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STATE OF CONNECTICUT
DEPARTMENT OF HEALTH SERVICES
DIVISION OF MEDICAL QUALITY ASSURANCE

In the Matter of Virginia Duclos, H.A.D.
License No. 170

FINAL DECISION

On April 9, 1986, a hearing was held before Laurence P. Rubinow, Hearing Officer on the allegations contained in the First, Second, Third and Fourth Counts of the Statement of Charges dated February 25, 1986, brought by the Connecticut Department of Health Services' Division of Medical Quality Assurance ("Petitioner") against Virginia Duclos ("Respondent").

At the request of the Division of Medical Quality Assurance oral argument was conducted at which time the Division articulated exceptions to the proposed decision of the Hearing Officer. After considering the exceptions and reviewing the recommendations, I hereby render the following decision.

FINDINGS OF FACT

I hereby find as fact proposed findings one through eleven.

DISCUSSION

1. I note that the basic factual question which had to be answered for the Division to prevail in the Second and Third Counts was whether there existed too much wax in the ear of Edna Bartlett. The Department failed to prove such was the case. It is apparent the Department could have answered the question through providing evidence from the physician of Ms. Bartlett as to what he found upon his examination of her shortly after the incident in question. The burden was on the Division to establish this fact which it failed to do.

2. The Hearing Officer found that the Respondent violated the statutes and the regulations as set forth in the Fourth Count but recommended that no discipline be imposed. I disagree to the extent the violation of the statute warrants a reprimand. Because the Respondent's employer provided her with a form is no

excuse for her not to comply with the statute. It is not a question of whether harm in fact occurred. The obligation is on her to see that the requirements of the statute are filed.

DECISION AND ORDER

It is hereby ordered that the First, Second and Third Counts are dismissed, and Respondent is reprimanded for failure to comply with § 20-402a(b), Conn. Gen. Stat.

October 20, 1986

Date

Elinor P. Jacobson

Elinor P. Jacobson
Deputy Commissioner
Department of Health Services

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BEFORE HEARING OFFICER LAURENCE P. RUBINOW

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PROPOSED FINDINGS OF FACT

This Hearing Officer makes the following proposed findings of fact:

1. By document dated February 25, 1986, the Respondent was duly served with a Statement of Charges brought by the Petitioner against the Respondent.
2. By notice dated March 12, 1986, the Respondent was duly served with a notice of a hearing to be held on April 9, 1986 at 9:30 a.m. at 150 Washington Street, Hartford, Connecticut. The Respondent waived any objection to the notice of the hearing.

◇ 3. The Respondent appeared at the hearing on April 9, 1986, at 9:30 a.m. and was represented by counsel.

4. At the hearing, the respondent: (a) admitted paragraphs 1 through 4 of the First Count of the Statement of Charges and denied paragraphs 5 and 6; (b) admitted paragraphs 1 through 3 of the Second Count of the Statement of Charges and denied paragraphs 4, 5 and 6; (c) admitted paragraphs 1 through 3 of the Third Count of the Statement of Charges and denied paragraphs 4, 5 and 6; and (d) admitted paragraphs 1 through 4 of the Fourth Count of the Statement of Charges and denied paragraphs 5 and 6.

5. At the hearing, with the permission of the Hearing Officer, the Petitioner amended the 5th paragraph of the Fourth Count of the Statement of Charges to read as follows: "The purchase agreement utilized by Virginia Duclos in the sale made to Eleanor Jenks on the above referenced day did not conform to statutory requirements as found in Connecticut General Statutes Section 20-402a(b) and Section 24-404a(9)".

6. At the hearing, the Petitioner withdrew its claim contained in both paragraph 6c of the Second Count of the Statement of Charges and paragraph 6d of the Third Count of the Statement of Charges that the respondent violated Conn. Gen. Stat. Section 20-404(a)(12).

7. At the hearing, the Petitioner withdrew its claim contained in paragraph 4 of the Second Count of the Statement of Charges that referred to "an unsolicited call".
◇

8. The factual basis for the First Count of the Statement of Charges against the respondent is alleged in Paragraph 5 of the First Count of the Statement of Charges. In said paragraph 5, it is alleged, "During said interview, Virginia DuClos informed Catherine Bakinow that after three weeks of training with Bardon Hearing Aids and Services, Inc., Catherine Bakinow could use the title 'state licensed audiologist'." These allegations are not found proved.

9. The factual basis for the Second Count of the Statement of Charges against the respondent is alleged in Paragraph 5 of the Second Count of the Statement of Charges. In said paragraph 5, it is alleged, "On or about November 5, 1984, Virginia Duclos failed to properly advise Edna Bartlett to see a physician when she noted visible evidence of cerumen accumulation in Edna Bartlett's ear." These allegations are not found proved.

10. The factual basis for the Third Count of the Statement of Charges against the respondent is alleged in Paragraph 5 of the Third Count of the Statement of Charges. In said paragraph 5, it is alleged, "On or about November 5, 1984, Virginia Duclos prescribed ear wax removal drops for Edna Bartlett as a remedy for cerumen accumulation." These allegations are not found proved.

11. The factual basis for the Fourth Count of the Statement of Charges against the respondent is alleged in Paragraph 5 of the Fourth Count of the Statement of Charges. In said paragraph 5, it is alleged, "The purchase agreement utilized by Virginia DuClos in the sale made to Eleanor Jenks on the

◇ above referenced day did not conform to statutory requirements." The purchase agreement utilized by Virginia DuClos in the sale to Eleanor Jenks did not contain the following language in twelve point boldface type of uniform font: "A CANCELLATION FEE OF TWELVE PER CENT OF THE PURCHASE PRICE MAY BE IMPOSED." However, said purchase agreement did contain the following language: "In the event of the cancellation of such sale or rental, the seller may retain \$_____ (not to exceed twelve percent of the purchase price), . . ."

PROPOSED CONCLUSIONS OF LAW

1. Pursuant to Conn. Gen. Stat. Section 19a-14(c)(2), the Department of Health Services has all powers and duties normally vested with a board in administering regulatory jurisdiction over the licensing of a hearing aid dealer.
2. The Respondent was given reasonable notice of the hearing, and the notice complied with the requirements of Conn. Gen. Stat. Section 4-177.
3. The hearing was conducted pursuant to Conn. Gen. Stat. Section 4-177 and in accordance with the legally adopted Regulations of the Department of Health Services.
4. With reference to the First Count of the Statement of Charges, the respondent did not violate Conn. Gen. Stat. Sections 20-404(a)(3) or 20-404(a)(11).

◇ 5. With reference to the Second Count of the Statement of Charges, the respondent did not violate Conn. Gen. Stat. Sections 20-404(a)(4) or 20-404(a)(11).

6. With reference to the Third Count of the Statement of Charges, the respondent did not violate Conn. Gen. Stat. Sections 20-404(a)(3), 20-404(a)(4) or 20-404(a)(11).

7. With reference to the Fourth Count of the Statement of Charges, the respondent did not violate Conn. Gen. Stat. Sections 20-404(a)(3), 20-404(a)(9) or 20-404(a)(11).

8. With reference to the Fourth Count, the respondent did fail to comply with the technical requirements of Conn. Gen. Stat. Section 20-402a(b), however, such violation was inadvertent and did not result in any harm to the consumer.

PROPOSED RECOMMENDED DECISION

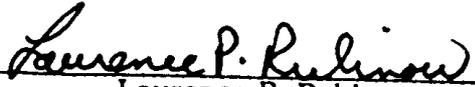
The Hearing Officer finds that the Respondent did not engage in conduct in violation of Conn. Gen. Stat. Sections 20-404(a)(3), 20-404(a)(11), 20-404(a)(4), or 20-404(a)(9).

The Hearing Officer finds that the Respondent did engage in conduct in violation of Conn. Gen. Stat. Section 20-402c(b). Such technical violation, however, does not warrant grounds for disciplinary action under Conn. Gen. Stat. Section 19a-17.

PROPOSED ORDER

The Hearing Officer recommends that the First, Second and Third Counts of the Petitioner's Statement of Charges be dismissed.

Respectfully Submitted,



Laurence P. Rubino
Administrative Hearing Officer