

CHAPTER 153A

HEARING INSTRUMENT DISPENSING

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153A.01 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 153A.01 to 153A.12, the terms defined in this section have the meanings given to them.

Subd. 2. **Hearing instrument.** "Hearing instrument" means an instrument designed for or represented as aiding defective human hearing, and its parts, attachments, or accessories, including but not limited to ear molds. Batteries and cords are not parts, attachments, or accessories of a hearing instrument. Surgically implanted hearing instruments, and assistive listening devices that do not require testing, fitting, or the use of ear molds and are not worn within the ear canal, are not hearing instruments.

Subd. 3. **Hearing instrument dispenser.** "Hearing instrument dispenser" means a natural person who engages in hearing instrument dispensing.

Subd. 4. **Hearing instrument dispensing.** "Hearing instrument dispensing" means fitting and dispensing hearing instruments, assisting the consumer in instrument selection, selling hearing instruments at retail, and testing human hearing in connection with these activities.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

History: 1985 c 290 s 1

153A.02 POWERS AND DUTIES.

Subdivision 1. **Regulation.** The commissioner shall:

- (1) regulate hearing instrument dispensing;
- (2) examine applicants for a hearing instrument dispensing license and grant licenses to qualified applicants;
- (3) deny, suspend, or revoke a license on any of the following grounds:
 - (a) fraud or deception in obtaining a license or in the practice of hearing instrument dispensing;
 - (b) conviction of a felony;
 - (c) conviction of an offense involving moral turpitude;
 - (d) employing, assisting, or enabling in any manner an unlicensed person to engage in hearing instrument dispensing;
 - (e) violation of sections 153A.01 to 153A.12 or rules adopted under these sections;
- (4) ensure that hearing instruments are dispensed in compliance with the requirements of the United States Food and Drug Administration;
- (5) perform any other duties and exercise other powers required by sections 153A.01 to 153A.12; and
- (6) adopt rules to implement sections 153A.01 to 153A.12.

Subd. 2. **Contested cases.** The commissioner shall comply with the contested case provisions of chapter 14 when suspending, revoking, or failing to issue a license under sections 153A.01 to 153A.12.

Subd. 3. **Reinstatement of license.** A license that has been suspended or revoked may be reinstated by the commissioner if the former licensee pays all costs of the proceedings that resulted in the suspension or revocation and a fee set by the commissioner.

History: 1985 c 290 s 2

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.03 EXEMPTIONS.

Persons licensed under chapter 147 are exempt from the requirements of sections 153A.01 to 153A.12. Audiologists who hold the certificate of clinical competence of the American Speech, Language, and Hearing Association are exempt from examination and education requirements under sections 153A.01 to 153A.12, but must obtain a license and pay a fee determined by the commissioner. Sections 153A.01 to 153A.12 do not otherwise preclude or limit the testing of hearing by persons exempt under this section.

History: 1985 c 290 s 3

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.04 PROHIBITED ACTS; ENFORCEMENT; PENALTY.

Subdivision 1. **Prohibited acts.** A person must not:

- (1) engage in hearing instrument dispensing without a current license;
- (2) falsely assume or pretend to the title of hearing instrument dispenser;
- (3) receive any portion of the profits from the fitting, dispensing, or sale of hearing instruments at retail unless the person is licensed under sections 153A.01 to 153A.12 or employs a person licensed under sections 153A.01 to 153A.12;
- (4) conduct a business engaged in hearing instrument dispensing except under the direction of a licensed hearing instrument dispenser, audiologist, or person licensed under chapter 147;
- (5) engage in hearing instrument dispensing exclusively by telephone or mail, or both; or
- (6) prescribe or otherwise recommend to any person the use of a hearing instrument unless the prescription or recommendation is in writing, is delivered to the person to whom it relates, and bears the following information in 12-point or larger bold type: "HEARING INSTRUMENTS MAY BE PURCHASED FROM ANY LICENSED HEARING INSTRUMENT DISPENSER OR PHYSICIAN. THIS PRESCRIPTION MAY BE FILLED BY THE DISPENSER OR PHYSICIAN OF YOUR CHOICE." A prescription or written recommendation must include, upon patient authorization, an audiogram upon which the prescription or recommendation is based.

Subd. 2. **Enforcement.** The attorney general shall enforce this section in the manner provided by section 8.31, except that there is no private remedy as provided by section 8.31, subdivision 3a.

Subd. 3. **Penalty.** A person violating this section is guilty of a misdemeanor.

History: 1985 c 290 s 4

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.05 EXAMINATIONS; FEES.

The commissioner shall give reasonable notice of all examinations by mail to known applicants. Testing must occur at least three times annually at intervals no greater than five calendar months. The commissioner shall record the names of persons licensed as hearing instrument dispensers and the grounds upon which the right of each to licensure was claimed. The commissioner may establish a fee under section 16A.128 to cover the cost of the examination. Fee receipts must be deposited in the state treasury and credited to the special revenue fund. The fee may, in the discretion of the commissioner, be returned to applicants who do not take the examination.

History: 1985 c 290 s 5

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.06 CONTENTS OF EXAMINATION.

Examinations for licensure as a hearing instrument dispenser must consist of written, oral, and practical tests. The tests must be objective and applied in a consistent manner. The tests must include the following subjects: (1) basic physics of sound; (2) the structure and function of hearing instruments; (3) the fitting of hearing instruments; (4) puretone audiometry, including air conduction testing and bone conduction testing; (5) live voice or record voice speech audiometry, or both; (6) recording and evaluation of audiograms and speech audiometry to determine the hearing instrument candidacy; (7) selection and adaptation of hearing instruments; (8) the taking of ear mold impressions; (9) indications suggesting the need for referral to competent medical personnel for diagnosis or treatment of a disease or injury; and (10) knowledge of the federal and state laws regarding hearing instrument dispensing. The examination must not test knowledge of the diagnosis or treatment of a disease or injury to the human body. The commissioner shall consult with the commissioner of health, otolaryngologists, audiologists and hearing instrument dispensers in connection with preparation of the examination.

History: 1985 c 290 s 6

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.07 QUALIFICATIONS OF APPLICANTS.

In order to be examined as a hearing instrument dispenser, an applicant must be of good moral character, be at least 18 years old, and meet educational criteria for licensure established by the commissioner.

History: 1985 c 290 s 7

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.08 RECIPROCITY; LICENSURE.

The commissioner may grant a license without an examination to a hearing instrument dispenser licensed by another state that gives similar recognition to licensees of this state, if the commissioner finds that the requirements for licensure in

the other state are equivalent to those provided in sections 153A.01 to 153A.12. The commissioner may set the fee for licensure by rule.

History: 1985 c 290 s 8

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.09 BOND REQUIRED.

A sole proprietor, partnership, association, or corporation engaged in hearing instrument dispensing shall provide a surety bond in favor of the state of Minnesota in the amount of \$10,000 for every five or fewer of its licensees engaged in the practice of hearing instrument dispensing, up to a maximum of \$20,000.

History: 1985 c 290 s 9

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.10 EXPENSES.

The expenses of administering sections 153A.01 to 153A.12 must be paid from the appropriations made to the department.

History: 1985 c 290 s 10

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.11 ADVERTISING.

The commissioner shall adopt rules concerning advertising of the fitting, dispensing, and sale of hearing instruments. The rules must not:

- (1) restrict the use of any medium for advertising;
- (2) restrict a licensee's personal appearance or voice in an advertisement;
- (3) relate to the size or duration of an advertisement; or
- (4) restrict advertisement under a trade name.

History: 1985 c 290 s 11

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.

153A.12 INTERNSHIP.

The commissioner shall license as an intern any natural person who has satisfied the commissioner that the person is of good moral character, is not physically or mentally unfit, and meets the requirements for intern licensure prescribed by the commissioner. The intern must be supervised by a licensed hearing instrument dispenser. A person must not be licensed as an intern for more than 12 calendar months and the license must not be renewed or otherwise extended by the commissioner. No more than three intern licensees may hold an intern license to practice hearing instrument dispensing under the supervision of a single licensed hearing instrument dispenser. A document evidencing the fitting, selection, sale, or delivery of a hearing instrument at retail must bear the name of the supervising licensee in addition to the name of the intern involved in the transaction.

History: 1985 c 290 s 12

NOTE: This section is effective 12 months after completion of the study required by Laws 1985, chapter 290, section 13. See Laws 1985, chapter 290, section 14.