

STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS
REGULAR MEETING
Friday, February 24, 2006, 9:00 a.m.
Department of State Health Services
Exchange Building, Room S-402
8407 Wall Street
Austin, Texas 78754

MINUTES

Committee Members Present:

Ronald J. Ensweiler, President
Richard Davila, II
Kenneth Earl
Rosemary Geraci
Ken Haesly
Audrey McDonald
Melissa Rodriguez

Committee Members Absent:

Jerome Kosoy, M.D.
Sara Garza

DSHS Staff Present:

David Richards	Eileen Hartman
Joyce Parsons	Becky Evers
Stephen Mills	Mireya Uribe-Warren
Debbie Peterson	Stewart Myrick

Guests Present:

Scott Pospisil	James Hovis
Ray Jones	Laura Stubbing
Kelly Kelley	Lynn Butler
Kerry Ormson	Raul Noriega
Joe Geraci	
Ben Norris	

Agenda Item 1 was the call to order by Mr. Ensweiler at 9:05 am.

Agenda Item 2 was the introduction members, staff, and guests.

Agenda Item 3 was public comment. Laura Stubbing and James Hovis from Hearing Help Express spoke about their business and selling hearing aids by mail. Scott Pospisil and Ray Jones spoke about the petition filed by Mr. Jones for proposed rule changes concerning sound-level measurements. Mr. Pospisil also spoke about comments filed by him regarding the proposed rule changes and about online continuing education. Joe Geraci spoke about the proposed rule changes.

Agenda Item 4 was the review and approval of minutes from the committee meeting held on October 21, 2005. Mr. Davila made a motion to accept the minutes with revisions. The motion was seconded and passed unanimously.

Agenda Item 5 was the discussion and possible action regarding the subcommittee reports of meetings held on February 23, 2006.

Ms. Geraci gave the Complaints Subcommittee report. The subcommittee considered a total of twelve complaints. Eight complaints were closed as no violation, two were closed with a warning letter, and administrative penalties were proposed for two complaints, one of which is also being referred for further investigation. The subcommittee recommended approval of the license surrender order of David Sirmons and the default order for Lawrence Cox. Ms. Geraci made a motion to accept the report. The motion was seconded and passed unanimously.

Dr. Rodriguez gave the Continuing Education Subcommittee report. The subcommittee approved Communication Access Ability Group as a non-manufacturer sponsor. Dr. Rodriguez made a motion to accept the report. The motion was seconded and passed unanimously.

Mr. Ensweiler gave the Examinations Subcommittee report. The subcommittee discussed the validation of the practical exam and changes to the exam study guide. The subcommittee approved the compensation of non-committee member examiners. Mr. Ensweiler made a motion to accept the report. The motion was seconded and passed unanimously.

Mr. Davila gave the Applications Subcommittee report. The subcommittee discussed renewal procedures. Mr. Davila made a motion to accept the report. The motion was seconded and passed unanimously.

Agenda Item 6 was the discussion and possible action regarding the licensure surrender order of David Sirmons. Ms. Geraci made a motion to accept the surrender order. The motion was seconded and passed unanimously.

Agenda Item 7 was the discussion and possible action regarding the default order of Lawrence Cox. Ms. Geraci made a motion to accept the default order. The motion was seconded and passed unanimously.

Agenda Item 9 was the discussion and possible action and presentation from representative of the Office of the Attorney General regarding potential litigation involving sales of hearing instruments by mail. Lynn Butler, attorney for Hearing Help Express, made the presentation on behalf of his clients.

The committee recessed at 10:50 am. The committee reconvened at 11:00 am

At 11:01 am, the committee went into executive session, in accordance with Texas Government Code, Chapter 551, for the purpose of consulting with the committee attorney concerning the matter of potential litigation involving sales of hearing instruments by mail, as listed on the agenda as item nine. The committee came out of executive session at 11:46 am. No action was taken during the closed session.

Mr. Davila made a motion to decline to pursue litigation at this time and to seek an opinion from the Office of the Attorney General regarding the constitutionality and possibility of federal pre-emption of Texas Occupations Code § 402.451(a)(6) and (7). The motion was seconded and passed unanimously.

Agenda Item 8 was the discussion and possible action regarding Attorney General's Opinion No. GA-0382 – Standards applicable to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments in Conducting Examinations. This item was not considered.

Agenda Item 10 was the discussion and possible action regarding the petition for rule adoption submitted by Jack Jones Hearing Centers, Inc., concerning 22 Texas Administrative Code Section 141.16(h)(2)(C). No action was taken.

Agenda Item 15 was the management report from the Professional Licensing and Certification Unit, Texas Department of State Health Services. Debbie Peterson reported on the budget, licensee report, the criminal history project of the State Auditor's Office, and the new database.

Agenda Item 11 was the discussion and possible action regarding public comments on proposed amendments to 22 Texas Administrative Code, Chapter 141, concerning the licensure and regulation of fitters and dispensers of hearing instruments. Mr. Haesly made a motion to accept § 141.14(b)(3) as posted. The motion was seconded and passed with opposition from Mr. Davila. Mr. Earl made a motion to keep the term "online" in the rules. The motion was seconded and passed unanimously. Mr. Davila made a motion to change the punctuation in §141.16(c)(11) and to delete § 141.16(c)(12). The motion was seconded and passed unanimously. Mr. Davila made a motion to replace the definition title in § 141.2(7) with "certification, proof of". The motion was seconded and passed unanimously. Mr. Haesly made a motion to add the phrase "in the hearing evaluation" to § 141.16(f)(2). The motion was seconded and passed with opposition from Mr. Davila.

Agenda Item 12 was discussion and possible action regarding the final adoption of proposed amendments to 22 Texas Administrative Code, Chapter 141, concerning the licensure and regulation of fitters and dispensers of hearing instruments. Dr. Rodriguez made a motion to accept the revisions discussed in agenda item 11 and to publish the proposed rules as adopted. The motion was seconded and passed unanimously.

Agenda Item 14 was the Executive Director report. Ms. Parsons made the report regarding temporary permit holders, open government training, and future committee meetings.

Agenda Item 16 was the discussion and possible action regarding procedure for submission of agenda items and agenda posting deadlines. No action was taken.

Agenda Item 13 was the President's report. No action was taken.

Agenda Item 17 was announcements and committee member comments not requiring committee action. Mr. Davila recognized Ray Jones for underwriting mission trips to help underprivileged children for the fifth consecutive year.

Agenda Item 18 was the adjournment of the meeting. Mr. Davila moved to adjourn. The motion was seconded and passed unanimously at 1:25 pm.

Approved by the committee on June 2, 2006

Ronald Ensweiler, President
Joyce Parsons, Executive Director