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STATE OF WISCONSIN
BEFORE THE HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
ANN DONALDSON CARBAJAL : LS # 0708142 HAD
RESPONDENT. :

[Division of Enforcement Case # 04 HAD 007]

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

Ann Donaldson Carbajal
5913 W. Howard Avenue
Milwaukee, WI 53220

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

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

PROCEDURAL HISTORY

A formal Complaint was filed in this matter on August 14, 2007. Respondent declined to contest the allegations of the Complaint.

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 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. Ann Donaldson Carbajal (“Respondent”) was born on February 13, 1961, and is licensed as a hearing instrument specialist in the state of Wisconsin, pursuant to license number 599, first granted on March 4, 1985.
2. Respondent’s most recent address on record with the Hearing and Speech Examining Board is 5913 W. Howard Avenue, Milwaukee, Wisconsin 53220.
3. At all times relevant to this complaint, Respondent maintained offices in Milwaukee and New Berlin, Wisconsin.
4. Client F.P. was a woman born on January 29, 1918.
5. Client F.P. went to Respondent’s office on W. Howard Avenue in Milwaukee for a hearing test on January 2, 2004, in response to an advertisement by Respondent, promising a thirty day trial period for hearing instruments. The advertisement read, in part:

30-DAY REFUND PRIVILEGE If you are not satisfied with your Beltone hearing instruments, they may be returned within 30 days of the date of delivery. See us for full details, including the amount of any non-refundable preparation fees.

6. Respondent performed a hearing test, and persuaded Client F.P. to purchase two hearing instruments, one for each ear, for a total price of \$3,360.00.
7. Client F.P. took delivery of the hearing instruments on January 16, 2004, and on that date signed a loan agreement for six months interest free financing for \$2,600.00 for the hearing instruments.
8. On January 23, 2004, Respondent saw Client F.P. for a follow-up appointment.
9. On February 13, 2004, Client F.P. and her daughter went to Respondent’s Howard Avenue office, reported several problems with the instruments and attempted to return the hearing instruments.
10. Respondent was not in the office that day, and Respondent’s office manager, after consulting with Respondent, advised Client F.P. that she was not authorized to accept the return of the instruments, and insisted that Client F.P. make an appointment with Respondent instead.
11. Client F.P. made an appointment with Respondent for February 16, 2004.
12. At the appointment on February 16, 2004, Client F.P. reported difficulties with the instruments and expressed concern about the possibility of losing her payments in the mail. Respondent did not accept the return of the instruments, but instead made adjustments to the instruments.
13. After several months of attempts by Respondent to make the instruments workable and wearable, on May 7, 2004, Client F.P. again attempted to return the aids.
14. Respondent refused to accept the return of the aids, or offer a refund of the purchase price, because the 30-day trial period had passed. Instead, Respondent offered to provide Client F.P. with a different pair of hearing instruments.
15. On May 20, 2004, Client F.P. wrote a complaint letter to Contact 6, a consumer advocacy program operated by WITI, a Milwaukee television station. After being contacted by Contact 6, Respondent agreed to permit Client F.P. to return the instruments, and, on July 16, 2004, Respondent refunded \$2,936.50 of the \$3,360.00 Client F.P. had paid Respondent for the instruments.
16. Respondent withheld \$300.00 of Client F.P.’s money from the refund as a penalty to Client F.P. for return of the

hearing aids after the thirty day trial period, and she withheld \$123.50 of Client F.P.'s money as finance charges on the money that Client F.P. had paid during the 180 day interest free financing period.

17. The contract between Client F.P. and Respondent did not authorize Respondent to withhold finance charges from a refund during the interest free financing period.
18. The contract between Client F.P. and Respondent did not authorize Respondent to impose a \$300.00 penalty on Client F.P. for return of the instruments more than thirty days after delivery.
19. Respondent failed to fully complete the sales contract between Respondent and Client F.P. on January 2, 2004, particularly by failing to complete the portion of the form advising Client F.P. of the fees that Respondent would withhold from any refund on exercise of the thirty day money back trial period, or the total amount of the refund.
20. 21 Code of Federal Regulations § 801.421(a)(1) provides that persons who sell hearing aids shall not sell a hearing aid unless the prospective user has presented a written statement signed by a licensed physician that states that the prospective user's hearing loss has been medically evaluated and that the prospective user may be considered a candidate for a hearing aid, or the client signs a specific waiver of a medical examination of the client's hearing.
21. Respondent does not have the physician statement required by 21 C.F.R. § 801.421(a)(1), or any waiver of a physician's examination signed by Client F.P.
22. Wis. Admin. Code § HAS 4.03(3) provides that audiometric equipment used in the evaluation of hearing sensitivity for the fitting and sale of hearing instruments shall be calibrated not less than once every 12 months.
23. Respondent failed to have the audiometric equipment she used to evaluate hearing sensitivity of prospective clients calibrated between February 8, 2005, and May 2, 2006, a period of nearly fifteen months.
24. Respondent did not honor her advertised thirty day trial period when Respondent directed her office manager not to accept the return of the hearing aids from Client F.P. on February 13, 2004.
25. Respondent failed to honor her advertised thirty day trial period when Respondent went to Client F.P.'s home on February 16, 2004, and left without accepting Client F.P.'s attempt to exercise her money back return privilege.
26. On September 14, 2007, Respondent made a refund to Client F.P. in the amount of \$323.50, retaining only the \$100.00 fitting fee she is entitled to under the terms of her contract with Client F.P.

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 5 through 14 and paragraphs 24 and 25 , above, constitutes a violation of Wis. Stat. § 459.10(1)(g).
3. The conduct described in paragraphs 16 through 18, above, constitutes a violation of Wis. Stat. § 459.10(1)(k).
4. The conduct described in paragraph 19, above, constitutes a violation of Wisconsin Administrative Code § HAS 5.02(2)(g).
5. The conduct described in paragraph 21, above, constitutes a violation of Wis. Stat. § 459.10(1)(e) and

6. The conduct described in paragraph 23, above, constitutes a violation of Wisconsin Administrative Code § HAS 5.02(2)(f).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Ann Donaldson Carbajal is hereby REPRIMANDED.

IT IS FURTHER ORDERED that:

2. The license of Ann Donaldson Carbajal to practice as an hearing instrument specialist in the state of Wisconsin is hereby LIMITED by the condition that she shall, within 180 days of the date of this Order, successfully complete ten hours of continuing education in the topic of the laws regulating the practice of an hearing instrument specialist in the state of Wisconsin.

a. The continuing education required under this Order shall be in addition to any continuing education Respondent is required to complete for any other purpose.

b. Respondent shall obtain pre-approval from the Board or its designee for any continuing education course she intends to take in compliance with this Order. The Board shall not unreasonably deny approval of a course nominated by Respondent, but may accept or reject any course in whole or in part, and credit only part of a course or courses toward compliance with this Order.

c. Respondent shall be solely responsible for all costs of compliance with this Order.

d. For purposes of this Order, the Board's designee is

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

3. Respondent shall, within 180 days from the date of this Order, pay costs of this proceeding in the amount of Two Thousand One Hundred Seventy-five (\$2,175.00) 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

4. 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 Respondent'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 Respondent fails to pay costs as ordered or fails to comply with the ordered continuing education the Respondent's license(#599) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

Wisconsin Hearing and Speech Examining Board

By: Peter J. Zellmer
A Member of the Board

1/28/08
Date