

IN THE MATTER OF

MITCHELL A. STEIN
Hearing Aid Dispenser

Respondent

License Number: 01901

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BEFORE THE STATE BOARD
OF EXAMINERS FOR
AUDIOLOGISTS, HEARING AID
DISPENSERS AND SPEECH-
LANGUAGE PATHOLOGISTS

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CONSENT ORDER

PROCEDURAL BACKGROUND

On April 9, 2003, the State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists ("the Board") charged MITCHELL A. STEIN, Hearing Aid Dispenser, (the "Respondent"), License No. 01901, under the Maryland Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologist Act (the "Act"), Md. Health Occ. ("H.O.") Code Ann. § 2-101 *et seq.* (2000).

The pertinent provisions of the Act under H.O. § 2-314 provide:

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 the license or limited license if the applicant or 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;
- (7) Uses or promotes or causes the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand insignia, or other representation;
- (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; and

(12) Violates any provision of this title.

Another pertinent provision of the Health Occupations title, § 2-406 provides:

While providing hearing aid services as ... a hearing aid dispenser, a person may not :

(1) Engage in an unfair or deceptive trade practice, as defined in § 13-301 of the Commercial Law Article.

Md. Com. Law II Code Ann. § 13-301 provides, *inter alia*,

Unfair or deceptive trade practices include any:

(1) False, falsely disparaging, or misleading oral or written statement visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;

(2) Representation that:

(i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity [sic] which they do not have...;

(9) Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with:

(i) The promotion or sale of any consumer goods...

The pertinent provisions of the regulations, Md. Regs. Code ("COMAR") tit. 10, § 41.02 provide:

.02 Ethical Responsibilities

C. Professional Conduct

(1) The licensee may not be represented by titles which are not consistent with training.

.03 Advertising

A. The licensee may not include statements in advertising that:

(1) Misrepresent facts; and

(6) Contain representations or implications that in reasonable probability can be expected to cause an ordinarily prudent person to misunderstand or be deceived...

The Respondent, after being advised of his right to retain counsel, and declining that right; and Kimberly S. Cammarata, Assistant Attorney General, negotiated terms and conditions of a Consent Order as a resolution of the Charges. The Respondent and the Board agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law and Order, with the terms and conditions set forth below.

FINDINGS OF FACT

1. At all times relevant hereto, the Respondent was and is licensed to practice hearing aid dispensing in the State of Maryland, under license number 01901.
2. The Respondent is the president of American Hearing Centers, Inc. and is responsible for the advertising of American Hearing Centers, Inc.
3. The Respondent advertises American Hearing Centers, its products and services, among other ways, via its web site at www.americanhearingcenters.net. The website provides information which is misleading, deceiving, and/or untruthful.

Audioprostologist

4. On the website, the Respondent is pictured with the titles BC-HIS and Audioprosthologist, listed under his name. The Respondent is not an Audioprosthologist.

Master Hearing Instrument Specialist

5. On the website, Mr. Ken Needle is pictured with the titles BC-HIS and Master Hearing Instrument Specialist under his name. The use of the title "Master Hearing Instrument Specialist" is not a title recognized by the Board and is a title which is misleading and deceiving to consumers as it implies a specialty from a legitimate certifying organization which applies objective and consistent standards for obtaining such a designation. The title "Master Hearing Instrument Specialist" is given by a hearing aid manufacturer to those persons who purchase a certain number of hearing aids from the manufacturer. The title is strictly a sales designation and requires no special skills, training, testing, experience or expertise.

The Only American Made Hearing Aid

6. On the website, a menu page touts "The Only American Made Hearing Aid." This caption and the page itself provides false, misleading and deceiving information as there are other American made hearing aids and other American owned companies that make and distribute hearing aids.

The most advanced hearing aid in the world; the only hearing aid with voice recognition circuitry; no hearing aid can outperform this instrument.

7. Under the new products section of the website, the following statements appear:

- a. "INTRODUCING The Most Advanced Hearing Aid in the World, The 2002 Eclipse;"
- b. "The only hearing aid with voice recognition circuitry...;" and
- c. "There is No Hearing Aid On The Market That Can Out Perform This Instrument."

8. These superlative statements amount to puffery and are false, misleading, and deceiving. There are other hearing aids with voice recognition circuitry.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent has violated H.O. § 2-314(3), (7), (10), (11), (12); H.O. § 2-406(1) and Md. Com. Law II Code Ann. § 13-301 which provide:

H.O. § 2-314

- (3) Commits fraud or deceit in the practice of audiology, the provision of hearing aid services, or the practice of speech-language pathology;
- (7) Uses or promotes or causes the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand insignia, or other representation;
- (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; and
- (12) Violates any provision of this title.

H.O. § 2-406(1)

While providing hearing aid services as ... a hearing aid dispenser, a person may not [e]ngage in an unfair or deceptive trade practice, as defined in § 13-301 of the Commercial Law Article...

Md. Com. Law II Code Ann. § 13-301

Unfair or deceptive trade practices include any:

- (1) False, falsely disparaging, or misleading oral or written statement visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;
- (2) Representation that :
 - (i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity [sic] which they do not have...;

(9) Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with:

(i) The promotion or sale of any consumer goods...

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is by the Maryland State Board of Audiologists, Hearing Aid Dispenser and Speech-Language Pathologists hereby:

ORDERED that the Respondent's license to practice hearing aid dispensing in the State of Maryland is **SUSPENDED** for NINETY (90) DAYS; and it is further

ORDERED that the Suspension is immediately **STAYED**; and it is further

ORDERED that from the date of this Consent Order, the Respondent shall be placed on **PROBATION** for a period of TWO (2) YEARS, subject to the following terms and conditions:

1. The Respondent shall pay, in full, a civil fine in the amount of TWO THOUSAND DOLLARS (\$2000.00), by certified check, payable to the "Board of Hearing Aid Dispensers". Within sixty (60) days of the effective date of the Consent Order, that date being the date that the Board executes the Consent Order, the Respondent shall pay in part, one thousand dollars (\$1000.00) of the civil fine. Within six (6) months of the effective date of the Consent Order, the Respondent shall pay in part, the remainder of the civil fine, one thousand dollars (\$1000.00).

2. Within six (6) months of the effective date of the Consent Order, the Respondent shall enroll in and successfully complete a professional ethics course that has been pre-approved by the Board.

3. The Respondent shall forward copies of all advertisements, whether print, television, radio, web or otherwise, to the Board on a monthly basis for review; and it is further

ORDERED that the Respondent's failure to fully comply with the terms and conditions of this Consent Order hereby imposed shall be deemed a Violation of Probation and of this Consent Order, and that the Respondent may be subject to further disciplinary action by the Board; and it is further

ORDERED that the Respondent shall comply with the Maryland Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologist Act and regulations. Failure to do so shall constitute a Violation of Probation and of this Consent Order, and the Respondent may be subject to further disciplinary action by the Board; and it is further

ORDERED that if the Board has probable cause to believe that the Respondent has violated any of the terms of this Consent Order, the Board, after notice and opportunity for a Show Cause Hearing only before the Board, and upon a determination of a violation, may impose any other disciplinary sanctions it deems appropriate under the Act, said violation being proven by a preponderance of the evidence; and it is further

ORDERED that one (1) year from the date of this Consent Order, the Respondent may petition the Board for termination of his probationary status without any conditions or restrictions whatsoever. If the Respondent has satisfactorily complied with all conditions of probation, including at least one (1) year of probation, and there are no outstanding

complaints regarding the Respondent, the Board shall terminate the probation; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

ORDERED that this Consent Order is a public document pursuant to Md. State Gov't Code Ann §10-611 et seq. (1999) and it will be disclosed to any national reporting data bank that the Board is mandated to report to.

5/20/03
Date

Iona Hutton-Johnson
Iona Hutton-Johnson, Chair
State Board of Examiners for Audiologists,
Hearing Aid Dispensers and Speech-Language
Pathologists

CONSENT

I, Mitchell A. Stein, Hearing Aid Dispenser, License #01901, by signing this Consent, agree to be bound by the terms and conditions of the foregoing Consent Order. I acknowledge that I have read this Consent Order and that I have been notified of my right to consult with an attorney in the course of the Board's proceedings, and that I have elected to proceed without the advice of counsel.

I further acknowledge that, by signing this Consent Order, I admit to the Findings of Fact and Conclusions of Law and submit to its terms and conditions as a resolution of the Board's case. I further acknowledge that the Board has entered into this Consent Order in lieu of proceeding forward with the Charges based on the Findings of Fact. By signing this Consent Order, I waive my right to contest the terms and findings herein and all challenges legal or otherwise to the proceedings before the Board.

I acknowledge the enforceability of this Consent Order as if it were made after a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other procedural protections to which I am entitled by law. I also recognize that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing and am also waiving any other legal remedies I may have regarding resolution of the Charges. I sign this Consent Order voluntarily, understanding its terms, meaning, and effect.

5-14-03
Date

Mitchell A. Stein
Mitchell A. Stein
Respondent

NOTARY

STATE OF Maryland

CITY/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 14 day of may, 2001,³ before me, a Notary Public for the State and City/County aforesaid, personally appeared Mitchell A. Stein, and made oath in due form of law that the foregoing Consent was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.

John R. Kaprielian
Notary Public

My Commission Expires:
3-11-2006