Within 30 days of receiving a purchaser's notice of cancellation, fail to notify the purchaser whether the seller intends to repossess or to abandon the delivered hearing aid; or
- (7) Fail to refund all payments, less 10 percent of the amount allowed under §2-2503 (b)(2) of this subtitle, made under the purchaser's agreement within 30 days after:
  - (i) Receipt of the notice of cancellation if the purchaser's agreement to purchase is made at a place other than the place of business of the seller; or
  - (ii) Return of the hearing aid, if the purchaser's agreement to purchase is made at the place of business of the seller.

**Comm. Law §14-2505. Violation of subtitle; failure to pay refunds.**

(b) Failure to pay refunds. –If a seller fails to refund all payments in the time required, after the purchaser complies with the requirements of the notice of cancellation a purchaser is entitled to payment of an additional 1 percent for each month or part of a month that the refund is not paid.

Also, on November 20, 2003, the Board issued Charges under the Act based on the same grounds which were the basis for the Summary Suspension as set forth above, and based on the following additional ground:

Health Occ. § 2-314(6) Directly or indirectly employs any unlicensed person or any person whose license or limited license has been suspended.

On December 9, 2003, a Case Resolution Conference ("CRC") was held at the Board's offices to determine whether there existed the possibility of resolving the pending issues without having an evidentiary hearing. The Parties

agreed to settlement of the above captioned matter in accordance with the following Findings of Fact, Conclusions of Law and Consent Order.

### **FINDINGS OF FACT**

The Board finds that the following facts are true:

#### **I. BACKGROUND**

1. The Respondent was and is licensed by the Board as a hearing aid dispenser being assigned license #02398.
2. As a licensed hearing aid dispenser, the Respondent often provides services to elderly and infirm individuals with limited financial resources. Since many of the Respondent's patients are part of a vulnerable population, deviation from the principles set forth in the Code of Ethics for Audiologists, Hearing Aid Dispensers and Speech-Language Pathologists codified at COMAR 10.41.02.02 and the Consumer Protection Act are particularly egregious.
3. The Respondent operates as a hearing aid dispenser through his business, Better Hearing Centers, Inc. ("Better Hearing Centers") which has or has had offices located at:

3210 Eastern Avenue  
Baltimore, Maryland 21224

5020 York Road  
Towson, Maryland 21212;

8218 Wisconsin Avenue  
Suite 107  
Bethesda, Maryland 20814 -3107;

727 Frederick Road  
Catonsville, Maryland, 21228; and

10101 Georgia Avenue,  
Silver Spring, Maryland 20902.

4. Until May of 2003, the Respondent, through his business Better Hearing Centers, was an authorized dispenser of Beltone brand hearing aids<sup>1</sup>. Beltone Electronics Corporation is a manufacturer of hearing aids located in Chicago, Illinois. The Respondent and Better Hearing Centers, Inc. are wholly independent from Beltone Electronics Corporation ("Beltone").

5. The Board began an investigation into the Respondent's hearing aid dispensing practice as a result of several patient complaints received by the Board in November and December of 2002. In the course of the investigation of these complaints, the Board learned of numerous patient complaints that had been submitted to either the Consumer Protection Division of the Office of the Attorney General ("Consumer Protection Division") or the Montgomery County Department of Housing and Community Affairs.

#### **A. CONSUMER PROTECTION DIVISION ACTION**

6. The Consumer Protection Division received numerous patient complaints alleging violations of the Consumer Protection Act. As a result of the Consumer Protection Division's investigation into the Respondent's business practices, the Respondent entered into an Assurance of Discontinuance ("the Assurance") which sets forth terms with which the Respondent must comply in order to continue to operate his business.

7. In the Assurance, the Respondent agreed that his business practices violated the Consumer Protection Act, the Hearing Aid Sales Act and the Door-to-Door Sales Act.

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<sup>1</sup> The Respondent is no longer an authorized Beltone representative. Beltone terminated its contract with the Respondent on May 1, 2003.

8. Furthermore, in the Assurance, the Respondent agreed to the Cease and Desist Provisions which are briefly summarized below:

- a. Cease and desist from engaging in any unfair or deceptive trade practices in violation of the Maryland Consumer Protection Act, Maryland Hearing Aid Sales Act, and Door-to-Door Sales Act, including failing to advise consumers of their cancellation rights and failing to pay prompt refunds to canceling consumers.
- b. Cease and desist from offering and selling hearing aids to Maryland consumers unless, on or before June 30, 2003, Respondent posted a \$20,000 surety bond with the Consumer Protection Division.
- c. Include a notice in his sales contracts informing consumers that they may contact the Consumer Protection Division if they are unable to resolve a dispute with Respondent and his business.
- d. Pay the Consumer Protection Division restitution equal to all monies they collected from consumers who lawfully cancelled their purchases for hearing aids, which amount Respondent agreed was at least \$24,990.00.
- e. Pay the Consumer Protection Division \$1,000 for its investigation costs and a civil penalty of \$25,000, which shall reduce to \$5,000 if Respondent and his business comply with the terms of the Assurance of Discontinuance.
- f. Provide the Consumer Protection Division with a list identifying each consumer who Respondent sold a hearing aid, who cancelled their order, and have not received a full refund of their payments.
- g. Provide the Consumer Protection Division with their business records so that the Division could determine the identities of consumers owed refunds by Respondent and his business that had not already been identified by the Division.
- h. That the Respondent pay a civil penalty of \$25,000 and any monies owed in restitution in monthly installments of \$2,000 with the first payment due on June 1, 2003 and then monthly thereafter.

9. On July 16, 2003, Philip Zipperman, Assistant Attorney General from the Consumer Protection Division wrote to the Respondent regarding the Respondent's failure to follow the terms of the Assurance. Specifically, the letter stated that the



Respondent had failed to post a surety bond or letter of credit, provide his customer list for the last three (3) years and to make the second \$2,000 installment payment which was due on July 1, 2003.

10. On August 25, 2003, Philip Zipperman again wrote to the Respondent indicating that the Respondent still had not paid the surety bond or letter of credit, provided his customer list, or made the third \$2,000 installment payment which was due on August 1, 2003. The letter further states that,

if you [the Respondent] have not corrected these breaches on or before September 8, 2003, we will consider you to be in breach of the Assurance and will take suitable legal action to enforce the agreement, including seeking the entire penalty amount and an order requiring you to stop selling hearing aids in Maryland until you have posted the required surety bond.

11. By failing to comply with the terms of the Assurance of Discontinuance in the Consumer Protection Division, the Respondent violated Health Occ. §2-314 (10) which prohibits a licensee from committing any act of unprofessional conduct in the provision of hearing aid services.

## **II. PATIENT SPECIFIC ALLEGATIONS**

### **A. FRAUD, FAILURE TO REFUND, AND UNPROFESSIONAL CONDUCT**

#### **PATIENT A AND PATIENT Z<sup>2</sup>**

12. On June 2, 2003, Patient A complained to the Consumer Affairs Division of the Montgomery County Department of Housing and Community Affairs. The Montgomery County Consumer Affairs Division forwarded Patient A's complaint to the Board on July 17, 2003.

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<sup>2</sup> Patient names have been omitted to preserve the patients' confidentiality. A patient list will be provided to the Respondent upon request.

13. On or about April 8, 2003, Respondent met with Patient A (D.O.B. 12/18/48) at her home pursuant to her request (through her husband) to purchase a new hearing aid.
14. Patient A suffers from Multiple Sclerosis. As a result of her Multiple Sclerosis, she is confined to a wheelchair, cannot walk or stand and is unable to use one of her arms.
15. During Respondent's April 8, 2003 visit in Patient A's home, Patient A ordered one new right hearing aid from the Respondent at a cost of \$1,200.
16. At the time of purchase, Patient A gave Respondent her credit card number and authorized payment of the full \$1,200.
17. The Respondent delivered a hearing aid with serial #03Z07332 on the evening of May 13, 2003.
18. When the Respondent delivered the hearing aid, the Respondent did not provide any documentation or informational brochures from the manufacturer.
19. The hearing aids started to whistle before the Respondent left Patient A's residence on May 13. When Patient A complained about the whistling, the Respondent stated that the whistling was caused by the volume on the hearing aid being up too high. Patient A observed the Respondent "act like he turned it down."
20. After Respondent left Patient A's home, Patient A noticed that the whistling would not stop unless she touched the aid. The aid whistled whenever Patient A chewed, spoke, or moved her head. Patient A's husband observed that the hearing aid did not fit snugly in Patient A's ear. He noticed and photographed visible gaps between the aid and Patient A's ear canal.

21. Patient A called the Respondent on May 15, 2003 and informed him that she was dissatisfied with the hearing aid.

22. After several unsuccessful attempts to speak with the Respondent about the problems she was having with the hearing aid, Patient A called the manufacturer, Beltone, for assistance with the whistling and bad fit problems. Beltone then informed Patient A that the hearing aid with serial #03Z07332 was manufactured for someone else (Patient Z) and that Beltone had no record whatsoever of ever making a hearing aid for Patient A.

23. In a subsequent letter to the Montgomery County Consumer Affairs investigator dated July 9, 2003, Beltone revealed that the order for the aid connected with serial #03Z07332 was placed on 4/01/2003 by Better Hearing Centers, Inc. #03Z07332 was manufactured as a result of a lost, stolen, or damaged replacement request for serial # 02Z13667 and was registered at Beltone to Patient Z. Two ear molds were submitted with the lost, stolen, or damaged replacement request.<sup>3</sup>

24. The Board's subsequent investigation revealed that the warranty form submitted on April 1, 2003 reporting #02Z13667 (and #02Z13669) as lost was completed by the Respondent's employee, E.B.. E.B. signed Patient Z's name on the form which reported Patient Z's hearing aids as lost without Patient Z's permission or knowledge. E.B. stated that the Respondent directed her to sign Patient Z's name on the form and that she had signed patient names on similar false warranty reports on other occasions.

25. In an interview with Patient Z, Patient Z stated that her hearing aids were never lost, that she had never requested any replacement for them, that she had never

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<sup>3</sup> The Respondent did not evaluate and fit Patient A until May 8, 2003 so it would be impossible for the molds submitted to Beltone in connection with the order for the hearing aid with #03Z07332 to fit her because that order was submitted one week prior to Patient A's fitting.

authorized the Respondent or his employee to sign her name, and that she had had no contact whatsoever with the Respondent in the Spring of 2003, when the Lost, Stolen, or Damaged report was submitted to Beltone on her behalf.

26. Patient A returned the hearing aid to the Respondent on May 20, 2003 and requested a refund.

27. On May 20, 2003, Patient A confronted the Respondent over the telephone about his having given her a hearing aid which was made for Patient Z. Although the Respondent did not disclose the fraudulent Lost, Stolen and Damaged Report, the Respondent admitted to having given Beltone a false name when he ordered her hearing aid because he was trying to protect her from receiving unwanted telephone solicitations from the manufacturer. Since the Respondent had not actually provided Beltone with a false name to protect her from unwanted telephone calls, the Respondent's stated excuse for his dishonest and deceptive conduct was also dishonest.

28. As of August 19, 2003, the Respondent had not repaid the \$1,200 charged to Patient A's credit card. Patient A disputed the charge with her credit card company. According to documentation provided by Patient A, the credit card company conducted an investigation regarding the Respondent's responsibility for repaying the \$1,200.

29. By giving Patient A the hearing aid with serial #03Z07332 which was manufactured under Patient Z's warranty and to fit molds belonging to some unknown patient's ear, the Respondent violated Health Occ. §2-314 (3) which prohibits a licensee from committing fraud or deceit in the provision of hearing aid services, (5) which prohibits a licensee from obtaining a fee through fraud or misrepresentation, (10) which

prohibits a licensee from committing any act of unprofessional conduct in the provision of hearing aid services, (11) which prohibits violation of any regulation adopted by the Board with underlying grounds of violation of COMAR 10.41.02 which requires that a licensee shall consider paramount the welfare of individuals served professionally and may not exploit individuals served professionally by misrepresenting products and services dispensed, (18) which prohibits submitting a false statement to collect a fee, and (21) which prohibits behaving immorally in the provision of hearing aid services.

30. Further, Respondent's conduct in giving Patient A the hearing aid with serial #03Z07332 which was not manufactured for her constituted an unfair and deceptive trade practice in violation of Health Occ. §2-406 and Comm. Law §13-301(2) (iii) which prohibits selling of deteriorated, altered, reconditioned, reclaimed, or second-hand consumer goods as original or new.

31. By failing to properly and timely refund Patient A's money when Patient A returned the hearing aid within thirty (30) days as required under the law and the terms of the contract she signed, the Respondent violated Health Occ. §2-314 (12) which prohibits violation of any provision of Title 2. Specifically, the Respondent's conduct violated Health Occ. §2-406 which prohibits unfair and deceptive trade practices as defined in Door-to-Door Sales Act and the Hearing Aid Sales Act. The Respondent's conduct also violated Health Occ. §2-314 (10) which prohibits any act of unprofessional conduct in the provision of hearing aid services and (20) which prohibits the promotion the sale of devices, appliances, or goods to a patient so as to exploit the patient for financial gain.

32. By having an employee sign Patient Z's name on a fraudulent warranty replacement form, submitting that form to the manufacturer to obtain a replacement, and then dispensing the replacement manufactured for Patient Z to Patient A, the Respondent violated Health Occ. §2-314 (3) which prohibits a licensee from committing fraud or deceit in the provision of hearing aid services, (5) which prohibits a licensee from obtaining a fee through fraud or misrepresentation, (10) which prohibits a licensee from committing any act of unprofessional conduct in the provision of hearing aid services, (18) which prohibits submitting a false statement to collect a fee, and (21) which prohibits behaving immorally in the provision of hearing aid services.

## **B. UNFAIR AND DECEPTIVE TRADE PRACTICES**

### **PATIENT B**

33. Patient B (D.O.B. 7/7/31) purchased two (2) Beltone hearing aids from the Better Hearing Centers on May 9, 2002 through the store located at 10401 Georgia Avenue, Silver Spring, MD 20902. She paid \$4,570.

34. The hearing aids were delivered to Patient B on May 28, 2002.

35. Patient B found the hearing aids unsatisfactory and returned them to the store on June 25, 2002.

36. On October 23, 2002, Patient B filed a complaint with the Consumer Protection Division of the Office of the Attorney General ("Consumer Protection Division") because she had not yet received any refund from the Respondent.

37. On December 2, 2002, the Consumer Protection Division referred Patient B's complaint to the Board.

38. As of February 25, 2003, approximately eight (8) months after the aids were returned, Patient B had not received any portion of her \$4,570 from the Respondent.

39. On May 11, 2003, the Respondent signed the Assurance of Discontinuance in the Consumer Protection Division. In that document, the Respondent agreed that Patient B properly cancelled her purchase of hearing aids and was due a refund of \$4,750<sup>4</sup>.

### **PATIENT C**

40. On September 24, 2002, the Respondent met with Patient C in Patient C's home to sell her a hearing aid. Patient C agreed to purchase two (2) Beltone digital hearing aids for a total cost of \$5,990. Patient C gave the Respondent a check for \$3,000 as a down payment.

41. At the time of the initial sale, the Respondent did not inform Patient C that she had three (3) business days to cancel her order.

42. After the hearing aids were ordered and before they were delivered, Patient C discussed the hearing aid purchase with her daughter who has power of attorney for her. Patient C and her daughter decided to cancel the order and informed the Respondent on September 30, 2002 via telephone of their intent to do so.

43. During the telephone conversation on September 30, 2002, the Respondent initially refused to agree to a refund but subsequently agreed to refund Patient C's money minus a \$1,200 "handling fee."<sup>5</sup>

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<sup>4</sup> The Assurance of Discontinuance indicates that Patient B is owed a refund of \$4,750 however the purchase price of the hearing aids listed on the sales contract itself was \$4,570.

<sup>5</sup> The Hearing Aid Sales Act permits a 10% fee for services. 10% of \$5,990 is \$599.

44. After repeated unsuccessful attempts to contact the Respondent between October 2 and October 7, 2002, Patient C's daughter finally spoke to the Respondent on October 8, 2002. During this conversation, the Respondent agreed to refund the entire \$3,000 down payment within thirty (30) days.

45. On November 12, 2002, Patient C's daughter called the Respondent to inquire about the promised refund which had not yet arrived. The Respondent stated that he had mailed it on October 12, 2002.

46. In November of 2002, Patient C's daughter sought the assistance of the Consumer Protection Division in obtaining a refund of her mother's money.

47. On December 2, 2002, the Consumer Protection Division referred Patient C's complaint to the Board.

48. As of February 25, 2003, neither Patient C nor her daughter had received a refund of any portion of Patient C's \$3,000 payment.

49. In his correspondence dated January 6, 2003 to the Board, the Respondent stated that Patient C is due a refund from his company but that he does not have money to reimburse her.

50. On May 11, 2003, the Respondent signed the Assurance of Discontinuance in the Consumer Protection Division. In that document, the Respondent agreed that Patient C properly cancelled her purchase of hearing aids and was due a refund of \$3,000.

#### **PATIENT D**

51. Patient D is an 86 year old woman who resides in Silver Spring, Maryland.



52. On August 15, 2002 the Respondent visited Patient D in her home. The Respondent gave Patient D a hearing test and sold her two (2) Beltone hearing aids for \$4,390. Patient D paid the entire \$4,390 with check #0328.

53. On August 20, 2003, the third day of the three (3) business-day grace period, Patient D cancelled the order by going to the Respondent's Silver Spring, Maryland office and delivering a written cancellation notice.

54. After the ten (10) day refund period set forth in the contract of sale passed, Patient D called the Respondent's office to request her refund. She was told that it would take forty-five (45) days for the refund to be processed by the accountant.

55. After numerous calls to the Respondent and Better Hearing Centers, Patient D contacted the Consumer Protection Division on November 1, 2002 for assistance in obtaining a refund of her money from the Respondent.

56. On December 2, 2002, the Consumer Protection Division referred Patient D's complaint to the Board.

57. In his correspondence dated January 6, 2003 to the Board, the Respondent stated that Patient D is due a refund from his company but that he does not have money to reimburse her.

58. As of March 8, 2003, Patient D had not received a refund of any portion of her \$4,390 payment.

59. On May 11, 2003, the Respondent signed the Assurance of Discontinuance in the Consumer Protection Division. In that document, the Respondent agreed that Patient D properly cancelled her purchase of hearing aids and was due a refund of \$4,390.

## **PATIENT E**

60. Patient E is a ninety-two (92) year old self-described widow/pensioner who resides with her nephew and his wife.

61. On August 9, 2002, Patient E purchased two (2) hearing aids from Better Hearing Centers for \$4,000. She paid \$2,000 when she placed the order on August 9 and the remaining \$2,000 when she received delivery of her hearing aids on August 28, 2002.

62. Patient E was not satisfied with the hearing aids because she felt that they did not fit properly and that they were not properly adjusted to accommodate her hearing impairment.

63. On September 25, 2002, within the thirty (30) day period specified in the contract and as required by law, Patient E returned the hearing aids in proper working order and requested a refund of the \$4,000 she paid to the Respondent.

64. In November of 2002, Patient E contacted the Consumer Protection Division for assistance in obtaining a refund of her money.

65. On December 2, 2002, the Consumer Protection Division referred Patient E's complaint to the Board.

66. In his January 6, 2003 letter to the Board, the Respondent admitted that Patient E was due a refund by his company.

67. As of February 25, 2003, five (5) months after returning the hearing aids and requesting a refund, Patient E had not received any portion of the \$4,000 refund due to her.

68. On May 11, 2003, the Respondent signed the Assurance of Discontinuance in the Consumer Protection Division. In that document, the Respondent agreed that

Patient E properly cancelled her purchase of hearing aids and was due a refund of \$4,000.

#### **PATIENT F**

69. On April 17, 2002, Patient F met with a representative of Better Hearing Center in his home and agreed to purchase two (2) hearing aids for \$3,600.

70. Better Hearing Center delivered the hearing aids to Patient F at his home on May 18, 2002.

71. Patient F was not satisfied with the fit of the right hearing aid and decided to return it June 10, 2002.

72. As of February 25, 2003, approximately seven (7) months after returning the aid and requesting a refund, Patient F had not received any portion of the \$1,800 he paid for the returned aid.

73. On May 11, 2003, the Respondent signed the Assurance of Discontinuance in the Consumer Protection Division. In that document, the Respondent agreed that Patient F properly cancelled his purchase of hearing aids and was due a refund of \$3,600<sup>6</sup>.

#### **PATIENT G**

74. On May 17, 2002, Patient G, an 88 year old man, purchased two (2) hearing aids for \$4,100 from the Respondent at the Respondent's Better Hearing Center store located at 56 Main Street, Westminster, Maryland.

75. On June 13, 2002, the Patient G decided to cancel his purchase and returned the hearing aids to the Respondent. He requested a refund of his \$4,100.

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<sup>6</sup> The Assurance of Discontinuance states that Patient F was due \$3,600 which was the amount he paid for two hearing aids. Since he only returned the right hearing aid, he is only entitled to a refund of \$1,800.

76. On August 27, 2002, after repeated attempts to contact the Respondent by telephone went unanswered, Patient G's attorney wrote to the Respondent and demanded that the Respondent refund Patient G's \$4,100.

77. On December 12, 2002, Patient G's attorney again wrote to the Respondent demanding the refund for Patient G in the form of at least \$200 monthly installments.

78. As of February 22, 2003, Patient G had not yet received a refund of any portion of his \$4,100 payment.

79. On May 11, 2003, the Respondent signed the Assurance of Discontinuance in the Consumer Protection Division. In that document, the Respondent agreed that Patient G properly cancelled his purchase of hearing aids and was due a refund of \$4,100.

#### **PATIENT H**

80. On October 28, 2002, Patient H purchased two hearing aids from the Respondent's Silver Spring, Maryland store. She paid \$500 as a deposit for the hearing aids.

81. Two (2) or three (3) days after she purchased the hearing aids and before the aids were delivered to her, Patient H informed the Respondent's store that she wanted to cancel the order. The person with whom she spoke agreed to cancel the order and refund the \$500 deposit.

82. After Patient H did not receive her refund in a reasonable period of time, Patient H and her daughter both called the Better Hearing Center almost daily to request the refund. The Respondent did not return repeated calls from Patient H.

83. As of March 3, 2003, Patient H had not received a refund of any portion of her \$500 deposit.

84. On May 11, 2003, the Respondent signed the Assurance of Discontinuance in the Consumer Protection Division. In that document, the Respondent agreed that Patient H properly cancelled her purchase of hearing aids and was due a refund of \$500.

#### **PATIENT I**

85. On May 15, 2002, Patient I purchased a Beltone hearing aid for \$1,625 from the Respondent's Better Hearing Center in Westminster, Maryland. Patient I paid a \$200 down payment on the same date.

86. The hearing aid was delivered to Patient I in her home on June 5, 2002 at which time Patient I paid the remaining \$1,425 due.

87. On July 2, 2002, within thirty (30) days of receipt of the aid, Respondent returned the hearing aid in proper working order with a written notification regarding her intent to cancel the purchase.

88. After thirty (30) days of waiting for the refund, Patient I's daughter made repeated attempts to contact the Respondent about the refund due to her mother but the Respondent did not return the daughter's calls.

89. On October 16, 2002, Patient I's daughter contacted the Consumer Protection Division seeking assistance with obtaining a refund of her mother's \$1,425.

90. On December 2, 2002, the Consumer Protection Division referred Patient I's complaint to the Board.

91. In his correspondence dated January 6, 2003 to the Board, the Respondent stated that Patient I had been refunded the money due to her.

92. On May 20, 2003, Patient I contacted the Board and informed the Board's Executive Director that she had in fact received a refund.

#### **PATIENT J**

93. On December 3, 2002, Patient J, an 80 year old women residing in a retirement community in Maryland, agreed to purchase two Beltone hearing aids from the Respondent for \$5,590. The sale occurred in Patient J's residence. Patient J paid the entire \$5,590 on December 3, 2002.

94. Patient J, with the assistance of her brother-in-law, cancelled her purchase on approximately January 20, 2003, before she received the hearing aids.

95. On or about January 20, 2003, the Respondent promised both Patient J and her brother-in-law that he would send a refund.

96. Patient J's brother-in-law sent a letter to the Respondent on February 12, 2003 indicating that the refund the Respondent had promised to send by February 5, 2003 was then overdue.

97. Since January of 2003, the Respondent did not answer or return numerous calls from Patient J's brother-in-law.

98. On May 5, 2003, the Board received a complaint from Patient J's brother-in-law indicating that Patient J had not received any portion of the \$5,590 refund the Respondent owed to Patient J.

99. By failing to provide refunds to patients B, C, D, E, F, G, H, I, and J, the Respondent violated Health Occ. §2-314 (12) which prohibits violation of any provision

of Title 2. Specifically, the Respondent's conduct violated Health Occ. §2-406 which prohibits unfair and deceptive trade practices as defined in Door-to-Door Sales Act and the Hearing Aid Sales Act. The Respondent's conduct also violated Health Occ. §2-314 (10) which prohibits any act of unprofessional conduct in the provision of hearing aid services and (20) which prohibits the promotion the sale of devices, appliances, or goods to a patient so as to exploit the patient for financial gain.

### **C. MISCELANOUS UNPROFESSIONAL CONDUCT AND REFUNDS**

#### **PATIENT K**

100. On March 3, 2001, Patient K purchased two Beltone hearing aids from the Respondent's Better Hearing Centers located in Westminster, Maryland. On that date, she paid \$3,200 via her credit card.

101. In November of 2001, Patient K's daughter learned that an insurance payment of \$1,250 from Care First Blue Cross/Blue Shield had been sent directly to the Respondent's business.

102. From November of 2001 to February of 2002, Patient K's daughter repeatedly contacted the Respondent in order to obtain a refund of the \$1,250 paid by the insurance. Respondent did not respond to Patient K's daughter's repeated requests for the refund.

103. On February 26, 2002, Patient K's daughter sought assistance from the Better Business Bureau in getting a refund of her mother's money. On June 3, 2002, the Better Business Bureau, sent out a final letter to the Respondent regarding Patient K's refund. The Respondent did not respond to the Better Business Bureau's letter.

104. On August 1, 2002, Patient K's daughter sent a complaint to the Consumer Protection Division. The Consumer Protection Division made repeated attempts to contact the Respondent in September and October of 2002. The Respondent did not respond to the Consumer Protection Division's calls or letters.

105. On December 2, 2002, the Consumer Protection Division referred Patient K's complaint to the Board.

106. In his January 6, 2003 letter to the Board, the Respondent admits that Patient K was due a refund by his company.

107. As of July 24, 2003, Patient K had not been refunded the \$1,250 owed to her by the Respondent.

#### **PATIENT L**

108. Patient L is an elderly woman who resides with her adult daughter. She is homebound because she difficulty breathing and using her legs.

109. Patient L purchased two (2) hearing aids from the Respondent in November of 1999. Initially, both hearing aids fit and worked satisfactorily. Patient L's daughter brought one of the aids to the Respondent for repair on July 26, 2001 because it had stopped working.

110. In the fall of 2001 the Respondent returned the hearing aid to Patient L but it still did not work correctly and it no longer fit correctly or comfortably into Patient L's ear.

111. Between December of 2001 and April 30, 2002 the Respondent took three (3) molds of Patient L's ear but was unable to provide an aid that fit comfortably into Patient L's ear.



112. Although the Respondent made significant efforts to assist Patient L in adjusting to her new hearing aid, he repeatedly made appointments to meet with Patient L and never showed up or called to say that he would not be coming. Patient L's daughter documented at least seven (7) occasions between May 15, 2002 and June 27, 2002 when the Respondent did not keep or call to cancel a scheduled appointment with Patient L. She also documented numerous telephone calls to Respondent's office to which the Respondent did not respond.

113. Patient L was harmed by not having her hearing aid because without it her quality of life has significantly declined. In addition, the unreturned telephone calls and missed appointments greatly inconvenienced and aggravated Patient L and her family.

114. As a result of the protracted service problems and inconsiderate, unprofessional behavior by the Respondent, Patient L's daughter requested a refund of the purchase price of the non-working hearing aid. The Respondent refused this request.

115. In June of 2002, Patient L's daughter sent a complaint to the Board, the Consumer Protection Division of the Office of the Attorney General, and to the Better Business Bureau. In her complaint, Patient L's daughter described numerous incidents where the Respondent was inconsiderate by not showing up for scheduled appointments and not returning telephone calls.

116. In his January 6, 2003 letter to the Board, the Respondent claimed that Patient L was satisfied with her hearing aid at that time. In contrast, Patient L's daughters indicated that Patient L has been unable to use the hearing aid for the majority of the time since it was initially returned for repair in June of 2001.

117. Patient L has possession of the hearing aid but she has not been using it because it does not fit comfortably into her ear and it does not work properly. She is only using one hearing aid and plans on purchasing a new hearing aid (from a different dispenser) in the near future when she can afford to do so.

**Patient M**

118. Patient M is an 83 year old man who suffers from hearing difficulties and unspecified health problems. His adult daughter assists him in handling many of his affairs.

119. On October 26, 2001, Patient M purchased two (2) hearing aids from the Respondent for \$4,600. Shortly after receiving the aids, Patient M returned the aids to the Respondent for repair because they were not working correctly. The Respondent never returned the aids to Patient M.

120. After several months without his hearing aids, Patient M requested a refund of his \$4,600 from the Respondent.

121. Patient M's daughter reported that she and her father have attempted to contact the Respondent "50 times" but that he was not responsive to their calls or letters.

122. In November of 2002, Patient M complained to the Board about the service problems he was having with the Respondent.

123. In his January 6, 2003 correspondence with the Board, the Respondent stated that Patient M was due a refund because his hearing aids had inadvertently been lost by the Respondent.

124. On more than one occasion, the Respondent misappropriated payments from patients to a third-party financing company used by patients to finance hearing aid purchases.

125. By failing to refund the insurance payment to Patient K, failing to return calls and keep appointments with Patients L and M, losing Patient M's hearing aids, and failing to make the promised refund to Patient M and misappropriating patient payments intended for a third-party financing company, the Respondent has violated Health Occ. § 2-214 (3) which prohibits fraud or deceit in the practice of hearing aid dispensing, (10) which prohibits unprofessional conduct in the practice of hearing aid services, (11) which prohibits violation of any order given or regulation adopted by the Board with underlying grounds of violation of COMAR 10.04.02.02 (A ) which requires that the licensee shall consider paramount the welfare of the individuals served professionally and 10.41.02.02 (E) which requires the licensee to take every precaution to avoid harm to the individual served, and (19) which prohibits .professionally incompetent behavior.

### **III. PRACTICING WITHOUT A LICENSE**

126. The Respondent's license expired on January 31, 2003. The Board provided an automatic grace period to renew the license through March 3, 2003.

127. On March 18, 2003, the Respondent received and signed for a certified letter from the Board informing him that he must renew his license and that he must cease practicing as a Hearing Aid Dispenser until his license was reinstated.

128. On March 20, 2003, while the Respondent's license was expired and after he received the Board's cease and desist letter, the Board's investigator contacted the

Respondent's office and was able to schedule an appointment with the Respondent for his mother to be fitted for hearing aids.

129. In addition, on April 8, 2003, the Respondent met with Patient A at her home, tested her hearing, fitted her right ear and sold Patient A a hearing aid for \$1,200.

130. The Respondent's license was not reinstated until April 22, 2003.

131. The Respondent's license lapsed from March 3, 2003 to April 22, 2003.

132. During the time the Respondent's license was lapsed, he continued to practice as a hearing aid dispenser.

133. By practicing without a license, the Respondent violated Health Occ. §2-314(11) which prohibits violation of any lawful order given by the Board or regulation adopted by the Board, (12) which prohibits violation of any provision of Title 2 with underlying grounds of Health Occ. §2-401 which prohibits unlicensed practice of hearing aid services, and (10) which prohibits unprofessional conduct in the provision hearing aid services.

### **III. FAILURE TO COOPERATE WITH BOARD INVESTIGATION**

134. On December 18, 2003, the Board served, via certified mail, a *subpoena duces tecum* for:

A complete "LEGIBLE" copy of all patient treatment records including charts, evaluations, re-evaluations, tests, referrals, notes, treatment notes, discharge summary, correspondence, letters, memo's, doctors orders, patient information sheets, patient sign-in sheets, etc. for the [nine (9)] patients listed below.

A complete "LEGIBLE" copy of all billing records to include all insurance statements, fee sheets, billing statements for treatments, correspondence, debts owed, insurance claim forms, etc. for all [nine (9)] patients listed below. [patient names omitted]

135. The Respondent did not send any of the records *subpoened* on December 18, 2002.

136. In response to a complaint received by the Board from Patient N, on March 21, 2003, the Board sent a letter to the Respondent requesting an explanation of the allegations described Patient N's complaint. Although the Respondent indicated to the Board's investigator that he wrote a responsive letter to the Board, the Board did not receive a letter from the Respondent and the Respondent cannot produce a copy of the letter.

137. On August 6, 2003, the Board *subpoenaed* records for Patients A and Z. The Respondent provided Patient A's records from 1996 but did not provide records for his most recent treatment of Patient A in April of 2003.

138. On September 3, 2003, the Board issued a *subpoena* for records for Patient J. The Respondent did not provide any records in response to the *subpoena*.

139. By failing to comply with the Board's investigation, the Respondent violated Heath Occ. §2-314(11) which prohibits violation of any lawful order given by the Board or regulation adopted by the Board. Specifically, the Respondent violated COMAR 10.41.02.04 (H) which requires that the licensee maintain adequate records of professional services rendered and products dispensed and that licensees shall allow access to records when appropriately authorized and (K) which requires that the licensee cooperate fully with the Board in an investigation and adjudication of matters related to the Code of Ethics.

#### IV. Unauthorized Practice

140. The Respondent has several unlicensed employees who have provided hearing aid services to patients including conducting hearing tests, taking ear molds and dispensing hearing aids.

141. By directly employing unlicensed individuals in the provision of hearing aid services, the Respondent violated Health Occ. §2-314(6) which prohibits directly or indirectly employing any unlicensed person 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 Respondent violated Health Occ. §§2-314 (3), (5), (6), (10), (11), (12), (19), (20), (21), 2-401, 2-406; Md. Regs. Code tit. 10, §41; and Comm. Law II §§13-301, 14-301, 14-302, 14-2503, 14-2504, and 14-2505.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 15 day of JANUARY, 2009, by a majority of a quorum of the Board, hereby

ORDERED, that upon execution of this Consent Order, Respondent's license to practice hearing aid dispensing in the State of Maryland is SUSPENDED with the following conditions:

1. The Respondent shall pay refunds due to all patients;
2. The Respondent shall, within thirty (30) days of this Order, submit a list of all patients due refunds to the Board;

3. 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;
4. 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;
5. Respondent shall attend and submit proof of completion of a Board approved ethics course; and
6. The Respondent shall attend and submit proof of completion of a Board approved business management course.

and it is further

ORDERED that after nine (9) months of active suspension AND completion of the aforementioned conditions, the Respondent may petition the Board to STAY the Suspension. The Board's decision regarding the Respondent's petition to stay the suspension shall be at the Board's discretion and non-appealable; and it is further

ORDERED that upon issuance of an order staying the suspension, the Respondent's license shall be on PROBATION for a period of at least two (2) years under the following conditions:

1. The Respondent shall submit a list of all hearing aid sales by his business to the Board on a monthly basis;
2. The Respondent's practice shall submit to a Board approved audit of patient records and accounts, including the escrow account described above, with quarterly reports to the Board;

3. The Respondent shall permit the Board to conduct random reviews of patient files, as necessary, at the Board's discretion.

and it is further;

ORDERED that the Respondent shall practice in accordance with the laws and regulations governing the practice of hearing aid dispensing in Maryland and any such violation shall be deemed a violation of this order; and it is further

ORDERED that should the Board receive a report that the Respondent's practice is a threat to the public health, welfare and safety, the Board may take immediate action against the Respondent's license, including suspension or revocation, providing notice and an opportunity to be heard are provided to the Respondent in a reasonable time thereafter. Should the Board receive in good faith information that the Respondent has substantially violated the Act or if the Respondent violated any conditions of this Order, after providing the Respondent with notice and an opportunity for a hearing, the Board may take further disciplinary action against the Respondent, including suspension or revocation of the Respondent's license. The Respondent shall have the burden of proof to demonstrate compliance with this Order in any action brought against the Respondent as a result of a substantiated breach of the conditions of the Order; and it is further

ORDERED that if the Respondent fails to comply with any of the terms or conditions set forth above, that failure shall be deemed a violation of this Order; and it is further

ORDERED that the Respondent shall pay all costs associated with this ORDER, and it is further



ORDERED that for purposes of public disclosure, as permitted by Md. State Gov't. Code Ann. §10-617 (h) (Repl. Vol.1999), this document consists of the forgoing Findings of Fact, Conclusions of Law and Order and that the Board may also disclose same to any national reporting data bank to which it is mandated to report.

1/15/04  
Date

Richard Robinson  
Richard Robinson, Chairperson  
Board of Examiners for Audiologists, Hearing  
Aid Dispensers, and Speech-Language  
Pathologists.

### CONSENT

I, John M. Kochan, HAD, by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney.
2. I am aware that, without my consent, my license to practice hearing aid dispensing in this State cannot be limited except pursuant to the provisions of §2-315 of the Act and §§10-201 et seq. of the Administrative Procedure Act codified in the State Government Article of the Annotated Code of Maryland.
3. I am aware that I am entitled to a full evidentiary hearing before this Board or the Office of Administrative Hearings.
4. By this Consent Order, I hereby admit the truth of the Findings of Fact and Conclusions of Law and accept and submit to the foregoing Order and its conditions.
5. I acknowledge the validity of the Order as if made after a hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by law and I waive any appeal right under Maryland State Gov't Code Ann. §10-222.

6. I acknowledge that by my failure to abide by the conditions of this Consent Order, I may suffer additional disciplinary action against my hearing aid dispensing in the State of Maryland.

7. I understand that this Consent Order is a public document, disclosable under §10-617(h)(2)(vi) of the Md. Code Ann. State Gov't.

8. I fully understand the language, meaning, and terms of this Consent Order.

Dec 17, 2003  
Date

John M. Kochan Sr  
John M. Kochan, HAD; License No.:02398  
Respondent

State of: Maryland

City/County of: Montgomery

I HEREBY CERTIFY that on this 17 day of December, 2003, before me, a Notary of the State of Maryland and the City/County of Montgomery, personally appeared John M. Kochan, HAD and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and that the statements made herein are true and correct.

AS WITNESS my hand and notarial seal.

Michael G. Wechsler  
NOTARY



Michael G. Wechsler  
NOTARY PUBLIC  
MONTGOMERY COUNTY  
MARYLAND  
My Commission Expires May 1, 2007

5/1/07  
My Commission Expires: