

FILED DATE - JUL 14 2016

Department of Health

By: Orlando Sudeus  
Deputy Agency Clerk

**STATE OF FLORIDA  
BOARD OF HEARING AID SPECIALISTS**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

vs.

**Rosalyn Runae Johnson White, A.S.,**

**Respondent.**

**DOH Case No; 2012-06027**

**Case No.: 15-6246PL**

**License No.: AS 4137**

FILED  
JUL 18 AM 11:37  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

**FINAL ORDER**

This cause came before the Board of Hearing Aid Specialists (Board), pursuant to sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting on July 8, 2016, in Clearwater, Florida. The purpose of the cause was for consideration of the Recommended Order issued in this case (attached hereto as Exhibit "A"), Respondent's Exceptions (attached hereto as Exhibit "B"), and Petitioner's Response to Exceptions (attached hereto as Exhibit "C"). Petitioner was present and represented by Richard A. Greenburg, Esq.

Upon review of the Recommended Order, the Exceptions, and the complete record in this case, the Board makes the following findings and conclusions:

**RULINGS ON EXCEPTIONS**

1. Respondent's Exceptions to Findings of Fact, Nos. 1-16: These exceptions are denied because the Petitioner's Request for Admissions was deemed admitted by the Administrative Law Judge ("ALJ"), pursuant to Fla. R. Civ. P. 1.370. The findings are supported by competent substantial evidence.

2. Respondent's Exceptions to Conclusions of Law, Nos. 17-21: These exceptions are denied because they are supported by competent substantial evidence, including but not limited to, reasonable inferences supported by competent substantial evidence, and they do not depart from the essential requirements of law.
3. Respondent's Exceptions to Conclusion of Law, No. 22: This exception is denied because revocation is an acceptable penalty pursuant to rule 64B6-7.002(2)(w), Florida Administrative Code.

#### FINDINGS OF FACT

4. There is competent, substantial evidence to support the Findings of Fact made in the Recommended Order;
5. Accordingly, the Findings of Fact set forth in the Recommended Order are hereby approved, adopted, and incorporated by reference as the Findings of Fact of the Board.

#### CONCLUSIONS OF LAW

6. The Board has jurisdiction pursuant to sections 120.569; 120.57(1); and Chapter 484, Part II, Florida Statutes.
7. The Board does not find a more reasonable interpretation of the law than that which was found by the Administrative Law Judge;
8. Accordingly, the Conclusions of Law set forth in the Recommended Order are approved, adopted and incorporated herein by reference.

PENALTY

9. Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be accepted without modification.

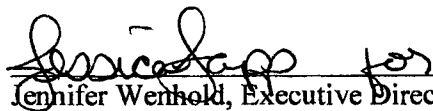
COSTS

10. The award of costs in the Recommended Order is accepted. Petitioners motion to bifurcate the proceedings such that the amount of costs will be determined in a separate hearing is granted. Accordingly, the Board retains jurisdiction to rule on the amount of costs. Respondent shall have the opportunity to provide testimony and argument on the amount of costs at the hearing.

**WHEREFORE**, it is hereby **ORDERED** that Respondent's license is revoked, and Respondent shall pay restitution to B.P. in the amount of \$90,000, shall be fined \$8,000, and shall be assessed the costs of the investigating and prosecuting this case.

**DONE AND ORDERED** this 14 day of July, 2016.

BOARD OF HEARING AID SPECIALISTS

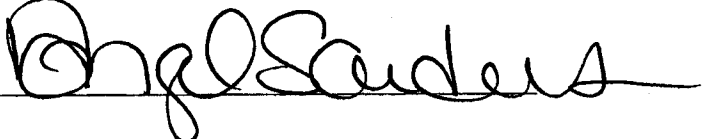
  
Jennifer Wenhold, Executive Director

**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 THIRTY (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 **CERTIFIED U.S. Mail to Rosalyn Runae Johnson White c/o Richard A. Greenberg, Esq., Rumberger, Kirk and Caldwell, P.A., P.O. Box 10507, Tallahassee, FL 32302-2507, Honorable F. Scott Boyd, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice mail to Octavio Simoes-Ponce, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265, this 14<sup>th</sup> day of July**, 2016.



**Deputy Agency Clerk**

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**Mission:**

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



**Rick Scott**  
Governor

**Celeste Philip, MD, MPH**  
State Surgeon General and Secretary

**Vision:** To be the Healthiest State in the Nation

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**MEMORANDUM**

**DATE:** July 14, 2016

**TO:** Adrienne Rodgers, J.D., Bureau Chief  
Bureau of Health Care Practitioner Regulation

**FROM:** Jennifer Wenhold, Executive Director  
Boards of Clinical Social Work, Marriage & Family Therapy,  
Mental Health Counseling, Dentistry, Opticianry,  
Hearing Aid Specialists and Athletic Training

**SUBJECT:** Delegation of Authority

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This is to advise you that while I am out of the office Thursday, July 14, 2016, through Friday, July 15, 2016, Jessica Sapp, Regulatory Supervisor, has delegated authority to serve as Acting Executive Director for the Boards of Clinical Social Work, Marriage & Family Therapy, Mental Health Counseling, Dentistry, Opticianry, Hearing Aid Specialists, and Athletic Training. Mrs. Sapp may be reached by phone to (850) 245-4463.

JW/ac

cc: Executive Directors  
Board Staff  
Karol Moore

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**Florida Department of Health**

Division of Medical Quality Assurance • Bureau of Health Care Practitioner Regulation • Boards of Clinical Social Work, Marriage & Family Therapy, Mental Health Counseling, Dentistry, Opticianry, Hearing Aid Specialists, and Athletic Training

4052 Bald Cypress Way, Bin C-08 • Tallahassee, FL 32399-3261  
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DATE MAY 20 2016

**STATE OF FLORIDA  
BOARD OF HEARING AID SPECIALISTS**

**DEPARTMENT OF HEALTH,**

**Petitioner,**

**DOAH Case No. 15-6246PL**

**v.**

**DOH Case No. 2012-06027**

**ROSALYN RUNAE JOHNSON WHITE, H.A.S.,**

**Respondent.**

**PETITIONER'S RESPONSE TO RESPONDENT'S EXCEPTIONS  
TO THE RECOMMENDED ORDER**

Petitioner, Department of Health ("Department"), by and through the undersigned counsel, pursuant to Rule 28-106.217(3), Florida Administrative Code (2015), hereby files this Response to Respondent's Exceptions to the Recommended Order ("Respondent's Exceptions."). In support thereof, Petitioner states the following:

**BACKGROUND**

1. Respondent, Rosalyn Runae Johnson White, is a licensed hearing aid specialist in the State of Florida, having been issued license number AS 4137 (Recommended Order, ¶ 2).

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DEPARTMENT OF HEALTH  
ADMINISTRATIVE SERVICES

2. A formal administrative hearing of the instant matter was held on March 8, 2016, to determine whether Respondent violated sections 484.056(1)(w), 484.056(1)(v), and 484.056(1)(g), Florida Statutes (2010-11), as alleged in Petitioner's Third Amended Administrative Complaint, and if so, what disciplinary measures should be taken against Respondent's license to practice dispensing hearing aids in Florida (*Id.*, p. 2-3).

3. On April 14, 2016, the presiding Administrative Law Judge ("ALJ") entered his Recommended Order ("Order"). The ALJ found that there was clear and convincing evidence that Respondent: failed to include serial numbers on receipts in violation of section 484.056(1)(w); exercised influence on Patient B.P. in such a manner as to exploit Patient B.P. for the financial gain of Respondent in violation of section 484.056(1)(v); and was guilty of misconduct in the practice of dispensing hearing aids in violation of section 484.056(1)(g) (*Id.*, p. 10-15).

4. The ALJ recommended that the Board of Hearing Aid Specialists ("Board") enter a final order imposing the following penalties on Respondent's license to practice dispensing hearing aids in

Florida: revocation; restitution to Patient B.P. of improper gains amounting to \$90,000; an \$8,000 administrative fine; and the assessment of reasonable costs related to investigation and prosecution (*Id.*, p. 17).

5. On April 29, 2016, Respondent's new counsel filed an Unopposed Motion for Extension of Time to File Respondent's Exceptions with the Department. On March 13, 2016, Respondent filed Respondent's Exceptions with the Department. *See* Respondent's Exceptions attached hereto as Exhibit A.

#### **STANDARD OF REVIEW**

6. The Board and the ALJ have distinct roles in administrative hearings involving issues of disputed material fact.

7. It is the hearing officer's function to "consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence." *Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (emphasis added). *See also* § 120.57(k), Fla. Stat (2015). If the evidence presented supports two



inconsistent findings, it is also the ALJ's role to decide the issue one way or the other. *Heifetz*, 475 So. 2d at 1281.

8. When presented with a recommended order by an ALJ, the Board has the authority to adopt the recommended order, reject or modify findings of fact, reject or modify conclusions of law, and accept or modify the recommended penalty. *See* § 120.57(1)(l), Fla. Stat. (2015).

9. The Board can only reject or modify the ALJ's findings of fact if it first determines from a review of the entire record, and states with particularity in the Board's order, that the findings of fact were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Id.*

10. Competent, substantial evidence was defined by the Florida Supreme Court in the following way:

Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be *reasonably inferred*. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.... We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently

relevant and material that *a reasonable mind would accept it as adequate to support the conclusion reached*. To this extent the 'substantial' evidence should also be 'competent.'

*DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (emphasis added, internal citations omitted).

11. In contrast, the Board may only reject or modify the ALJ's conclusions of law over which it has substantive jurisdiction. See § 120.57(1)(l), Fla. Stat. (2015). "Jurisdiction" has been interpreted to mean "administrative authority" or "substantive expertise." *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140, 1142 (Fla. 2nd DCA 2001).

12. If the Board elects to reject or modify the ALJ's conclusions of law, then the Board must state with particularity its reasons for rejecting or modifying the conclusions of law and make a finding that the substituted conclusions of law are as reasonable or more reasonable than that which was rejected. See § 120.57(1)(l), Fla. Stat. (2015).

## **RESPONSE TO RESPONDENT'S EXCEPTIONS**

13. In the Preliminary Statement of Respondent's Exceptions, Respondent asserts that she was "essentially abandoned by her former counsel" and that, as a matter of "fundamental fairness," the Order should be set aside.

14. Respondent is essentially making a claim of ineffective assistance of counsel. However, because there is not a constitutional right to counsel in administrative proceedings, Respondent cannot use the failure of her previous counsel to respond to discovery to challenge the ALJ's findings of fact and conclusions of law in this matter. *See Prieto v. Florida Dep't of Bus. & Prof'l Regulations*, 876 So. 2d 633, 633-34 (Fla. 3d DCA 2004) (citing to *S.B. v. Dep't of Children & Families*, 851 So. 2d 689, 690 (Fla. 2003)).

### Respondent's Exception 1-16

15. Respondent's exceptions should be denied because, as Respondent notes, the facts were deemed admitted after Respondent's previous counsel failed to respond to Petitioner's discovery requests.

16. Parties in administrative hearings are permitted to serve upon other parties written requests for the admission of the truth of matters. See Fla. Admin. Code R. 28-106.206; see also Fla. R. Civ. P. 1.370. Requested matters are deemed admitted unless the party to whom the request is directed serves upon the party requesting the admission a written answer or objection. Fla. R. Civ. P. 1.370. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Fla. R. Civ. P. 1.370.

17. Because Respondent's prior counsel failed to respond to discovery requests, the facts contained in the requested admissions were deemed admitted and conclusively established. As such, these exceptions should be denied.

#### Respondent's Exception 17

18. Respondent challenges several portions of Paragraph 51 of the Order in this exception.

19. First, Respondent claims the record does not support a finding that "Respondent actively procured" the transfer of various assets. As mentioned, part of the ALJ's role includes drawing

permissible inferences. *Heifetz*, 475 So. 2d at 1281. The ALJ's finding that Respondent actively procured assets from Patient B.P. was a permissible inference supported by competent, substantial evidence. Respondent's exception selectively quotes from page 4 of Exhibit B, and leaves out the portion of the exhibit that clearly states "[Patient B.P.] realize[s] that the reason [Respondent] **asked** for help is because she needed it..." (P. Exh. B, p. 4) (emphasis added).<sup>1</sup> The fact that Respondent specifically asked for financial gains provides competent, substantial evidence of active procurement. The ALJ also cited facts that were deemed admitted, such as Respondent opening up a joint bank account with Patient B.P. (P. R.F.A., # 26) and procuring credit cards with Patient B.P.'s personal information (P. R.F.A., # 10-12, 15), that provide further competent, substantial evidence for this inference (Recommended Order, p, 13).

20. Second, Respondent argues that there is no evidence of Respondent's intent in the record. For the reasons stated above, Respondent's intent in entering into these transactions ("benefitting

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<sup>1</sup> It was also an admitted fact that Respondent herself drafted the letter converting the loans into a gift (Recommended Order, ¶ 15).

herself") is a reasonable inference based on competent, substantial evidence in the record.

21. Lastly, Respondent disputes Paragraph 51(f), claiming that there is no evidence that Respondent used her position as Patient B.P.'s healthcare practitioner to exercise influence over him. Paragraph 51(f) does not make this assertion, and proving this assertion is not necessary to show a violation of 484.056(1)(v).

22. For the above reasons, Respondent's Exception 17 should be denied.

#### Respondent's Exception 18

23. Respondent's Exception 18 asserts that the conclusion that Respondent "exploited her client B.P. for her financial gain" is not supported by the record. The ALJ made numerous factual findings proven by competent, substantial evidence that support this conclusion including the following: Respondent procured loans totaling at least \$35,000 from Patient B.P. (P. Exh. B, p. 4, Recommended Order, ¶ 51b); Respondent obtained property and other services from credit cards she procured using Patient B.P.'s personal information (P. R.F.A., # 10, 22-25, Recommended Order, ¶

51c); Respondent had full use of an automobile Patient B.P. paid for entirely (P. Exh. B, p. 6, Recommended Order, ¶ 51c); and Respondent received \$48,500 from the proceeds of a loan Patient B.P. took out in Patient B.P.'s name (P. R.F.A., # 28, Recommended Order, ¶ 32).

24. This Exception should therefore be rejected because the conclusion that Respondent exploited B.P. for financial gain was supported by competent, substantial evidence.

#### Respondent's Exception 19

25. This exception should be denied because the conclusion that Respondent violated section 484.056(1)(v) by exercising influence on Patient B.P. in such a manner as to exploit Patient B.P. for Respondent's financial gain was supported by competent, substantial evidence as shown in Paragraphs 17 and 23.

#### Respondent's Exception 20

26. Respondent asserts that there is no competent, substantial evidence that "B.P. had memory problems." Patient B.P. disclosed in the initial exam of Respondent's own medical records that he had "noticed changes in his ability to remember" (P. Exh. A, p. 26,

Recommended Order, ¶ 5). As such, this finding is supported by competent, substantial evidence.

27. Respondent also asserts that there is no evidence to support a finding that Respondent "arranged" financial transactions with B.P. As shown above in Paragraph 19, this argument is without merit. For the above reasons, the Board should deny this exception.

Respondent's Exception 21

28. Respondent asserts that the ALJ's finding that Respondent violated section 484.056(1)(g) by committing misconduct in the practice of dispensing hearing aids is not supported by competent, substantial evidence.

29. The ALJ specifically found that Respondent arranged financial transactions with Patient B.P., a 93-year-old man with self-disclosed memory problems and Respondent's patient (Recommended Order, p. 14-15).

30. This exception should be denied because the conclusion that Respondent violated section 484.056(1)(g) was supported by facts proven by competent, substantial evidence.



### Respondent's Exception 22

31. Respondent first argues that the record evidence does not support a finding that Respondent received \$90,000 from Patient B.P.

32. At a minimum, Respondent received the following: at least \$35,000 in loans between December 2011 and February 2012 (P. Exh. B, p. 4, Recommended Order, p. 4-5); \$48,500 on or about April 5, 2012, from the proceeds of a loan Patient B.P. took out in his name (P. R.F.A., # 28, Recommended Order, p. 8); \$4,277.87 worth of jewelry from Zales from Patient B.P. (P. R.F.A., #20, Recommended Order, ¶ 21); \$693.49 when she charged Patient B.P.'s American Express credit card to exchange a watch Patient B.P. bought her for a bracelet (P. R.F.A., # 21, Recommended Order, ¶ 22); \$699.58 worth of items from Radio Shack (P. R.F.A., # 22, Recommended Order, ¶ 23); and \$1,100 from a charge made to Patient B.P.'s Citi Card for a Progressive Insurance policy held by Respondent (P. R.F.A., # 23, Recommended Order, ¶ 24). The total amount for these transactions alone is over \$90,000.

33. Respondent also disputes that revocation is within the recommended penalties. Revocation is warranted under the guidelines



**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of Petitioner's Notice of Serving Petitioner's Response to Respondent's Exceptions to the Recommended Order has been served via certified and electronic mail to: Richard A. Greenberg, Esquire, Rumberger, Kirk, and Caldwell, 215 South Monroe Street, Suite 702, Tallahassee, FL 32301, [rgreenberg@rumberger.com](mailto:rgreenberg@rumberger.com).

On this 20 day of May, 2016

Respectfully submitted,

\_\_\_\_\_  
/S

Octavio Simoes-Ponce  
Assistant General Counsel

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DEPARTMENT OF HEALTH  
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STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, BOARD OF  
HEARING AID SPECIALISTS,

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DOAH Case No. 15-6246PL  
DOH Case No. 2012-06027

ROSALYN RUNAE JOHNSON WHITE,  
H.A.S.,

Respondent.

FILED  
MAY 18 2016  
DIVISION OF ADMINISTRATIVE HEARINGS

**RESPONDENT'S EXCEPTIONS TO THE RECOMMENDED ORDER**

Respondent, Rosalyn Runae Johnson White, H.A.S. ("Ms. White"), by and through the undersigned counsel, submits these exceptions to the Recommended Order pursuant to the Uniform Rules of Procedure, Rule 28-106.217, F.A.C.:

**STANDARD OF REVIEW**

The standard of review applied to the Recommended Order entered by the Administrative Law Judge ("ALJ") is found at §120.57(1)(b), Florida Statutes, and provides, in pertinent part:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law...and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. **The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on**

which the findings were based did not comply with essential requirements of law.... (emphasis added).

It is long established administrative law that:

It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other.

*Heifetz v. Dept. of Bus. Res.*, 475 So. 2d 1277, 1281 (Fla. 1<sup>st</sup> DCA 1985)(citations omitted).

### PRELIMINARY STATEMENT

Ms. White hired former counsel, Ixc Hollander, to represent her in this matter and defend her against petitioner's complaint. Instead, Ms. White was essentially abandoned by her former counsel and petitioner's complaint was uncontested. As a matter of fundamental fairness, the recommended order entered on April 14, 2016, should be set aside and an actual hearing should take place.

A review of the docket of this case shows the ways in which Ms. White was denied "her day in court" due to the actions, or in reality inaction, of her former counsel. In the election of rights filed on November 5, 2015, Ms. White indicated she contested many of the factual allegations made in the complaint. Yet, former counsel took no steps to present any evidence in support of Ms. White's position or, more importantly, contest petitioner's case.

On February 17, 2016, petitioner filed a motion to compel discovery and to deem petitioner's requests for admissions admitted. In paragraph 6 of the motion to compel, counsel for petitioner states "Counsel for Respondent indicated he was still receiving answers from Respondent and putting the materials together." Ms. White was unaware of any discovery requests made by petitioner until after the final hearing in this case.

Paragraph 13 of petitioner's motion to compel discovery is perhaps most indicative of the

way in which Ms. White was abandoned by former counsel: "Numerous attempts have been made to contact Respondent's counsel pertaining to discovery, *and no response has been received*." (Emphasis added) As a result, an order granting motion to compel was understandably entered on February 25, 2016. The granting of this motion to compel left Ms. White defenseless at the final hearing.

Despite having "offered no witnesses or exhibits" (Recommended Order, p. 3) and allowing the granting of petitioner's motion to compel, Ms. White's former counsel submitted proposed findings of fact on April 4, 2016. The proposed findings consist of little more than an argument that petitioner failed to present sufficient evidence in support of its complaint.

**Exception No. 1**

**Recommended Finding of Fact No. 12 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding.

**Exception No. 2**

**Recommended Finding of Fact No. 13 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 3**

**Recommended Finding of Fact No. 15 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. Specifically, there is no record evidence to support a finding that "Ms. White wrote a letter on behalf of B.P." In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 4**

**Recommended Finding of Fact No. 16 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. Specifically, there is no record evidence to support a finding that "Ms. White submitted an application for an American Express card".

**Exception No. 5**

**Recommended Finding of Fact No. 18 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. Specifically, there is no record evidence to support a finding that "Ms. White submitted an application for a Discover credit card". In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 6**

**Recommended Finding of Fact No. 20 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. Specifically, there is no record evidence to support a finding there was anything improper about B.P.'s purchase of the Lexus "for Ms. White's use". In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 7**

**Recommended Finding of Fact No. 21 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 8**

**Recommended Finding of Fact No. 22 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.



**Exception No. 9**

**Recommended Finding of Fact No. 23 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 10**

**Recommended Finding of Fact No. 24 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 11**

**Recommended Finding of Fact No. 26 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 12**

**Recommended Finding of Fact No. 27 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 13**

**Recommended Finding of Fact No. 30 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 14**

**Recommended Finding of Fact No. 32 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 15**

**Recommended Finding of Fact No. 35 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 16**

**Recommended Finding of Fact No. 36 is not supported by competent substantial evidence.**

Other than the requests for admissions which were deemed admitted after Ms. White's former counsel failed to respond to petitioner's discovery requests, there is no record evidence to support this recommended finding. In addition, Ms. White specifically disputed this allegation in the election of rights filed by former counsel.

**Exception No. 17**

**Conclusion of Law No. 51 departs from the essential requirements of law and is not supported by competent substantial evidence.**

Paragraph 51 of the recommended order makes several findings which are not supported by the record. 51(d) states "Respondent actively procured" the transfer of assets from B.P. Neither B.P. nor Ms. White testified at the hearing before Judge Boyd. The record does not contain any evidence that Ms. White "actively procured" anything from B.P. On the contrary, the evidence supports a finding that B.P. decided of his own volition to give things of value to Ms. White. (*See* Exhibit B 004 ("I want Rosalyn White to use this money without worrying about having to pay it back...She is a friend of mine and I want nothing but what is best for her.") and Exhibit B 006 ("I purchased this car on behalf of Rosalyn R.J.P. White for it to be her vehicle. She is responsible for all of the car notes, registration, as well as insurance on this vehicle."))

Paragraph 51(e) states "Respondent did so with the intent, and the result, of benefiting herself". The record does not contain any evidence of Ms. White's intent.

Paragraph 51(f) states "Respondent stood in a position of professional trust and confidence with respect to B.P." in regard to the financial interactions discussed in the recommended order. The only "position of professional trust and confidence" Ms. White had with B.P. was in her job as a hearing aid specialist. There is no evidence she used that position to exercise any influence over B.P.

**Exception No. 18**

**Conclusion of Law No. 52 departs from the essential requirements of law and is not supported by competent substantial evidence.**

Paragraph 52 concludes Ms. White "exploited her client B.P. for her financial gain." This finding is not supported by competent substantial evidence. Neither B.P. nor Ms. White testified at

the hearing. Several exhibits, including Exhibits B 004 and 006, show B.P. voluntarily and willingly gave things to Ms. White.

**Exception No. 19**

**Conclusion of Law No. 53 departs from the essential requirements of law and is not supported by competent substantial evidence.**

Paragraph 53 concludes petitioner proved by clear and convincing evidence that Ms. White violated section 484.056(1)(v). This finding is not supported by competent substantial evidence.

**Exception No. 20**

**Conclusion of Law No. 55 departs from the essential requirements of law and is not supported by competent substantial evidence.**

Paragraph 55 states Ms. White arranged financial transactions with a 93-year-old client with memory problems during the time that she was in a position of trust and confidence with respect to the client. This finding is not supported by competent substantial evidence. There is no record evidence to support a finding B.P. had memory problems. In addition, the record does not support a finding that Ms. White, as opposed to B.P., "arranged" any financial transactions between the two.

**Exception No. 21**

**Conclusion of Law No. 56 departs from the essential requirements of law and is not supported by competent substantial evidence.**

Paragraph 56 concludes petitioner proved by clear and convincing evidence that Ms. White violated section 484.056(1)(g). This finding is not supported by competent substantial evidence.

**Exception No. 22**

**The recommended discipline is not supported by competent substantial evidence.**

The recommended order recommends Ms. White "provide restitution to B.P. in the amount of \$90,000.00; [pay] an administrative fine...of \$8,000.00; [pay] reasonable costs related to

investigation and prosecution of the case; and [the revocation of] her license to practice as a hearing aid specialist." These recommendations are excessive and are not supported by the evidence or by the law. Specifically, the record evidence does not support a finding that Ms. White received \$90,000.00 from B.P.

The recommended penalties far exceed the range "of penalties which will routinely be imposed", Rule 64B6-7.002(1), F.A.C. The range of penalties for "[e]xercising influence for financial gain or for other misconduct" is "from a minimum fine of \$1,000 and/or restitution of improper gains and six months of probation to a maximum suspension of license for two years followed by probation and a fine of \$8,000." Rule 64B6-7.002(2)(v). It is only for a second or subsequent offense that revocation of a license is recommended. *Id.*

#### **Relief sought**

Respondent initially requests that this matter be set for a new hearing. As mentioned above, Ms. White's previous attorney failed to respond to petitioner's discovery requests, which resulted in an order deeming virtually every fact alleged in the complaint admitted. In addition, Ms. White's prior counsel did not submit any witnesses or exhibits on her behalf at the hearing. Alternatively, Ms. White requests that the Board reject the findings of fact and penalty set forth in the Recommended Order.

WITTFORFORE, Respondent requests that the Board consider and accept the above referenced Exceptions to the Recommended Order.

Dated: May 13, 2016

Respectfully submitted,

/s/ Richard A. Greenberg

Richard A. Greenberg

Florida Bar No. 0382371

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Attorneys for Respondent **WHITE****CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-filing to Christopher R. Diorlam, Octavio Simoes-Ponce, Sharmin Royette Hibbert, Matthew George Witters, Department of Health, Prosecution Services Unit, Counsel for Petitioner; by facsimile transmission to Agency Clerk, Office of the General Counsel, Florida Department of Health, at 850-413-8743; and by U.S. Mail to Nichole C. Geary, General Counsel, Department of Health, 4052 Bald Cypress Way, Bin A02, Tallahassee, FL 32399-1701, and Jennifer Wenhold, Executive Director, Board of Hearing Aid Specialists, Department of Health, 4052 Bald Cypress Way, Bin C08, Tallahassee, FL 32399-3257, this 13th day of May, 2016.

/s/ Richard A. Greenberg

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Attorneys for Respondent **WHITE**

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DATE: May 13, 2016  
TO: Agency Clerk, Office of the General Counsel FAX NO.: 413-8743  
FROM: Richard Greenberg  
RE: Department of Health v. Rosalyn Runac Johnson White  
DOAH Case No. 15-6246PL, DOH Case No. 2012-06027

NUMBER OF PAGES (including this page): 12

COMMENTS: Respondent's Exceptions to The Recommended Order

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DEPARTMENT OF HEALTH  
DEPUTY CLERK

CLERK Angel Sanders  
DATE MAR 30 2015

STATE OF FLORIDA  
BOARD OF HEARING AID SPECIALISTS

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2012-06027

ROSALYN RUNAE JOHNSON WHITE, H.A.S.,

RESPONDENT.

THIRD AMENDED ADMINISTRATIVE COMPLAINT

Petitioner, Department of Health, by and through its undersigned counsel, files this Second Amended Administrative Complaint before the Board of Hearing Aid Specialists against Respondent, Rosalyn Runae Johnson White, H.A.S., and in support alleges:

1. Petitioner is the state department charged with regulating the practice of hearing aid specialists pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 484, Florida Statutes.
2. At all times material to this complaint, Respondent was licensed to practice as a hearing aid specialist in the State of Florida, having been issued license number AS 4137.



3. Respondent's address of record is 950 Northwest 13<sup>th</sup> Street, Boca Raton, Florida 33486.

4. Respondent's Hearing Aid practice is known as Serenity Sounds Hearing Care Center, Inc. (SSHCC). At all times material to this complaint, Respondent was listed as the Primary Officer and Registered Agent for SSHCC in the state of Florida Sunbiz online corporations' directory.

5. At all times material to this complaint Patient B.P. was a patient of Respondent's and they remained in a practitioner-patient relationship. At this time, Patient B.P. was a ninety-three (93) year old man.

6. On or about March 7, 2011, Respondent fitted Patient B.P. for a set of hearing aids. The hearing aides were Audina half-shells for which Respondent billed B.P. \$3,200.00.

7. The sales receipt for the March 7, 2011, purchase failed to list the serial numbers of the hearing aids that were sold to Patient B.P.

8. On or about July 13, 2011, Patient B.P. elected to exchange the Audina half-shell hearing aids as he was dissatisfied with them.

9. Respondent fitted Patient B.P. for the Audina OTE hearing aids. Respondent charged Patient B.P. \$4,500.00 for the Audina OTE aides.

10. Respondent credited Patient B.P. for the initial hearing aids provided to B.P., and charged B.P. \$1,700.00 for the new aides.

11. The sales receipt for the July 13, 2011, purchase failed to list the serial numbers of the second pair of hearing aids that were sold to Patient B.P.

12. On or about October 21, 2011, Patient B.P. presented to Respondent at SSHCC with the second pair of hearing aids (Audina OTE) broken.

13. The broken hearing aids would have been covered under a Loss and Damage policy requiring a fee of \$100.00 to replace the broken aides.

14. On the above date, Respondent sold Patient BP a thlrđ pair of new hearing aids for which she charged the patient \$3,000.00.

15. On or about December 13, 2011, a check from Patient B.P.'s account was deposited in a bank account for Respondent's business SSHCC at PNC Bank in the amount of \$400.00. The memo line states "remote".

16. On or about December 20, 2011, a check in the amount of \$9,600.00, from Patient B.P.'s account was deposited into the bank account at PNC Bank belonging to Respondent's business SSHCC. The reason for this check or the benefit received by Patient B.P is unknown.

17. On or about December 20, 2011, Respondent wrote and issued a letter from her business, SSHCC, confirming receipt of \$20,000.00 in loans from Patient B.P. There are notations of the supposed pay back schedule. There is also a handwritten addition that has the date of January 25, 2012=\$10,000.00.

18. On or about December 22, 2011, a check in the amount of \$10,000.00 written from Patient B.P.'s account was deposited into the PNC bank account belonging to Respondent's business SSHCC.

19. On or about January 25, 2012, a check from the account of Patient B.P. was deposited into an account at PNC Bank belonging to Respondent's business SSHCC.

19. On or about January 25, 2012, Patient B.P. allegedly signs a letter written by Respondent, stating that B.P. permits Respondent to use his Citi Dividends credit card (Citi Dividends card) to purchase three (3) round trip tickets using B.P.'s credit card.

20. On or about February 14, 2012, an application for credit was submitted to Citigroup (Citi card) using Patient B.P.'s personal information. Respondent was Identified as an authorized user on the account.

21. Investigation by the Palm Beach Sheriff's Department (PBSD) reflects that the application was submitted on a computer with the IP address of 76.108.53.214, which was assigned to Respondent's business SSHCC.

22. The email address provided for the account was rosethicshearinghearing@aol.com, which belonged to Respondent.

23. On or about February 14, 2012, an application for a credit card to Capital One (Capital One) using Patient B.P.'s personal information was submitted from a computer with the IP address of 76.108.53.214, belonging to Respondent's business SSHCC.

24. The email address provided for the account was rosethicshearinghearing@aol.com which belongs to Respondent. The account was opened in B.P.'s name and used his address as the physical home address.

25. On or about February 14, 2012, a check in the amount of \$3,000.00 written from Patient B.P.'s account and deposited into a PNC Bank account belonging to Respondent's business SSHCC.

26. On or about February 17, 2012, Respondent wrote a letter allegedly on the behalf of Patient B.P., signed by Respondent and

purportedly B.P., stating that the more than \$35,000.00 in provided to Respondent's business SSHCC would be converted to a gift. The letter states this conversion was because Respondent needed the money and was not in a financial position to repay Patient B.P.

27. This letter also states that B.P. granted Respondent the right to use his credit cards, specifically those for Citibank and Capital One, that he "helped her get"; however the letter instructs that Respondent was still responsible for the monthly payments.

28. On or about February 22, 2012, an application was submitted online for an American Express Credit Card (American Express), using Patient B.P.'s personal information listing Respondent as a supplemental card holder. The application was submitted from a computer with the IP address of 76.108.53.214 which belonged to Respondent's business SSHCC.

29. Charges were posted to the American Express which remained in Patient B.P.'s name. At this time B.P. was a still a patient of Respondent's.

30. On or about February 23, 2012, charges were posted to the Citi card account opened February 14, 2012, to Siemen's for \$90.00 and

\$200.00, for a SSHCC patient who was not B.P.; a charge in the amount of \$1,000.00 to Progressive Insurance for an insurance policy belonging to Subject was made to the account.

35. On or about February 27, 2012, a charge in the amount of \$1,577.00, to "Chicago Advert." was posted to the Citi card account for Respondent.

36. On or about February 28, 2012, an application for a Discover credit card was submitted using Patient B.P.'s personal information was submitted from a computer with the IP address of 76.108.53.214, which belonged to a computer from SSHCC.

37. The email address provided for opening the Discover account was rosethicshearing@aol.com, which belonged to Respondent and SSHCC. There were charges posted to this account, none of which were for or by Patient B.P.

38. At this time B.P. was still a patient of Respondent's.

39. On or about March 6, 2012, a charge in the amount of \$975.00 was charged on the Citi card account to Comcast Spotlight of Miami for advertising for Respondent's practice.

40. On or about March 14, 2012, Patient B.P. allegedly signs a typed letter which asserts that B.P. bought a 2011 Lexus GS350 vehicle, valued at approximately \$40,000.00, which he purchased in his name but on the behalf of Respondent.

41. In this letter, Patient B.P. assigns all rights and ownership of this vehicle to Respondent giving away all of his rights. The letter appears to attempt to sign "power of attorney" for the vehicle to Respondent.

42. On or about March 16, 2012, Respondent presented to a Zale's jewelry store in Wellington, Florida, with Patient B.P. A charge was made to the patient's Citi card account in the amount of \$4,277.87 to Zale's Jewelers for jewelry for Respondent.

43. On or about March 17, 2012, a second charge for \$693.49 was made on the American Express to Zale's Jewelers. Respondent presented at the store alone to exchange a watch purchased earlier for a bracelet, the difference in price being \$693.49. Patient B.P. was not present at this visit.

44. On or about March 19, 2012, a charge was made to the Discover credit card for \$699.58 to Radio Shack for items for Respondent.

45. On or about March 22, 2012, a charge was made to the Citi credit card in the amount of \$1,100.00 to Progressive Insurance for a policy held by Respondent.

46. On or about March 31, 2012, a charge was made to the Discover card in the amount of \$133.99 to Macy's located in Palm Beach Gardens, Florida, for items for Respondent for which she signed receipt.

47. On or about April 2, 2012, a charge was made to the Citi card in the amount of \$492.00 to Siemen's for a SSHCC patient that was not Patient B.P.

48. On or about April 3, 2012, Respondent sold Patient B.P. a fourth set of hearing aids, 2 RIC Starkey aides for the both ears, and billed Patient B.P. \$8,600.00.

49. On or about April 5, 2012, Respondent submitted with Patient B.P. an application for joint Wells Fargo Bank account. A personal loan was taken out by Patient B.P. at that time with Wells Fargo.

50. The personal loan was in the amount of \$48,694.75. Of this amount, \$48,450.00 was withdrawn from the loan account via a cashier's account and made payable to Respondent.



51. The check was deposited into Respondent's PNC bank account and later withdrawn by Respondent.

52. On or about April 12, 2012, Palm Beach Sheriff's Department initiated an investigation into the financial transactions between Respondent and Patient B.P.

53. On or about April 27, 2012, Respondent writes a letter wherein she admits to being in possession of the vehicle purchased by Patient B.P. by stating that she "has returned" the 2011 Lexus GS 350 to Patient B.P.

54. As a 94 year old elderly man, Patient B.P. was a member of a vulnerable population. Respondent took advantage of this and of Patient B.P. for her own financial gain.

55. Respondent's actions in this matter by entering into a personal, financial, romantic, and/or sexual relationship with Patient B.P. is proof of Respondent's misconduct in the practice of dispensing hearing aids.

### **COUNT ONE**

54. Petitioner re-alleges paragraphs one (1) through fifty-three (53), as if fully set forth herein.

55. Section 484.056(1)(w), Florida Statutes (2010-2011), subjects a hearing aid specialist to discipline for, among others things, a violation of any provision of Chapter 484.

56. Section 484.051(2), Florida Statutes (2010-2011), provides in pertinent part as follows:

Any person who fits and sells a hearing aid shall, at the time of delivery, provide the purchaser with a receipt containing the seller's signature, the address of her or his regular place of business, and her or his license or trainee registration number, if applicable, together with the brand, model, manufacturer or manufacturer's Identification code, **and serial number of the hearing aid furnished** and the amount charged for the hearing aid. The receipt also shall specify whether the hearing aid is new, used, or rebuilt and shall specify the length of time and other terms of the guarantee and by whom the hearing aid is guaranteed (emphasis added).

57. Respondent failed to specify in the sales receipt the serial number of the hearing aids sold to Patient B.P. on or about March 7, 2011.

58. Respondent failed to specify in the sales receipt the serial number of the hearing aids sold to Patient B.P. on or about July 13, 2011.

59. Based on the foregoing, Respondent violated Section 484.056(1)(w), Florida Statutes by violating Section 484.051(2), Florida Statutes.

## **COUNT TWO**

60. Petitioner re-alleges paragraphs one (1) through fifty-three (53), as if fully set forth herein.

61. Section 484.056(1)(v), Florida Statutes (2010-2011), provides that exercising influence on a client in such a manner as to exploit the client for financial gain of the licensee or of a third party is grounds for disciplinary action by the board and/or Department.

62. Respondent exercised Influence on a client, Patient B.P., in a manner to exploit the client for financial gain of the licensee in one or more of the following ways:

- a. by selling Patient B.P. four sets of hearing aids over one year and one month, totaling approximately \$16,500.00,;
- b. by requesting and/or accepting a check for \$9,600.00 from Patient B.P., and depositing it into Respondent's bank account;
- c. by accepting and/or entering into a loan agreement for \$20,000.00 from Patient B.P.;
- d. by requesting, accepting permission to, and/or using Patient B.P.'s Citibank credit card to purchase three (3) round trip airplane tickets;

e. by applying for and/or using a Citibank credit card using Patient B.P.'s personal information, with Respondent as the authorized user and using Respondent's email address, on Respondent's computer;

f. by discussing the need for her business to advertise, accepting and/or using Patient B.P.'s Citibank card to buy additional advertising from Comcast Spotlight of Miami totaling \$975.00;

g. by requesting and/or accepting a check for \$3,000.00 from Patient B.P. and depositing it into Respondent's bank account;

h. by writing, signing, and/or accepting a letter stating that the more than \$35,000.00 in loans provided to Respondent's business would be converted into a gift;

i. by discussing with Patient B.P. about the failing or state of her business, that Respondent was in need of money, and not in financial position to repay money loaned;

j. by using various credit cards belonging to Patient B.P. including but not limited to Citibank, Capital One, American Express, and Discover;

k. by applying for and receiving using various credit cards including but not limited to Citibank, Capital One, American Express, and Discover, using Patient B.P.'s personal information, with Respondent as an authorized user, with and/or without Patient B.P.'s knowledge and/or permission;

l. by writing a self-serving letter stating that Patient B.P. granted the use of his credit cards to Respondent including those he purportedly "helped her" get;

m. by requesting, influencing Patient B.P. to, and/or accepting, the purchase of a 2011 Lexus GS350 vehicle worth \$40,000, by Patient B.P. for Respondent;

n. by writing a letter signed purportedly by Patient B.P. assigning all rights of ownership of the vehicle to Patient B.P.

o. by requesting and/or accepting jewelry including a gold and diamond ring, a gold bracelet, and a watch, purchased at Zale's totaling over \$4,277.87;

p. by requesting, accepting, and/or purchasing Items from Radio Shack and Macy's using the a Discover Card in Patient B.P.'s name;

q. by requesting, accepting, and/or using Patient B.P.'s Citibank card to pay Respondent's insurance policy at Progressive Insurance on more than one occasion;

r. by opening a joint bank account at Wells Fargo Bank with Patient B.P.;

s. by requesting, accepting, and/or depositing a check in the amount of \$48,450.00 from Patient B.P. into Respondent's PNC bank account;

63. Based on the foregoing, Respondent violated Section 484.056(1)(v), Florida Statutes (2010-2011), by exploiting Patient B.P. for the financial gain of Respondent.

### **COUNT THREE**

64. Petitioner re-alleges paragraphs one (1) through fifty-three (53), as if fully set forth herein.

65. Section 484.056(1)(g), Florida Statutes (2010-2011), provides that proof of a licensee is guilty of fraud or deceit or of negligence, incompetency, or misconduct in the practice of dispensing hearing aids is grounds for disciplinary action by the board and/or Department.

66. Proof of guilt by the licensee's (Respondent) of fraud, deceit, or of negligence, incompetency, or misconduct in the practice of dispensing hearing aids includes one or more of the following:

- a. by requesting and/or accepting any money in the form of cash or checks from Patient B.P. ;
- b. by requesting and/or accepting a 2011 Lexus GS350 vehicle worth \$40,000, by Patient B.P. for Respondent;
- c. by requesting, accepting, and purchasing jewelry from Zale's, using Respondent's credit card;
- d. by applying for and/or receiving using various credit cards including but not limited to Citibank, Capital One, American Express, and Discover, using Patient B.P.'s personal information, with Respondent as an authorized user, with and/or without Patient B.P.'s knowledge and/or permission;
- e. by opening a joint bank account at Wells Fargo Bank with Patient B.P.;
- f. by using various credit cards belonging to Patient B.P. including but not limited to Citibank, Capital One, American Express, and Discover;

g. by selling Patient B.P. four sets of hearing aids over one year and one month, totaling approximately \$16,500.00;

h. by entering into any financial arrangement, relationship, and/or transaction with a client, Patient B.P.

i. by entering into any sort of personal, romantic, and/or sexual relationship with Patient B.P.;

j. by taking advantage of a member of a vulnerable population by accepting large amounts of cash, gifts, and/or any other financial gain or benefit;

k. by discussing the financial distress within Respondent's business SSHCC in order to get money from Patient B.P.;

l. by writing letters on the behalf of Patient B.P. expressing permission for use of credit cards, alterations of loans into gifts totaling, accepting all rights to a vehicle, and/or granting permission or use of credit cards.

67. Based on the foregoing, Respondent violated Section 484.056(1)(g), Florida Statutes (2010-2011).

**WHEREFORE**, the Petitioner respectfully requests that the Board of Hearing Aid Specialists enter an order imposing one or more of the



following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 30<sup>th</sup> day of March, 2015.

John H. Armstrong, MD FACS  
State Surgeon General & Secretary



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## **NOTICE OF RIGHTS**

**Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.**

## **NOTICE REGARDING ASSESSMENT OF COSTS**

**Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.**