

**BEFORE THE NEW MEXICO BOARD OF SPEECH LANGUAGE
PATHOLOGY, AUDIOLOGY, AND HEARING AID DISPENSING PRACTICES**

IN THE MATTER OF:

**JAIME E. BURKE,
License Number: 0696**

Case No.: HAD-11-01-02

Respondent.

DEFAULT ORDER

THIS MATTER came before a quorum of the New Mexico Board of Speech Language Pathology, Audiology, and Hearing Aid Dispensing Practices (the “Board”), at a regular meeting held on July 22, 2013, for a decision in the above-referenced case. With a quorum present and a unanimous vote in the affirmative, the Board renders this Order.

FINDINGS OF FACT

1. On July 8, 2011, the Board voted to issue a Notice of Contemplated Action (“NCA”) to Respondent Jaime E. Burke (“Respondent”) in case numbers HAD-11-01-02.
2. On January 18, 2013, the Board issued an NCA against Respondent, stating that the Board had sufficient evidence to justify suspending or revoking Respondent’s license to practice as a hearing aid dispenser based on alleged violations of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act (“Practices Act”), NMSA 1978, Sections 61-14B-1 through 61-14B-25 (1996, as amended through 2005) and the Board’s rules and regulations.
3. The NCA stated that, unless explained or rebutted at a formal hearing, Respondent’s alleged conduct justified the Board in suspending or revoking Respondent’s license to practice as a hearing aid dispenser. See NCA ¶ 1, Attachment 1.

4. On January 18, 2013, the Board mailed Respondent an NCA in case number HAD-11-01-02 via certified mail, return receipt requested, to her address located at 817 W. Broadway, Ste. A, Farmington, New Mexico 87401.

5. The United States Postal Service (“USPS”) attempted to deliver the NCA to Respondent’s address on January 23, 2013, but the NCA was ultimately returned to the Board’s Office on January 25, 2013, with the following message: “return to sender, vacant, unable to forward.”

6. Respondent did not request a hearing within twenty (20) days of service of the NCA, as contemplated by Sections 61-1-4(D)(3) and 61-1-5 of the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 through 61-1-31 (1957, as amended through 2003).

7. Respondent failed to otherwise respond to the NCA.

CONCLUSIONS OF LAW

Based on the findings of fact, the Board reaches the following conclusions of law:

1. The Board has jurisdiction over Respondent and the subject matter of this proceeding pursuant to the Practices Act and the ULA.

2. Section 61-1-5 of the ULA provides that, where notice is served via certified mail, “it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.” NMSA 1978, § 61-1-5.

3. In accordance with Sections 61-1-4 and 61-1-5 of the ULA, Respondent received service of the decision on January 23, 2013.

4. The Board may take the action contemplated in the NCA if the Respondent does not deposit in the mail a certified, return receipt requested, letter addressed to the Board containing a

request for a hearing within twenty (20) days after service of the NCA. See NMSA 1978, §§ 61-1-4(D)(3) and (E).

5. More than twenty (20) days have passed since Respondent was served with the NCA and Respondent has failed to request a hearing. Thus, the Board is authorized to take the action contemplated in the NCA pursuant to Section 61-1-4(E) of the ULA.

6. The Board has complied with all notice and other procedural requirements of the Act and the ULA.

7. This order is final and not subject to judicial review. See NMSA 1978, § 61-1-4(E).

ORDER

Based on the above findings of fact and conclusions of law, the Board renders this order.

IT IS THEREFORE ORDERED that Respondent's license is hereby **REVOKED**.

IT IS FURTHER ORDERED that this Decision and Order shall be served upon Respondent in accordance with Section 61-1-5 of the ULA. Board Chair Keith Rohr is designated to sign this Decision and Order on behalf of the Board.

IT IS SO ORDERED.

FOR THE NEW MEXICO
BOARD OF SPEECH LANGUAGE
PATHOLOGY, AUDIOLOGY AND
HEARING AID DISPENSING
PRACTICES

Date

7/20/13



Keith Rohr
Board Chair

**BEFORE THE STATE OF NEW MEXICO
SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID
DISPENSING PRACTICES BOARD**

IN THE MATTER OF:
JAIME E. BURKE,

Respondent.

Board Case No. HAD-11-01-02

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that the New Mexico Speech-Language Pathology and Hearing Aid Dispensing Practices Board (hereinafter “the Board”) has before it sufficient evidence which, if not rebutted or satisfactorily or explained at a formal hearing, will justify the Board in suspending or revoking the license of Respondent Jaime E. Burke (hereinafter “Respondent”) to practice as a licensed hearing aid dispenser trainee in the State of New Mexico and to impose such other penalties as are permitted by law.

At the time of the violations Respondent was a licensed hearing aid dispenser trainee and subject to the jurisdiction of the Board pursuant to NMSA 1978 § 61-14B-1 through § 61-14B-25 (1976), of the Speech-Language Pathology Audiology and Hearing Aid Dispensing Practices Act, and 16 NMAC 26, of the New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board Rules and Regulations.

The general nature of the evidence is the Complainant, Esther R. Buswell, and her daughter went to the Miracle Ear Hearing Aid Center in Farmington, New Mexico in September 2010 in response to a television advertisement regarding hearing aids. The Complainant dealt with the Respondent for all purposes in purchasing a hearing aid. The Complainant purchased a hearing aid for \$1,975.34 that she paid for with a personal check.

The contract that the Complainant signed promised a 100% refund if the hearing was returned within 30 days of purchase. Respondent verbally assured the Complainant that she would provide the same 100% refund if the Complainant returned the hearing aid within 60 or 90 days of purchase. The Complainant had problems with the hearing aid and Respondent delivered a new charger for the hearing to the Complainant. When the new charger did not resolve the problem, the Complainant personally returned the hearing aid on November 11, 2010.

Respondent informed the Complainant that she would need to return the device to the manufacturer and that the Complainant would receive her refund within six weeks. After six weeks had passed without receipt of the refund, the Complainant attempted to contact Respondent and Respondent failed to take or return the Complainant's calls.

The Board provided Respondent with a copy of the Complaint and requested Respondent to provide a response. Respondent failed to do so.

The Board has sufficient evidence to take disciplinary action against Respondent for the following violations pursuant to the Speech-Language Pathology and Hearing Aid Dispensing Practices Act, NMSA §§ 61-14B-21(A)(3), (4), and (10), and 16 NMAC 26.7.8 (A)(1).

The foregoing statements are general in nature and the evidence adduced at the hearing will not be limited by this summary.

The Board may revoke or suspend Respondent's license, and may impose such other penalties, unless within twenty (20) days after receipt of this Notice of Contemplated Action, the Respondent requests a formal hearing by certified mail, return receipt requested. Such a request for a formal hearing should be mailed to Laura Halama-

Romero, Administrator, New Mexico Speech-Language Pathology and Hearing Aid

Dispensing Practices Board, Post Office Box 25101, Santa Fe, New Mexico 87504.

The formal hearing, if requested, will be conducted in accordance with the New Mexico Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to 61-1-33 (1978) Pursuant to NMSA 1978, § 61-1-3 (1978) the licensee is specifically advised as follows:

61-1-3. Opportunity for licensee or applicant to have hearing.

Every licensee or applicant shall be afforded notice and an opportunity to be heard, before the board has authority to take any action, which would result in:

- E. suspension of license;
- F. revocation of a license;
- G. restrictions or limitations on the scope of a practice;
- H. the requirement that the applicant complete a program of remedial education or treatment;
- I. monitoring of the practice by a supervisor approved by the board;
- J. the censure or reprimand of the licensee or applicant;
- K. compliance with conditions of probation or suspension for a specific period of time;
- L. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;
- M. corrective action, as specified by the board;

In addition, pursuant to NMSA 1978, § 61-1-8 (1978) the licensee is specifically advised as follows:

61-1-8. Rights of Person Entitled to Hearing

- A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall have the right to be represented

by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.

- B. Upon written request to another party, any party is entitled to: (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing. The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No request shall be made less than fifteen days before the hearing.
- C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.



Chairperson
New Mexico Speech-Language Pathology and
Hearing Aid Dispensing Practices Board
2550 Cerrillos Road
Santa Fe, New Mexico 87504

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Contemplated Action was mailed to the Respondent, on this 18th day of January, 2013 via certified mail, return receipt requested.

Shirley H. Halama
~~Board Administrator~~ *compliance liaison*
**New Mexico Speech-Language Pathology and
Hearing Aid Dispensing Practices Board**
(505) 476-4642

Administrative Prosecutor:

Scott Fuqua
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87501
(505) 827-6920