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STATE OF WISCONSIN
BEFORE THE HEARING AND SPEECH EXAMINING BOARD

| | | | |
|-------------------------------|---|--|----------------|
| IN THE MATTER OF DISCIPLINARY | : | | FINAL DECISION |
| PROCEEDINGS AGAINST | : | | AND ORDER |
| | : | | LS0812042HAD |
| SCOTT C. CHASE, | : | | |
| RESPONDENT. | : | | |

Division of Enforcement Case Nos. 03 HAD 021 and 08 HAD 004

The State of Wisconsin, Hearing and Speech Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Hearing and Speech Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 13th day of July, 2009.

Okie E Allen
Member
Hearing and Speech Examining Board

STATE OF WISCONSIN
BEFORE THE HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST
SCOTT C. CHASE,
RESPONDENT.

PROPOSED DECISION
AND ORDER
Case No. LS-0812042-HAD

DOE Case Numbers 03 HAD 021 and 08 HAD 004

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Ave.
Madison, WI 53708-8935

Respondent:

Scott C. Chase
17908 Old Yorkville Road
Union Grove, WI 53182

Disciplinary Authority:

Hearing and Speech Examining Board
1400 East Washington Ave.
Madison, WI 53703

APPLICABLE STATUTES AND RULES

Statutes

459.10 Disciplinary grounds.

(1) Subject to subch. II of ch. 111 and the rules adopted under s. 440.03 (1), the examining board may reprimand the licensee or permit holder or revoke, suspend, limit or deny the trainee permit or license, or any combination thereof, of any person who has done any of the following:

...
(e) Violated this subchapter or ch. 440 or any federal or state statute or rule which relates to the practice of fitting and dealing in hearing aids.

...
(k) Engaged in unprofessional conduct. In this subsection, "unprofessional conduct" means the violation of any standard of professional behavior which through experience, state statute or administrative rule has become established in the practice of fitting and dealing in hearing aids.

459.34 Disciplinary proceedings and actions.

(1) Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations and conduct hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the examining board may reprimand a licensee or permittee or deny, limit, suspend or revoke a license or permit under this subchapter if it finds that the applicant, licensee or permittee has done any of the following:

...
(b) Engaged in conduct in the practice of speech-language pathology or audiology which evidences a lack of knowledge or ability to apply professional principles or skills.

...
(g) Violated this subchapter or any rule promulgated under this subchapter.

(h) Engaged in unprofessional conduct as defined by rule by the examining board.

Wisconsin Administrative Code

HAS 4.01 Appropriate procedures for measurement of human hearing.

The procedures accepted by the board for the measurement of human hearing by licensees and trainees comprise:

- (1) Pure tone audiometry, including air conduction testing and bone conduction testing.

...

HAS 5.02 Unprofessional conduct.

...

(2) The following, without limitation because of enumeration, are violations of standards of professional conduct and constitute unprofessional conduct under s. 459.10(1)(k), Stats.:

(a) After a request by the board, failing to cooperate in a timely manner with the board's investigation of complaints filed against the applicant or licensee. There is a rebuttable presumption that a licensee or applicant who takes longer than 30 days to respond to a request of the board has not acted in a timely manner under this subsection.

...

- (d) Failing to maintain client records for a period of 5 years.

...

(e) Practicing in a manner which substantially departs from the standard of care ordinarily exercised by a hearing instrument specialist.

...

HAS 7.04 Failure to renew.

A licensee who fails to renew a license by the applicable renewal date shall not practice as a hearing instrument specialist, speech-language pathologist or audiologist until the license is restored under s. HAS 7.05.

PROCEDURAL HISTORY

A. On December 4, 2008, a disciplinary complaint was filed against Mr. Chase by Attorney Sandra Nowack of the Department's Division of Enforcement and assigned to Administrative Law Judge Jacquelynn Rothstein for hearing. A copy of complaint was sent to Mr. Chase along with a notice of hearing. The complaint alleged four violations:

1. a violation of sec. HAS 5.02 (2) (e) related to air conduction and bone conduction tests,
2. a violation of sec. HAS 7.04 related to a failure to timely renew his license,
3. a violation of sec. HAS 5.03 (2) (a) for failure to cooperate, and
4. a violation of sec. HAS 5.02 (2) (d) for failure to maintain patient records.

B. On December 8, 2008, a Notice of Prehearing Conference for January 7, 2009 was sent to the parties. The prehearing conference was held as scheduled and dates were set for the filing of an answer, another prehearing conference, and a hearing on February 18, 2009.

C. Mr. Chase filed an answer to the complaint on January 14, 2009. Mr. Chase admitted the facts related to the charges 3 and 4, but disputed the allegations related to charges 1 and 2.

D. Additional prehearing conferences were held on February 9 and 10, 2009.

E. The hearing was held as scheduled on February 18, 2009. Testimony was received from Mr. Chase and from Cathy Pothe of the Department of Regulation and Licensing.

F. On March 16, 2009, the case was assigned to Administrative Law Judge Nick Schweitzer.

FINDINGS OF FACT

1. The respondent, Scott C. Chase, is licensed as a hearing instrument specialist in Wisconsin with license number 815, first issued on March 6, 1989.

2. Mr. Chase resides at 17908 Old Yorkville Road, Union Grove, WI 53182.

3. At all times relevant to the complaint in this case, Mr. Chase owned CHAS Hearing Health Care in Milwaukee, Wisconsin where he has worked as a hearing instrument specialist, and where he has employed one person as an office manager. Mr. Chase also practiced part-time at the Mount Pleasant Medical Clinic in Racine, Wisconsin [tr., pp. 27-31].

4. On February 11, 2003, a person identified by his initials as MK purchased a hearing aid from Mr. Chase.

5. As reflected in section HAS 4.01 (1), Wis. Admin. Code, the professional standards for testing human hearing require air conduction and bone conduction testing. On February 3, 2003, before selling MK the hearing aid, Mr. Chase tested MK's hearing and documented results of air conduction and bone conduction tests.

6. Because bone conduction bypasses the outer and middle ear, air conduction test scores will normally be higher than bone conduction test scores.

conduction test scores.

7. Mr. Chase recorded lower scores for MK's air conduction tests than for his bone conduction tests. [exhibit 4]
8. Possible explanations for lower air conduction test scores include malfunctioning equipment, operator error including misreporting of scores, and false indications from the patient.
9. There is no evidence that Mr. Chase's equipment was malfunctioning on February 3, 2003, and he is certain that the anomalous scores were not due to equipment malfunction.
10. The anomaly may have been caused by Mr. Chase transposing the test scores or by false indications from the patient. Mr. Chase conducted additional tests of MK, including an air conduction test at 750 hertz, a frequency not routinely tested, and a bone conduction test at 1,500 hertz. The additional tests may or may not have been because Mr. Chase noticed the anomaly between air conduction and bone conduction test scores. Even if he did notice the anomaly, Mr. Chase did not adequately address, document, or resolve it.
11. Mr. Chase's license was to be renewed by January 31, 2003, and renewal applications were mailed to licensees by the Department in December of 2002. Mr. Chase did not prepare and sign his renewal application until February 28, 2003, and the Department did not receive it until March 21, 2003. Mr. Chase's license was placed in expired status on February 7, 2003 and returned to active status on March 24, 2003. Mr. Chase continued to practice during the period in which his license was in expired status.
12. Starting in the spring of 2008, the mother of Mr. Chase's office manager occasionally helped in the CHAS Hearing and Hearing Care office on a volunteer basis. Among her activities were going through patient files to remove and follow up on patients who were most likely deceased, or files that had been inactive for a long time. She suffered an injury from a fall sometime before April 10, 2008, developed complications, and died on May 5, 2008.
13. On April 10, 2008, an investigator for the Department's Division of Enforcement sent a letter to Mr. Chase requesting information about one of his patients. Mr. Chase called the investigator on April 25, 2008 and said he would reply promptly. No written response was received and a second letter with the same request was sent to Mr. Chase on May 12, 2008. Mr. Chase called and left a message for the investigator that he would reply by June 30, 2008. No written response was received. On June 10, 2008, when he was at the Department of Regulation and Licensing serving as an examiner for the Hearing and Speech Examining Board, Mr. Chase told the investigator "that we had lost some family members and that we were unable to find the file", but that he would reply by July 29, 2008. No written response was received. On August 6, 2008, a third letter was sent to Mr. Chase by certified mail. Mr. Chase did not provide a written response to the investigative request. He has been unable to locate the record for the patient. His best guess is that the file was taken home by the office manager's mother before she suffered her injury and but it has not been located.

CONCLUSIONS OF LAW

- I. The Hearing and Speech Examining Board is the legal authority responsible for issuing and controlling licenses for hearing instrument specialists in Wisconsin, under chapter 459, Stats., and it has jurisdiction over this hearing regarding an allegation of unprofessional conduct, under sections 459.10 and 459.34, Stats., and section HAS 5.02, Wis. Admin. Code.
- II. The Hearing and Speech Examining Board has personal jurisdiction over the respondent, Scott C. Chase, based on his holding a credential issued by the Hearing and Speech Examining Board, and based on notice under sec. 801.04 (2), Stats.
- III. By failing to respond adequately to anomalous air conduction and bone conduction test scores, Mr. Chase has engaged in unprofessional conduct as defined by sec. HAS 5.02 (2) (e), Wis. Admin. Code, and discipline is appropriate under sec. 459.10 (1) (k), Wis. Admin. Code.
- IV. By failing to renew his license in a timely fashion and continuing to practice during a period in which his license was expired, Mr. Chase has engaged in unprofessional conduct as defined by sec. HAS 7.04, Wis. Admin. Code, and discipline is appropriate under sec. 459.10 (1) (e), Wis. Admin. Code.
- V. By failing to cooperate in a timely manner with the board's investigation of a complaint, Mr. Chase has engaged in unprofessional conduct as defined by sec. HAS 5.02 (2) (a), Wis. Admin. Code, and discipline is appropriate under sec. 459.10 (1) (k), Wis. Admin. Code.
- VI. By failing to maintain a client's record for 5 years, Mr. Chase has engaged in unprofessional conduct as defined by sec. HAS 5.02 (2) (d), Wis. Admin. Code, and discipline is appropriate under sec. 459.10 (1) (k), Wis. Admin. Code.

ORDER

THEREFORE, IT IS ORDERED that the respondent, Scott C. Chase, is hereby REPRIMANDED.

IT IS FURTHER ORDERED that Mr. Chase pay two-thirds of the Department's costs of investigating and prosecuting this matter. Payment shall be made by certified check or money order, payable to the Department of Regulation and Licensing and sent to

Department Monitor
Department of Regulation and Licensing,
PO Box 8935, Madison, WI 53708-8935.
Tel. (608) 267-3817
Fax (608) 266-2264.

If Mr. Chase fails to make the payment as ordered, and fails to obtain an extension of time in which to make payment, his hearing instrument specialist license SHALL BE SUSPENDED, without notice and without further hearing, and said suspension shall continue until full payment has been made to the Department of Regulation and Licensing.

ANALYSIS

This is a class 2 proceeding under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code, initiated by the filing complaint, which contained four allegations:

1. a violation of sec. HAS 5.02 (2) (e) related to air conduction and bone conduction tests,
2. a violation of sec. HAS 7.04 related to a failure to timely renew his license,
3. a violation of sec. HAS 5.03 (2) (a) for failure to cooperate, and
4. a violation of sec. HAS 5.02 (2) (d) for failure to maintain patient records.

In his answer, Mr. Chase admitted the facts related to the charges 3 and 4, but disputed the allegations related to charges 1 and 2.

Cathy Pond, Division Administrator for Professional Credential Processing in the Department of Regulation and Licensing testified about the Department's standard operating procedure regarding license renewals [transcript, pp. 10-25]. Her testimony is reflected in Finding of Fact 11 above. There was no explanation for why the renewal application was dated February 28, 2003 and received by the Department on March 21, 2003. It might have been lost or misdirected by the U.S. Postal Service, or it might not have been posted on the date it was signed. Nevertheless, the exact number of days does not make a difference. Mr. Chase's license was put into expired status on February 7, 2003 and regardless of the time between February 28th and March 21st, his license was in expired status from at least February 7, 2003 to February 28, 2003, and Mr. Chase admitted at hearing that he was practicing during the period his license was expired [tr., p. 27].

The most serious allegation was that Mr. Chase made an error when conducting hearing tests on patient MK. Because air conduction bypasses the outer and middle ear, air conduction test scores will normally be higher than bone conduction test scores. If we assume this means that the tests consist of recording the lowest volumes at which a patient can hear tones at different frequencies measured in decibels, and that higher volumes are needed to convey tones through all rather than just a part of the entire auditory system, or as Mr. Chase put it, that "the air conduction depends on the bone conduction to get to the nerve center" [tr., p. 44]. Mr. Chase conducted air conduction and bone conduction tests on patient MK and he recorded air conduction scores that were lower than the bone conduction scores [exhibit 4]. Mr. Chase testified that such a pattern made no sense, and that such a result was like "a note that would state a minor abrasion of the middle finger on the left foot" [tr., p. 44].

Ruling out the possibility of equipment malfunction, which Mr. Chase did, he stated at his deposition in November of 2008 that he could think of no explanation for the anomaly other than that he had transposed the numbers [tr., 127], which he agreed would be an error below minimal standards of competence [tr., pp. 39, 127]. Mr. Chase also acts as an examiner for the Board on occasion and he agreed that a candidate who did not properly record the results of bone conduction and air conduction tests would likely be failed [tr., pp. 37-38]. At the hearing, and apparently a few weeks before the hearing in a communication with Attorney Nowack, he came up with another possible explanation. He stated that just a few weeks earlier, "my six-year-old niece had an earache, and while I was checking her hearing at the kitchen table, she was giving me responses to air conduction scores when the machine was still turned off" [tr., pp. 48-49]. This made him realize that MK might have been giving "false indications" [tr., p. 49], which he said were "not uncommon" in elderly patients [tr., p. 125].

Mr. Chase did not try to present this as the most likely explanation, but only as another reasonable alternative, one that makes at least as much sense as an experienced licensee transposing test scores. My consideration of this possibility is not really a matter of evaluating Mr. Chase's credibility, but rather of the possibility of a false indication from the patient. The professional members of the Board in their review of this proposed decision may be in the best position to say whether this ever happens. I consider it unlikely that Mr. Chase would have transposed the scores. This is because, as shown in exhibit 4, the air conduction test using headphones was run at 250 hertz, 500 hertz, 1000 hertz, 1500 hertz, 2000 hertz, 3000 hertz, 4000 hertz, 6000 hertz, and 8000 hertz, and the scores for those 9 tests would have been written down in one place at one time. The bone conduction test using an oscillator placed on the mastoid bone was run at 500 hertz, 1000 hertz, 2000 hertz, and 4000 hertz, and the scores for those 4 tests would have been written down in one place at one time. Transposition of

score results would seem likely only if 9 scores were substituted for 9 others, and so I find the transposition explanation unlikely. But Mr. Chase readily admitted that the scores didn't make sense and up until a few weeks before the hearing, he was willing to admit the only explanation that he could think of, which was that he must have written the numbers down wrong.

Attorney Nowack suggested the possibility that Mr. Chase simply made up the numbers, but he rejected that as something he simply wouldn't do, and I accept that. Not only would it require a licensee to be utterly and completely unprofessional, any knowledgeable person who would resort to simply making up numbers would at least invent bone conduction scores that were lower than air conduction scores.

There was no evidence presented that the patient had reported false indications, but neither do I find any reason not to accept it as a possible explanation for the anomaly. I do not make a finding of fact either that Mr. Chase transposed the numbers, or that the patient reported false indications. However, I do find that Mr. Chase should have taken some further action when he recorded test results that, in his own words, were like a finger on a foot, without adequately documenting the abnormal result, and without resolving it or at least addressing it in some meaningful way before preparing a hearing aid for MK. For this reason I find that Mr. Chase violated section HAS 5.02 (2) (e), and this is one of four violations for which discipline is appropriate.

One factor to be taken into consideration, both in terms of all of Mr. Chase's violations and in terms of the appropriate discipline, is that early 2003 seems to have a disastrous time for him and his office. He testified that

- the patient MK had lost his wife to cancer shortly before coming to Mr. Chase's office [tr., pp. 72, 151],
- Mr. Chase had watched a friend die unexpectedly a few days before seeing MK [tr., pp. 151-152],
- the father of Mr. Chase's office manager died [tr., p. 99], and
- after she started volunteering in the office, the mother of Mr. Chase's office manager fell, broke her leg, developed an infection, and died [tr., p. 99].

Ms. Nowack proposed discipline for Mr. Chase's violations as follows:

- a reprimand,
- a limitation on his license to require him, within 180 days of the order, to demonstrate proficiency in pure-tone audiometry, including air conduction testing and bone conduction testing, to be evidenced by a passing score in the practical examination for licensure as a hearing instrument specialist,
- a limitation on his license to require him, within 180 days of the order, to take and complete 16 hours of continuing education in small office management,
- a limitation on his license that he not act as an examiner on behalf of the board until he has completed the other requirements of the order, and
- payment of the Department's full costs.

A reprimand is appropriate. In fact, a reprimand would be appropriate for any one of the violations (although an administrative warning would also be appropriate for any one of the violations), and payment of at least some of the Department's costs is appropriate, as discussed further below. I do not recommend limitations on Mr. Chase's license, because Mr. Chase has already been educated on the dangers of not adequately performing and reporting air conduction testing and bone conduction testing; he stated, "I'm not pleased with what happened here on February 3, and I think it could certainly be done better, and it certainly has not passed my desk again where I have not looked twice at that, as it should be" [tr., p. 112]. He has also been educated on the dangers of any mismanagement in his office; he stated, "I respect the importance of Ms. Heisdorf's file. That is going to haunt me. Ms. Heisdorf's daughter is probably going to sue me." [tr., p. 157]. The investigative and prosecutorial process provides a very intense education for most practitioners who become its focus. I do not consider additional education, or a prohibition on acting as a Board examiner during that time, to be necessary or appropriate, especially for events that -- aside from his reluctance to admit the loss of a file to the Department -- all took place 6 years ago during a time of extraordinary emotional stress. The Board has the authority to reach a different conclusion and to impose a different sanction.

Under sec. 440.22, Stats., when discipline is imposed on a credential-holder, the Department has the authority to impose all or part of the costs of a proceeding on the credential-holder. The Board is directed to exercise discretion in its imposition of costs by considering certain factors, including the number of counts charged, contested, and proven; the nature of the misconduct; the level of discipline; the respondent's cooperation with the disciplinary process; prior discipline; and other relevant circumstances, which can include ability to pay. In this case, four counts were charged, two were admitted, and the other two were contested and proven. The disciplinary process was prolonged, and additional costs incurred, because Mr. Chase did not respond to repeated investigative requests. On the other hand, although all misconduct is serious, Mr. Chase's unprofessional conduct is not the worst to come before the Board, a reprimand is a relatively low level of discipline, and no previous discipline has been imposed on Mr. Chase. In addition, there are strong indications in the record that Mr. Chase has limited financial resources. He testified that he draws about \$500 a month from his practice, and to support himself he sells some wood sculptures and lives off his savings [tr., pp. 32-33]. He also testified that he stopped marketing his practice while this charge was pending because he didn't want to have to say to clients "give me

your trust but, you know, I'm under investigation with the Department of Licensing and Regulation" [tr., p. 153], and that process has now extended for 6 years. Given this balance of positive and negative factors, the proposed order includes a provision that Mr. Chase pay a portion, but not all of the Department's costs of investigating and prosecuting this matter, and I have set that portion at two-thirds.

Dated and signed: May, 2009

Nick Schweitzer
Administrative Law Judge
Department of Regulation and Licensing