

SOUTH DAKOTA DEPARTMENT OF HEALTH

BOARD OF HEARING AID DISPENSERS AND AUDIOLOGISTS

IN THE MATTER OF THE	)	DOH 25-012
LICENSURE PROCEEDINGS	)	
	)	FINAL ORDER
Re: Licensee Eric Smith	)	
License No. 428-H	)	

The above captioned matter came before the Board of Hearing Aid Dispensers and Audiologists (Board) on Thursday, November 6, 2025. The Board having reviewed the materials on file in this matter, and being otherwise fully informed of the facts and issues pertinent therein, issues the following:

The Board hereby

FINDS that on September 24, 2025, this matter was heard by the Office of Hearing Examiners who prepared Findings of Fact, Conclusions of Law, and issued an Amended Proposed Decision that the Board revoke the license of Eric Smith (Smith), order Smith to reimburse the Board for its actual expenses associated with the proceeding under SDCL 1-26-29.1, require Smith to reimburse patients for all moneys paid to Smith for which he did not supply hearing aids as a condition of reinstatement, and that the Board report its decision in accordance with state and federal law. The Board further

FINDS by clear and convincing evidence that Smith engaged in deceptive practices, as well as illegal, incompetent, or negligent practices, that are grounds for disciplinary action under SDCL 36-24-39.1. The Board further

FINDS that Smith failed to file an answer to the formal complaint as

required by SDCL 36-1C-8, which is grounds for disciplinary action under SDCL 36-24-39.1(18).

Based on the foregoing it is

ORDERED that the Findings of Fact and Conclusions of Law issued by the Office of Hearing Examiners are hereby adopted by the Board and incorporated into this Order by reference. A copy of said Findings of Fact and Conclusions of Law are to be attached to this Order as if fully set out herein. It is further

ORDERED that Smith reimburse the Board for its actual expenses associated with this contested case proceeding pursuant to SDCL 1-26-29.1, totaling \$452.94. It is further

ORDERED that Smith's license, number 428-H, is hereby deemed revoked and that, as a condition of any reinstatement, Smith reimburse his patients for all moneys paid to him for hearing aids that he did not supply to the patients. It is further

ORDERED that these documents are public records of the Board and that the Board communicate its disciplinary action and Smith's licensure status to relevant state and federal governing bodies, including the National Practitioner Data Bank, or other entity deemed appropriate by the Board in compliance with State and Federal law.

Dated this 6 day of November 2025.

SOUTH DAKOTA BOARD OF HEARING AID
DISPENSERS AND AUDIOLOGISTS

By: Norman Sorensen
Norman Sorensen, President

**State of South Dakota
Office of Hearing Examiners
South Dakota Board of Hearing Aid Dispensers & Audiologists**

**IN THE MATTER OF THE
LICENSURE PROCEEDINGS**

DOH 25-012

RE: Licensee Eric Smith

Amended Proposed Decision

License No. 428-H

A Hearing was held before Anita Fuoss, with the Office of Hearing Examiners, on September 24, 2025, regarding complaints made against Eric Smith (Smith) in relation to his license as a hearing aid dispenser. The South Dakota Board of Licensed Hearing Aid Dispensers and Audiologists (Board) requested the hearing be held regarding those complaints leveled against Smith. This Hearing was held by videoconference and in-person, pursuant to the authority granted by SDCL Chapters 36-24, 36-1C, and 1-26-7, and SDCL § 36-24-12.1.

The Board was represented at hearing by Attorney Tamara Lee. Smith did not appear. Appearing as witnesses at the hearing were Brooke Tellinghuisen Geddes, Aggie Kennedy, Gwendolyn L. Ray, Ron Hauck, and Lin L. Seder.

The purpose of the hearing is to determine whether Smith failed to answer the formal complaints filed against him in this matter; and in the alternative, to determine whether he engaged in conduct that constitutes the commission of fraud or deceit in the practice of audiology or licensed hearing aid dispensing; committed any act of dishonesty or unprofessional conduct while engaging in the practice of audiology or licensed hearing aid dispensing; engaged in illegal, incompetent, or negligent practice; violated a provision of SDCL chapter 36-24; or violated federal, state, or local laws relating to his profession, all in violation of SDCL 36-24-39.1(6), (10), (11), (13), and (18); and therefore is subject to the exercise of the disciplinary proceedings in SDCL § 36-24-39.2.

FINDINGS OF FACT

1. Smith holds a current license as a hearing aid dispenser in South Dakota and held that license during all times relevant to this case.
2. Smith operated under the business name of Bristol Hearing Solutions (Bristol).
3. On June 5, 2025, the Board received a complaint against Smith from Ronald R. Hauck (Hauck).
4. Hauck had lost a hearing aid and contacted Smith to request a replacement. Smith advised Hauck that the hearing aid was out of warranty and that he required payment

before he would order the replacement. Hauck paid Smith \$2,025 by credit card but did not receive the replacement.

5. Hauck later obtained a replacement hearing aid from another audiologist, who advised the hearing aids were still under warranty and provided him a replacement for a \$300 for replacement fee.
6. Hauck was able to get a refund from his bank, Wells Fargo, for the credit card charge. Hauck does not know if Wells Fargo received a refund from Smith.
7. On June 6, 2025, the Board received a consumer complaint filed by Sam Holcomb (Holcomb) with the Division of Consumer Protection with the South Dakota Office of Attorney General.
8. Holcomb had purchased hearing aids for \$4,500, and took them to Bristol for service on April 16, 2025. Thereafter, Holcomb attempted to contact Smith on multiple occasions to get his hearing aids back but was unsuccessful. Smith closed his office and failed to return the hearing aids.
9. On June 23, 2025, the Board received a complaint from Erin Reider, a claims manager for Sedgwick (Sedgwick).
10. Sedgwick is a third-party administrator for worker's compensation claims. A patient whose claims Reider was managing requested replacement hearing aids from Smith in October 2024. Smith required prepayment of \$5,390, and Sedgwick made that prepayment on October 25, 2024 by check to Bristol. That check was cashed November 8, 2024. Smith failed to provide the hearing aids and did not respond to repeated emails and phone calls to Bristol.
11. On June 23, 2025, the Board received a complaint from Lin L. Seder (Seder).
12. On April 4, 2025, Seder ordered hearing aids and paid \$5,390 for the hearing aids. Smith failed to provide the hearing aids and did not respond to Seder's repeated requests for information and/or a refund.
13. On June 16, 2025, the Board received a complaint from Gwendolyn L. Ray (Ray).
14. On February 20, 2025, Ray's aunt was ordered new hearing aids at Bristol and Ray paid Smith \$3,293 for the hearing aids. The hearing aids were available in early May and Ray made an appointment for Smith to fit the hearing aids at her aunt's nursing home on May 9, 2025. Smith failed to keep that appointment and failed to respond to Ray's repeated calls and attempts to contact Smith. Smith never provided the hearing aids or a refund.
15. On July 7, 2025, the Board received a complaint from Mark Hanrahan (Hanrahan).
16. Hanrahan purchased hearing aids and paid Smith \$4,043 on February 22, 2024. Hanrahan returned them to Smith early in 2025 for repairs. Smith advised that he would

send the hearing aids to the company for repairs. Smith failed to provide the repaired hearing aids and failed to contact Hanrahan regarding them.

17. Sometime before the end of May 2025, Smith vacated his business location and did not contact any of the complainants regarding the status of their orders.
18. The complaints were sent by the Board to Smith, informally, with a request each time for a response within 20 days pursuant to SDCL 36-1C-3.
19. Smith responded only to the complaint by Hauck. Smith responded to the Hauck complaint by email on June 24, 2025, with a statement that he had ordered a replacement hearing aid for Hauck and would deliver it to Hauck.
20. Smith did not respond to the complaints other than the one by Hauck.
21. The Board requested Aggie Kennedy (Kennedy), a member of the board investigate the complaints. Kennedy reviewed the complaints, contacted Smith, and attempted to settle the matter. This was unsuccessful.
22. Smith acknowledged he had not contacted any of the complainants and had not resolved their complaints.
23. The Board sent a formal complaint and notice of this hearing to Smith's mailing address and the e-mail address which Smith used on June 24, 2025, to respond to Hauck's complaint.
24. Smith failed to appear at the hearing.
25. Any additional Findings of Fact included within the Discussion section are incorporated herein by this reference. To the extent any of the foregoing are improperly designated and are Conclusions of Law, they are hereby redesignated and incorporated herein as Conclusions of Law.

DISCUSSION

Any person who fits and dispenses hearing aids must be licensed by the Board. SDCL 36-24-16. To hold a hearing aid dispenser license, a person must, among other things, "[h]ave not committed an act for which disciplinary action may be justified." SDCL 36-24-17.2.

The acts for which disciplinary action is justified are set out in SDCL 36-24-39.1, which provides in relevant part:

The Board may take disciplinary action for the following conduct:

...

- (6) Committing fraud or deceit in the practice of audiology or licensed hearing aid dispensing, including:

- (a) Willfully making or filing a false report or record in the practice of audiology or licensed hearing aid dispensing;
- (b) Submitting a false statement to collect a fee; or
- (c) Obtaining a fee through fraud or misrepresentation;
- ...
- (10) Committing any act of dishonesty or unprofessional conduct while engaging in the practice of audiology or licensed hearing aid dispensing;
- (11) Engaging in illegal, incompetent, or negligent practice;
- ...
- (13) Violating any provision of this chapter, or any lawful order given, or rule adopted, by the board;
- ...
- (18) Violating federal, state, or local laws relating to the licensee's profession.

SDCL 36-24-39.1.

The Board presented clear and convincing evidence that Smith misrepresented the warranty status of a hearing aid, collected \$2,025 for a new hearing aid instead of repairing the one that was under warranty, and never provided the new hearing aid to the customer. The Board also presented clear and convincing evidence that Smith collected payment from four other customers for hearing aids and then failed to supply the hearing aids, and that Smith accepted hearing aids from another customer for repairs and then failed to repair or return the hearing aids.

After accepting payment from the various customers, Smith failed to deliver the hearing aids for which they paid, failed to communicate with the customers about the status of their orders, closed his office, and moved without leaving any forwarding information for the customers.

The Board contacted Smith informally about each complaint it received from the customers. The statutes require a licensee to respond to informal complaints:

Upon receipt of a properly submitted complaint within the agency's jurisdiction, the administrator shall serve a copy of the complaint by mail or electronic mail upon the applicant or licensee complained against.

The applicant or licensee complained against shall send a response to the complaint to the administrator of the agency within twenty business days after service of the complaint on the applicant or licensee. Upon receipt of the response of the applicant or licensee, or upon expiration of the time for the applicant or licensee complained against to respond, the administrator shall assign an investigative committee to determine if the complaint has probable cause and constitutes grounds for disciplinary action or lacks probable cause and should be dismissed.

The twenty business days may be extended by the administrator for good cause.

Failure to respond to the complaint is grounds for disciplinary action.

SDCL 36-1C-3. Smith responded to only one of the informal complaints as required.

The Board then filed a formal complaint pursuant to SDCL 36-1C-7. The law requires a licensee to file an answer to a formal complaint.

The applicant or licensee shall file an answer with the administrator within twenty calendar days after service of the complaint admitting, denying, qualifying, or explaining all facts alleged in the formal complaint and all defenses of the applicant or licensee or mitigating factors.

SDCL 36-1C-8. Smith failed to file any answer to the formal complaint.

CONCLUSIONS OF LAW

1. The State Board of Licensed Hearing Aid Dispensers and Audiologists, under the Department of Health, has a statutory duty to administer and enforce provisions found at SDCL Chapter 36-24. Their jurisdiction over this matter is pursuant to SDCL 36-24-12.1 and 36-1C-2.
2. The Board is charged with reviewing all documents presented at hearing by the complainants and making a Final Order based upon this Proposed Decision as well as the complete record.
3. The standard of review with respect to professional licenses is that of "clear and convincing evidence." *Kent v. Lyon*, 1996 S.D. 131 ¶15, 555 N.W.2d 106, 110-11. "In matters concerning the revocation of a professional license, we determine that the appropriate standard of proof to be utilized by an agency is clear and convincing evidence." *Id.* (quoting *In re Zar*, 434 N.W.2d 598, 602 (S.D. 1989)).
4. The Board has provided all legal due processes to Smith as required by SDCL 1-26-29, and all other applicable laws and administrative rules.
5. Smith's failure to respond to the complaints other than that filed by Hauck is grounds for disciplinary action under SDCL 36-1C-3 and 36-24-39.1(18).
6. The Board served a formal complaint on Smith pursuant to SDCL 36-1C-7.
7. The Board showed by clear and convincing evidence that Smith failed to file an answer to the formal complaint as required by SDCL 36-1C-8. Smith's failure to file that answer is grounds for disciplinary action under SDCL 36-24-39.1(18).
8. The Board showed by clear and convincing evidence that Smith engaged in deceptive practices that are grounds for disciplinary action under 36-24-39.1(6) and (10).
9. The Board showed by clear and convincing evidence that Smith engaged in illegal, incompetent, or negligent practices that are grounds for disciplinary action under 36-24-39.1(11).

10. SDCL 1-26-29.1 and 36-24-39.2 govern the Board's ability to require Smith to pay the costs of this proceeding. Section 1-26-29.1 provides: "After conducting a contested case proceeding that results in discipline or censure of a licensee, suspension or revocation of a licensee's license, or denial of a license to an applicant, a professional or occupational board or commission established pursuant to Title 36 may assess all or part of its actual expenses for the proceeding against the licensee or applicant."
11. The Board is empowered with the ability to suspend or revoke Smith's license. SDCL 36-24-12.1, 36-24-41.
12. The Board is authorized to impose probationary conditions. SDCL 36-24-39.2.
13. Any additional Conclusions of Law included within the Discussion section are incorporated herein by this reference. To the extent any of the foregoing are improperly designated and are Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.
14. Any final action by the Board in this matter may be appealed to the Circuit Court or Supreme Court, as provided in law.

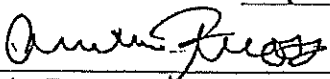
PROPOSED ORDER

It is the Proposed Order of the Office of Hearing Examiners that the South Dakota Board of Licensed Hearing Aid Dispensers and Audiologists find by clear and convincing evidence that Smith engaged in deceptive practices, as well as illegal, incompetent, or negligent practices, that are grounds for disciplinary action under SDCL 36-24-39.1; and further that Smith failed to file an answer to the formal complaint as required by SDCL 36-1C-8, which is grounds for disciplinary action under SDCL 36-24-39.1(18)

It is my recommendation that the Board order Smith to reimburse the Board for its actual expenses associated with this contested proceeding pursuant to SDCL 1-26-29.1. Furthermore, it is my recommendation that the Board revoke Smith's license and require as a condition of any reinstatement that Smith reimburse his patients for all moneys paid to him for hearing aids that he did not supply to the patients.

Furthermore, it is my recommendation that the Board communicate its disciplinary action and Smith's licensure status to relevant state and federal governing bodies, including the National Practitioner Data Bank, as may be required or advisable in the Board's discretion.

Dated October 9, 2025.



Anita Fuoss
Hearing Examiner
Office of Hearing Examiners
Pierre, South Dakota 57501