

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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State of Wisconsin

Before the Hearing and Speech Examining Board

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In the Matter of the Disciplinary Proceedings Against

Kim L. Kurschner,  
Respondent

FINAL DECISION AND ORDER  
LS0112031HAD

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The parties to this proceeding for purposes of §227.53, Wis. Stats., are:

Kim L. Kurschner  
2531A Cornelia Trail  
Woodbury, MN 55125

Hearing and Speech Examining Board  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935

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

The Wisconsin Hearing and Speech Examining Board received a Stipulation submitted by the parties to the above-captioned matter. The Stipulation, a copy of which is attached hereto, was executed by Kim L. Kurschner, personally, and by Gilbert C. Lubcke, attorney for the Department of Regulation and Licensing, Division of Enforcement. Based upon the Stipulation of the parties, the Wisconsin Hearing and Speech Examining Board makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Kim L. Kurschner, Respondent herein, 2531A Cornelia Trail, Woodbury, Minnesota 55125 was born on 12/27/1935 and has been licensed as a hearing instrument specialist in the State of Wisconsin since 3/3/1997, license #1111.
2. Respondent is not currently practicing in Wisconsin as a hearing instrument specialist.
3. On 10/21/1999, the Respondent examined patient G.H., performed an audiogram hearing test and fitted and sold patient G.H. two new hearing aids.
4. Patient G.H did not present the Respondent with a medical evaluation signed by a licensed physician stating that the patient's hearing loss has been medically evaluated and that the patient may be considered a candidate for a hearing aid. Patient G.H. did not sign any waiver statements stating that she did not wish a medical examination before purchasing the hearing aids. The Hearing Aid Purchasing Agreement that Respondent used for the sale of the hearing aids to patient G.H. did not contain a waiver of the medical evaluation requirement.
5. On 3/23/1998, the Respondent examined patient M.M. and performed an audiogram hearing test.

6. On 6/9/1998, the Respondent fitted and sold patient M.M. two new hearing aids.

7. Patient M.M. did not present the Respondent with a medical evaluation signed by a licensed physician stating that the patient's hearing loss has been medically evaluated and that the patient may be considered a candidate for a hearing aid. Patient M.M. did not sign any waiver statements stating that he did not wish a medical examination before purchasing the hearing aids. The Hearing Aid Purchasing Agreement that Respondent used for the sale of the hearing aids to patient M.M. did not contain a waiver of the medical evaluation requirement.

8. On 9/10/1999, the Respondent examined patient S.J., performed an audiogram hearing test and fitted and sold patient S.J. two new hearing aids.

9. Patient S.J. did not present the Respondent with a medical evaluation signed by a licensed physician stating that the patient's hearing loss has been medically evaluated and that the patient may be considered a candidate for a hearing aid. Patient S.J. did not sign any waiver statements stating that she did not wish a medical examination before purchasing the hearing aids. The Hearing Aid Purchasing Agreement that Respondent used for the sale of the hearing aids to patient S.J. did not contain a waiver of the medical evaluation requirement.

10. On 1/20/1998, the Respondent examined patient F.S., performed an audiogram hearing test and fitted and sold patient F.S. one new hearing aid.

11. Patient F.S. did not present the Respondent with a medical evaluation signed by a licensed physician stating that the patient's hearing loss has been medically evaluated and that the patient may be considered a candidate for a hearing aid. Patient F.S. did not sign any waiver statements stating that she did not wish a medical examination before purchasing the hearing aid. The Hearing Aid Purchasing Agreement that Respondent used for the sale of the hearing aid to patient F.S. did not contain a waiver of the medical evaluation requirement.

12. On 11/15/1999, the Respondent examined patient P.K., performed an audiogram hearing test and fitted and sold patient P.K. two new hearing aids.

13. Patient P.K. did not present the Respondent with a medical evaluation signed by a licensed physician stating that the patient's hearing loss has been medically evaluated and that the patient may be considered a candidate for a hearing aid. Patient P.K. did not sign any waiver statements stating that she did not wish a medical examination before purchasing the hearing aids. The Hearing Aid Purchasing Agreement that Respondent used for the sale of the hearing aids to patient P.K. did not contain a waiver of the medical evaluation requirement.

#### CONCLUSIONS OF LAW

1. The Wisconsin Hearing and Speech Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 459.10.

2. The Wisconsin Hearing and Speech Examining Board has the authority to resolve this proceeding by Stipulation without an evidentiary hearing pursuant to Wis. Stats. sec. 227.44(5).

3. Respondent sold hearing aids to patients G.H., M.M., S.J., F.S. and P.K. without having obtained from the patients medical evaluations signed by a licensed physician stating that the patient's hearing loss had been medically evaluated and that the patient may be considered a candidate for a hearing aid, or signed waivers to the medical evaluation requirement in violation of Wis. Stats. sec. 459.10(1)(e) and 21 C.F.R. sec. 801.421.

4. The Hearing and Speech Examining Board has the authority pursuant to Wis. Stats. sec. 440.22 to assess the costs of this proceeding against Kim L. Kurschner.

#### ORDER

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

IT IS FURTHER ORDERED that Kim L. Kurschner's license to practice as a hearing instrument specialist in the State of Wisconsin is SUSPENDED for a minimum of 30 days, effective on the date of the Final Decision and Order. The suspension will continue until Kim L. Kurschner has submitted evidence satisfactory to the Hearing and Speech Examining Board and the Hearing and Speech Examining Board has determined that he has developed a physician medical evaluation waiver form that meets all of the requirements of 21 C.F.R. sec. 801.421(a)(2)(iii).

IT IS FURTHER ORDERED that Kim L. Kurschner pay costs in the amount of \$200.00 to the Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708-8935, within 30 days of the date of this Final Decision and Order.

IT IS FURTHER ORDERED that Kim L. Kurschner will appear before the Hearing and Speech Examining Board, as the Hearing and Speech Examining Board directs, to demonstrate to the Hearing and Speech Examining Board full compliance with all of the terms of this Final Decision and Order.

IT IS FURTHER ORDERED that pursuant to Wis. Stats. sec. 227.51(3) if the Hearing and Speech Examining Board finds that Kim L. Kurschner has violated the terms of this Final Decision and Order and the public health, safety or welfare imperatively requires emergency action, the Hearing and Speech Examining Board may order that the license of Kim L. Kurschner to practice as a hearing instrument specialist in the State of Wisconsin be summarily suspended pending investigation of the alleged violation.

The rights of a party aggrieved by this Final Decision and Order to petition the Wisconsin Hearing and Speech Examining Board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin, this 3<sup>rd</sup> day of December, 2001.

WISCONSIN HEARING AND SPEECH EXAMINING BOARD

Gerard Kupperman

Member, Wisconsin Hearing and Speech Examining Board