

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

Wednesday, February 11, 2009 1:00 p.m.
Department of State Health Services
Exchange Building, Room S-402
8407 Wall Street
Austin, Texas 78754

Minutes

Members Present:

Ken Haesly, Professional Member
Rosemary Geraci, Professional Member
Ben Norris, Professional Member
Amy Trost, Professional Member
Richard Davila, Professional Member
Melissa Rodriguez, Professional Member
James Leffingwell, M.D., Physician Member

Staff Present:

Joyce Parsons
Jose Paiz
David Richards
Stephen Mills
Cindy Bourland

Public Present:

Ray Jones

Agenda item 1 was call to order. Mr. Haesly called the meeting to order at 1:10 p.m.

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

Agenda item 3 was public comment.

Agenda item 4 was review and approval of minutes from committee meeting held October 1, 2008. Mr. Davila made a motion to approve the minutes. Ms. Rodriguez seconded the motion. The motion was passed.

Agenda item 5 was discussion and possible action concerning the subcommittee report of the Complaints Subcommittee meeting, Wednesday, February 11, 2009. The report was given by Ms. Geraci. Ms. Geraci made a motion to approve the report. The motion was seconded by Mr. Norris. The motion was passed.

Agenda item 6 was discussion and possible action regarding final disciplinary action in 1066-07-0020. Mr. Davila made a motion to approve the default order. The motion was seconded by Ms. Trost. The motion was passed.

Agenda item 7 was discussion and possible action concerning pending applications for continuing education sponsorship, including:

Audiology Online, Inc. - Ms. Geraci made a motion to table the continuing education application of Audiology Online until

such time the chair appoints an adhoc subcommittee to investigate and study online use of continuing education as a viable CE provider. The motion was seconded by Ms. Trost. The motion was discussed and passed.

For – Geraci, Trost, Haesly

Against – Leffingwell, Davila

Abstained – Norris, Rodriguez

Hearing Healthcare Providers of Arizona - Mr. Davila made a motion to approve the applicant as a non-manufacturer CE provider. The motion was seconded by Ms. Rodriguez. The motion was passed.

For – Rodriguez, Davila, Leffingwell, Norris

Against – none

Abstained – Trost, Geraci, Haesly

Marcon - Mr. Davila made a motion to approve the applicant as a non manufacturer CE Provider. The motion was seconded by Ms. Rodriguez. The motion was defeated.

For – Davila, Rodriguez, Leffingwell

Against – Geraci, Norris, Trost, Haesly

Abstained – none

Agenda item 8 was discussion and possible action regarding reciprocity application of Donald Stephens. Ms. Rodriguez made a motion to deny the application based on past disciplinary action in accordance with rule 22 TAC 141.10(g). The motion was seconded by Ms. Trost. The motion was discussed and passed.

For – Rodriguez, Geraci, Norris, Trost

Against – Davila

Abstained – Leffingwell, Haesly

The Committee went into Executive Session at 1:55 p.m. The Committee left Executive Session at 2:10 p.m. and went back to open session.

Agenda item 9 was discussion and possible action regarding the proposal for decision in the matter of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments v. Rachel G. Lingnau, Au.D.; SOAH Docket No. 537-08-1041; Before the State Office of Administrative Hearings. Dr. Leffingwell made a motion to grant a fitting and dispensing license to Dr. Lingnau as recommended by David Richards. The motion was seconded by Ms. Geraci. The motion was passed.

For – Leffingwell, Geraci, Rodriguez, Norris, Davila, Trost

Against – none

Abstained – Haesly

Agenda item 10 was discussion and possible action regarding petition for rulemaking by Richard Davila relating to defining the term "distributor". Ms. Trost made the following motion:

"I move that the petition for rulemaking be denied because it would require this Committee to promulgate rules and regulations outside the scope of the licensing requirements of Chapter 402 of the Texas Occupation Code. Under 402, this Committee only has authority to issue a license in two instances. The first is to an applicant seeking to fulfill all requirements of the act by becoming a temporary permit holder, undergoing 160 hours of training by an approved supervisor, passing all parts of the Committee's written and practical examination, and maintaining an apprentice license for one year thereafter under the new indirect supervision of an approved supervisor. In addition, this Committee can issue a license under Chapter 402 to persons properly licensed in another state as long as those persons comply with all provisions of Section 141.10 of our rules.

Therefore, by law, this Committee cannot change it's rules to issue a license in the manner set forth in the petition. I move the petition be denied and my motion be made part of the record."

The motion was seconded by Ms. Rodriguez. The motion was discussed and passed.

For – Trost, Rodriguez, Geraci, Norris, Davila, Leffingwell

Against – None
Abstained – Haesly

Agenda item 11 was the discussion and possible action regarding petition for rulemaking by Richard Davila relating to defining the term "retail hearing instrument company". Ms. Geraci made the following motion:

"I move that the petition for rulemaking be denied because it is not necessary to define or clarify the term "retail hearing instruments company" for Dr. Leffingwell, or any other physician similarly situated, to be appointed and serve on this Committee.

It is obvious from Dr. Leffingwell's appointment that no clarification of Section 402.053 is needed and no confusion which the language in this section exists. Governor Perry and his staff have shown they fully understand the difference between a medical practice and a retail hearing aid company and subsequently made a proper appointment to the Committee. Therefore, no need exists for this Committee to go forward with a rulemaking proceeding.

I move the petition be denied."

The motion was seconded by Ms. Rodriguez. The motion was discussed and passed.

For – Trost, Rodriguez, Geraci, Norris, Haesly

Against – Davila

Abstained – Leffingwell

Agenda item 12 was the Committee Chair Report and Update. No report was given.

Agenda item 13 was the Executive Director's Report and Update. The report was given by Ms. Parsons.

Agenda item 14 was the Management Report and Update. Reports were given by Mr. Mills and Ms. Bourland.

Agenda item 15 was announcements and committee member comments not requiring committee action. No action was taken.

Agenda item 16 was adjournment. Mr. Haesly made a motion to adjourn the meeting. The motion was seconded by Ms. Rodriguez. The motion was passed. The meeting was adjourned at 2:35 p.m.

Chair signature

Date