



State of Nevada

Speech-Language Pathology, Audiology & Hearing Aid Dispensing Board

MINUTES OF PUBLIC MEETING

Speech-Language Pathology, Audiology & Hearing Aid Dispensing Board

April 29, 2020

Members Present: Tami Brancamp, Andrea Menicucci, Michael Hodes, Timothy Hunsaker, Bonnie Lamping

Members Absent: Nighat Abdulla, Thomas Rainford

Staff Present: Jennifer Pierce, Executive Director
Stacey Whittaker, Executive Assistant/Licensing Coordinator
Henna Rasul, Sr. Deputy Attorney General, Board Counsel

Public Present: Scott Sumrall, AuD

Call to Order, Confirmation of Quorum

Tami Brancamp, Board Chair, called the meeting to order at 4:36 p.m. A roll call confirmed a quorum was present.

Public Comment

There was no public comment. Henna Rasul, Board Counsel also stated that because this is a public hearing the Board may choose to refuse public comment on this matter.

Case A20-01: Scott Sumrall, AuD, License # A-2133. Public Hearing to Determine Whether There Has Been a Violation of the Consent Decree Executed on January 22, 2020

Tami Brancamp summarized the agenda item and stated for the record that she would recuse herself from this agenda item disclosing that she has a prior relationship with Mr. Sumrall as one of his professors during his academic career. Michael Hodes also recused himself, disclosing that he grew up with Mr. Sumrall's family and was involved recently in a potential purchase of Mr. Sumrall's audiology practice.

Tami Brancamp called on Andrea Menicucci to take over as Chair for the meeting.

Ms. Menicucci called on Board staff to begin. Henna Rasul, Board Counsel identified that Mr. Sumrall was present in the meeting and began by inviting Ms. Pierce to summarize the allegation of Violation of the Consent Decree and instructing Board Members to review the Consent Decree and supporting documentation provided. Ms. Rasul explained that following Ms. Pierce, Mr. Sumrall would be provided an opportunity to speak to the Board as well.

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Ms. Pierce summarized the meeting packet, which contained the January 22, 2020 Consent Decree as well as copies of email communications between Mr. Sumrall, Ms. Rasul, and Ms. Pierce. Ms. Pierce reviewed the requirements stipulated in the Consent Decree and the status of each as follows:

- Mr. Sumrall's license was placed on probation for one (1) year, ending April 2021. This is ongoing.
- Mr. Sumrall was ordered to pay or make arrangement to pay attorney's fees and costs assessed at \$1,389.24 within 45 days of the approval and execution of the Consent Decree, March 7, 2020. Payment of fees and costs has not been received by the Board office to date.
- Mr. Sumrall was ordered to complete six (6) hours of Board approved continuing education on professional ethics within three (3) months of the date of the executed Consent Decree, April 22, 2020. Proof of CE completion has not been received by the Board office to date.
- Mr. Sumrall was ordered to sit for and pass both the written and practical dispensing examinations for the hearing aid dispensing endorsement within three (3) months of the date of the executed Consent Decree, April 22, 2020. And within one (1) week of completion of the exams, submit the required Audiology Dispensing Endorsement application and pay all associated application fees. The Board office received notification from IHS that Mr. Sumrall passed the written examination on 3/9/2020. Mr. Sumrall has not requested to take or completed the practical examination to date.

Ms. Pierce further explained that she and Board staff have checked the credit card payment system regularly for a payment, and once the payment was flagged as overdue in March 2020, she contacted Mr. Sumrall via email and letter to grant a payment extension to Friday, March 20, 2020. Mr. Sumrall did not respond until March 24, 2020 at which time he emailed to indicate he had received the letter and wanted to make arrangements to make the payment but had attempted to call and reach Board staff unsuccessfully. This was after the Governor's Emergency Directive to close physical office access however staff were still working and available by phone and email daily and no emails or voicemails had been received from Mr. Sumrall. Mr. Sumrall was provided several options to pay, including dropping a check through the mail slot in the office door or online, and Mr. Sumrall indicated he planned to do so. On March 26, 2020 payment had still not been received when Mr. Sumrall emailed Ms. Pierce asking about his written dispensing exam results and stated concerns that he had regarding restrictions now on his license because of the initial Consent Decree. The Board is mandated to report disciplinary action to the National Practitioner Data Bank and the Nevada Legislature and Mr. Sumrall indicated that the public reprimand had impacted his ability to earn a living. On March 30, 2020 payment had still not been received, and in an email response to Mr. Sumrall regarding his request to have the restrictions removed from his license, Ms. Pierce reiterated that the Consent Decree was a final executed legal document and again provided instructions for making the payment. That same day Ms. Pierce provided Mr. Sumrall with written notice via email and letter sent regular and Certified Mail of today's hearing date for the Board to consider the allegation of violation of the Consent Decree. Ms. Pierce sent a final email to Mr. Sumrall on Thursday, April 23, 2020 with the agenda for today's hearing attached.

Andrea Menicucci instructed Board members to proceed with reading the documentation provided. The Board spent several minutes reviewing the packet and there were no questions when prompted by Ms. Menicucci.

Andrea Menicucci called on Mr. Sumrall to make a statement. Mr. Sumrall stated that he did not disagree with anything Ms. Pierce stated. He reported that he attempted to make payment but due to

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his current divorce, the payment was made but stopped. He further stated that the current restriction on his license has been extremely impactful and as previously discussed with Ms. Pierce, the vast majority of his practice is through VA contracts, which have now been almost eliminated due to the restrictions on his license. Mr. Sumrall asked if the restrictions on his license could be removed and stated that he would be more than happy to comply with everything in the Consent Decree, especially if there was a way to have the findings not displayed to the national licensing agency. Mr. Sumrall stated that the Continuing Education credits have been completed, the written dispensing exam has been completed, and he is not sure why the practical exam has not been completed. Mr. Sumrall stated that he had to reach out to the Board office to get the written exam results and is not sure that taking the practical exam right now with social distancing restrictions is appropriate. Ms. Menicucci asked Mr. Sumrall if he had completed his statement, and he stated yes, and that every aspect of the Consent Decree has been completed with the exception of the practical exam and the payment, which he attempted to make but was stopped by his ex-wife. Mr. Sumrall stated that he is more than happy to sit for the practical exam at any time once exams can be scheduled.

Timothy Hunsaker asked Ms. Pierce for clarification on the restrictions and reporting that Mr. Sumrall spoke of, and Ms. Pierce clarified that following any disciplinary action, the Board is mandated to report to the National Practitioner Data Bank within 30 days and the Nevada Legislature. Ms. Pierce stated that her understanding from Mr. Sumrall was that once the report was made to the NPDB following the January 22, 2020 meeting, the credentialing agencies overseeing Mr. Sumrall's contracts became aware of the reprimand.

Ms. Menicucci asked for confirmation that as of this meeting date, the Board has not received payment. Both Mr. Sumrall and Ms. Pierce stated that was correct. Ms. Menicucci asked for confirmation that as of this meeting date, the Board has not received confirmation of completion of continuing education. Ms. Pierce reported that she has received no documentation showing completion of continuing education. Ms. Menicucci asked for confirmation as to whether the Board has confirmation of Mr. Sumrall passing the dispensing examination. Ms. Pierce reported that the Board received notification that Mr. Sumrall passed the written portion of the examination on March 6, 2020 and were waiting to hear from Mr. Sumrall to request scheduling of the practical exam. Ms. Pierce confirmed that Mr. Sumrall was provided notification on March 26, 2020 that the written examination had been passed.

Mr. Sumrall stated that he received an email from IHS that it takes two to three weeks for exam results and they would be sent to the state Board. Ms. Menicucci asked about the status of scheduling the practical exam. Ms. Pierce reported that practical exams are not being scheduled at this time and have been on hold since March 23, 2020 following the Governor's Emergency Directives closing state offices and significantly reducing non-essential business. Ms. Menicucci reiterated that at this point the Board had not received payment, continuing education documentation, and the practical exam had not been completed.

Mr. Hunsaker asked Mr. Sumrall when the payment attempt was made, and Mr. Sumrall stated that he believed it was March 20, 2020, the due date for the payment extension. Mr. Sumrall stated that he attempted to reach Board staff several times that day unsuccessfully. Ms. Pierce confirmed that the Board office had remained operational and was unsure why Mr. Sumrall could not make contact, further stating that the Board never received notice from Mr. Sumrall about an attempted payment. Ms. Menicucci clarified that Mr. Sumrall had also received earlier instructions on how to pay the fees online.

Mr. Hunsaker stated his concern regarding why Mr. Sumrall had not prioritized meeting the requirements of the Consent Decree given the impact the reprimand has had on his work. Mr. Hunsaker

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stated that the Board has no proof of the requirements not being done and asked Mr. Sumrall about why he was making excuses regarding not completing requirements and if it was this important more should have been done. Mr. Sumrall stated that “things have absolutely been done” and reiterated that he sat for the exam, engaged in email correspondence and everything is complete except for payment and the practical exam which cannot be done currently. Mr. Hunsaker agreed that the practical exam is not an option currently but questioned why the payment has still not been sent and is concerned that Mr. Sumrall has not treated the matter as important.

Mr. Sumrall again stated that his practice has been significantly impacted and commented that he would appreciate it if the restrictions could be lifted. Mr. Sumrall further stated that he is happy to make the payment and could bring a check down to the Board “first thing in the morning”. Mr. Sumrall stated “I’ve done everything that I thought was in my power to resolve the issue”.

Ms. Menicucci informed Mr. Sumrall that the Consent Decree was very straightforward in terms of what was required and responding to each item was within his control. Mr. Sumrall stated that he is happy to send the Board proof of his continuing education.

Ms. Menicucci asked for guidance from Ms. Rasul who instructed the Board that if they have concluded receiving information they would do two separate motions. The first would be as to whether or not there have been violations of the Consent Decree terms with the violated terms identified. If a violation of the Consent Decree is found, the second motion would be related to discipline. Ms. Rasul read the disciplinary options listed in NRS 637B.280 for the Board’s reference.

Ms. Rasul asked if there was a motion on the alleged violation of the Consent Decree. Bonnie Lamping made a motion for a finding of a violation of the Consent Decree for no payment received, lack of continuing education presented, and non-completion of the practical examination. Timothy Hunsaker seconded the motion. The motion carried.

Ms. Menicucci invited discussion on potential discipline. Ms. Rasul stated that at the conclusion of the meeting she would prepare an order. Mr. Sumrall again stated that every requirement of the Consent Decree with the exception of the practical exam and the payment have been fulfilled. He again stated that he could “drop a check off first thing in the morning”.

Ms. Rasul directed the Board to review the discipline options in NRS 637B.280 and Ms. Pierce read the options again for the Board’s reference. Mr. Sumrall requested a public reprimand and stated that he felt the probationary period was too long. Mr. Sumrall stated that everything would be completed in two weeks except the practical exam. Ms. Menicucci identified that that the Board has incurred additional expenses since the January 2020 Consent Decree and suggested the Board consider imposing a fee as well. Ms. Menicucci further stated that she does not see how there was a problem to begin with as Board staff are always easily accessible and responsive. Mr. Sumrall stated that he fully agreed that there should not have been a problem to begin with.

Mr. Hunsaker asked for clarification around Mr. Sumrall’s request for removal of restrictions on the license and the Board’s inability to do so. Ms. Pierce and Ms. Rasul confirmed that the Consent Decree is final and remains in effect and the reporting to NPDB and the Legislature are mandatory. Mr. Hunsaker stated that there have been plenty of opportunities for Mr. Sumrall to complete the requirements and suggested that the timeline be shortened on this discipline rather than allowing Mr. Sumrall another 90 days. Mr. Sumrall offered that he could have a check to the Board within three (3) days.

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Ms. Rasul redirected the Board to consider the discipline options. Ms. Menicucci asked Mr. Sumrall if he has been practicing at all and he stated that no, his office has been closed since mid-March. Continued discussion occurred on how fees could be imposed, and Ms. Rasul reported that only attorney's fees and costs could be assessed. Ms. Rasul further reiterated that any new fees assessed would be on top of the original fees agreed to in the Consent Decree. Ms. Rasul also recommended inclusion of a deadline for all options.

Ms. Lamping asked Mr. Sumrall why he had not yet completed the six (6) hours of continuing education on professional ethics when webinars are available. Mr. Sumrall responded that the continuing education has been completed and he was logging onto Audiology Online during this meeting to send them to Ms. Pierce. Ms. Menicucci asked when they were completed, and Mr. Sumrall stated that they were completed in the last month. Mr. Sumrall stated that he emailed Ms. Pierce a screenshot without the PDF attachments showing a total of six (6) hours completed. Mr. Pierce reported that she received the email from Mr. Sumrall just now, but it only shows six (6) hours total since January 2020 with one course completed today, April 29, 2020, but does not provide the details of each training. Mr. Sumrall stated that he would follow up and send Ms. Pierce the PDF certificates.

Andrea Menicucci made a motion to impose the following discipline:

1. Public Reprimand;
2. Payment of fees in the original Consent Decree as well as additional attorney's fees and costs incurred by the Board since the execution of the Consent Decree no later than May 15, 2020. Ms. Rasul will calculate the total amount of new fees and include that in the final order.
3. Submit documentation of completion of six (6) hours of outstanding Continuing Education courses in professional ethics as mandated by the January 22, 2020 Consent Decree no later than May 15, 2020.
4. Sit for and pass the Dispensing Practical Exam within 30 days of contact from the Board to schedule the examination.

Timothy Hunsaker seconded the motion. The motion carried.

Ms. Menicucci and Ms. Rasul informed Mr. Sumrall that he would receive notification and the final order from Ms. Rasul. Mr. Sumrall again asked if there was any way to make his license unrestricted and was told no, that the Board could not control the outcome of mandated reporting. Mr. Hunsaker clarified that the resulting impact was not within the Board's purview and Mr. Sumrall stated that he felt it was, as "I haven't done anything violating my license or done anything in practice that affects patient care." Ms. Rasul clarified that he has which is why there is a current Consent Decree in place.

Public Comment

There was no public comment.

Adjournment

Andrea Menicucci adjourned the meeting at 5:32 p.m.