

Notwithstanding Minnesota Statutes, section 447.31, subdivision 2, the Northern Itasca Hospital District shall include any city or town located in Itasca or Koochiching counties that at any time after May 1, 1993, elects, by resolution or otherwise as provided by statute, to be part of the hospital district.

**Sec. 5. EFFECTIVE DATE.**

Sections 1 to 3 take effect in each respective county the day after the filing of a certificate of local approval by the Nobles, Rock, Pipestone, or Murray county board in compliance with Minnesota Statutes, section 645.021, subdivision 3.

Presented to the governor May 12, 1993

Signed by the governor May 14, 1993, 10:00 p.m.

**CHAPTER 201—S.F.No. 1101**

*An act relating to health-related occupations; requiring hearing instrument dispensers to be certified by the commissioner of health; requiring holders of temporary hearing instrument dispensing permits to be supervised by certified hearing instrument dispensers; authorizing cease and desist orders; providing for penalties; appropriating money; amending Minnesota Statutes 1992, sections 153A.13, subdivisions 4 and 5; 153A.14; 153A.15; and 153A.17; proposing coding for new law in Minnesota Statutes, chapter 214.*

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:**

Section 1. Minnesota Statutes 1992, section 153A.13, subdivision 4, is amended to read:

Subd. 4. **HEARING INSTRUMENT SELLING DISPENSING.** "Hearing instrument selling 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.

Sec. 2. Minnesota Statutes 1992, section 153A.13, subdivision 5, is amended to read:

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

Sec. 3. Minnesota Statutes 1992, section 153A.14, is amended to read:

**153A.14 REGULATION.**

New language is indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. **APPLICATION FOR PERMIT CERTIFICATE.** A seller dispenser of hearing instruments shall apply to the commissioner for a permit certificate to sell dispense hearing instruments. The commissioner shall provide applications for permits certificates. At a minimum, the information that an applicant must provide includes the seller's dispenser's name, social security number, business address and phone number, employer, and information about the seller's dispenser's education, training, and experience in testing human hearing and fitting hearing instruments. The commissioner may reject an application for a permit certificate if there is evidence of a violation or failure to comply with sections 153A.13 to 153A.15 this chapter.

Subd. 2. **ISSUANCE OF PERMIT CERTIFICATE.** The commissioner shall issue a permit certificate to each seller dispenser of hearing instruments who applies under subdivision 1 if the commissioner determines that the applicant is in compliance with sections 153A.13 to 153A.15 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 PERMIT CERTIFICATE.** The permit cannot be A certificate may not be transferred.

Subd. 4. **SALE DISPENSING OF HEARING INSTRUMENTS WITHOUT PERMIT CERTIFICATE.** Except as provided in subdivision 4a, it is unlawful for any person not holding a valid permit certificate to sell dispense a hearing instrument as defined in section 153A.13, subdivision 3. A person who sells dispenses a hearing instrument without the permit 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 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.

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Subd. 5. **RULEMAKING AUTHORITY.** The commissioner shall adopt rules under chapter 14 to implement ~~sections 153A.13 to 153A.18~~ 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 ~~sold~~ 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 ~~permit~~ 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.

Sec. 4. Minnesota Statutes 1992, section 153A.15, is amended to read:

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

Subdivision 1. **PROHIBITED ACTS.** The commissioner may reject an application for a ~~permit~~ certificate or may act under subdivision 2 against a seller dispenser of hearing instruments for failure to comply with ~~sections~~

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~~153A.13 to 153A.15~~ this chapter. Failure to apply to the commissioner for a ~~per-~~mit certificate, or supplying false or misleading information on the application for a ~~per-~~mit 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 ~~seller~~ 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~~ and unless the prescription or written recommendation ~~must include~~ 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 ~~permit certification~~ to sell ~~dispense~~ hearing instruments indicates state approval; ~~or 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~~ 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; ~~or~~

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

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(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 seller dispenser of hearing instruments has violated one or more provisions of sections 153A.13 to 153A.15 this chapter, the commissioner may do one or more of the following:

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

(2) revoke the permit certificate;

(3) suspend the permit certificate;

(4) impose, for each violation, a civil penalty that deprives the seller 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; and

(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 ~~shall~~ 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. ~~The subpoenas~~ A subpoena may be

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served upon any person ~~named therein~~ 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 ~~shall be considered~~ is health data under section 13.38.

Subd. 4. **PENALTIES.** Except as provided in section 153A.14, subdivision 4, a person violating sections ~~153A.13 to 153A.15~~ 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 permit certificate required in section 153A.14 by the renewal deadline established by the commissioner in rule.

Sec. 5. Minnesota Statutes 1992, section 153A.17, is amended to read:

**153A.17 EXPENSES.**

The expenses for administering the permit certification requirements including the complaint handling system for hearing aid sellers dispensers in sections 153A.14 and 153A.15 and the consumer information center under section 153A.18 must be paid from initial permit application and examination fees and, renewal fees, penalties, and fines. The total fees collected must as closely as possible equal anticipated expenditures during the fiscal biennium as provided for in section 16A.128. The commissioner shall by rule, with the approval of the commissioner of finance, adjust any fee the commissioner is empowered to assess as provided for in section 16A.128. The fee established must include a 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 amount necessary of \$60 to recover, over a five-year period, the commissioner's accumulated direct expenditures for adoption of the rules 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.

Sec. 6. **[214.131] COMMISSIONER CEASE AND DESIST AUTHORITY AND PENALTY FOR VIOLATION.**

Subdivision 1. CEASE AND DESIST ORDER. The commissioner of health may issue a cease and desist order to stop a person from engaging in an unauthorized practice or violating or threatening to violate a statute, rule, or order that the commissioner of health has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the person's right to request a hearing under sections 14.57 to 14.62. If, within 15 days after service of the order, the subject of the order fails to request a hearing in writing, the cease and desist order becomes final.

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A hearing must be initiated by the commissioner of health not later than 30 days after the date the commissioner receives a written hearing request. Within 30 days after receiving the administrative law judge's report, the commissioner of health shall issue a final order modifying, vacating, or making permanent the cease and desist order as the facts require. The final order remains in effect until modified or vacated by the commissioner of health.

When a request for a stay accompanies a timely hearing request, the commissioner of health may grant the stay. If the commissioner does not grant a requested stay, the commissioner shall refer the request to the office of administrative hearings within three work days after receiving the request. Within ten days after receiving the request from the commissioner of health, an administrative law judge shall issue a recommendation to grant or deny the stay. The commissioner of health shall grant or deny the stay within five work days after receiving the administrative law judge's recommendation.

In the event of noncompliance with a cease and desist order, the commissioner of health may institute a proceeding in a district court to obtain injunctive relief or other appropriate relief, including a civil penalty payable to the commissioner of health not exceeding \$10,000 for each separate violation.

Subd. 2. CIVIL PENALTY. When the commissioner of health finds that a person has violated one or more provisions of any statute, rule, or order that the commissioner of health is empowered to regulate, enforce, or issue, the commissioner of health may impose, for each violation, a civil penalty that deprives the person of any economic advantage gained by the violation, or that reimburses the department of health for costs of the investigation and proceeding, or both.

Subd. 3. INJUNCTIVE RELIEF. In addition to any other remedy provided by law, the commissioner of health may bring an action in district court for injunctive relief to restrain any unauthorized practice or violation of any statute, rule, or order that the commissioner of health is empowered to regulate, enforce, or issue. A temporary restraining order may be granted in the proceeding if continued activity by a person would create a serious risk of harm to others.

Subd. 4. ADDITIONAL POWERS. The issuance of a cease and desist order or injunctive relief granted under this section does not relieve a person from criminal prosecution by any competent authority or from disciplinary action by the commissioner of health. Any violation of any order of the commissioner is a misdemeanor.

#### Sec. 7. RULES.

Until the commissioner adopts rules required by this act for the administration of the hearing instrument dispenser certification program, the commissioner shall apply Minnesota Rules, chapter 4692, to govern commissioner action on permits; Minnesota Rules, part 4745.0025, to govern requirements for certification, examination of applicants, and certification by reciprocity; Minnesota

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Rules, chapter 4745, to govern commissioner action on certificates and additional grounds for disciplinary action; and Minnesota Rules, part 4745.0060, to establish the membership and responsibilities of the hearing instrument dispenser advisory council.

#### Sec. 8. TRANSFER OF POWERS AND DUTIES.

Actions prohibited under Minnesota Statutes, section 153A.15, occurring before the effective date of this act may be investigated by the commissioner and enforcement actions taken under the continuing authority of Minnesota Statutes, chapter 153A. Disciplinary actions and other orders of the commissioner issued before the effective date of this act to govern the conduct of persons or entities subject to Minnesota Statutes, chapter 153A, continue in effect after the effective date of this act.

#### Sec. 9. TRANSITION PERIOD.

Notwithstanding section 3, subdivision 2, a person who, by exam or reciprocity, is a registered hearing instrument dispenser on the effective date of this act is entitled to certification without examination. Between the effective date of this act and November 1, 1994, no current registrations of hearing instrument dispensers may be renewed and no new registrations issued, but hearing instrument dispenser permits must be renewed to applicants for renewal who meet the requirements in effect at the time their previous permit was issued. During that period, the fee for a permit and the fee for a certificate is the amount set for a certificate application in section 5, except that the commissioner shall prorate the fee for first-time applicants for certification according to the number of months that have elapsed since the date the applicant's permit was issued and the date certification must be renewed under section 3. Notwithstanding section 3, subdivision 4, a person holding a valid hearing instrument dispenser permit may continue to dispense hearing instruments without a certificate until November 1, 1994, but may not use the title "certified hearing instrument dispenser" or in any other way hold to the public that the person is certified.

#### Sec. 10. APPROPRIATION.

\$45,000 is appropriated in fiscal year 1994 and \$49,000 is appropriated in fiscal year 1995 to the commissioner of health from the state government special revenue fund.

#### Sec. 11. EFFECTIVE DATE.

Sections 1 to 9 are effective July 1, 1993.

Presented to the governor May 12, 1993

Signed by the governor May 14, 1993, 3:45 p.m.

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