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P.02

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF HEALTH,

Petitioner,

vs.

KENT A. BROY,

Respondent.

LJS
DOAH Case No. 03-3452PL

DOH Case No. AS 2001-19941

MOTION TO REMAND

Petitioner, DEPARTMENT OF HEALTH, by and through its undersigned qualified representative, hereby files its MOTION TO REMAND and as grounds therefore states the following:

1. On October 23, 2003, Administrative Law Judge Larry J. Sartin entered an ORDER GRANTING Petitioner's Motion to Shorten Time for Respondent to Respond to Petitioner's Discovery Requests. The ORDER required Respondent to Respond to Petitioner's Request for Production of Documents and Petitioner's Request for Admissions on or before October 27, 2003. The ORDER further required Respondent to Respond to Petitioner's Second Request for Admissions on or before October 28, 2003.

2. In addition to the Division of Administrative Hearings' providing a copy of the above ORDER by mail to Respondent's attorney, Petitioner's undersigned qualified representative faxed a copy of the ORDER to the Respondent's attorney on October 24, 2003, which Respondent's attorney has acknowledged receiving.

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3. Each of Petitioner's discovery requests had been served by fax (as well as by U.S. mail) on Respondent's attorney prior to being filed by fax with the Division of Administrative Hearings. Respondent has therefore been afforded ample time to respond to Petitioner's discovery requests but Respondent has failed to respond to any of Petitioner's discovery requests as of the filing of this MOTION TO REMAND.

4. By failing to respond to Petitioner's Request for Production of Documents and Petitioner's Request for Admissions on or before October 27, 2003, the Respondent has failed to comply with Administrative Law Judge Larry J. Sartin's ORDER GRANTING MOTION TO SHORTEN TIME.

5. By failing to respond to Petitioner's Second Request for Admissions on or before October 28, 2003, the Respondent has failed to comply with Administrative Law Judge Larry J. Sartin's ORDER GRANTING MOTION TO SHORTEN TIME.

6. Pursuant to Rule 1.370 of the Florida Rules of Civil Procedure, each matter about which Petitioner requested an admission from Respondent is ADMITTED since Respondent failed to serve upon Respondent a written answer or objection addressed to each matter by the deadline imposed by Administrative Law Judge Larry J. Sartin's ORDER GRANTING MOTION TO SHORTEN TIME. Further pursuant to Rule 1.370 of the Florida Rules of Civil Procedure, all matters ADMITTED are CONCLUSIVELY ESTABLISHED.

7. Because every allegation in the Administrative Complaint that is material to Counts I, II, III, IV, and V of the Administrative Complaint has been ADMITTED and therefore CONCLUSIVELY ESTABLISHED, there are no material facts in dispute in this case that require an evidentiary hearing pursuant to Section 120.57(1), Florida Statutes.

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WHEREFORE, Petitioner, Department of Health, respectfully requests that this case be remanded to the Board of Hearing Aid Specialists for proceedings in accordance with Section 120.57(2), Florida Statutes.

Dated this 29TH day of OCTOBER, 2003.

Respectfully submitted,

CHARLES J. CRIST, JR.
Attorney General



Steven Graham
Qualified Representative
Department of Legal Affairs
110 S.E. 6th Street, 9th Floor
Fort Lauderdale, FL 33301
Telephone: (954) 712-4600
FAX: (954) 712-4658
Qualified Representative for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been served by FAX TRANSMISSION, as well as by U.S. mail, to: E. Raymond Shope, Esquire, 1404 Goodlette Road N, Naples, FL 34102 [Attorney for Respondent] at FAX number (239) 262-2244, this 29TH day of October, 2003.

