

## CHAPTER 153A

## HEARING INSTRUMENT DISPENSING

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**153A.01** [Repealed, 1988 c 689 art 2 s 269]**153A.02** [Repealed, 1988 c 689 art 2 s 269]**153A.03** [Repealed, 1988 c 689 art 2 s 269]**153A.04** [Repealed, 1988 c 689 art 2 s 269]**153A.05** [Repealed, 1988 c 689 art 2 s 269]**153A.06** [Repealed, 1988 c 689 art 2 s 269]**153A.07** [Repealed, 1988 c 689 art 2 s 269]**153A.08** [Repealed, 1988 c 689 art 2 s 269]**153A.09** [Repealed, 1988 c 689 art 2 s 269]**153A.10** [Repealed, 1988 c 689 art 2 s 269]**153A.11** [Repealed, 1988 c 689 art 2 s 269]**153A.12** [Repealed, 1988 c 689 art 2 s 269]**153A.13 DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to sections 153A.13 to 153A.18.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 3. **Hearing instrument.** "Hearing instrument" means an instrument designed to or represented as being able to aid defective human hearing. "Hearing instrument" includes the instrument's parts, attachments, and 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. 4. **Hearing instrument selling.** "Hearing instrument selling" means fitting and selling hearing instruments, assisting the consumer in instrument selection, selling hearing instruments at retail, or testing human hearing in connection with these activities.

Subd. 5. **Seller of hearing instruments.** "Seller of hearing instruments" means a natural person who engages in hearing instrument selling whether or not registered by the commissioner of health or licensed by an existing health-related board.

**History:** 1988 c 689 art 2 s 55; 1989 c 282 art 2 s 46

**153A.14 REGULATION.**

Subdivision 1. **Application for permit.** A seller of hearing instruments shall apply to the commissioner for a permit to sell hearing instruments. The commissioner shall provide applications for permits. At a minimum, the information that an applicant must provide includes the seller's name, social security number, business address and phone number, employer, and information about the seller's education, training, and experience in testing human hearing and fitting hearing instruments. The commissioner may reject an application for a permit if there is evidence of a violation or failure to comply with sections 153A.13 to 153A.16.

Subd. 2. **Issuance of permit.** The commissioner shall issue a permit to each seller of hearing instruments who applies under subdivision 1 if the commissioner determines that the applicant is in compliance with sections 153A.13 to 153A.16.

Subd. 3. **Nontransferability of permit.** The permit cannot be transferred.

Subd. 4. **Sale of hearing instruments without permit.** It is unlawful for any person not holding a valid permit to sell a hearing instrument as defined in section 153A.13, subdivision 3. A person who sells a hearing instrument without the permit required by this section is guilty of a gross misdemeanor.

Subd. 5. **Rulemaking authority.** The commissioner shall adopt rules under chapter 14 to implement sections 153A.13 to 153A.18.

Subd. 6. **Hearing instruments to comply with federal and state requirements.** The commissioner shall ensure that hearing instruments are sold in compliance with state requirements and the requirements of the United States Food and Drug Administration. Failure to comply with state or federal regulations may be grounds for enforcement actions.

Subd. 7. **Contested cases.** The commissioner shall comply with the contested case procedures in chapter 14 when suspending, revoking, or refusing to issue a permit under this section.

**History:** 1988 c 689 art 2 s 56

### 153A.15 PROHIBITED ACTS; ENFORCEMENT; AND PENALTY.

Subdivision 1. **Prohibited acts.** The commissioner may reject an application for a permit or may act under subdivision 2 against a seller of hearing instruments for failure to comply with sections 153A.13 to 153A.16. Failure to apply to the commissioner for a permit, or supplying false or misleading information on the application for a permit, is a ground for action under subdivision 2. The following acts and conduct are also grounds for action under subdivision 2:

(1) prescribing or otherwise recommending to a consumer or potential consumer the use of a hearing instrument, unless the prescription from a physician or recommendation from a hearing instrument seller or audiologist is in writing, is delivered to the consumer or potential consumer, and bears the following information in all capital letters of 12-point or larger bold-face type: "THIS PRESCRIPTION OR RECOMMENDATION MAY BE FILLED BY, AND HEARING INSTRUMENTS MAY BE PURCHASED FROM, THE DISPENSER, AUDIOLOGIST, OR PHYSICIAN OF YOUR CHOICE." A prescription or written recommendation must include, upon the authorization of the consumer or potential consumer, the audiogram upon which the prescription or recommendation is based if there has been a charge for the audiogram;

(2) representing through any advertising or communication to a consumer or potential consumer that a person's permit to sell hearing instruments indicates state approval, endorsement, or satisfaction of standards of training or skill;

(3) being disciplined through a revocation, suspension, restriction, or limitation by another state for conduct subject to action under subdivision 2;

(4) presenting advertising that is false or misleading;

(5) providing the commissioner with false or misleading statements of credentials, training, or experience;

(6) engaging in conduct likely to deceive, defraud, or harm the public; or demonstrating a willful or careless disregard for the health, welfare, or safety of a consumer;

(7) splitting fees or promising to pay a portion of a fee to any other professional other than a fee for services rendered by the other professional to the client;

(8) engaging in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws, Food and Drug Administration regulations, or state medical assistance laws;

(9) obtaining money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud; or

(10) failing to comply with restrictions on sales of hearing aids in section 145.43.

Subd. 2. **Enforcement actions.** When the commissioner finds that a seller of hearing

instruments has violated one or more provisions of sections 153A.13 to 153A.16, the commissioner may do one or more of the following:

- (1) deny or reject the application for a permit;
- (2) revoke the permit;
- (3) suspend the permit;
- (4) impose, for each violation, a civil penalty that deprives the seller of any economic advantage gained by the violation and that reimburses the department of health for costs of the investigation and proceeding; and
- (5) censure or reprimand the dispenser.

**Subd. 3. Procedures.** The commissioner shall establish, in writing, internal operating procedures for receiving and investigating complaints and imposing enforcement actions. The written internal operating procedures may include procedures for sharing complaint information with government agencies in this and other states. Establishment of the operating procedures are not subject to rulemaking procedures under chapter 14. Procedures for sharing complaint information shall be consistent with the requirements for handling government data under chapter 13.

**Subd. 4. Penalty.** A person violating sections 153A.13 to 153A.16 is guilty of a misdemeanor.

**History:** 1988 c 689 art 2 s 57; 1989 c 282 art 2 s 47

#### **153A.16 BOND REQUIRED.**

A sole proprietor, partnership, association, or corporation engaged in hearing instrument sales shall provide a surety bond in favor of the state of Minnesota in the amount of \$5,000 for every individual engaged in the practice of selling hearing instruments, up to a maximum of \$25,000. The bond required by this section must be in favor of the state for the benefit of any person who suffers loss of payments for the purchase or repair of a hearing instrument after July 1, 1988, due to insolvency or cessation of the business of the sole proprietor, partnership, association, or corporation engaged in hearing instrument sales. A copy of the bond must be filed with the commissioner of health. A person claiming against the bond may maintain an action at law against the surety and the sole proprietor, partnership, association, or corporation. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein must not exceed the amount of the bond.

**History:** 1988 c 689 art 2 s 58; 1989 c 282 art 2 s 48

#### **153A.17 EXPENSES.**

The expenses for administering the permit requirements for hearing aid sellers in section 153A.14 and the consumer information center under section 153A.18 must be paid from permit fees collected under the authority granted in section 214.06, subdivision 1.

**History:** 1988 c 689 art 2 s 59

#### **153A.18 CONSUMER INFORMATION CENTER.**

The commissioner shall establish a consumer information center to assist actual and potential purchasers of hearing aids by providing them with information regarding hearing instrument sales. The consumer information center shall disseminate information about consumers' legal rights related to hearing instrument sales, provide information relating to complaints about sellers of hearing instruments, and provide information about outreach and advocacy services for consumers of hearing instruments. In establishing the center and developing the information, the commissioner shall consult with representatives of hearing instrument sellers, audiologists, physicians, and consumers.

**History:** 1988 c 689 art 2 s 60