

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
CHERYL R. JACOBY,	:	LS0408027HAD
RESPONDENT	:	

The parties to this action for the purposes of section 227.53 of the Wisconsin statutes are:

Cheryl R. Jacoby
530 19th Ave. S.
Wisconsin Rapids, WI 54495

Hearing and Speech Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

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 Board. The Board has reviewed this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Cheryl R. Jacoby, (D.O.B. 10/27/1947), is duly licensed in the state of Wisconsin as a hearing instrument specialist (license #889). This license was granted on March 4, 1991.

2. Respondent’s latest address on file with the Department of Regulation and Licensing is 530 19th Ave. S., Wisconsin Rapids, WI 54495.

01 HAD 008

3. On or about October 3, 2000, Ms. Jacoby sold two reconditioned BTE hearing aids to customer E.S., at his residence.

4. The receipt furnished to E.S. for the purchase of the two BTE hearing aids did not include:
- (a) the make and model of the hearing aid,
 - (b) the terms of the warranty,
 - (c) a statement regarding the purchaser’s relationship with the Respondent and that any examination or representation made by the respondent is not an examination, diagnosis or prescription and therefore must not be regarded as medical advice,
 - (d) the nature and duration of the trial period,
 - (e) the refund policy and amount,

- (f) The product return and exchange policy,
- (g) The product repair policy, or
- (h) A statement that the hearing aids were reconditioned.

5. The container in which Ms. Jacoby sold the hearing aids to E.S. did not note that the hearing aids were reconditioned.

6. E.S. contends that he believed that the hearing aids sold to him were new, not reconditioned.

7. Respondent contends that she informed E.S. that the hearing aids were reconditioned.

8. While hearing aid prices do vary, the price of the reconditioned hearing aids sold to E.S. was more closely comparable to the price of similar new hearing aids than to the price of 15 year old reconditioned hearing aids.

9. After being notified of the complaint in this matter Ms. Jacoby forgave the debt of \$400 that E.S. still owed on the hearing aids.

02 HAD 021

10. On July 24, 2002, customer L.O. ordered two In the Ear Canal hearing aids from Ms. Jacoby, for a total price of \$1,650. Payment was made in full at the time of the order.

11. The hearing aids were delivered on August 12, 2002. They did not fit properly and L.O. requested a refund.

12. After several requests, Ms. Jacoby returned on August 27, 2002 to pick up the hearing aids. She stated that L.O.'s money would be refunded when she received the money back from the manufacturer.

13. According to the manufacturer, it pays all refunds within two weeks.

14. L.O. did not receive her refund from Ms. Jacoby until November of 2002, and only after she filed a complaint in small claims court for the return of the money.

15. The receipt furnished to L.O. for the purchase of the two hearing aids did not include:

- (a) the make and model of the hearing aid,
- (b) the terms of the warranty,
- (c) a statement regarding the purchaser's relationship with the Respondent and that any examination or representation made by the respondent is not an examination, diagnosis or prescription and therefore must not be regarded as medical advice,
- (d) the nature and duration of the trial period,
- (e) the refund policy and amount,
- (f) The product return and exchange policy, or
- (g) The product repair policy.

16. In resolution of this matter, Ms. Jacoby consents to entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Hearing and Speech Examining Board has jurisdiction to act in this matter, pursuant to §45910, Wis. Stats.

2. The Board is authorized pursuant to sec. 227.44(5), Wis. Stats. to enter into the attached Stipulation and Order and in the following terms and conditions.

3. Respondent's conduct described in paragraphs 4 and 13 constitutes grounds for action within the meaning of sections

and 459.10(1)(e), Wis. Stats. and Wis. Adm. Code sections HAS 5.02(2)(g).

4. Respondent's conduct described in paragraph 5 constitutes grounds for action within the meaning of sections 459.03 and 459.10(1)(e), Wis. Stats.

5. Respondent's conduct described in paragraphs 9 through 12 constitutes grounds for action within the meaning of sections 423.204 and 459.10(1)(e), Wis. Stats.

ORDER

THEREFORE, IT IS ORDERED:

1. The stipulation of the parties is approved.
2. Respondent must submit for approval all documentation to be used by her in connection with the sale of hearing aids, to the Board's designee, Joseph Hulwi, at 2191 Eastridge Center, Eau Claire, Wisconsin, 54701. Mr. Hulwi will review that documentation for compliance with applicable laws and will mail Respondent a letter indicating his approval or denial of the documentation it within 5 days of receipt. If the documentation is denied, Mr. Hulwi will indicate the reason in his letter. Respondent then may resubmit corrected documentation which will be considered according to the same process.
3. Respondent is SUSPENDED, for one week or until she receives approval of her documentation from Mr. Hulwi, whichever is longer.
4. Respondent will pay COSTS in the amount of One Thousand Three Hundred Fifty dollars (\$1350.00) to the Department of Regulation and Licensing, 1400 E. Washington Ave., Madison WI 53708. Costs may be paid in installments according to the following schedule: \$200 will be due by May 31, 2004, \$200 will be due by June 30, 2004, \$200 will be due by July 31, 2004, \$200 will be due by August 31, 2004, \$200 will be due by September 30, 2004, and a final payment of \$350 will be due by October 31, 2004.
5. Respondent shall bear all costs incurred as a result of satisfying this Order.
6. This Order shall become effective upon the date of its signing.

Dated at Madison, Wisconsin, this 2nd day of August, 2004.

HEARING AND SPEECH EXAMINING BOARD

Gerard Kupperman
A Member of the Board