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STATE OF WISCONSIN
BEFORE THE HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

JAMES M. GOTT,
RESPONDENT. :

FINAL DECISION AND ORDER
(LS0810154HAD)

Division of Enforcement Case # 04HAD013; 04HAD014; 08HAD014

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

James M. Gott
102 Main Street, N.W.
P.O. Box 11
Bethel, MN 55005

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Hearing And Speech Examining Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Wisconsin Hearing And Speech Examining Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. James M. Gott, Respondent herein, date of birth 7/18/46, is duly licensed as a hearing instrument specialist in the state of Wisconsin, license #771-60. This license was first granted on 3/7/88.
2. Respondent's most recent address on file with the Wisconsin Hearing And Speech Examining Board is 102 Main Street, N.W., P.O. Box 11, Bethel, Minnesota 55005
3. At all times relevant to this action, Respondent was working as a hearing instrument specialist in the state of Wisconsin.

COUNT I

4. Respondent was required, pursuant to Wis. Admin. Code § HAS 8.03, to obtain 20 hours of Board approved continuing education programs in courses of study which pertain to the practice of fitting and dealing in hearing instruments in the biennial renewal period from 2/1/03 to 1/31/05. Completion of the 20 hours of Board approved continuing education programs in the period from 2/1/03 through 1/31/05 was a necessary prerequisite to renewal of Respondent's license to practice as a hearing instrument specialist for the biennium from 2/1/05 through 1/31/07.
5. Respondent submitted an application dated 12/21/04 for renewal of his license to practice as a hearing instrument specialist for the biennium from 2/1/05 to 1/31/07. Respondent certified on the application that he had completed the 20 hours of Board approved continuing education between 2/1/03 and 1/31/05. In fact, Respondent had completed only 10 hours of Board approved continuing education between 2/1/03 and 1/31/05 and, therefore, was not eligible for renewal of his license to practice as a hearing instrument specialist.
6. Respondent's application for renewal of his license to practice as a hearing instrument specialist for the biennium from 2/1/05 through 1/31/07 was granted on 1/4/05.

COUNT II

7. Respondent was required, pursuant to Wis. Admin. Code § HAS 8.03, to obtain 20 hours of Board approved continuing education programs in courses of study which pertain to the practice of fitting and dealing in hearing instruments in the biennial renewal period from 2/1/03 to 1/31/05. Completion of the 20 hours of Board approved continuing education programs in the period from 2/1/03 through 1/31/05 was a necessary prerequisite to renewal of Respondent's license to practice as a hearing instrument specialist for the biennium from 2/1/05 through 1/31/07.
8. Respondent submitted an application dated 12/21/04 for renewal of his license to practice as a hearing instrument specialist for the biennium from 2/1/05 to 1/31/07. Respondent knowingly falsely certified on the application that he will have completed the 20 hours of Board approved continuing education between 2/1/03 and 1/31/05. In this application for renewal of his license to practice as a hearing instrument specialist, Respondent also knowingly provided false information to the Hearing And Speech Examining Board by stating in his application for renewal of his license that he will have evidence of having completed the 20 hours of continuing education in the period from 2/1/03 through 1/31/05 which he will furnish to the Board upon request. In fact, Respondent had completed only 10 hours of Board approved continuing education between 2/1/03 and 1/31/05 and did not have evidence of having completed the 20 hours of continuing education and, therefore, was not eligible for renewal of his license to practice as a hearing instrument specialist for the biennium from 2/1/05 through 1/31/07.
9. On 1/4/05, the Wisconsin Hearing And Speech Examining Board and the Wisconsin Department of Regulation and Licensing, acting in reliance on Respondent's false representations, granted Respondent's application for renewal of his license to practice as a hearing instrument specialist for the biennium from 2/1/05 through 1/31/07.

COUNT III

10. On 4/17/01, Respondent performed measurements of the hearing of his client, R.D., to determine if the client was a candidate for hearing instruments and to determine a proper selection of hearing instruments for the client. The client was 74 years of age at the time of this evaluation. On 4/17/01, Respondent and the client entered into a contract for the purchase of two hearing instruments. The hearing instruments were subsequently delivered to the client pursuant to the terms of the contract.
11. On 8/22/03, Respondent re-evaluated the client's hearing by performing measurements of the hearing of his client. The client was 76 years of age at the time of this evaluation. On 8/22/03, Respondent and the client entered into a

contract for the purchase of two hearing instruments. The hearing instruments were subsequently delivered to the client pursuant to the terms of the contract.

12. On or about 5/6/04, the client complained to Respondent that he was occasionally experiencing problems with feedback in the hearing instruments he was then using. Respondent made adjustments to the vents on the hearing instruments in an effort to address the feedback problem with the hearing instruments. On or about 5/6/04, Respondent also informed the client that digital hearing instruments with adaptive feedback suppression were now available and that these digital hearing instruments may be appropriate to address the client's hearing loss and to address the feedback problem.

13. Respondent was contacted by the client between 5/6/04 and 5/20/04. The client told the Respondent that he wanted to try the digital hearing instrument system that the Respondent had previously explained to him on 5/6/04.

14. On 5/20/04, in response to the client's request, Respondent returned to the client's residence to discuss with the client the purchase of the digital hearing instrument system. On 5/20/04, the Respondent took new impressions and the Respondent and the client entered into a contract for the purchase of two digital hearing instruments. The Respondent did not perform or document in the client's records the appropriate tests of human hearing required by Wis. Admin. Code § HAS 4.01, prior to entering into the contract for the purchase of the digital hearing instruments. The hearing instruments were subsequently delivered to the client pursuant to the terms of the contract.

15. Respondent, pursuant to Wis. Admin. Code §§ HAS 4.01 and HAS 4.04, was required within 6 months prior to the 5/20/04 sale of the digital hearing instruments to the client to perform and document in the client's records the results of his measurements of the client's hearing including the results of pure tone audiometry performed by air conduction testing and by bone conduction testing; the results of speech audiometry including speech reception threshold, speech discrimination testing, most comfortable loudness measurements and loudness discomfort levels; and the results of audiometric testing performed with appropriate masking techniques when indicated.

COUNT IV

16. On 4/17/01, Respondent performed measurements of the hearing of his client, R.D., to determine if the client was a candidate for hearing instruments and to determine a proper selection of hearing instruments for the client. The client was 74 years of age at the time of this evaluation. On 4/17/01, Respondent and the client entered into a contract for the purchase of two hearing instruments. The hearing instruments were subsequently delivered to the client pursuant to the terms of the contract.

17. On 8/22/03, Respondent re-evaluated the client's hearing by performing measurements of the hearing of his client. The client was 76 years of age at the time of this evaluation. On 8/22/03, Respondent and the client entered into a contract for the purchase of two hearing instruments. The hearing instruments were subsequently delivered to the client pursuant to the terms of the contract.

18. On 8/22/03, when the Respondent sold the hearing instruments to the client and Respondent and the client entered into the contract for the purchase of the two hearing instruments, the Respondent had not been presented with and did not have in his possession or in the client's records a written statement signed by a licensed physician stating that the client's hearing loss had been medically evaluated within the 6 months prior to the sale of the hearing instruments and that the client may be considered a candidate for a hearing instrument.

19. On 8/22/03 when the Respondent sold the hearing instruments to the client and Respondent and the client entered into the contract for the purchase of the two hearing instruments, the Respondent did not have in his possession or in the client's records a written statement signed by the client waiving a medical evaluation of the client's hearing loss performed by a licensed physician within the 6 months preceding the sale of the hearing instruments.

20. On or about 5/6/04, the client complained to Respondent that he was occasionally experiencing problems with feedback in the hearing instruments he was then using. Respondent made adjustments to the vents on the hearing instruments in an effort to address the feedback problem with the hearing instruments. On or about 5/6/04, Respondent also informed the client that digital hearing instruments with adaptive feedback suppression were now available and that these digital hearing instruments may be appropriate to address the client's hearing loss and to address the feedback problem.

21. Respondent was contacted by the client between 5/6/04 and 5/20/04. The client told the Respondent that he wanted to try the digital hearing instrument system that the Respondent had previously explained to him on 5/6/04.

22. On 5/20/04, in response to the client's request, Respondent returned to the client's residence to discuss with the client the purchase of the digital hearing instrument system. On 5/20/04, the Respondent took new impressions and the Respondent and the client entered into a contract for the purchase of two digital hearing instruments. The hearing instruments were subsequently delivered to the client pursuant to the terms of the contract.

23. On 5/20/04, when the Respondent sold the hearing instruments to the client and Respondent and the client entered into the contract for the purchase of the two hearing instruments, the Respondent had not been presented with and did

not have in his possession or in the client's records a written statement signed by a licensed physician stating that the client's hearing loss had been medically evaluated within the 6 months prior to the sale of the hearing instruments and that the client may be considered a candidate for a hearing instrument.

24. On 5/20/04 when the Respondent sold the hearing instruments to the client and Respondent and the client entered into the contract for the purchase of the two hearing instruments, the Respondent did not have in his possession or in the client's records a written statement signed by the client waiving a medical evaluation of the client's hearing loss performed by a licensed physician within the 6 months preceding the sale of the hearing instruments.

25. The formal Complaint currently pending in this disciplinary proceeding was based upon the results of investigations conducted in investigative files 04HAD013 and 04HAD014. Investigative file 08MED014 was opened for investigation on 10/7/08, 8 days prior to commencement of this formal disciplinary proceeding. 08HAD014 included allegations that James M. Gott was selling hearing instruments to clients that were not clearly and permanently labeled as required by 21 C.F.R. §801.420(b)(1). James M. Gott has on order a laser device for clearly and permanently labeling hearing instruments as required by 21 C.F.R. §801.420(b)(1).

CONCLUSIONS OF LAW

1. The Wisconsin Hearing And Speech Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 459.10, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 4 through 6, above, constitutes a violation of Wis. Stat. §§ 459.10(1)(e) and 459.09(1)(b); and Wis. Admin. Code §§ HAS 7.03(1)(d) and HAS 8.03(1) in that James M. Gott failed to obtain the required 20 continuing education hours for the renewal of his license to practice as a hearing instrument specialist for the biennium from 2/1/05 to 1/31/07.

3. The conduct described in paragraphs 7 through 9, above, constitutes a violation of Wis. Stat. §§ 459.10(1)(a) and 459.10(1)(k); and Wis. Admin. Code § HAS 5.02(2)(b) in that James M. Gott provided false information to the Hearing And Speech Examining Board in connection with his application for renewal of his license to practice as a hearing instrument specialist.

4. The conduct described in paragraphs 10 through 15, above, constitutes a violation of Wis. Stat. §§ 459.10(1)(e) and 459.10(1)(p); and Wis. Admin. Code §§ HAS 4.01 and HAS 4.04 in that James M. Gott failed to perform and document in the client's records the results of required audiometric testing of the client's hearing prior to and within 6 months of the date on which James M. Gott fitted and sold hearing instruments to the client.

5. The conduct described in paragraphs 16 through 24, above, constitutes a violation of Wis. Stat. § 459.10(1)(e) and 21 CFR 801.421(a)(1) and 21 CFR 801.421(a)(2) in that James M. Gott failed to have in his possession or in the client's records either written statements signed by licensed physicians stating that the client's hearing loss had been medically evaluated within 6 months prior to the dates of the sales of the hearing instruments and that the client may be considered a candidate for a hearing instrument or written medical waivers signed by the client within 6 months prior to the dates of the sales of the hearing instruments waiving the medical evaluation before the client purchased the hearing instruments on 8/22/03 and on 5/20/04.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Stipulation of the parties is approved.

IT IS FURTHER ORDERED that:

1. The license of James M. Gott to practice as a hearing instrument specialist in the state of Wisconsin, license #771-60, is hereby REPRIMANDED.

IT IS FURTHER ORDERED that:

2. The license of James M. Gott to practice as a hearing instrument specialist in the state of Wisconsin, license #771-60, shall be and hereby is SUSPENDED, the suspension commencing 10 days after the effective date of this Final Decision and Order. The suspension shall continue for 30 days or until James M. Gott has fully satisfied all of the requirements as set forth in paragraphs 3.a., 3.b., 3.c., 3.d. and 3.f. of this Order, whichever period of suspension is the greater. Upon satisfactory completion of the terms of paragraphs 3.a., 3.b., 3.c., 3.d. and 3.f. of the Order and completion of the ordered period of suspension as determined by the Department Monitor, the Department Monitor shall make the appropriate entries in the records of the Department of Regulation and Licensing and of the Wisconsin Hearing And Speech Examining Board documenting that the suspension of the license has terminated. The Department Monitor shall promptly give notice of the termination of the suspension to James M. Gott. James M. Gott shall not resume practice as a hearing instrument specialist in Wisconsin until he has received actual notice from the Department Monitor of the termination of his suspension.

IT IS FURTHER ORDERED that:

3. The license of James M. Gott to practice as a hearing instrument specialist in the state of Wisconsin, license #771-60, shall be, and hereby is, LIMITED pursuant to the following terms and conditions:

a. James M. Gott shall take and satisfactorily complete 10 credit hours of continuing education in courses approved by the Board to satisfy the continuing education requirements for biennial renewal of a license to practice as a hearing instrument specialist in the state of Wisconsin, Wis. Admin. Code § HAS 8.03(1). The 10 credit hours shall include a minimum of 3 credit hours in professional ethics applicable to practice as a hearing instrument specialist. The 10 credit hours of continuing education shall be taken on or after the effective date of this Final Decision and Order. James M. Gott shall attend each of the courses taken in satisfaction of this provision in its entirety.

b. James M. Gott shall demonstrate compliance with the continuing education requirement of paragraph 3.a. of this Order by filing with the Department Monitor:

i. Certifications of attendance provided by the sponsoring organizations for each of the continuing education courses taken in satisfaction of this requirement.

ii. An affidavit given under oath by James M. Gott verifying that he has attended in its entirety each of the continuing education courses taken in satisfaction of this requirement.

c. James M. Gott shall pay the full costs of satisfying this continuing education requirement.

d. The terms of paragraphs 3.a., 3.b. and 3.c. of this Order shall be satisfied in their entirety before James M. Gott shall be eligible to have the suspension as ordered in paragraph 2 of this Order terminated.

e. James M. Gott shall not apply or attempt to apply any of the continuing education credits obtained in satisfaction of paragraph 3.a. of this Order toward satisfaction of his biennial renewal continuing education requirements for any biennial renewal period other than for the biennial renewal period from 2/1/05 through 1/31/07.

f. James M. Gott shall provide to the Department Monitor during the period of suspension of his license a copy of his standard form document as currently used by him in his practice as a hearing instrument specialist containing the medical waiver provision as required by 21 C.F.R. §801.421(a)(2)(iii) stating as follows:

“I have been advised by _____ (Hearing aid dispenser’s name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.”

IT IS FURTHER ORDERED that James M. Gott shall pay a forfeiture in the amount of \$500.00 within 90 days of the effective date of this Final Decision and Order.

IT IS FURTHER ORDERED that James M. Gott shall not sell a hearing instrument to any client unless the hearing instrument has clearly and permanently engraved in the shell of the hearing instrument the information required by 21 C.F.R. §801.420(b)(1), including the name of the manufacturer or distributor, the model name or number, the serial number and the year of manufacture.

IT IS FURTHER ORDERED that all certifications of attendance, affidavits and other documents required to be filed with the Wisconsin Hearing And Speech Examining Board under the terms of this Final Decision and Order will be mailed, faxed or delivered to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone no. (608) 267-3817
Fax no. (608) 266-2264

IT IS FURTHER ORDERED that upon satisfaction of all of the terms of this Order, including the payment of costs, as determined by the Department Monitor, James M. Gott's license to practice as a hearing instrument specialist will be restored to full and active status without further notice or appearance.

IT IS FURTHER ORDERED that this Final Decision and Order fully resolves the currently pending formal disciplinary proceeding, LS0810154HAD, which is based on the results of the investigations 04HAD013 and 04HAD014; and the pending investigation, 08HAD014. Investigative file 08HAD014 is hereby closed without further investigation or issuance of a formal Complaint.

IT IS FURTHER ORDERED that:

4. James M. Gott shall, within 90 days from the date of this Order, pay costs of this proceeding in the amount of \$2,671.41 dollars. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of James M. Gott's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event James M. Gott fails to timely submit any payment of the forfeiture as set forth above, or fails to pay costs as ordered or fails to comply with the ordered continuing education, James M. Gott's license to practice as a hearing instrument specialist in Wisconsin, license #771-60 SHALL BE SUSPENDED, without further notice or hearing, until James M. Gott has complied with the terms of this Order.

6. This Order is effective on the date of its signing.

By: Okie Allen
A Member of the Board

4/20/09
Date

STATE OF WISCONSIN
BEFORE THE HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: :
JAMES M. GOTT, :
RESPONDENT. :

STIPULATION
(LS0810154HAD)

Division of Enforcement Case # 04HAD013; 04HAD014; 08HAD014

It is hereby stipulated between James M. Gott; and Gilbert C. Lubcke, for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending formal disciplinary proceeding involving Respondent's licensure by the Wisconsin Hearing And Speech Examining Board, case LS0810154HAD, Division of Enforcement investigative files 04HAD013 and 04HAD014; and as the result of a pending investigation, Division of Enforcement investigative file 08HAD014. Respondent consents to the resolution by this Stipulation of the formal disciplinary proceeding and pending formal Complaint and of the pending investigation without issuance of a formal Complaint.

2. James M. Gott understands that by signing this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. James M. Gott has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.

4. James M. Gott agrees to the adoption of the attached Final Decision and Order by the Wisconsin Hearing And Speech Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. James M. Gott waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Wisconsin Hearing And Speech Examining Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of James M. Gott or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. James M. Gott understands that the attorney or other agent for the Division of Enforcement or the case advisor, in responding to questions asked by the Board, may be required to provide information to the Board which may be construed by the Board as not weighing in favor of accepting this proposed Stipulation and Final Decision and Order. James M. Gott will not contend that any responses made by the attorney or other agent for the Division of Enforcement or by the case advisor in response to questions posed by the Board constitute a failure by the attorney or other agent for the Division of Enforcement or by the case advisor to speak in support of this agreement. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and

Order.

7. James M. Gott is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins James M. Gott in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

James M. Gott
102 Main Street, N.W.
P.O. Box 11
Bethel, MN 55005

Date

Gilbert C. Lubcke, Attorney
Division of Enforcement
Wisconsin Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Date