

HEARING AID COUNCIL
PROCEEDINGS
Meeting of the
DISCIPLINARY COMMITTEE

Held at:
70 St Mary Axe
London. EC3A 8BD

On:
Tuesday, 19 August 2008

PRESENT:

MR CHRISTOPHER HUGHES
(Chair)

Panel Members:
MR PETER INCE
MR MIKE BISHOP

Legal assessor:
MR DAVID GRANT

MRS JANET HAWTHORNE appeared on behalf of the Hearing Aid Council

In the matter of:
MR BERG

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1 THE CHAIR: Good morning, Mr Berg. The Disciplinary Committee today consists of
2 myself Chris Hughes, Chairman, Mr Mike Bishop and Mr Peter Ince. We are
3 advised by My David Grant, the legal assessor; that is, the independent legal
4 advisor to the Committee. The Hearing Aid Council today is represented by
5 Mrs Janet Hawthorne, and Mr Berg is present and is representing himself.
6 Mrs Hawthorne.

7 MRS HAWTHORNE: Would you like me to read the charges?

8 THE CHAIR: Yes, read the charge please.

9 MRS HAWTHORNE: There are two charges. Charge one is that contrary to Clause 3 of
10 the Code of Practice in force at all material times, between 22nd January 2007
11 and 7th June 2007 you, Mr Berg, were responsible for the audiological care of
12 Mrs Doris Page, 2a Branch Close, Hatfield, Hertford AL10 0TW, as a result of
13 your employment with Kind Hearing.

14 MR BERG: It was Prestige Hearing at that point; Kind took over Prestige after I left.

15 MRS HAWTHORNE: On 23rd January 2007 you undertook audiometry on Mrs Page.
16 You dispensed a Siemens Phoenix 213 hearing aid for Mrs Page's left ear.
17 You fitted Mrs Page with the Siemens Phoenix 213 hearing aid on
18 6th February 2007. You failed to comply with the terms of Clause 3 of the
19 Code in that you failed to provide the best possible advice to Mrs Page in that
20 the Siemens Phoenix 213 aid is a basic aid with linear processing and limited
21 digital signal processing. As a result, it would have been of little benefit to
22 Mrs Page's individual hearing loss, which required non-linear processing.

23 The second charge is as follows. That contrary to Clause 9 of the Code in force
24 at all material times, between 22nd January 2007 and 7th June 2007 you were
25 responsible for the audiological care of Mrs Doris Page, 2a Branch Close,

1 Hatfield, Hertfordshire AL10 0TW, as a result of your employment with
2 Kind Hearing. On or around 23rd January 2007, you undertook audiometry on
3 Mrs Page. You recorded the result of that audiometry on an audiogram dated
4 23rd January 2007. You failed to comply with the terms of Clause 9(a) in
5 relation to audiometry conducted on 23rd January 2007 in that you did not
6 conduct air conduction audiometry at 8 kHz for both the left and right ear, as
7 required by the British Society of Audiology recommended procedures. Two,
8 you failed to mask bone conduction at 2 kHz and 4 kHz, as required by the
9 British Society of Audiology recommended procedures.

10 THE CHAIR: Thank you, Mrs Hawthorne. Now, Mr Berg, what do you say to those two
11 charges? Do you agree with charge one and the facts in it and the statement
12 that you failed to comply with Clause 3 of the Code of Conduct?

13 MR BERG: Yes, I signed the statement of facts and presented mitigation.

14 THE CHAIR: Right, okay, so you accept charge one and on the same basis you accept
15 charge two.

16 MR BERG: Yes.

17 THE CHAIR: Very well. The Committee finds Mr Berg in breach of Clause 3 and
18 Clause 9 as set out in the charges.

19 Now, the next matter is Mr Berg's mitigation. Is there anything more you wish
20 to tell us about the matter before Mr Berg mitigates?

21 MRS HAWTHORNE: Only to say that really the Council's case is that the best advice
22 includes recommending appropriate technology. That is where the Council is
23 coming from in this case and it's not simply acceptable to concentrate solely on
24 the binaural aspects of the aiding. The Investigations Committee have
25 considered this matter and felt that a financial penalty was appropriate.

1 THE CHAIR: Thank you. Very well, Mr Berg, what do you want to tell us?

2 MR BERG GIVES MITIGATION

3 [Break]

4 THE CHAIR: Mr Berg has pleaded guilty to two charges in respect of his care of
5 Mrs Page. The first charge is that he failed to provide best possible advice to
6 Mrs Page with respect to the dispensing of a Phoenix 213 hearing aid, which
7 would have been and indeed was of little benefit to Mrs Page's individual
8 hearing loss. The second charge to which he has pleaded guilty was that he
9 failed to conduct audiometry in accordance with the
10 British Society of Audiology recommended procedures in that he did not
11 conduct air conduct audiometry at 8 kHz for both ears and he failed to mask
12 bone conduction at 2 kHz and 4 kHz.

13 We have considered very carefully the mitigation which he has put forward and
14 we have given him full credit for the pleas he has entered. We have also noted
15 that he has arranged further training in audiometry for himself and we welcome
16 that proactive approach.

17 In all the circumstances, we consider that the first charge is a charge of some
18 gravity which can only be properly addressed by the imposition of a financial
19 penalty and, accordingly, we impose a penalty of £500.

20 The second charge we consider that in all the circumstances of the case and the
21 age of his patient, we consider this is a breach which merits some sanction.
22 However, we consider that the sanction of admonishment is appropriate in this
23 case. Accordingly, we admonish Mr Berg for his failure to comply with the
24 terms of Clause 9(a) of the Code of Conduct.

1 In summary, therefore, we impose a penalty of £500 with respect to charge one
2 and we admonish Mr Berg with respect to charge two.

3 Now then, Mrs Hawthorne, I understand you wish to make an application for
4 costs.

5 MRS HAWTHORNE: I do wish to make an application for costs. I have a schedule. As
6 you are aware, there are an additional number of items on the agenda for today,
7 and therefore the fixed cost element of the Hearing Aid Council's costs should
8 be revised downwards to take into – and therefore the application for costs
9 which I am making will be reduced. The adjustment comes in relation to the
10 £906.67. That figure should be reduced to £604.45, which is a reduction of
11 £302.22.

12 MR GRANT: Does Mr Berg understand the reasoning behind that, Mrs Hawthorne?

13 MR BERG: Yes, sir. Yes.

14 MRS HAWTHORNE: So therefore the application for costs in this matter is £3,270.15.

15 There is a breakdown attached to this of the investigation charges and, in
16 addition, there is an income and expenditure schedule attached, which Mr Berg
17 has filled in, and a letter from Mr Berg's accountant.

18 JANET HAWTHORNE GAVE A DETAILED BREAKDOWN OF COSTS.

19 THE CHAIR: Thank you. Mr Berg.

20 MR BERG STATED HIS MITIGATION IN RELATION TO COSTS

21 THE CHAIR: Thank you.

22 MR GRANT: Mr Chairman, the broad advice is that on questions of costs obviously the
23 Committee must be satisfied firstly that all elements of costs have been
24 reasonably and necessarily incurred. Secondly, that they should be
25 proportionate, an award of costs should be proportionate to the matter in

1 question. I think all of the other matters that will be relevant are essentially
2 matters of fact.

3 THE CHAIR: Thank you very much. We will now consider the question of costs.

4 [Break]

5 THE CHAIR: The Committee has been called on to consider an application for costs in
6 the sum of approximately £3,270. The Committee has carefully considered the
7 breakdown of the costs and is satisfied that the costs have all been properly
8 incurred. We are aware of the rate upon which these costs are based and it is
9 by no means excessive. The amount of work involved at approximately
10 14-15 hours is relatively modest for the amount of preparation which a case of
11 this nature requires. We are therefore satisfied that an award of costs in that
12 sum would be entirely justified. However, having considered all the
13 surrounding facts and documents, we feel that a lay individual without
14 knowledge of how litigation works and how costs rise and move may have
15 come to some slight misapprehension as to the level of costs and, accordingly,
16 we conclude that today we will only award costs in the sum of £2,000 in favour
17 of the Hearing Aid Council against Mr Berg. Accordingly, we award costs of
18 £2,000 and direct that they be paid within 28 days. That concludes the hearing.
19 Thank you very much.

20 MR BERG: Sorry, can I ask one final thing? Is there no opportunity to pay the costs over
21 a lengthier period of time?

22 THE CHAIR: We've taken into account everything and we are directing payment within
23 28 days and 28 days is also the payment for the financial penalty. Thank you.

24 MR BERG: Thank you.

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