

RJM

02-01-02

Final Order No. DOH-02-0530- FOF-MQA
FILED DATE - 4/16/02
Department of Health

By: Vicki R. Kenon
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF HEARING AID SPECIALISTS

Division of Administrative Hearings
FILED
Date 7/4/02

DEPARTMENT OF HEALTH,
BOARD OF HEARING AID SPECIALISTS,

Petitioner,

vs.

AP

DOAH CASE NOS. 01-3536PL
01-3537PL
01-3538PL

ROBERT F. DAVIDSON,

Respondent.

FLB-1103

FINAL ORDER

THIS CAUSE came before the Board of Hearing Aid Specialists (Board) pursuant to section 120.569 and section 120.57(1), Florida Statutes, on April 5, 2002, in Miami, Florida for the purpose of considering the Administrative Law Judge's Recommended Order (attached as Exhibit A). Petitioner was represented by Agency for Health Care Administration attorney Gary L. Asbell. Respondent was not present, but was represented by attorney E. Raymond Shope.

Upon review and consideration of the Recommended Order and after a review of the available record in this case, including Respondent's Exceptions to Recommended Order (attached as Exhibit B), and Petitioner's Response (attached as Exhibit C), and Petitioner's Exceptions to Recommended Order (attached as Exhibit D), the Board arrived at the following findings of fact and conclusions of law:

EXCEPTIONS TO RECOMMENDED ORDER

1. Respondent filed exceptions to specified paragraphs in the findings of fact and conclusions of law portions of the Recommended Order.
2. The Board individually considered and discussed each of these filed exceptions and determined that they be denied.
3. Petitioner filed exceptions to paragraphs 17 and 24.
4. The Board individually considered and discussed these exceptions. The Board granted Petitioner's exception to paragraph 24 because the cited law applies to audiologists and not to the hearing aid profession that is regulated by the Board.

FINDINGS OF FACT

5. The findings of fact set forth in the Recommended Order are approved, adopted, and incorporated herein by reference.

CONCLUSIONS OF LAW

6. The Board has jurisdiction of this matter pursuant to sections 120.569 and 120.57(1), and part II of chapter 484, Florida Statutes.
7. With the exception of paragraph 24, the conclusions of law set forth in the Recommended Order are consistent with the findings and are approved, adopted, and incorporated herein by reference. A typographical error is noted in paragraph 17 as the correct citation is to statute section 484.0512, Florida Statutes.
8. In lieu of the language contained in paragraph 24, the Board concludes that Rule 64B6-7.002, Florida Administrative Code, authorizes deviation from the normal penalty guidelines for aggravating and mitigating circumstances by the Board. Aggravating

circumstances include exposure of a patient or the public to injury or potential injury, physical or otherwise, and pecuniary benefit or self-gain inuring to the licensee.

RECOMMENDATION

9. The Administrative Law Judge's recommendation is hereby approved and adopted in its entirety except that the refund to patient J. C. or his estate alternatively may be paid to the daughter Chris Vidalis.

WHEREFORE,

IT IS HEREBY ORDERED AND ADJUDGED that Respondent's license shall be disciplined as provided in the Recommended Order. The required probation shall last for a one year period. At the conclusion of the one year of probation, Respondent shall make a personal appearance before the Board.

The appropriate amount to be assessed against Respondent for the costs of investigation and prosecution is \$3,201. These costs and the fine, payable to the Department of Health, shall be mailed to the Board Executive Director, 4052 Bald Cypress Way Bin C-99, Tallahassee, FL. 32399-3299.

This Final Order shall take effect upon filing with the Clerk of the Department of Health.

DONE AND ORDERED this 15th day of April, 2002.

BOARD OF HEARING AID SPECIALISTS



Sue Foster, Board Executive Director

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this final order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the agency clerk of the Department of Health and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. mail to: Fred L. Buckine, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Pkwy, Tallahassee, Florida 32399-3060; to E. Raymond Shope, Esquire, 1404 Goodlette Road North, Naples, Florida 34102; to Robert F. Davidson, 347 Burning Tree Drive, Naples, Florida 34103; and by interoffice mail to Gary L. Asbell, Senior Attorney, Agency for Health Care Administration, Practitioner Regulation - Legal B, 2727 Mahan Drive, Bldg. 3, MS-39, Tallahassee, Florida 32308, and to Donna Erlich, Assistant General Counsel, Department of Health, Prather Building, Tallahassee, Florida 32399, this 16th day of April, 2002.

Marie Webb