

IN THE MATTER OF

John Cummins

License Number 02624

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**BEFORE THE MARYLAND
BOARD OF EXAMINERS FOR
AUDILOGISTS, HEARING
AID DISPENSERS & SPEECH-
LANGUAGE PATHOLOGISTS**

CONSENT ORDER

On or about September 28, 2018 the Maryland Board of Examiners for Audiologists, Hearing Aid Dispensers and Speech-Language Pathologists (the “Board”), received records of audiograms and other patient procedures performed by John Cummins (the “Respondent”). The results of one of these audiograms indicated that further testing and a referral for medical clearance by a physician would be needed prior to fitting the patient for a hearing aid in the poorer ear. However, the records did not indicate that the necessary tests were conducted before the hearing aid was dispensed. The Board investigated the matter. On August 20, 2020, the Board voted to offer a Pre-Charge Consent Order to the Respondent, in lieu of issuing charges for violations of the Maryland Audiology, Hearing Aid Dispensing, and Speech-Language Pathology Act (the “Act”), Md. Code Annotated, Health Occupations Article (“Health Occ.”), § 2-101 *et seq.* and the Code of Maryland Regulations (COMAR), Chapter 10, Subchapter 41.

As a result of that offer, the Respondent and the Board agreed to the following Consent Order.

FINDINGS OF FACT

The Board finds that:

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1. The Respondent was originally licensed to practice hearing aid dispensing in Maryland on June 21, 2007, under license number 02624. The Respondent's license is currently valid through January 31, 2021.

2. On or about September 28, 2018, the Board received information relating to the Respondent's hearing aid dispensing practice while employed by Connect Hearing. This information showed audiograms and tests performed on multiple patients by the Respondent, which should have triggered further testing or a referral to a physician.

3. On November 21, 2019, the Board voted to refer the matter for investigation.

4. This investigation revealed instances in which bone-conduction testing had not been performed on patients. The investigation also revealed the presence of visible cerumen accumulation in one of this patient's ears in one of these instances.

5. This investigation revealed no records of the patients in question having been tested further with the addition of bone conduction measures, or referred to a physician due to an accumulation of cerumen when present. The investigation also revealed that one of the patients in question was in fact fitted for a hearing aid by the Respondent, in one of the ears which required further testing with bone conduction measures after cerumen removal.

6. The Respondent was unable to provide any notes, records, or assertions to the Board that the addition of bone conduction measures had been made or that a referral had been made for the patient with cerumen in one of their ears to a physician, prior to being fitted for a hearing aid in the affected ear.

CONCLUSIONS OF LAW

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Based on the foregoing findings of fact, the Board concludes that the Respondent violated Health Occ., § 2-314(11):

Subject to the hearing provisions of § 2-315 of this subtitle, the Board, may deny a license or limited license to any applicant, reprimand any licensee or holder of a limited license, place any licensee or holder of a limited license on probation, or suspend or revoke a license or limited license if the applicant, licensee, or holder:

...
(11) Violates any lawful order given or regulation adopted by the Board...

The Code of Maryland Regulations (COMAR) 10.41.08.08.F states that:

Before fitting or selling a hearing aid to a potential client, the licensee shall refer the client to a physician, preferably one specializing in the diseases of the ear, if the licensee determines that the client has any of the following conditions:

...

(6) Visible evidence of cerumen (ear wax) accumulation or a foreign body in the ear canal.

COMAR 10.41.08.08.B states that:

The licensee or holder of a limited license shall perform the following minimum testing procedures on each client seen:

(1) Air conduction tests at frequencies of 500-1,000-2,000-4,000 hertz, including appropriate masking, if the threshold of the second ear tested appears to differ by 30 decibels at any one frequency from those of the first ear; and

(2) Bone conduction tests at frequencies of 500-1,000-2,000-4,000 hertz, including appropriate masking, if there is a greater than 10 decibel difference in the bone readings of one ear over the other.

The Board finds that this violation of the Act and COMAR falls within category A.(11) of the Board's sanctioning guidelines. See COMAR 10.41.13.04.A.(10). The range of potential

regulatory sanctions for a violation of A.(10) is a reprimand up to a one-year suspension of the license and a \$1,000.00 fine. *Id.*

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

ORDERED that, the Respondent's license to practice as a hearing aid dispenser in the State of Maryland is hereby placed on **PROBATION** for a minimum of **SIX (6) MONTHS** subject to the following conditions:

1. The Respondent's license status as a hearing aid dispenser shall be listed on the Board's website as being on "Probation."
2. The Respondent shall provide to the Board written evidence of his successful completion of coursework totalling ten (10) hours of Continuing Education Unit (CEUs) to be approved by Board staff. These CEUs shall include coursework in ethics, testing and all other patient related documentation, identification of differences or asymmetries between ears in air and/or bone conduction, appropriate masking for both air and bone conduction, and when these asymmetries indicate that a referral should be made by a hearing aid dispenser to receive medical clearance by a physician, preferably an otolaryngologist.
3. The Respondent shall complete the CEUs within the six-month period of probation.
4. The Respondent shall retain documentation of the required CEUs. Documentation shall consist of an official transcript with the licensee's name, course title, date of completion, number of CEU credits awarded, and exam score.
5. The Respondent shall re-take the practical examination for hearing aid dispensers in

Maryland, to be administered by a Board member or Board staff on a date agreeable to both parties.

6. The Respondent is responsible for the cost of compliance with the terms and conditions set forth in this order; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this probation or this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing before the Board, if there is a genuine dispute as to the material fact(s), or an opportunity for a show cause hearing before the Board, may impose any other disciplinary sanction which the Board is statutorily authorized to impose in this case under § 2-314 of the Act, including a reprimand, additional probation, suspension, or revocation, said violation being proven by a preponderance of the evidence; and be it further

ORDERED that no earlier than **SIX (6) MONTHS** from the effective date of this Consent Order, the Board may consider a petition for termination of the Respondent's probationary status, provided that the he has been satisfactorily compliant with the probationary terms of this Consent Order; and it is further

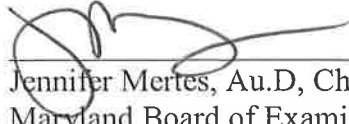
ORDERED that the Respondent shall comply with the Maryland Audiology, Hearing Aid Dispensing and Speech-Language Pathology Act, Health Occ., § 2-101 *et seq.*, and all federal and State laws and regulations governing the practice of hearing aid dispensing in Maryland; and it is further

ORDERED that this is a Final Decision and Order of the Board and, as such, is a **PUBLIC DOCUMENT** pursuant to Maryland Code Annotated, General Provisions Article § 4-

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101 *et seq.*

10/13/2020
Date



Jennifer Mertes, Au.D, Chair
Maryland Board of Examiners for Audiologists,
Hearing Aid Examiners, and Speech-Language Pathologists

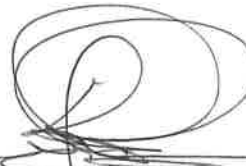
CONSENT

By this Consent, I acknowledge that I have read this Consent Order in its entirety and I hereby admit the truth of the Findings of Fact and accept and submit to the foregoing Consent Order and its conditions. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent order. I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to legal counsel authorized to practice law in Maryland, to confront witnesses, to give testimony, to request subpoenas for witnesses, to call witnesses on my own behalf, to introduce testimony and evidence on my own behalf, and to all other substantive and procedural protections provided by law. I waive these rights, as well as any appeal rights under Maryland Code Annotated, State Government Article § 10-222.

I sign this Consent Order after having an opportunity to consult with an attorney, voluntarily and without reservation, and I fully understand and comprehend the language, meaning, terms, and effect of this Consent Order.

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09/26/2020
Date


John Cummins, License Number 02624

NOTARIZATION

STATE: MARYLAND


CITY/COUNTY: BALTIMORE COUNTY

I HEREBY CERTIFY that on this 26 day of SEPTEMBER 2020, before me, a Notary Public of the State and City/County aforesaid, personally appeared **John Cummins** and made oath in due form of law that the foregoing was the voluntary act and deed of **John Cummins**.

AS WITNESSETH my hand and Notarial Seal.

SEAL




Notary Public

My Commission Expires: 10/8/21