

HEARING AID COUNCIL

PROCEEDINGS

**Meeting of**

**FAST-TRACK DISCIPLINARY COMMITTEE**

held at

70 St Mary Axe  
London EC3A 8BD  
on

17 August 2007

PRESENT:

MR CHRIS HUGHES (Chair)

MR TONY CORCORAN  
MR MIKE BISHOP  
(Committee Members)

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MS SIOBHAN GOODRICH: Legal Assessor  
MRS JANET HAWTHORNE: Council's Solicitor  
MS AMICIE KNOWLES: Committee Administrator

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Case of: MR RUSSELL BORLAND

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The respondent did not attend.

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Transcribed by Ubiquis  
Cliffords Inn, Fetter Lane, London, EC4A 1LD  
Telephone 020 7269 0370

1 DECISION REGARDING SANCTION

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3 CHAIR: Mr Borland, a registered hearing aid dispenser, sold a pair of Synchro hearing  
4 aids to a patient in August 2005 for the sum of £5,790. Before doing so, he  
5 conducted audiometry and failed to carry out appropriate bone conduction testing in  
6 accordance with the British Society of Audiology procedures, which is a  
7 requirement of the Code of Conduct of registered hearing aid dispensers produced  
8 by the Hearing Aid Council. Mr Borland admits that he failed to do so and  
9 indicates in his mitigation that he has taken steps to clarify his understanding of  
10 when masking should be carried out. He has tested that understanding with a  
11 competent audiologist.

12 The second charge against Mr Borland relates to his failure to maintain an  
13 appropriate case history record for his client. In not recording the various changes  
14 to the programming of the hearing aids which he made.

15 The third charge against Mr Borland is that he failed to respond in  
16 appropriate time to requests by the Registrar of the Hearing Aid Council for  
17 information with respect to his relations with this patient and therefore was again in  
18 breach of the Code of Conduct for registered hearing aid dispensers.

19 The Committee has carefully considered the mitigation he put forward with  
20 respect to all these matters and has also considered the question of whether in his  
21 responses to the second and third charges Mr Borland can properly be said to have  
22 admitted the pleas. Having considered all the evidence we are satisfied that he has  
23 actually pleaded guilty to breaches and has conflated that plea with robust  
24 statements as to what he sees as extenuating circumstances.

25 The Committee therefore finds him in breach of the three charges which  
26 were put against him by the Hearing Aid Council, which are breaches of 9(a) with  
27 respect to bone conduction, 9(c) with respect to maintaining a case history, and

1 Clause 21 in failing to respond with reasonable expedition to the Registrar.

2 In coming to a view of what an appropriate sanction would be, if any, for  
3 these breaches of the Code, the Committee has been careful to weigh up the public  
4 interest of protection of the public, the impact of this course of events on his  
5 patient, the need to ensure the highest possible quality of patient care and safety in  
6 order that the standards of the profession are maintained and that confidence in the  
7 profession is maintained, as well of course as Mr Borland's own position.

8 It is clear that his patient has suffered a significant detriment because of the  
9 poor quality of care which is evidenced by these first two breaches. Accordingly,  
10 the Committee concludes that the appropriate penalty for the first breach is £1,500.  
11 For the second breach it is £1,000. With respect to the third breach, the failure to  
12 properly correspond with the Registrar, the Committee takes into account the course  
13 of dealings between the Registrant and the Hearing Aid Council and that this was  
14 not a deliberate and overt refusal to correspond with the Registrar and provide the  
15 Registrar with the information which the Registrar needed to conduct this  
16 investigation appropriately, and may be seen more as a significant aspect of a  
17 problem evinced by Mr Borland's failure to keep appropriate clinical records. In  
18 summary, a failure to properly understand the technology he is working with.  
19 Accordingly, the Committee imposes a sanction of £500 with respect to the third  
20 charge. This makes a total of £3,000 of sanctions.

## 21 22 23 DECISION REGARDING COSTS

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25 CHAIR: The Committee has considered the application for costs to be received from the  
26 Hearing Aid Council against Mr Borland. The Committee notes that the indication

1 given by the Investigating Committee of costs of £3,000 was a remarkably accurate  
2 indication of the actual costs incurred, which were not significantly more than  
3 £3,000 in the circumstances, and bearing in mind that all costs which are not  
4 recovered from a dispenser who has been in breach of the Code of Conduct will  
5 automatically fall on the broader community of dispensers. The Committee has to  
6 bear in mind how it weighs the interests of those two particular interests and has  
7 concluded that it is appropriate on this occasion to award costs in the sum of  
8 £3,000.

9 The Committee directs payment within 28 days. In the event that the  
10 Respondent finds this impossible he should approach the Registrar of the Hearing  
11 Aid Council within that time with evidence of his means, including relevant bank  
12 statements, and realistic proposals for payment of the sum over a moderate period  
13 of time.

14 That concludes the business with respect to Mr Borland.

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16 [The hearing concluded]