

## CHAPTER 153A

## HEARING INSTRUMENT DISPENSING

153A.13	Definitions.	153A.175	Penalty fees.
153A.14	Regulation.	153A.20	Hearing Instrument Dispenser Advisory Council.
153A.15	Prohibited acts; enforcement; and penalty.		

**153A.13 DEFINITIONS.**

*[For text of subs 1 to 4, see M.S.2004]*

Subd. 5. **Dispenser of hearing instruments.** "Dispenser of hearing instruments" means a natural person who engages in hearing instrument dispensing whether or not certified by the commissioner of health or licensed by an existing health-related board, except that a person described as follows is not a dispenser of hearing instruments:

- (1) a student participating in supervised field work that is necessary to meet requirements of an accredited educational program if the student is designated by a title which clearly indicates the student's status as a student trainee; or
- (2) a person who helps a dispenser of hearing instruments in an administrative or clerical manner and does not engage in hearing instrument dispensing.

A person who offers to dispense a hearing instrument, or a person who advertises, holds out to the public, or otherwise represents that the person is authorized to dispense hearing instruments must be certified by the commissioner except when the person is an audiologist as defined in section 148.512.

*[For text of subs 6 to 11, see M.S.2004]*

**History:** 2005 c 147 art 7 s 11

**153A.14 REGULATION.**

*[For text of subs 1 and 2, see M.S.2004]*

Subd. 2a. [Repealed, 2005 c 147 art 7 s 20]

*[For text of subs 2b to 2g, see M.S.2004]*

Subd. 2h. **Certification by examination.** An applicant must achieve a passing score, as determined by the commissioner, on an examination according to paragraphs (a) to (c).

(a) The examination must include, but is not limited to:

(1) A written examination approved by the commissioner covering the following areas as they pertain to hearing instrument selling:

- (i) basic physics of sound;
- (ii) the anatomy and physiology of the ear;
- (iii) the function of hearing instruments; and
- (iv) the principles of hearing instrument selection.

(2) Practical tests of proficiency in the following techniques as they pertain to hearing instrument selling:

- (i) pure tone audiometry, including air conduction testing and bone conduction testing;
- (ii) live voice or recorded voice speech audiometry including speech recognition (discrimination) testing, most comfortable loudness level, and uncomfortable loudness measurements of tolerance thresholds;
- (iii) masking when indicated;
- (iv) recording and evaluation of audiograms and speech audiometry to determine proper selection and fitting of a hearing instrument;

- (v) taking ear mold impressions;
- (vi) using an otoscope for the visual observation of the entire ear canal; and
- (vii) state and federal laws, rules, and regulations.

(b) The examination shall be administered by the commissioner at least twice a year.

(c) An applicant must achieve a passing score on all portions of the examination within a two-year period. An applicant who does not achieve a passing score on all portions of the examination within a two-year period must retake the entire examination and achieve a passing score on each portion of the examination. An applicant who does not apply for certification within one year of successful completion of the examination must retake the examination and achieve a passing score on each portion of the examination. An applicant may not take any part of the examination more than three times in a two-year period.

Subd. 2i. **Continuing education requirement.** On forms provided by the commissioner, each certified dispenser must submit with the application for renewal of certification evidence of completion of ten course hours of continuing education earned within the 12-month period of July 1 to June 30 immediately preceding renewal. Continuing education courses must be directly related to hearing instrument dispensing and approved by the International Hearing Society. Evidence of completion of the ten course hours of continuing education must be submitted with renewal applications by October 1 of each year. This requirement does not apply to dispensers certified for less than one year. The first report of evidence of completion of the continuing education credits shall be due October 1, 1997.

*[For text of subs 2j and 3, see M.S.2004]*

Subd. 4. **Dispensing of hearing instruments without certificate.** Except as provided in subdivisions 4a and 4c, and in sections 148.512 to 148.5198, 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 text of subs 4a and 4b, see M.S.2004]*

Subd. 4c. **Reciprocity.** (a) A person applying for certification as a hearing instrument dispenser under subdivision 1 who has dispensed hearing instruments in another jurisdiction may dispense hearing instruments as a trainee under indirect supervision if the person:

- (1) satisfies the provisions of subdivision 4a, paragraph (a);
- (2) submits a signed and dated affidavit stating that the applicant is not the subject of a disciplinary action or past disciplinary action in this or another jurisdiction and is not disqualified on the basis of section 153A.15, subdivision 1; and

(3) provides a copy of a current credential as a hearing instrument dispenser held in the District of Columbia or a state or territory of the United States.

(b) A person becoming a trainee under this subdivision who fails to take and pass the practical examination described in subdivision 2h, paragraph (a), clause (2), when next offered must cease dispensing hearing instruments unless under direct supervision.

*[For text of subs 4d to 6, see M.S.2004]*

Subd. 8. [Repealed, 2005 c 147 art 7 s 20]

Subd. 9. **Consumer rights.** A hearing instrument dispenser shall comply with the requirements of sections 148.5195, subdivision 3, clause (20); 148.5197; and 148.5198.

Subd. 10. [Repealed, 2005 c 147 art 7 s 20]

*[For text of subd 11, see M.S.2004]*

**History:** 2005 c 147 art 7 s 12-16

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

Subdivision 1. **Prohibited acts.** The commissioner may take enforcement action as provided under subdivision 2 against a dispenser of hearing instruments for the following acts and conduct:

- (1) dispensing a hearing instrument to a minor person 18 years or younger unless evaluated by an audiologist for hearing evaluation and hearing aid evaluation;
- (2) being disciplined through a revocation, suspension, restriction, or limitation by another state for conduct subject to action under this chapter;
- (3) presenting advertising that is false or misleading;
- (4) providing the commissioner with false or misleading statements of credentials, training, or experience;
- (5) 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;
- (6) 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;
- (7) 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;
- (8) obtaining money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud;
- (9) performing the services of a certified hearing instrument dispenser in an incompetent or negligent manner;
- (10) failing to comply with the requirements of this chapter as an employer, supervisor, or trainee;
- (11) failing to provide information in a timely manner in response to a request by the commissioner, commissioner's designee, or the advisory council;
- (12) being convicted within the past five years of violating any laws of the United States, or any state or territory of the United States, and the violation is a felony, gross misdemeanor, or misdemeanor, an essential element of which relates to hearing instrument dispensing, except as provided in chapter 364;
- (13) failing to cooperate with the commissioner, the commissioner's designee, or the advisory council in any investigation;
- (14) failing to perform hearing instrument dispensing with reasonable judgment, skill, or safety due to the use of alcohol or drugs, or other physical or mental impairment;
- (15) failing to fully disclose actions taken against the applicant or the applicant's legal authorization to dispense hearing instruments in this or another state;
- (16) violating a state or federal court order or judgment, including a conciliation court judgment, relating to the activities of the applicant in hearing instrument dispensing;
- (17) having been or being disciplined by the commissioner of the Department of Health, or other authority, in this or another jurisdiction, if any of the grounds for the discipline are the same or substantially equivalent to those in sections 153A.13 to 153A.19;
- (18) misrepresenting the purpose of hearing tests, or in any way communicating that the hearing test or hearing test protocol required by section 153A.14, subdivision 4b, is a medical evaluation, a diagnostic hearing evaluation conducted by an audiologist, or is other than a test to select a hearing instrument, except that the hearing instrument dispenser can determine the need for or recommend the consumer obtain a medical evaluation consistent with requirements of the United States Food and Drug Administration;
- (19) violating any of the provisions of sections 148.5195, subdivision 3, clause (20); 148.5197; 148.5198; and 153A.13 to 153A.18; and

(20) aiding or abetting another person in violating any of the provisions of sections 148.5195, subdivision 3, clause (20); 148.5197; 148.5198; and 153A.13 to 153A.18.

*[For text of subds 2 to 4, see M.S.2004]*

**History:** 2005 c 147 art 7 s 17

#### 153A.175 PENALTY FEES.

(a) The penalty fee for holding oneself out as a hearing instrument dispenser without a current certificate after the credential has expired and before it is renewed is one-half the amount of the certificate renewal fee for any part of the first day, plus one-half the certificate renewal fee for any part of any subsequent days up to 30 days.

(b) The penalty fee for applicants who hold themselves out as hearing instrument dispensers after expiration of the trainee period and before being issued a certificate is one-half the amount of the certificate application fee for any part of the first day, plus one-half the certificate application fee for any part of any subsequent days up to 30 days. This paragraph does not apply to applicants not qualifying for a certificate who hold themselves out as hearing instrument dispensers.

(c) The penalty fee for failing to submit a continuing education report by the due date with the correct number or type of hours in the correct time period is \$200 plus \$200 for each missing clock hour. The certificate holder must obtain the missing number of continuing education hours by the next reporting due date.

(d) Civil penalties and discipline incurred by certificate holders prior to August 1, 2005, for conduct described in paragraph (a), (b), or (c) shall be recorded as nondisciplinary penalty fees. Payment of a penalty fee does not preclude any disciplinary action reasonably justified by the individual case.

**History:** 2005 c 147 art 9 s 4

#### 153A.19 [Repealed, 2005 c 147 art 7 s 20]

#### 153A.20 HEARING INSTRUMENT DISPENSER ADVISORY COUNCIL.

Subdivision 1. **Membership.** The commissioner shall appoint seven persons to a Hearing Instrument Dispenser Advisory Council.

(a) The seven persons must include:

(1) three public members, as defined in section 214.02. At least one of the public members shall be a hearing instrument user and one of the public members shall be either a hearing instrument user or an advocate of one; and

(2) three hearing instrument dispensers certified under sections 153A.14 to 153A.20, each of whom is currently, and has been for the five years immediately preceding their appointment, engaged in hearing instrument dispensing in Minnesota and who represent the occupation of hearing instrument dispensing and who are not audiologists; and

(3) one audiologist licensed as an audiologist under chapter 148 who dispenses hearing instruments, recommended by a professional association representing audiologists and speech-language pathologists.

(b) The factors the commissioner may consider when appointing advisory council members include, but are not limited to, professional affiliation, geographical location, and type of practice.

(c) No two members of the advisory council shall be employees of, or have binding contracts requiring sales exclusively for, the same hearing instrument manufacturer or the same employer.

*[For text of subds 2 and 3, see M.S.2004]*

**History:** 2005 c 147 art 7 s 18