

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The  
State Of Wisconsin  
**HEARING AND SPEECH EXAMINING BOARD**

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In the Matter of the Disciplinary Proceedings  
Against **KAREN R. FENNEMA**, Respondent

FINAL DECISION AND ORDER  
DHA Case No. DRL-09-0110  
**ORDER 0000951**

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(Division of Enforcement Case No. 05 HAD 015 and 05 HAD 017\_

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Respondent, Karen R. Fennema, by

Attorney Wade M. Williams  
Attorney Glen C. Reynolds  
407 East Main  
Madison, WI 53703-4276

Department of Regulation and Licensing, Division of Enforcement, by

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

**PROCEDURAL HISTORY**

These proceedings were initiated when the Department of Regulation and Licensing, Division of Enforcement, (the "Division"), filed a formal Complaint against Respondent Karen R. Fennema on or about November 2, 2009, alleging that Respondent Fennema: (1) failed to maintain proper calibration of audiometric equipment, as required by Wis. Admin. Code § HAS 4.03, thereby engaging in unprofessional conduct under Wis. Admin. Code § HAS 5.02; (2) advertised a price comparison on April 25, 2005, without disclosing material information essential to consumer understanding of the comparison made, in violation of Wis. Admin. Code § ATPC 124.03(2), thereby engaging in unprofessional conduct within the meaning of Wis. Stat. § 459.10(1)(e); (3) advertised a price comparison on August 14, 15, and 17, 2005, without disclosing material information essential to consumer understanding of comparisons made, in violation of Wis. Admin. Code § ATPC 124.03(2), thereby engaging in unprofessional conduct within the meaning of Wis. Stat. § 459.10(1)(e); and (4) removed cerumen (earwax) from client D.B.'s ear on August 16, 2005, engaging in practice beyond the scope of her license as defined in Wis. Stat. § 459.01(5), and thereby engaged in unprofessional conduct within the meaning of Wis. Stat. § 459.10(1)(e).

On or about November 20, 2009, Respondent Fennema filed an Answer denying all allegations and affirmatively alleging that she did not exceed the scope of her Hearing Instrument License when she performed cerumen removal procedures and services related to the subject matter raised in the Complaint because the procedures and services were for the purpose of fitting or selling hearing aides pursuant to Wis. Stat. § 459.22(2).<sup>1</sup>

On March 19, 2010, the parties entered into a Joint Stipulation of Facts. In an e-mail that accompanied the Joint Stipulation of Facts, the Division, by Attorney James Polewski, advised that the parties had:

“agreed to stipulate that Ms. Fennema’s conduct constitute[d] a violation of the calibration requirements for audiometers, and violated the consumer protection advertising regulations. We have agreed to limit the hearing on April 5, 2010, to the issue of whether cerumen removal is within the scope of a hearing instrument specialist, and to argument on discipline to be imposed for the violations of the calibration requirement, the advertising regulations, and, in anticipation that you may decide that cerumen removal is beyond the licensed scope of a hearing instrument specialist, the cerumen removal.

The contested case hearing in this matter was held at the office of the Department of Regulation and Licensing on April 5, 2010. The parties confirmed that the issues for hearing were limited to the issue of whether cerumen removal is within the scope of a hearing instrument specialist, and to argument on discipline to be imposed for the violations of the calibration requirement and the advertising regulations. Upon conclusion of the hearing, the ALJ prepared a Proposed Decision containing the recommended Findings of Fact, Conclusions of Law and Order for adoption by the Hearing and Speech Examining Board as the Final Decision and Order in this matter. On April 25, 2011, the Board reviewed the Proposed Decision and based upon the findings and the nature of the misconduct, determined that it was appropriate to vary the ALJ’s recommendations for discipline. The Board’s variance to the Proposed Decision is described in detail in the Explanation of Variance and Order which is incorporated in this final decision.

### **FINDINGS OF FACT**

1. Karen R. Fennema (“Respondent”) was born on June 19 1964, and is licensed to practice as a hearing instrument specialist in the state of Wisconsin pursuant to license number 823. The license was first granted on June 5, 1989.

2. Respondent Fennema’s most recent address on file with the Wisconsin Hearing and Speech Examining Board is Hearing Health Center, 770 S. Main Street, Suite 14, Fond du Lac, Wisconsin, 54935.

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<sup>1</sup> The respondent abandoned this argument in her post-trial brief. As such, it will not be considered.

3. At all times relevant to this proceeding, Respondent Fennema was operating Hearing Health Centers, Inc. in Appleton, Plymouth, Sturgeon Bay, Princeton, Waupun, Ripon and Fond du La, Wisconsin.

4. On August 16, 2005, client D.B. went to Hearing Health Centers in Appleton, where he had a hearing test.

5. Client D.B. later complained to the Division of Enforcement that Respondent Fennema had tried to sell him a hearing instrument at a substantially greater price than she had advertised, and that she had caused his ear to bleed and caused him great pain while she was removing cerumen from his ear.

6. In an undated letter received at the Department on April 12, 2007. Respondent Fennema admitted that she removed dry cerumen from Client D.B.'s ear, but denied that the cerumen was impacted, and asserted that she had "explained" to him that the "dryness of his ear tends to make it feel a little irritated."

7. During a telephone interview between Dawn Kallies, investigator for the Division of Enforcement, and Respondent Fennema on May 17, 2007, the respondent stated that she had taken courses over the years on how to remove cerumen with the tip of the otoscope, and will do that from time to time. Respondent Fennema further stated that she was not aware that Client D.B. had been in great pain during the cerumen removal.

8. On May 23, 2007, Investigator Kallies wrote to Respondent Fennema, requesting documentation of the courses she had taken on removing cerumen. By undated letter received by the Department on June 25, 2007, the respondent stated that she had taken one course at a meeting of the International Hearing Society, and that there was no documentation of the course given to participants. Respondent Fennema does not recall the place or date of this course.<sup>2</sup>

9. In response to inquiries from the Division of Enforcement, Respondent Fennema stated that the audiometer used to test client D.B.'s hearing on August 16, 2005, was one of three she owned, and the only one she used at her Appleton, Plymouth, and Sturgeon Bay, Wisconsin, locations. She further identified it as serial number 80020.

10. In response to inquiries from the Department, Respondent Fennema delivered calibration certificates for audiometer 80020 dated July 30, 2004, July 23, 2005, August 18, 2005, and December 8, 2006, and represented that there were no other calibration certificates for audiometer 80020 during the period from July 30, 2004, through December 8, 2006.

11. The advertisement Respondent Fennema purchased in the Appleton Post Crescent for three insertions August 14, 15, and 17, 2005, advertised custom full shell hearing instruments for \$395 – 50% off the retail price of \$795, and also advertised custom canal instruments for

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<sup>2</sup> At hearing, Respondent Fennema provided documentation of a "Cerumen Management" session she took at the 46<sup>th</sup> Annual International Hearing Society Convention and Exhibition in Las Vegas, Nevada on September 4, 1997. See Respondent's Exhibit 122.

\$695, 50% off the retail price of \$1390. The advertisement also stated "Save 40% or more!" followed by "off MRSP."

12. Respondent Fennema's advertisements on August 14, 15, and 17, 2005, did not specify a particular model of hearing instrument or identify the manufacturer of the hearing instruments the respondent was offering for sale in her advertisement.

13. On April 25, 2005, Respondent Fennema ran an advertisement in the Sheboygan Press for her Plymouth, Wisconsin, location. The advertisement was for: custom full shell hearing instruments for \$395, at a claimed savings of 50% off the retail price of \$795; custom canal hearing instruments for \$695, at a claimed savings of 50% off the retail price of \$1390; 100% digital (sic) 2 channel canal instrument for \$1495.00 each, at a claimed savings of 40% off the regular \$2495.00.

14. Respondent Fennema's April 25, 2005, advertisement did not specify a particular model of hearing instrument or identify the manufacturer of the hearing instruments the respondent was offering for sale in her advertisement.

### CONCLUSIONS OF LAW

1. The Wisconsin Hearing and Speech Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 459.10.

2. Pursuant to Wis. Stat. § 459.10(1), **Disciplinary Grounds**, the Hearing and Speech Examining Board has the authority to "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 chapter 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<sup>3</sup>.

3. Pursuant to Wis. Stat. § 459.01(3), a "hearing instrument specialist," is "a person who is required to be licensed under Wis. Stat. § 459.05 to engage in the practice of dealing in or fitting hearing aids."

4. Wis. Stat. § 459.01(5) defines the "practice of fitting and dealing in hearing aids," to mean, "the measurement of human hearing by means of an audiometer or by any other means accepted by the examining board solely for the purpose of making selections, adaptations or sales of hearing aids intended to compensate for impaired hearing. The term also includes the making of impressions for ear molds."

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<sup>3</sup> "[U]nprofessional conduct" is defined in this section to mean "the violation of any standard of professional behavior which through experience, statute or administrative rule has become established in the practice of fitting and dealing in hearing aids."

5. Pursuant to Wis. Admin. Code § 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.

(2) Speech audiometry by live voice, or recorded voice, including speech reception threshold, speech discrimination testing, and most comfortable loudness measurements and loudness discomfort levels.

(3) Appropriate masking when indicated

(4) Recording and interpretation of audiograms and speech audiometry to determine proper selection and adaptation of hearing instruments.

6. Pursuant to Wis. Admin. Code § HAS 4.02, (**Ear Molds**), “Taking impressions for ear molds includes:

(1) Otosopic observation, pre- and post- impression

(2) Proper cotton or foam block placement.

(3) Impression material insertion.

(4) Removal of completed impression.

(5) Proper ear mold selection.

7. “Proper” cotton or foam block placement is not defined.

8. Respondent Fennema’s conduct in removing cerumen from D.B.’s ear (as described in ¶¶ 4-8, above), was not “proper,” under any reasonable definition of that term, and was thus beyond the scope of her license as defined by Wis. Stat. § 459.01(5) and Wis. Admin. Code ch. HAS. Respondent Fennema is subject to discipline pursuant to Wis. Stat. § 459.10(1)(e) (violation of this chapter or ch. 440 or any federal or state statute or rule which relates to the practice of fitting and dealing in hearing aids).

9. Wis. Admin. Code § HAS 4.03(3), **Equipment used to measure hearing** requires that “[a]udiometric 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.

10. The parties have previously stipulated that Respondent Fennema’s conduct, as described in ¶¶ 9-10 of the Findings of Fact, constituted a violation of Wis. Admin. Code § HAS 4.03(3), and thus subjects her to discipline pursuant to Wis. Admin. Code § HAS 5.02(f).

11. Wis. Admin. Code. § ATCP 124.03(2), **Price comparison; general**, requires that no price comparison may be made by a seller: In which the consumer property or services differ in composition, grade or quality, style or design, model, name or brand, kind or variety, or service and performance characteristics, unless the general nature of the material differences is conspicuously disclosed in the advertisement with the price comparison.

12. The parties have previously stipulated that Respondent Fennema’s conduct, as described in Findings of Fact ¶¶ 11-14, violated Wis. Admin. Code. § ATCP 124.03(2), and thus, subjects her to discipline pursuant to Wis. Stat. § 450.10(1)(k) (unprofessional conduct).

## DISCUSSION

### Violations of Wisconsin Statute and Administrative Code

As referenced in the Procedural History, the parties previously stipulated that Respondent Fennema's conduct as described in Findings of Fact<sup>4</sup> ¶¶ 9-10 constitutes a violation of the calibration requirements for audiometers, (Wis. Admin Code HAS § 4.03(3), subjecting her to discipline pursuant to Wis. Admin. Code § HAS 5.02(f) and that her conduct as described in Findings of Fact ¶¶ 11-14 constitutes a violation the consumer protection advertising regulations, (Wis. Admin. Code. § ATCP 124.03), subjecting her to discipline pursuant to Wis. Stat. § 459.10(1)(k).

The only issue that remains from the Complaint, then, is whether Respondent Fennema's removal of cerumen, (hereinafter "earwax"), from D.B.'s ear on August 16, 2006, as described in ¶¶ 4-8 of the Findings of Fact, was beyond the scope of her license as a hearing instrument specialist, in violation of Wis. Stat. § 459.10(1)(e).<sup>5</sup> The Division argues that the scope of Respondent Fennema's license is strictly limited to those tasks specifically enumerated in Wis. Stat. § 459.01(5) and Wis. Admin. Code §§ HAS 4.01 and 4.02, and nothing else. Because "removal of earwax" is not *specifically enumerated* amongst these "subsidiary tasks," it is not within the scope of a hearing instrument specialist. In support of this argument, the Division cites to *Kerkman v. Hintz*, which recognizes that a chiropractor is "authorized to treat the sick only to the extent authorized by their chiropractic license." 142 Wis. 2d 404, 419, 418 N.W.2d 795, 802 (citing *State v. Grayson*, 5 Wis.2d at 207, 92 N.W.2d 272).

The Division is correct that a person treating the sick who does not hold a license from the state board of medical examiners is statutorily mandated to treat the sick only to the extent authorized by his or her license. *See* Wis. Stat. § 147.14, *State v. Grayson*, 5 Wis.2d at 207. Wis. Stat. § 459.01(5) defines the "practice of fitting and dealing in hearing aids," to mean, "the measurement of human hearing by means of an audiometer or by any other means accepted by the examining board solely for the purpose of making selections, adaptations or sales of hearing aids intended to compensate for impaired hearing. The term also includes the *making of impressions for ear molds.*" (emphasis added).

Pursuant to Wis. Admin. Code § HAS 4.02, (**Ear Molds**), "Taking impressions for ear molds includes:

- (1) Otoscopic observation, pre- and post- impression
- (2) *Proper cotton or foam block placement.* (emphasis added)
- (3) Impression material insertion.
- (4) Removal of completed impression.

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<sup>4</sup> *See also* Joint Stipulation of Facts.

<sup>5</sup> The burden of proof for this claim is on the Division.

(5) Proper ear mold selection.”

When a term within a statute is not plain on its face, the tribunal is to consider the statute’s context and structure: “[S]tatutory language is interpreted in the context in which it is used, not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results. *See Heritage Farms, Inc. v. Markel Insurance Company*, 316 Wis.2d 47, ¶ 7, 762 N.W.2d 652 (citing *Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 44, 271 Wis.2d 633, 681, N.W.2d 110).

Respondent Fennema argues that reading Wis. Stat. § 459.01(5) and Wis. Admin. Code § HAS 4.02 in such a way evinces that “the practice of fitting and dealing in hearing aids,” includes “simple” earwax removal.<sup>6</sup> She contends: (1) that the Division’s strict interpretation of Wis. Stat. § 459.01(5) and Wis. Admin. Code §§ HAS 4.01 and 4.02 is unreasonable, and would lead to absurd results such as hearing instrument specialists being prohibited from consulting with patients, looking in patients’ ears, and reading or interpreting the results of hearing tests; and, (2) that the above provisions constitute general guidelines in which certain acts, including earwax removal, are implied as reasonable and necessary in furtherance of testing a patient’s hearing, (Wis. Stat. § 459.01(5) and Wis. Admin. Code § HAS 4.01), or in proper cotton or foam block placement, (Wis. Admin. Code § HAS 4.02).

In support of her second point, Respondent Fennema presented evidence that hearing instrument specialists encounter patients with earwax on a daily basis, (HT:72:10-11), that the presence of earwax can lead to inaccurate assessment of the patient’s hearing, (HT:75:19-23), and even worse, if not removed before insertion of the audiometer or ear mold, irritation and canal impaction, (HT:87-88), and that prohibiting hearing instrument specialists from removing non-impacted ear wax would have patients “bouncing back and forth from the doctor’s office and hearing aid clinic, frustrating patients and physicians alike<sup>7</sup>. (HT:92, 206). She further agrees that “proper cotton or foam block placement,” *may* contemplate earwax removal.<sup>8</sup> The Board finds that even if under certain circumstances, a hearing specialist may properly remove earwax from patient DB’s ear incidental to performing another task, such as placing a cotton or foam block, the Respondent’s conduct as described in ¶¶ 4-8 of the Findings of Fact and at hearing, was not “proper,” by any definition of that term.

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<sup>6</sup> The respondent admits that the removal of impacted earwax – that which is completely occluded and does not allow the hearing instrument specialist to see the eardrum at all – is not within her scope of practice, and must be referred out to an ear, nose and throat specialist, or a family doctor. (HT:71:11-15).

<sup>7</sup> It is not hard to imagine that if a patient does in fact have to leave the hearing aid clinic, and go his doctor’s office to have his ears cleaned, additional time and expense may attach, and may further discourage said patient from getting fit for hearing aids altogether.

<sup>8</sup> She does not, however, agree that removal of earwax can be implied as “reasonable and necessary in furtherance of testing a patient’s hearing,” in light of the court’s finding in *Grayson* that persons who are not licensed by the Medical Board are to treat the sick only to the extent authorized by his or her license. *See State v. Grayson*, 5 Wis.2d at 207.



Indeed, Respondent Fennema admitted: (1) that her training in how to remove earwax from a patient's ear was limited to a single class [that was held between 8:00 a.m. and 10:00 a.m. at the 46<sup>th</sup> Annual International Hearing Society Convention and Exhibition on September 4, 1997<sup>9</sup>]; (2) that she learned how to remove earwax from patient ears by "practicing with different substances, (i.e. cream cheese)," and tubes, and did not have any clinical experience whatsoever; (3) that she did not document patient D.B.'s consent to have his earwax removed, and, even more critically, (4) did not ask him whether he was taking any blood thinners. (HT:77, 87-89).

A review of the transcript further demonstrates that it is doubtful that Respondent Fennema assessed patient D.B.'s pain sensitivity before removing his admittedly hardened earwax. While Respondent Fennema's conduct in removing earwax from patient D.B.'s ear on August 16, 2005, may have been within the standard of care as she understood it in 1995, it is contrary to the International Hearing Society Model Licensure Act, (Respondent's Exhibit 111), and the recommendations of fellow hearing instrument specialists Alan L. Lowell and Luis Valdes in their article on the subject (Respondent's Exhibit 113). More importantly, it is contrary to public safety. As this cannot possibly be what was contemplated by "proper cotton or foam block placement," (HAS § 4.02), Respondent Fennema's removal of earwax from patient D.B.'s ear on August 16, 2005, was outside the scope of her license to practice as a hearing, and thus subjects her to discipline pursuant to Wis. Stat. § 459.1-(1)(e).

### **Appropriate Discipline**

The purpose of discipline is to: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976).

The Division argues that Respondent Fennema's above-stated violations require notable discipline on all three of these grounds, and requests that the Board suspend her license for a period of one year and that Respondent be assessed costs of the investigation. Respondent Fennema's violations consist of: (1) failing to have her primary audiometer calibrated between August 18, 2005, and December 8, 2006 (a three and one-half month lapse); (2) not including the particular model of hearing instruments or indentifying the manufacturer of the hearing instruments she was offering for sale in advertisements she ran in the Sheboygan Press on April 25, 2005, and in the Appleton Post Crescent on August 14, 15, and 17 (*see* Division's Exhibit 4); and (3) removing earwax from patient DB's ear on August 18, 2005, as described above.

### **Violation of Calibration Requirements**

The credible evidence demonstrates that between 2004 and 2006, Respondent was three and one-half months late per Wis. Admin. Code § HAS 4.03(3)) in calibrating her primary

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<sup>9</sup> See Respondent's Exhibit 113.

audiometer (serial # 80020).<sup>10</sup> Respondent Fennema stipulated to this violation. She further acknowledged the importance of calibration to accurate hearing test results. (HT:147). Respondent argued that her violation of HAS 4.03(3) was merely “technical,” and that she attempted to have her equipment calibrated every year. The Board agrees with the Division that Respondent’s conduct shows a lack of due regard for the public protection purpose of her license. *See Gilbert v. Medical Examining Board*, 119 Wis. 2d 168, 188, 349 N.W.2d 68 (1984). However, the Board acknowledges that Respondent Fennema did stipulate to her violation of HAS 4.03(3) and this is the first time that she has been charged with a violation of calibration requirements in her twenty-two year career as a hearing instrument specialist.

### **Violation of Advertising Requirements**

The evidence of record shows that Respondent Fennema did not include the particular model of hearing instruments or identify the manufacturer of the hearing instruments she was offering for sale in advertisements she ran in the Sheboygan Press on April 25, 2005. The respondent admitted that she had no formal training in marketing, and had no knowledge of the Agriculture and Trade Protection Act in Wisconsin at the time she ran said advertisements. (HT:118). Moreover it appears that one of Respondent’s current advertisements, (Exhibit 119), makes price comparisons to a regular price that she has not used for years. This is false advertising in violation of Wis. Admin. Code § ATCP 124.05(2).<sup>11</sup> Clearly, the evidence of record shows that Respondent’s knowledge of advertising regulations in Wisconsin is inadequate, and some rehabilitation is warranted to ensure that no further advertising violations are committed.

In addition, the Board believes that a message needs to be sent to hearing instrument specialists that they cannot rely on manufacturer advertisement templates, and that they must understand and abide by consumer protection laws.

### **Improper Earwax Removal**

The Board does not accept Respondent Fennema’s testimony that she believed that removing earwax of the nature that was in patient DB’s ear was within the scope of her license. Moreover, even if some hearing instrument specialists, including some in Wisconsin, remove non-impacted earwax, as Fennema claimed, the actual manner in which she removed the client’s earwax was not safe. In light of these findings, the Board has determined that more than a 30 day suspension is warranted. The need for discipline in this case is also necessary to deter other

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<sup>10</sup> At hearing, the Division attempted to use Respondent’s Exhibit 109 to demonstrate other lapses in HAS’s 12 month calibration requirements. (HT:149-155). However, because these alleged lapses were not part of the Complaint, the respondent engaged in no discovery concerning these audiometers and when and if they were used or calibrated. As such, Exhibit 109 does not accurately reflect whether they were properly calibrated. (HT:151-155).

<sup>11</sup> Wis. Admin. § ATCP 124.05(2) provides that “no price comparison may be made by a seller based on a price which exceeds the seller’s cost plus the percentage markup regularly used by the seller in the actual sale of such property or services, or consumer property or services of similar class or kind, in the seller’s recent and regular course of business.”

hearing instrument specialists from engaging in similar misconduct beyond the scope of their licenses.

### Costs

The ALJ recommended the imposition of partial costs in this matter, however, the Board has determined that full costs of the proceeding should be assessed against the credential holder based upon consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a “program revenue” agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;

Respondent Fennema was found to be in violation of all of the counts charged against her, including practicing outside the scope of her license, as defined by Wis. Stat. § 459.01(5) and Wis. Admin. Code §§ HAS 4.01 and 4.02. In addition, balancing these factors with the seriousness of the proven violations, it is the Board’s view that respondent should pay all of the costs involved in investigating and prosecuting this matter.

### EXPLANATION OF VARIANCE

Pursuant to Wis. Stat. § 227.46(4), in any case which is a Class 2 disciplinary proceeding, the hearing examiner is required to prepare a proposed decision that may be adopted as the final decision in the case. Although the Board finds that the ALJ’s factual and legal findings are detailed and sufficient for adoption as the final decision in this matter, the members of the Board disagree with the disciplinary terms recommended by the ALJ and the rationale for her recommendations. Accordingly, in rendering this variance, the Board adopts only the Findings of Fact and Conclusions of Law as recommended by the ALJ and a modified portion of the discussion section which appears on pages 6-12 of the Proposed Decision.

The Board finds that the seriousness of Respondent’s misconduct, the need for protection of the public and the importance of deterring other licensees from engaging in similar conduct warrants a different outcome. Accuracy in advertising and instrument calibration in the practice of a hearing instruments specialist is essential to protect the public. False advertising and

inaccurate hearing assessment caused by miscalibrated audiometric instruments can cause serious harm. Consumers may needlessly spend thousands of dollars for hearing equipment that is inappropriate or ineffective. Often the consumers who are in need of assistive hearing devices are the vulnerable elderly or infirm who could be easily injured or deceived by false advertising and erroneous hearing tests.

The evidence in the hearing record shows that the potential risk of harm was not merely speculative; her actions caused actual harm to a client; pain and bleeding in the ear canal. Respondent's conduct in attempting to remove ear wax from the client's ear canal with the tip of an otoscope went far beyond the bounds of appropriate care and services by a licensed hearing instrument specialist. It is fortunate that this conduct did not cause a greater risk of harm to the client, such as infection or puncture of an eardrum. The following excerpt from the ALJ's decision underscores the Board's concern about the seriousness of the harm or potential risk of harm caused by Respondent's violations:

**“Respondent Fennema admitted: (1) that her training in how to remove earwax from a patient's ear was limited to a single class [that was held between 8:00 a.m. and 10:00 a.m. at the 46<sup>th</sup> Annual International Hearing Society Convention and Exhibition on September 4, 1997; (2) ... that she did not have any clinical experience whatsoever; (3) that she did not document patient D.B.'s consent to have his earwax removed, and, even more critically, (4) did not ask him whether he was taking any blood thinners. (HT:77, 87-89). A review of the transcript further demonstrates that it is doubtful that Respondent Fennema assessed patient D.B.'s pain sensitivity before removing his admittedly hardened earwax. While Respondent Fennema's conduct in removing earwax from patient D.B.'s ear on August 16, 2005, may have been within the standard of care as she understood it in 1995, it is contrary to the International Hearing Society Model Licensure Act, (Respondent's Exhibit 111), and the recommendations of fellow hearing instrument specialists Alan L. Lowell and Luis Valdes in their article on the subject (Respondent's Exhibit 113). More importantly, it is contrary to public safety.”**

Based upon the seriousness of Respondent's conduct and the importance of protecting the public and deterring others from engaging in similar conduct, the Board hereby adopts the Findings of Facts and Conclusions of Law from the ALJ's Proposed Decision and issues the following order as the final decision in this matter. The ALJ's discussion is adopted as modified in this variance to be consistent with the Board's views and decision.

### **ORDER**

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Karen R. Fennema to practice as a hearing instrument specialist in the State of Wisconsin be and is hereby SUSPENDED for a period of 90 days beginning on the effective date of this order.

IT IS FURTHER ORDERED that Respondent be and is hereby REPRIMANDED for her violations of Wis. Admin. Code HAS § 4.03(3) and Wis. Admin. Code. § ATCP 124.03(2).

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

Department of Safety and Professional Services  
Department Monitor  
P.O. Box 8935  
Madison, WI 53708-8935

This order is effective on the date signed below.

WISCONSIN HEARING AND SPEECH EXAMINING BOARD

By:   
\_\_\_\_\_  
Edward Korabic  
Chair

07/11/2011  
Date \_\_\_\_\_