

MINUTES

**UTAH
HEARING INSTRUMENT SPECIALIST BOARD
MEETING**

July 8, 2010

**Room 402 – 4th Floor - 9:00 a.m.
Heber Wells Building
Salt Lake City, UT 84111**

CONVENED: 9:15 a.m.

ADJOURNED: 11:13 a.m.

Bureau Manager:

Clyde Ormond

Board Secretary:

Jacky Adams

Board Members Present:

Robert Heygster - Chairperson
David Simmons
Morris Mower

Board Members Absent:

Guests:

Brent Edman - Hearing Healthcare Providers
Society
Kevin Olsen – Director of Consumer Protection
Bruce Sharp

DOPL Staff Present:

Ronda Trujillo - Compliance Assistant
Lenore Epstein - AG Representative

TOPICS FOR DISCUSSION

DECISIONS AND RECOMMENDATIONS

ADMINISTRATIVE BUSINESS:

Approval of the January 5, 2010 Board Meeting
Minutes

Mr. Simmons seconded by Mr. Mower made a
motion to approve the January 5, 2010 Board
Meeting Minutes. The motion carried unanimously.

Approval of the April 6, 2010 Board Meeting
Minutes

Mr. Simmons seconded by Mr. Mower made a
motion to approve the April 6, 2010 Board Meeting
Minutes. The motion carried unanimously.

APPOINTMENTS:

9:15 a.m. Compliance

Ms. Trujillo explained:

Mr. Weston Harris is non-compliant with his Stipulation (Stipulation and Order), due to his failure to submit his July 2010 “Employer Report”, as required. It was then added if he has a new purchase receipt or has placed any advertisements, since October 2009, they must also be submitted.

Mr. Ormond then explained Mr. Harris is not currently working in this profession, adding no time has been deducted from his probationary period.

Mr. Robert Harris is compliant with his Stipulation, it was then added if he has a new purchase receipt or has placed any advertisements, they must also be submitted.

After Mr. Harris left his last appointment with the Board, the Board determined he must submit a copy of his price list. Mr. Ormond explained the Board has the ability to decrease the requirements of a Stipulation or MOU (Memorandum of Understanding); however, they do not have the ability to increase the requirements, without a new agreement being developed and agreed to on both sides. It was then explained, when ever possible; individuals should be in attendance while the Board is discussing them.

9:30 a.m. Harris, Weston

Mr. Weston Harris appeared for his scheduled appointment with the Board. Mr. Ormond explained, Section (7) subsection (g), of Mr. Harris Stipulation requires, if Mr. Harris in not working in this profession for more than sixty days the time frame stops. Mr. Harris expressed his displeasure with this requirement. He further explained the Board was notified at his first meeting he was not working in this profession. Mr. Ormond requested a letter be submitted, explained why Mr. Harris feels this requirement is unjust, Mr. Harris agreed.

Mr. Simmons recommended amending Mr. Harris’s Stipulation. Mr. Harris then explained he is willing to practice for one year to meet this requirement. Mr. Ormond will discuss this issue with Ms. Epstein

to determine what action should to be taken.

It was then determined Mr. Harris does not need to meet with this Board again, if he is not practicing. It was then added if his Stipulation needs to be further discussed he will be scheduled for the next meeting on October 5, 2010.

9:45 a.m. Harris, Robert

Mr. Robert Harris appeared for his scheduled probationary appointment with the Board; all required reports have been submitted. He has not placed any new advertisements, nor has he utilized a new purchase receipt.

Mr. Harris expressed his need for specific guidelines regarding what requirements his advertisements must meet. Mr. Heygster submitted a copy of the FTC (Federal Trade Commission) "Guides Against Deceptive Pricing", for review. The Board then clarified, an advertisement is deceptive if the same item is on sale each week, if the advertisement states "on sale this week only" when the item is always on sale. Additionally it was strongly recommended using common sense; the seller must be able to prove the item has sold at the MSRP (Manufacturers Suggested Retail Price) for an item to reflect a sale price. It was also recommended to consider how the consumer will interpret the advertisement.

It was determined Mr. Harris is in compliance with his Stipulation, and will next meet with this Board at the January 2011.

10:00 a.m. Bain, Jennifer

Mr. Ormond explained Ms. Bain originally obtained her Hearing Instrument Internship license in June 2003, she has completed a minimum of 5000 hours, has passed the Utah Law and Rules, and NIHISE (National Institute for Hearing Instrument Studies Education and Examination Program) examinations. Due to a pregnancy Ms. Bain is requesting to reapply for licensure as a Hearing Instrument Intern, to enable her to continue practicing while she is completing the remainder of her examinations.

A detailed discussion ensued, where in Mr. Mower seconded by Mr. Simmons made a motion to grant

Ms. Bain's request. It was stipulated she must take and pass all examination, and no additional time frame will be given. The motion carried unanimously.

DISCUSSION ITEMS:

Advertising Regulations – as it relates to the Responsibilities of 'non-dispensing' owners and employees

Mr. Heygster explained the January 5 and April 6, 2010 Board Meeting discussions. He then proposed amending R156-46a-502a to state:

- 5) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warrantee, label, brand, insignia, or other representation, however disseminate or published, which is misleading, deceiving, or untruthful;
 - a) all advertising and sales contracts of hearing instrument pricing must identify the manufacture and model, its regular price and the sale price;
 - b) a hearing instrument specialist offering a particular hearing instrument at a discount from the regular price must be able to show proof of ten (10) sales of that instrument over the previous 3 months to support the regular price; and
 - c) the reference to 'msrp' (manufacturer's suggested retail price) may only be used if it meets the condition of (b) above.

Mr. Heygster then clarified, if the 'non-dispensing' owners and employees can not be held accountable for misleading advertising, the Hearing Instrument Specialist, who sells a device using a misleading advertisement, should be held accountable.

Ms. Epstein conducted a detailed discussion regarding Title 13 Chapter 11a the Commerce and Trade, Truth in Advertising Act. It was recommended to utilize "Reference Price" and "Regular Price", for this profession, the Board agreed.

Ms. Epstein then explained how the Division of Consumer Protection, conducts there investigations, related to misleading advertising. Mr. Olsen then joined the meeting, and explained the duties and

responsibilities of the Division of Consumer Protection. He then explained Title 13 Chapter 11 is the Statute which is mostly utilized for misleading advertisements. He further explained in most investigations, with his Division, the ‘owner / responsible persons are held accountable’, for misleading advertisements.

A detailed discussion then ensued regarding Mr. Heygster’s proposed rules changes to R156-46a. Ms. Epstein expressed her support of the changes, adding if implemented extensive training would be required for all licensees. The Board agreed.

It was determined to further study Title 13 Chapters 11 and 11a, to ensure appropriate definitions are implemented in R156-46a. Additionally it was determined upon implementation of the changes both Divisions will attend the following Hearing Healthcare Providers Society, meeting to begin educating the profession on the changes.

Responsibilities of ‘non-dispensing’ owners and employees

At the last Board meeting on January 5, 2010 the Board had expressed their concern regarding what action could be taken if a “non-dispensing” owner or employee violates Title 58 Chapter 1 or Title 58 Chapter 46a, specifically related to advertising.

Ms. Epstein submitted a copy of Title 13, Chapter 11a Consumer Protections Truth in Advertising requirements.

After a detailed discussion Ms. Epstein explained the Division cannot take action against an individual who is non-licensed, in this scenario. It was further clarified; this type of complaint needs to be sent to the Division of Consumer Protection.

Duties and Responsibilities of a Board Member

Mr. Ormond explained Tony Patterson, AG Section Chief has been conducting training for the Hunting Guides and Outfitter Licensing Board. A copy of the “Duties and Responsibilities of a Board Member” handout was given to this Board for review.

Ms. Epstein reminded the Board to avoid conversations regarding profession misconduct

while they are not in a Board Meeting. She further clarified the Board is the “Fact Finder” in any hearing conducted by the Division; if the Board has knowledge of an incident it will cause them to be recused from the hearing.

ADJOURN:

11:13 a.m.

Note: These minutes are not intended to be a verbatim transcript but are intended to record the significant features of the business conducted in this meeting. Discussed items are not necessarily shown in the chronological order they occurred.

Date Approved January 4, 2011

(ss) Robert Heygster
Chairperson, Utah Hearing Instrument Specialist Board

Date Approved January 4, 2011

(ss) Clyde Ormond
Bureau Manager, Division of Occupational & Professional Licensing