

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P O Box 146741
Salt Lake City UT 84114-6741
Telephone: (801) 530-6628

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF	:	
ROBERT E. HARRIS	:	NOTICE OF AGENCY ACTION
TO PRACTICE AS A	:	
HEARING INSTRUMENT SPECIALIST	:	
IN THE STATE OF UTAH	:	Case No. DOPL-2012-260

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
Robert E. Harris ("Respondent"), 5366 North Edgewood Drive, Provo
UT 84604:

The Division of Occupational and Professional Licensing
("the Division") hereby files this notice of agency action. Said
action is based on the Division's verified petition, a copy of
which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be
conducted on a formal basis. It is maintained under the
jurisdiction and authority of the Division as set forth in §58-1-
401(2). **Within thirty (30) days of the mailing date of this
notice, you are required to file a written response with this
Division.** The response you file may be helpful to clarify,
refine or narrow the facts and violations alleged in the verified
petition.

Your written response, and any future pleadings or filings,
which are a part of the official file in this proceeding, should
be mailed or hand delivered to the following.

Signed originals to:
Division of Occupational
and Professional Licensing
Attn: Disciplinary Files
(by mail): PO Box 146741
Salt Lake City UT 84114-6741
(by hand delivery):
160 East 300 South, 4th floor
Salt Lake City, Utah

A copy to:
Lenore Epstein
Assistant Attorney General
Heber M. Wells Building
(by mail): PO Box 140872
Salt Lake City UT 84114-0872
(by hand delivery):
160 East 300 South, 5th floor
Salt Lake City, Utah

You may represent yourself or, at your own expense, be represented by legal counsel at all times while this action is pending. **Your legal counsel shall file an entry of appearance with the Division after being retained to represent you in this proceeding.** Until that entry of appearance is filed, the Division, its counsel, and the presiding officer will communicate directly with you.

The presiding officer for the purpose of conducting this proceeding will be Jennie Jonsson, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney may have questions as to the procedures relative to the case, Judge Jonsson can be contacted in writing at P O Box 146741, Salt Lake City, UT 84114-6701; by telephone at (801) 530-6706; or by electronic mail at jjonsson@utah.gov.

Pursuant to a determination previously made by the Division which generally governs proceedings of this nature, the Division is providing the relevant and nonprivileged contents of its investigative file to you, concurrent with the issuance of this notice.

The Division is also providing its witness and exhibit list to you, concurrent with the issuance of this notice. The witness list identifies each individual the Division expects to present as a witness and includes a brief summary of their testimony at the hearing. The exhibit list identifies each anticipated document which the Division expects to present at the hearing. The Division is also providing a copy of any document to you that has not been otherwise made available to you through the investigative file.

Concurrent with your filing of a written response, you should provide to the Division a copy of any documents you have which relate to this case. Further, you should provide your witness and exhibit list to the Division. The witness list should identify each individual you expect to present as a witness and include a brief summary of their anticipated testimony. The exhibit list should identify each document you expect to present at the hearing.

If you fail to file a response within the 30 days allowed or fail to attend or participate in any scheduled hearing, Judge Jonsson may enter a default against you without any further notice to you.

After the issuance of a default order, Judge Jonsson may cancel any prehearing conference or hearing scheduled in the Division's verified petition, conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and determine all issues in the proceeding.

If you are held in default, the maximum administrative sanction consistent with the verified petition may be imposed against you. That sanction in this case is revocation of license.

Counsel for the Division in this proceeding is Lenore Epstein, Assistant Attorney General, State of Utah. Ms. Epstein may be contacted in writing at P.O. Box 140872, Salt Lake City, UT 84114-0872 or by telephone at (801) 366-0310. You may, subject to the deadlines established herein, attempt to negotiate a settlement of this proceeding by contacting counsel for the Division.

Any stipulation in lieu of a response should be jointly signed by yourself and the Division and filed within the time that a response would otherwise be due. Alternatively, any stipulation to resolve this case in lieu of the hearing shall be jointly signed by the parties and filed no later than one (1) week prior to the scheduled hearing.

Unless this case is resolved by a stipulation between the parties in lieu of the filing of a response, a prehearing conference will be conducted as follows:

Monday, July 16, 2012 at 10:00 a.m. by teleconference

During the conference, Judge Jonsson will address and resolve any further discovery issues. A schedule for the filing of any prehearing motions shall also be established.

Subject to the Department of Commerce Administrative Procedures Act Rules which govern this proceeding, the evidentiary hearing shall be conducted within 180 calendar days from the date of issuance of the notice of agency action.

You are entitled by law to an evidentiary hearing to determine whether your license to practice as a hearing instrument specialist in the State of Utah should be revoked, suspended or subjected to other disciplinary action. Unless otherwise specified by the Director of the Division, the Hearing Instrument Specialist Licensing Board will serve as fact finder in the hearing. **The hearing will be conducted as follows:**

Wednesday, October 10, 2012 at 9:00 a.m. Conference Room TBD
4th floor
160 East 300 South
Salt Lake City, Utah

During the evidentiary hearing, you will have the opportunity to present an opening statement, submit evidence, conduct cross-examination, submit rebuttal evidence and offer a closing statement to the fact finder. After the close of the hearing, the Board will take the matter under advisement and then submit its Findings of Fact, Conclusions of Law and a Recommended Order to the Division for its review and action.

Dated this 7th day of June, 2012.



W. Ray Walker
W. Ray Walker
Regulatory & Compliance
Officer

LENORE EPSTEIN (USB 6723)
Assistant Attorney General
MARK L SHURTLEFF (USB 4666)
Attorney General
Counsel for the Division of Occupational
and Professional Licensing
Heber M Wells Building, 5th Floor
160 East 300 South - Box 140872
Salt Lake City, Utah 84114-0872
Telephone: (801) 366-0310
Facsimile: (801) 366-0315

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF
ROBERT E. HARRIS TO PRACTICE AS A
HEARING INSTRUMENT SPECIALIST
IN THE STATE OF UTAH

PETITION

Case no DOPL 2012-260

These claims were investigated by the Utah Division of Occupational and Professional Licensing (Division) upon complaints that **ROBERT E. HARRIS** (Respondent), a licensee of the Division, has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-1-101 to 58-1-504 (West 2004) (the "Act"), and the Hearing Instrument Specialist Licensing Act, Utah Code Ann. §§ 58-46a-101 to 58-46a-503 (West 2004). The allegations in this Petition are based upon the Division's information and belief arising out of that investigation. Each count in this Petition shall be deemed to incorporate the allegations set forth in all other paragraphs of the Petition.

PARTIES

1. The Division is a division of the Department of Commerce of the State of Utah as established by Utah Code Ann § 13-1-2 (West 2004).

2. At all times material to the allegations contained herein, Respondent was licensed by the Division to practice as a hearing instrument specialist under the Hearing Instrument Specialist Licensing Act.

FACTUAL ALLEGATIONS

3 On June 4, 2008, the Division issued a Stipulation and Order placing Respondent's license on probation for a period of three years subject to certain terms and conditions. Exhibit A, Stipulation and Order

4 The Utah Attorney General filed charges against Respondent in 3rd District Court, Case No. 0901908060, for 3rd Degree Felony Tax Evasion on October 13, 2009 Exhibit B, Information

5. Respondent did not immediately notify the Division of the charges.

6. Respondent entered a plea in abeyance on the tax evasion charges on July 8, 2011. Exhibit C, Minutes. Respondent pled guilty to failure to report income from Harris Hearing Aid Center and failure to file tax returns for the years 2003-2007 Exhibit D, Statement of Defendant, Certificate of Counsel, and Order

APPLICABLE LAW

7 Utah Code Ann. § 58-1-401(1) (West 2004) provides as follows:

The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under this title

8 Utah Code Ann § 58-1-401(2) (West 2004) provides as follows.

The division may refuse to issue a license to an application and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee in any of the following cases:

(a) the applicant or licensee has engaged in unprofessional conduct, as defined by statute or rule under this title.

9 Utah Code Ann. § 58-1-401(4)(a) (West 2004) provides that the division may issue cease and desist orders to a licensee who may be disciplined under 58-1-401(1) or (2)

10. Utah Code Ann. § 58-1-501(2) (West 2004) provides as follows:

"Unprofessional conduct" means conduct, by a licensee or applicant, that is defined as unprofessional conduct under this title or under any rule adopted under this title and includes:

(c) engaging in conduct that results in .. a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession[]

11 Utah Code Ann. § 58-46a-302(1)(c) (West 2004) requires that good moral character is a qualification for licensure as a hearing instrument specialist.

12 The Stipulation and Order provides in Paragraph 7(h)

If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason... Respondent agrees to cause the Board to be notified immediately

CHARGE I: UNPROFESSIONAL CONDUCT

By engaging in conduct that resulted a plea of guilty or nolo contendere to tax fraud, which was held in abeyance, the Respondent has engaged in unprofessional conduct as defined in Section 58-1-501(2)(c), and is subject to sanctions upon his hearing instrument specialist license under Sections 58-1-401(2) and 106(1)(d)

CHARGE II: QUALIFICATIONS FOR LICENSURE

By engaging in tax fraud, Respondent has demonstrated a lack of good moral character,

and has failed to maintain the qualifications for licensure as specified in Section 58-46a-302(1)(c). Therefore, appropriate grounds exist to impose sanctions upon his hearing instrument specialist license under Sections 58-1-401(1) and 106(1)(d)

CHARGE III: FAILURE TO NOTIFY THE BOARD OF CRIMINAL CHARGES

Respondent failed to immediately notify the Board of the criminal charges. Therefore, an appropriate basis exists to impose sanctions for violating the terms and conditions of the Stipulation and Order under 58-1-401(2) and 106(1)(d)

WHEREFORE, the Division requests the following relief

1 That Respondent be adjudged and decreed to have engaged in the acts and omissions alleged herein;

2. That by engaging in the above acts and omissions, Respondent be adjudged and decreed to have violated the Division of Occupation and Professional Licensing Act and the Hearing Instrument Specialist Licensing Act,

3 That Respondent's license be revoked;

4 That an order be issued requiring Respondent to cease and desist from violating the licensing statutes; and

5. That an Order be issued imposing appropriate sanctions against Respondent's license to practice as hearing instrument specialists

DATED this 7th day of May, 2012

MARK L SHURTLEFF
ATTORNEY GENERAL


LENORE EPSTEIN

CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of June, 2012, a true and correct copy of the foregoing VERIFIED PETITION AND NOTICE OF AGENCY ACTION has been served on the parties of record in this proceeding by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to the following:

Robert E. Harris
5366 North Edgewood Drive
Provo UT 84604

Copy hand delivered to:

Lenore Epstein, Assistant Attorney General

Jennie Jonsson, Administrative Law Judge



Carol Inglesby
Admin. Asst
Division of Occupational
and Professional
Licensing

JUDITH A JENSEN (4603)
Assistant Attorney General
JOHN E SWALLOW (5802)
Utah Attorney General
Counsel for Agency
Commercial Enforcement Division
Heber M Wells Building
Box 146741
Salt Lake City, UT 84114-6741
Telephone (801) 366-0310
Facsimile. (801) 366-0315

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF ROBERT E. HARRIS TO PRACTICE AS A HEARING INSTRUMENT SPECIALIST IN THE STATE OF UTAH	AMENDED PETITION Case No DOPL 2012-260
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These claims were investigated by the Utah Division of Occupational and Professional Licensing (the "Division") upon complaint that Robert E Harris ("Respondent") has engaged in acts, practices, and omissions which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann § 58-1-101 to 58-1-507 (West Supp. 2012) and the Hearing Instrument Specialist Licensing Act, Utah Code Ann § 58-46a-101 to 58-46a-503 (West Supp 2012)

The allegations against Respondent are based upon information and belief arising out of an investigation conducted by the Division under its authority as set forth in Utah Code Ann § 58-1-106(1)(b) (West Supp 2012)

Each count in this Petition shall be deemed to incorporate by reference the allegations set forth in the other paragraphs of the Petition

PARTIES

1 The Division is a division of the Department of Commerce of the State of Utah as established by Utah Code Ann § 13-1-2(2) (West Supp 2012)

2 At all times material to the allegations contained herein, Respondent has held a license to practice as a hearing instrument specialist in the State of Utah

STATEMENT OF ALLEGATIONS

3 On October 13, 2009, an Information was filed against Respondent before the Third District Court, County of Salt Lake, State of Utah, in State of Utah Attorney General vs. Harris, Case No 091908060 charging Respondent with criminal offenses of Failure to File a Return and Attempted Tax Evasion as defined by Utah Code Ann 76-8-1101(1)(c) and (d)

4 On July 8, 2011, Respondent pleaded guilty in Case No 091908060 to one count each of Failure to File a Return and Attempted Tax Evasion based conduct including following

a In or about tax years 2003 through 2007 inclusive, Respondent operated the business Harris Hearing Aid Center in the State of Utah as owner, operator, and individual in control of the business and received income therefrom

b During said period, Respondent failed to report his income to and file tax returns with the Utah State Tax Commission, to respond to inquiries from the State taxing authorities, and to provide required reports, records and documentation to the State taxing authorities, despite having done so in

the past and despite direct requests to do so during this time period, and Respondent attempted to defeat his State income tax obligations

5 On July 8, 2011 in Case No 090108060, the Court ordered said pleas of guilty be held in abeyance for a period of 36 months on terms and conditions including Respondent shall complete community service hours and comply fully with and pay restitution to the Utah State Tax Commission

APPLICABLE LAW

6 At all times material hereto, Utah Code Ann § 58-1-401(1) has provided in relevant part the Division shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the qualifications for licensure under Title 58

7 At all times material hereto, Utah Code Ann § 58-46a-302(1)(c) has provided good moral character is a qualification for licensure as a hearing instrument specialist

8 At all times material hereto, Utah Code Ann § 58-1-401(2)(a) has provided in relevant part the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the license of any licensee if the licensee has engaged in unprofessional conduct, as defined by statute or rule under Title 58

9 At all times material hereto, Utah Code Ann § 58-1-501(2)(c) has defined "unprofessional conduct" in relevant part as engaging in conduct that results in a plea of guilty which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for

which the license was issued, bears a reasonable relationship to the licensee's ability to safely or competently practice the occupation or profession

COUNT I

- 10 Respondent engaged in conduct that resulted in his entry of pleas of guilty held in abeyance to the criminal offenses of Failure to File a Return and Attempted Tax Evasion in Case No 091908060, as further described in Paragraphs 3, 4, and 5 herein
- 11 In pleading guilty to said criminal offenses, Respondent pleaded guilty to crimes of moral turpitude or crimes that, when considered with the functions and duties of the licensed hearing instrument specialist bear a reasonable relationship to the licensee's ability to safely or competently practice in the profession of the hearing instrument specialist
- 12 Based on the foregoing, Respondent has engaged in unprofessional conduct as defined in Subsection 58-1-501(2)(c) and sufficient bases exist under Subsections 58-1-401(2)(a) and 58-1-106(1)(d) for imposing disciplinary sanctions against Respondent's license to practice as a hearing instrument specialist in the State of Utah

COUNT II

- 13 By engaging the conduct that resulted in Respondent's entry of pleas of guilty held in abeyance to the criminal offenses of Failure to File a Return and Attempted Tax Evasion in Case No 091908060, Respondent has failed to maintain qualifications for licensure as a hearing instrument specialist as required by Subsection 58-46a-302(1)(c)

14 Based on the foregoing, sufficient bases exist under Subsections 58-1-401(1) and 58-1-106(1)(d) for imposing disciplinary sanctions against Respondent's license to practice as a hearing instrument specialist in the State of Utah

WHEREFORE, the Division requests an order granting the following relief

- 1 Determining that Respondent engaged in the acts, practices, and omissions alleged herein,
- 2 Determining that, by engaging in the above acts, practices, and omissions, Respondent violated the terms of the provisions of the Division of Occupational and Professional Licensing Act and the Hearing Instrument Specialist Licensing Act, which are particularly referenced above, and
- 3 Imposing appropriate sanctions on the license of Respondent to practice as a hearing instrument specialist in the State of Utah in accordance with UTAH CODE ANN § 58-1-401(1) and (2)(a)

DATED this 5 day of April, 2013

JOHN E SWALLOW
UTAH ATTORNEY GENERAL



JUDITH A JENSEN
Assistant Attorney General

VERIFICATION

STATE OF UTAH)
 ss
COUNTY OF SALT LAKE)

APRIL ELLIS, being first duly sworn, states as follows

1 I am a Bureau Manager for the Utah Division of Occupational and Professional Licensing, Department of Commerce, State of Utah, and have been assigned administrative oversight of this case

2. I have read the foregoing Amended Petition and am familiar with the contents thereof All of the factual allegations in the Amended Petition are true to the best of my knowledge, information, and belief.

DATED this 9 day of April, 2013



APRIL ELLIS
Bureau Manager

SWORN TO AND SUBSCRIBED before me this 9 day of
April, 2013



NOTARY PUBLIC

