

STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS
COMPLAINTS SUBCOMMITTEE MEETING

Wednesday, May 13, 2009, 9:00 a.m.
Department of State Health Services
Exchange Building, Room S-402
8407 Wall Street
Austin, Texas 78754

Minutes

Members Present:

Rosemary Geraci, Professional Member
Ben Norris, Professional Member
Amy Trost, Professional Member
Robert Gebhard, Public Member

Staff Present:

Joyce Parsons
David Richards
Jose Paiz

Public Present:

Ray Jones	Edel H. Cruz
James Garcia	Randy Schoenborn
Jason Ginapp	Dusten Potter
Robert Somerville	

Agenda item 1 was Call to order. The meeting was called to order by Ms. Geraci at 9:00 a.m.

Agenda item 2 was Introduction of guests.

Agenda item 3 was Review and approve subcommittee report of the meeting held February 11, 2009. Ms. Trost made a motion to approve the minutes. Mr. Norris seconded the motion and the motion passed.

Agenda item 4 was Discussion and possible action to consider pending complaints requiring subcommittee review. 1066-09-0001- Mr. Norris made a motion to excuse Ms. Geraci's mistake on the complaint in regards to the last meeting and to issue an administrative penalty of \$2,000. Ms. Trost seconded the motion and the motion passed.

1066-09-0005- Mr. Norris amended his first motion to close the complaint with an advisement letter to closing the complaint with a warning letter regarding deficiencies with the Respondent's documents. Mr. Gebhard seconded the motion and the motion passed.

Committee went into Executive session at 9:20 a.m.
Committee went back into Open session at 9:37 a.m.

1066-09-0010- Mr. Gebhard made a motion to refer the case to the Attorney General's office for a possible injunction against practice and to refer the case back to the central investigation department for further investigation. Ms. Trost seconded the motion and the motion passed.

1066-09-0012- Mr. Norris made a motion to close the complaint with a letter of advisement to the licensee and a warning letter to the supervisor. Ms. Trost seconded the motion and the motion passed.

1066-09-0015- Ms. Trost made a motion to close the complaint with a warning letter regarding contract deficiencies. Mr. Gebhard seconded the motion and the motion passed.

1066-09-0017- Ms. Trost made a motion to impose an administrative penalty of \$250 for dispensing a different instrument that was written on the contract. Mr. Gebhard seconded the motion and the motion passed.

1066-09-0018- Mr. Norris made a motion to close the complaint with no violation. Mr. Gebhard seconded the motion and the motion passed.

1066-09-0019- Mr. Norris made a motion to close the complaint with no complaint. Ms. Trost seconded the motion and the motion passed.

1066-09-0021- Ms. Trost made a motion to close the complaint with no violation. Mr. Norris seconded the motion and the motion passed.

1066-09-0022- Ms. Trost made a motion to close the complaint with a warning letter. Mr. Norris seconded the motion and the motion passed.

1066-09-0006- Mr. Gebhard made a motion to impose an administrative penalty of \$250 for the first violation of 141.14(e) and \$500 for the second violation of 141.14 (e)(1) for an administrative penalty total of \$750. Mr. Norris seconded the motion and the motion passed.

1066-09-0014- Mr. Norris made a motion to close the complaint with a warning letter regarding timely renewals. Ms Trost seconded the motion and the motion passed.

1066-09-0023- Ms. Trost made a motion to close the complaint with no violation. Mr. Norris seconded the motion and the motion passed.

Agenda item 5 was Discussion and possible action concerning staff report of open complaints. No action was taken.

Agenda item 6 was Announcements and subcommittee member(s) comments not requiring subcommittee action.

Agenda item 7 was Adjournment. The meeting was adjourned at 10:45 a.m.

Chair,

Date

STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS
REGULAR MEETING

Wednesday, May 13, 2009, 12:30 p.m.
Department of State Health Services
Exchange Building, Room S-402
8407 Wall Street
Austin, Texas 78754

Minutes

Members Present:

Rosemary Geraci, Professional member
Ben Norris, Professional Member
Amy Trost, Professional Member
Robert Gebhard, Public Member
Melissa Rodriguez, Professional Member
Kenneth Haesly, Professional Member
Richard Davila, Professional Member
James Leffingwell, M. D., Physician Member
Cindy Steinbart, Public Member

Staff Present:

Joyce Parsons
David Richards
Jose Paiz
Stephen Mills
Cindy Bourland

Public Present:

Ray Jones
Ron Ensweller
Julian Rivera
Don Stephens

Agenda item 1 was Call to order. The meeting was called to order at 12:30 p.m. by Mr. Haesly.

Agenda item 2 was Introduction of members, staff, and guests.

Agenda item 3 was Public comment. Public comment was made by Mr. Ray Jones.

Agenda item 4 was Review and approval of minutes from committee meeting held February 11, 2009. Mr. Davila made a motion to approve the minutes. Ms. Geraci seconded the motion and the motion passed.

Agenda item 5 was Discussion and possible action concerning the subcommittee reports of meetings held May 13, 2009 Complaints Subcommittee. Ms. Geraci made a motion to approve the report. Ms. Rodriguez seconded the motion and the motion passed.

Agenda item 6 was Discussion and possible action regarding the reciprocity application filed by Donald L. Stephens. Ms. Rodriguez made a motion to grant the reciprocity based on the contingent to passing the practical examination and the state law questions. Mr. Davila seconded the motion and the motion passed.

For- Ms. Geraci, Ms. Rodriguez, Ms. Trost, Ms. Steinbart, Mr. Norris, Mr. Gebhard, and Dr. Leffingwell
Against- Mr. Davila

Board went into Executive session at 12:45 p.m.

Board went back into Open session at 1:05 p.m.

Agenda item 7 was Discussion and possible action regarding reciprocity application of Robert A. Froke and David Midgley.

Robert A. Froke- Ms. Rodriguez made a motion to deny reciprocity and refer him to the State Board of Examiners for Speech-Language Pathology and Audiology. Mr. Norris seconded the motion and the motion passed.

For- Ms. Geraci, Ms. Rodriguez, Ms. Trost, Ms. Steinbart, Mr. Norris, Mr. Gebhard, and Dr. Leffingwell

Against- Mr. Davila

David Midgley- Mr. Davila made a motion to grant Midgley to take the state practical examination and Texas questions. Mr. Gebhard seconded the motion and the motion passed unanimously.

For- Ms. Geraci, Ms. Rodriguez, Ms. Trost, Ms. Steinbart, Mr. Norris, Mr. Gebhard, Dr. Leffingwell, and Mr. Davila

Agenda item 8 was Discussion and possible action regarding petition for rulemaking by Richard Davila relating to defining the term "manufacturer". Ms. Geraci made a motion to deny the petition because in Texas under 402.401a license is required to fit hearing aids. Ms. Rodriguez seconded the motion and the motion passed.

For- Ms. Geraci, Ms. Rodriguez, Ms. Trost, Ms. Steinbart, Mr. Norris, Mr. Gebhard, and Dr. Leffingwell

Against- Mr. Davila

Agenda item 9 was Discussion and possible action regarding petition for rulemaking by Richard Davila relating to defining the term "used" – as it relates to the term "hearing instrument" - Petition A. Ms. Rodriguez made a motion to deny the petition due to it being outside of our scope of authority. Dr. Leffingwell seconded the motion and the motion passed.

For- Ms. Geraci, Ms. Rodriguez, Ms. Trost, Ms. Steinbart, Mr. Norris, Mr. Gebhard, and Dr. Leffingwell

Against- Mr. Davila

Agenda item 10 was Discussion and possible action regarding petition for rulemaking by Richard Davila relating to defining the term "used" – as it relates to the term "hearing instrument" - Petition B. Mr. Davila withdrew his petition.

Agenda item 11 was Discussion and possible action regarding petition for rulemaking by Richard Davila relating to continuing education requirements. Mr. Davila withdrew his petition.

Agenda item 12 was Discussion and possible action regarding petition for rulemaking by Richard Davila relating to defining the term "hearing instrument" – Petition A. Mr. Norris made a motion to deny the petition based on it being outside of the scope of authority. Ms. Trost seconded the motion and the motion passed.

For- Ms. Geraci, Ms. Rodriguez, Ms. Trost, Ms. Steinbart, Mr. Norris, Mr. Gebhard, and Dr. Leffingwell

Abstained- Mr. Davila

Agenda item 13 was Discussion and possible action regarding petition for rulemaking by Richard Davila relating to defining the term "hearing instrument" – Petition B. Dr. Leffingwell made a motion to deny the petition based on it being outside of the scope of authority.

For- Ms. Geraci, Ms. Rodriguez, Ms. Trost, Ms. Steinbart, Mr. Norris, Mr. Gebhard, and Dr. Leffingwell

Abstained- Mr. Davila

Agenda item 14 was Discussion and possible action regarding petition for rulemaking by Richard Davila relating to defining the term "repairs". Mr. Gebhard made a motion to deny the petition based on it being outside of the scope of authority. Ms. Steinbart seconded the motion and the motion passed.

For- Ms. Geraci, Ms. Rodriguez, Ms. Trost, Ms. Steinbart, Mr. Norris, Mr. Gebhard, and Dr. Leffingwell

Abstained- Mr. Davila

Agenda item 15 was Discussion and possible action regarding petition for rulemaking by Richard Davila relating to defining the term "telehealth". Ms. Trost made a motion to deny the petition due to it does not affect the program at this

time. Ms. Rodriguez seconded the motion and the motion passed.

For- Ms. Geraci, Ms. Rodriguez, Ms. Trost, Ms. Steinbart, Mr. Norris, Mr. Gebhard, and Dr. Leffingwell

Against- Mr. Davila

Agenda item 16 was Discussion and Possible Action regarding the Committee's protocols, policies, and procedures involving Informal Settlement Conferences (ISCs). Mr. Gebhard made a motion to adopt a policy that all contested case matters requiring informal conferences under the Administrative Procedure Act shall come before the full committee. Mr. Davila seconded the motion and the motion passed unanimously. Ms. Trost made a motion that all complaint cases requiring informal conferences under the Administrative Procedure Act shall come before the complaints subcommittee. Mr. Norris seconded the motion and the motion passed unanimously.

Agenda item 17 was Committee Chair Report and Update concerning current challenges and accomplishments; interaction with stakeholders, state officials, and staff; subcommittee appointments and functions; workload of committee members; and general information regarding the routine functioning of the committee. The report was given by Mr. Haesly.

Agenda item 18 was Executive Director's Report and Update concerning program operations; current and/or historical licensee statistics; media, legislative, and stakeholder contacts and concerns; and general information regarding the routine functioning of the licensure program. The report was given by Ms. Parsons.

Agenda item 19 was Management Report and Update from the Professional Licensing and Certification Unit, Department of State Health Services, including program costs and revenue; status of rulemaking within the unit; legislative and media contacts and tracking; and general information regarding the routine functioning of the unit. The report was given by Ms. Bourland.

Agenda item 20 was Announcements and committee member comments not requiring committee action.

Agenda item 21 was Adjournment. The meeting was adjourned at 2:35 p.m.

Chair,

Date