

CHAPTER 153A

HEARING INSTRUMENT DISPENSING

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153A.13 DEFINITIONS.

[For text of subs 1 to 3, see M.S.1992]

Subd. 4. **Hearing instrument dispensing.** "Hearing instrument dispensing" 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. **Dispenser of hearing instruments.** "Dispenser of hearing instruments" means a natural person who engages in hearing instrument dispensing whether or not registered by the commissioner of health or licensed by an existing health-related board.

History: 1993 c 201 s 1,2

153A.14 REGULATION.

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

Subd. 2. **Issuance of certificate.** The commissioner shall issue a certificate to each dispenser of hearing instruments who applies under subdivision 1 if the commissioner determines that the applicant is in compliance with this chapter, has passed an examination administered by the commissioner, and has paid the fee set by the commissioner. A certificate must be renewed by November 1 of each year.

Subd. 3. **Nontransferability of certificate.** A certificate may not be transferred.

Subd. 4. **Dispensing of hearing instruments without certificate.** Except as provided in subdivision 4a, it is unlawful for any person not holding a valid certificate to dispense a hearing instrument as defined in section 153A.13, subdivision 3. A person who dispenses a hearing instrument without the certificate required by this section is guilty of a gross misdemeanor. For purposes of this chapter, a person is dispensing a hearing instrument if the person does, or offers to do, any of the activities described in section 153A.13, subdivision 4, or if the person advertises, holds out to the public, or otherwise represents that the person is authorized to dispense hearing instruments.

Subd. 4a. **Trainees.** (a) A person who is not certified under this section may dispense hearing instruments as a trainee for a period not to exceed nine months if the person:

(1) is employed by and under the supervision or sponsorship of a certified dispenser meeting the requirements of this subdivision; and

(2) meets all requirements for certification except completion of the person's training and passage of the examination required by this section.

(b) A certified hearing instrument dispenser may not employ, sponsor, and supervise more than two trainees at the same time. The certified dispenser is responsible for all actions or omissions of a trainee in connection with the dispensing of hearing instruments. A certified dispenser may not employ, sponsor, or supervise a trainee if there

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are any commissioner, court, or other orders, currently in effect or issued within the last five years, that were issued with respect to an action or omission of a certified dispenser or a trainee under the certified dispenser's supervision.

Subd. 5. Rulemaking authority. The commissioner shall adopt rules under chapter 14 to implement this chapter. The rules must prescribe the form and content of the examination required by this section and must establish and prescribe the duties of a hearing instrument dispenser advisory council. The commissioner may adopt rules requiring continuing education of certified hearing instrument dispensers.

Subd. 6. Hearing instruments to comply with federal and state requirements. The commissioner shall ensure that hearing instruments are dispensed 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 under section 153A.15, subdivision 2.

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

Subd. 8. Content of contracts. Oral statements made by a hearing instrument dispenser regarding the provision of warranties, refunds, and service on the hearing instrument or instruments dispensed must be written on, and become part of, the contract of sale, specify the item or items covered, and indicate the person or business entity obligated to provide the warranty, refund, or service.

Subd. 9. Consumer rights information. A hearing instrument dispenser shall give a consumer rights brochure, prepared by the commissioner and containing information about legal requirements pertaining to sales of hearing instruments, to each potential buyer of a hearing instrument. A sales contract for a hearing instrument must note the receipt of the brochure by the buyer.

Subd. 10. Liability for contracts. Owners of entities in the business of dispensing hearing instruments, employers of persons who dispense hearing instruments, and sponsors and supervisors of trainees are liable for satisfying all terms of contracts, written or oral, made by their agents, employees, assignees, affiliates, or trainees, including terms relating to products, repairs, warranties, service, and refunds. The commissioner may enforce the terms of hearing instrument sales contracts against the principal, employer, sponsor, or supervisor of an agent, employee, or trainee and may impose any remedy provided for in this chapter.

History: 1993 c 201 s 3

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

Subdivision 1. Prohibited acts. The commissioner may reject an application for a certificate or may act under subdivision 2 against a dispenser of hearing instruments for failure to comply with this chapter. Failure to apply to the commissioner for a certificate, or supplying false or misleading information on the application for a certificate, 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 dispenser 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" and unless the prescription or written recommendation includes, 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 certification to dispense hearing instruments indicates state approval or endorsement;

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

(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;

(10) failing to comply with restrictions on sales of hearing aids in section 153A.19;

(11) performing the services of a certified hearing instrument dispenser in an incompetent or negligent manner; or

(12) failing to comply with the requirements of this chapter as an employer, supervisor, sponsor, or trainee.

Subd. 2. Enforcement actions. When the commissioner finds that a dispenser of hearing instruments has violated one or more provisions of this chapter, the commissioner may do one or more of the following:

(1) deny or reject the application for a certificate;

(2) revoke the certificate;

(3) suspend the certificate;

(4) impose, for each violation, a civil penalty that deprives the dispenser of any economic advantage gained by the violation and that reimburses the department of health for costs of the investigation and proceeding resulting in disciplinary action, including the amount paid for services of the office of administrative hearings, the amount paid for services of the office of the attorney general, attorney fees, court reporters, witnesses, reproduction of records, advisory council members' per diem compensation, department staff time, and expenses incurred by advisory council members and department staff;

(5) censure or reprimand the dispenser;

(6) revoke or suspend the right to sponsor trainees;

(7) impose a civil penalty not to exceed \$10,000 for each separate violation; or

(8) any other action reasonably justified by the individual case.

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 must be consistent with the requirements for handling government data under chapter 13.

Subd. 3a. Discovery. In all matters relating to the lawful regulation activities under this chapter, the commissioner may issue subpoenas to require the attendance and testimony of witnesses and production of books, records, correspondence, and other information relevant to any matter involved in the investigation. The commissioner or the commissioner's designee may administer oaths to witnesses or take their affirmation. A subpoena may be served upon any person it names anywhere in the state by any person authorized to serve subpoenas or other processes in civil actions of the district

courts. If a person to whom a subpoena is issued does not comply with the subpoena, the commissioner may apply to the district court in any district and the court shall order the person to comply with the subpoena. Failure to obey the order of the court may be punished by the court as contempt of court. All information pertaining to individual medical records obtained under this section is health data under section 13.38.

Subd. 4. Penalties. Except as provided in section 153A.14, subdivision 4, a person violating this chapter is guilty of a misdemeanor. The commissioner may impose an automatic civil penalty equal to one-fourth the renewal fee on each hearing instrument seller who fails to renew the certificate required in section 153A.14 by the renewal deadline.

History: 1993 c 201 s 4

153A.17 EXPENSES.

The expenses for administering the certification requirements including the complaint handling system for hearing aid dispensers in sections 153A.14 and 153A.15 and the consumer information center under section 153A.18 must be paid from initial application and examination fees, renewal fees, penalties, and fines. The certificate application fee is \$280, the examination fee is \$200, and the trainee application fee is \$100, except that the certification application fee for a registered audiologist is \$280 minus the audiologist registration fee of \$101. In addition, both certification and examination fees are subject to a surcharge of \$60 to recover, over a five-year period, the commissioner's accumulated direct expenditures for administering the requirements of this chapter, but not registration of hearing instrument dispensers under section 214.13, before November 1, 1994. All fees, penalties, and fines received must be deposited in the state government special revenue fund.

History: 1993 c 201 s 5