

Closed August 7, 2001



Protecting, maintaining and improving the health of all Minnesotans

July 6, 2001

Ms. Linda Logan


RE: HDA0100004

Dear Ms. Logan:

Based on my review of the attached document outlining the facts and law in this matter, I have determined to issue a civil penalty and a public written reprimand against you. This decision is based on my conclusion that you violated provisions regulating both hearing aid dispensers and audiologists in Minnesota: Minnesota Statutes, sec. 153A.14, subd. 4 (requiring all dispensers to be a trainee or certified to dispense hearing aids in Minnesota); sec. 153A.15, subd. 4 (requiring all dispensers to give all potential buyers an updated brochure prepared by the Department); sec. 153A.15, subd. 1 (8) and sec. 148.5195, subd. 3 (11) (engaging in conduct likely to deceive, defraud or harm the public); sec. 153A.15, subd. 1 (11) (obtaining money from consumers through the use of deception or fraud); subd. 1 (12) (failing to comply with restrictions on sales of hearing aids); subd. 1 (23) (violating any provisions of secs. 153A.13 to 153A.19); sec. 148.513 (using audiologist protected titles when not registered); sec. 148.5193 (failing to submit evidence of thirty contact hours in each reporting period); and sec. 148.5195, subd. 3 (1) (intentionally submitting false or misleading information to the commissioner on an audiologist registration application). This action is authorized pursuant to Minnesota Statutes, secs. 153A.15 and 148.5195.

Should you wish to challenge this civil penalty and written reprimand, you have thirty (30) days from the date of this letter to challenge this decision by requesting a contested case hearing as provided under Minnesota Statutes, Chapter 14. Requests for a hearing must be in writing and include specific grounds for challenging the Department's decision, including the reasons why you conclude our facts and law are incorrect. Please find enclosed information about contested case proceedings. If you wish to request a hearing please send, deliver, or fax a written hearing request, within thirty (30) days of the date of this letter to:

Tom Hiendlmayr, Health Occupations Program Director
Minnesota Department of Health
121 East Seventh Place, Suite 400
P.O. Box 64975

Ms. Linda Logan

July 6, 2001

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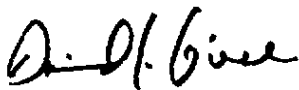
St. Paul, MN 55164-0975

Fax: 651-282-5628

If you choose not to appeal this action, the enclosed determination and this letter become a public disciplinary action. If you choose to appeal this action and the Department's decisions are upheld in the contested case proceeding, then the resulting action becomes a public disciplinary action.

If you have any questions, please contact Susan Winkelmann at (651) 282-5623.

Sincerely,



David J. Giese, Director
Health Policy and Systems Compliance Division

Enclosures

cc: Susan Winkelmann, Investigations and Enforcement Manager

HEALTH OCCUPATIONS PROGRAM
MINNESOTA DEPARTMENT OF HEALTH

**In the Matter of Linda J. Logan
Hearing Aid Dispenser Certification Applicant and
Audiologist Registration Applicant**

AUTHORITY AND LEGAL REQUIREMENTS

Regarding Certification of Hearing Aid Dispensers:

1. The Minnesota Department of Health (hereinafter "Department") has statutory authority to discipline hearing instrument dispensers under Minnesota Statutes, section 153A.15. The types of disciplinary action the Department may impose include issuance of public reprimands, suspension, revocation, denial of a certificate renewal, revocation or suspension of the right to supervise trainees, the assessment of civil penalties not to exceed \$10,000 for each separate violation, or any other action reasonably justified by the individual case. Pursuant to Minnesota Statutes, section 13.41, disciplinary actions are public data.
2. Since March 15, 1990, Minnesota Statutes, Chapter 153A has required hearing instrument dispensers to obtain a hearing aid seller permit to sell hearing instruments in the State of Minnesota. Effective July 1, 1993, Minnesota Statutes, section 153A.14, subd. 4, required all hearing aid dispensers to either be an authorized trainee or certified by the Department by November 1, 1994. Certification required that all dispensers take and pass an examination administered by the Department and submit a written application to the Department each year.
3. Minnesota Statutes, section 153A.13, subd. 5 defines a dispenser of hearing instruments as 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....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".
4. It is a criminal gross misdemeanor to dispense hearing aids in Minnesota without legal authorization by the Department pursuant to Minnesota Statutes, section 153A.14, subd. 4.
5. Minnesota Statutes, section 153A.14, subd. 2a exempts Minnesota registered audiologists from the written examination of the hearing aid dispenser certification requirement, but does not exempt audiologists from the requirement of obtaining a hearing instrument dispenser certification to dispense hearing instruments.
6. Minnesota Statutes, section 153A.15, subd. 1(8) prohibits dispensers from engaging in conduct likely to deceive, defraud or harm the public.

7. Minnesota Statutes, section 153A.15, subd. 1(11) prohibits dispensers from obtaining money from consumers through the use of deception or fraud.

8. Minnesota Statutes, section 153A.15, subd. 1 (12) prohibits failing to comply with restrictions on sales of hearing aids.

9. Minnesota Statutes, section 153A.15, subd. 1 (4) and sec. 153A.14, subd. 9 requires all dispensers to give all potential buyers an updated brochure prepared by the Department. In June 2000, the Department provided all certified dispensers with a revised brochure based on new laws.

10. Minnesota Statutes, section 153A.14, subd. 2e requires an applicant to apply for certification renewal on forms provided by the Department. The renewal application form contains the following statements under which applicants must sign and date: "The information I have provided in this application is true and accurate to the best of my knowledge and belief" and "I have read, understand and will abide by the Federal and Minnesota Statutes and rules governing hearing instrument dispensing". Minnesota Statutes, section 153A.15, subd. 1(23) prohibits violating Minnesota Statutes, section 153A.14.

Regarding Registration of Audiologists:

11. The Department has statutory authority to discipline audiologists under Minnesota Statutes, section 148.5195 and 214.131, subd. 2. The types of disciplinary action the Department may impose include refusing to renew registration, suspension, revocation, and the assessment of civil penalties not to exceed \$10,000 for each separate violation. Pursuant to Minnesota Statutes, section 13.41, disciplinary actions are public data.

12. Minnesota Statutes, section 148.511 states that the registration statutes apply to persons who are applicants for registration, who are registered, who use protected titles, or who represent that they are registered.

13. Minnesota Statutes, section 148.513 prohibits use of any of the protected titles unless a person is also registered with the Department. The protected titles are "audiologist"; "A"; or "AUD" alone or in combination with any word or words.

14. Minnesota Statutes, section 148.5195, subd. 3(1) prohibits intentionally submitting false or misleading information to the commissioner or advisory council.

15. Minnesota Statutes, section 148.5195, subd. 3(11) prohibits engaging in conduct likely to deceive the public.

16. Minnesota Statutes, section 148.5191, subd. 1 requires registration renewal applicants to complete an application on a form provided by the Department. The registration renewal

application form contains the following statement: The information I have provided herein is true and accurate to the best of my knowledge".

17. Minnesota Statutes, sec. 148.5193 requires all renewal applicants to submit evidence of thirty contact hours of continuing education (CE) attended within two years of the renewal date. At least twenty of these contact hours must be directly related to the registrant's area of registration. Contact hours cannot be accumulated in advance and transferred to a future continuing education period. This requirement became effective February 11, 1991.

FACTS

1. The Health Occupations Program (HOP) in the Department regulates both certified hearing aid dispensers and registered audiologists and each has a separate budget, staff and the credentialing files are maintained separately.
2. Practitioner first obtained a hearing instrument seller permit on June 23, 1993 and it expired on March 31, 1994. Practitioner was issued a dispenser certification in 1994 and she renewed her certification in 1995, 1996, 1997, and 1998. Practitioner's certification expired on October 31, 1999.
3. In the certification issuance letters from the Department between 1994 and 1998, the Department notified Practitioner of the following: 1) "You are responsible for conducting your business and activities consistent with laws provided to you with your initial application. 2) "To assure continued certified status, we must receive your certification renewal application and the renewal fee 15 days before the expiration date; 3) Dispensing hearing instruments after the expiration date without a valid certificate is a gross misdemeanor pursuant to Minnesota Statutes, sec. 153A.14, subd. 4;
4. Practitioner obtained her audiologist registration on July 7, 1993. She renewed her registration in 1994, 1996, and 1997. Practitioner did not have audiologist registration between April 1, 1995 and November 13, 1996 and after April 1, 1998. Practitioner did not submit approved CE hours for her 1996 renewal and submitted only 23.6 hours for her 1998 renewal. In 1996, it was the Department's policy to renew registration even if registrants failed to submit the correct number of CEs. The registrant was then given a four month period in which to submit the CEs owed. To date, Practitioner has never submitted the 30 owed CEs for the 1996 reporting period. However, along with her renewal application submitted on October 19, 2000, she provided the remaining balance for the 1998 reporting period.
5. On March 16, 1998, the Department received Practitioner's audiologist registration renewal application. On May 29, 1998, the Department faxed Practitioner a notification that it had received her renewal information and was reviewing it. When Practitioner did not receive the renewed registration from the Department, she contacted the Department in June 1998, and was

informed by Ken Morrison that he was still catching up on a backlog of application files. The Department erred in not communicating any decision about her renewal application to Practitioner after the June 1998 telephone contact.

6. In a letter dated August 23, 1999, the Department sent Practitioner a dispenser certification renewal application and continuing education reporting form. There was also a notice that dispensing hearing instruments in Minnesota after the expiration date is a gross misdemeanor. There was a notice stating that Practitioner's audiologist registration was not current and unless it was brought current, Practitioner would have to pay the dispenser certification fee of \$820 instead of \$330 for audiologist dispensers. On September 22, 1999, Department staff faxed another copy of this letter and renewal application to Practitioner. Ms. Patti Fuller left a message on Practitioner's phone (507-377-4825) that she had faxed the requested material.

7. In September 1999, Practitioner states she attempted to obtain an audiologist registration renewal application by telephoning the Department and did not obtain an application. The Department has no record of this request.

8. On May 17, 2000, the Department received Practitioner's dispenser certification renewal application which was dated and signed by Practitioner on October 20, 1999. Practitioner stated that she was unemployed.

9. In a letter dated June 13, 2000, the Department mailed Practitioner an audiologist registration renewal application and Continuing Education (CE) reporting form. Department staff notified Practitioner that to renew after a lapse, she would have to submit 68 CEs for the period from 1996 to 2000.

10. In a letter dated June 15, 2000, Department staff informed Practitioner that it was unable to process her certification application for the following reasons: 1) because she was not currently registered as an audiologist therefore, she owed the higher certification fee amount; 2) because she filled out an old application; and 3) because the date on her application was signed more than thirty days before. Practitioner was further reminded that her dispenser certification had expired on October 31, 1999. After no response from the Practitioner, Department staff wrote Practitioner a letter dated August 9, 2000 again asking for the information requested in the June 15, 2000, letter.

11. On October 2, 2000, the Department received both the certification renewal application on the correct form and the audiologist registration renewal from Practitioner.

12. On Practitioner's dispenser certification renewal application, Practitioner wrote "'99 Submitted application (late) for consideration of renewal; however, could not follow through due to own illness and father's..." Practitioner also listed Sound World, Inc. as her employer and stated that she intended to return to work by end of 2000.

13. Practitioner submitted Continuing Education (CE) courses showing she attended CE on the following dates: November 13, and 14, 1998; February 26 and 27, 1999; and March 23, 1999. Practitioner has met the CE requirements for dispensers and will owe ten CE hours by October 1, 2001, if she reapplies to be a certified dispenser.

14. In response to Question 5 on Practitioner's October 2, 2000, audiologist registration renewal application, which asked for her MN hearing instrument dispenser number if she sold hearing aids, Practitioner wrote "N/A currently; 2196 previously".

15. According to a letter from Practitioner received on February 13, 2001, Practitioner worked for Albert Lea Clinic for the past six years and her business card used after October 31, 1999, stated "Linda J. Logan, M.A., CCC-A, *Hearing Aids/Audiology*". Practitioner described her job as "assisting in diagnosing and treating hearing related diseases and afflictions" and "providing audiological support services." On Practitioner's October 2, 2000, audiologist registration renewal application, Practitioner left blank her response about whether she was employed as an audiologist.

16. In a letter from Practitioner received on February 13, 2001, Practitioner admitted to dispensing hearing aids illegally to twenty-seven consumers after October 31, 1999. In response to Question 1 on her October 2, 2000, certification application asking whether Practitioner had ever dispensed hearing aids in Minnesota without a permit or certification, Practitioner answered "no".

17. The brochure Practitioner provided to her consumers after her certification expired on October 31, 1999 was a brochure prepared in 1993 which had the Minneapolis address for the Department on it and an outdated telephone number. In 1993, there was no dispenser certification requirement yet. Since the 1993 brochure version used by Practitioner, the Department has revised the required brochure twice. A substantial revision to the brochure occurred in June 2000.

18. On August 2, 2000, the Mayo Foundation supplied Department staff with a copy of a wallet-sized dispenser certification card which Practitioner had given them. Mayo Foundation staff had called the Department to verify Practitioner's certification. The wallet card showed an incorrect issuance date of November 1, 1999, and expiration date of October 31, 2000. In response to a Department letter asking Practitioner why this wallet-card existed, Practitioner responded on December 1, 2000, and admitted having changed the dates on the card. From a visual inspection of the altered wallet-card, it was altered by using the exact font, size, boldness, and italics which the Department used in issuing the wallet-cards. Practitioner stated she no longer had possession of the altered wallet-card.

19. Practitioner explained that the reason she altered the wallet-card was because of overwhelming personal problems occurring at the time. Practitioner admits that she was wrong to change the wallet-card, but in a letter received February 13, 2001, Practitioner characterized the

act as "updating it". Practitioner also stated that she had assumed her certification was on its way because her first check was deposited in May of 2000.

20. Practitioner provided a copy of the hearing aid dispensing contract used by Albert Lea Medical Center and it does not comply with Minnesota Statutes, sec. 153A.19 because the required contract language about consumers' rights to request refunds is incorrect. The statement "This cancellation must be in writing and must be given or mailed to the seller" is missing. Also, the contract leaves room for a "permit" number, not a "certification" number.

21. In response to Question 30 E. on the certification application received October 2, 2000, which asked whether Practitioner had ever provided the Commissioner of Health with false or misleading information, Practitioner responded "no".

22. In response to Question 30 S. on the certification application received October 2, 2000, which asked whether Practitioner had ever violated any of the provisions of section 153A.13 to 153A.19, Practitioner responded "no".

23. In response to Question 9 D. on the audiologist registration application received October 2, 2000, which asked whether practitioner had ever violated Minnesota Statutes, secs. 148.511 to 148.5196, Practitioner responded "no".

24. In response to Question 9 K. on the audiologist registration application received October 2, 2000, which asked whether practitioner had engaged in conduct likely to deceive, defraud or harm the public, Practitioner responded "no".

25. For her Audiologist Registration, Practitioner did not comply with the CE requirements. Practitioner owes 30 CEs for the period ending March 31, 1996. Practitioner submitted 53 CEs for the period ending March 31, 2000, and is in compliance for the 2000 and 1998 reporting periods.

VIOLATIONS

Practitioner violated Minnesota Statutes, section 153A.14, subd. 4 (requiring all dispensers to be a trainee or certified to dispenser hearing aids in Minnesota); Minnesota Statutes, sec. 153A.15, subd. 4 (requiring all dispensers to give all potential buyers an updated brochure prepared by the Department); 1(8)(engaging in conduct likely to deceive, defraud or harm the public); 1(11) (obtaining money from consumers through the use of deception or fraud); 1(12) (failing to comply with restrictions on sales of hearing aids); 1(23) (violating any provisions of sections 153A.13 to 153A.19). Practitioner further violated Minnesota Statutes, section 148.513 (using audiologist protected titles when not registered); Minnesota Statutes, section 148.5193 (failing to submit evidence of thirty contact hours in each reporting period); Minnesota Statutes, section 148.5195, subd. 3(1) (intentionally submitting false or misleading information to the

commissioner on an audiologist registration application); and subd. 3(11) (engaging in conduct likely to deceive the public).

DETERMINATION

Falsifying a state-issued credential is a very serious violation. Continuing to dispense hearing instruments after expiration of certification is also very serious. Failing to provide consumers with the correct consumer brochure adds to the seriousness of the violations above because Practitioner's consumers did not have the same information about their rights as all other consumers in Minnesota, nor did they have the correct Department address for filing complaints. Further, the purchase agreement form did not contain a required sentence notifying consumers about how to make a request for a refund.

While the Department erred in not either issuing or denying Practitioner's registration in 1998, the Practitioner did violate the audiologist registration prohibition against using protected titles illegally and Practitioner is not excused from these legal requirements. However, due to the Department's error, the Practitioner should not be assessed a civil penalty for illegally using protected titles from April 1, 1998, to October 2, 2000, when the Department received her registration renewal application again. Practitioner should be penalized for using the protected title "A" as indicated on her business card for the period from October 2, 2000, to February 13, 2001, when she provided the Department with a copy of her business card which showed she was continuing to use the protected title despite the investigation against her for illegal conduct.

1. Practitioner must pay a civil penalty of \$42 for illegally using protected titles between October 1, 2000 and February 13, 2001; \$5400 for illegally dispensing hearing aids to twenty seven consumers after October 31, 1999, and then denying it on the October 2, 2000, dispensing renewal application which is authorized under Minnesota Statutes, section 153A.15, subd. 2(4) to deprive hearing instrument dispensers of the economic advantage gained by violating one or more provisions of Minnesota Statutes, sections 153A.13 to 153A.15, plus a civil penalty of \$412 representing the costs of investigation for this matter to date.

2. On February 5, 1999, Department staff consulted the Speech-Language Pathologist and Audiologist Advisory Council about an appropriate penalty for registrants who had failed to meet CE requirements. The Department has determined the penalty as follows: registrants who acquired the correct number of CEs, but did not acquire them within the correct time period will be assessed a penalty of \$100; and registrants who acquired less than 30 contact hours will be assessed a penalty of \$100 plus \$30 per contact hour not obtained. Registrants who obtained CEs after their reporting period cannot re-use those hours into the next reporting period. All registrants who violated the CE requirements are also subject to a public reprimand. Applying the Advisory Council's recommendation about civil penalties to this case, Practitioner must pay a civil penalty of \$100 plus \$900 for the 30 hours still owed from the 1996 CE reporting period.

3. Practitioner may pay the \$6,854 civil penalty in monthly installments over thirty six months after the effective date of this action. Each payment will be made by money order or certified check, made payable to "State of Minnesota, Treasurer", and mailed to Susan Winkelmann, Minnesota Department of Health, Health Occupations program, 121 East Seventh Place, P.O. Box 64975, St. Paul, MN 55164-0975, or other address specified by the Department. Thirty five monthly payments shall be in installments of \$190.38 and one payment shall be \$190.70. Each monthly payment is due by the last day of each month. Practitioner may prepay at any time without penalty;

4. If Practitioner wants to dispense hearing aids and/or use audiologist protected titles, she must do the following:

a. submit a new audiologist registration and dispenser certification renewal applications with full and complete disclosures about dispensing activities, falsifying the state issued wallet-card, failing to provide the correct consumer brochure, using hearing aid purchase agreements that failed to comply with state law and any other disclosures required by the applications;

b. for dispenser certification, Practitioner must submit new application fee of \$820 for hearing aid dispenser certification plus the required CE hours, and the certification, if issued, will expire on October 31, 2002.

c. for audiologist registration, Practitioner must submit a new application fee of \$212 if Practitioner applies in August, 2001 and \$203 if Practitioner applies in September 2001. If Practitioner applies after September 2001, Department staff will advise her of the correct prorated fee amount. Practitioner must not use audiologist protected titles until she receives a valid wallet card from the Department showing current audiologist registration.

d. for Practitioner's next audiologist CE report due in 2003, Practitioner must submit the balance of 30 CEs owed for the 1996 reporting period, plus the 42 required hours for the 2003 report. The 30 CEs owed for the 1996 report may be taken during between April 1, 2000, and January 31, 2003. If Practitioner does not submit the total number of CEs (72 contact hours), the Department will not renew Practitioner's audiologist registration in 2003.

e. Practitioner must not supervise any dispenser trainees for a period of five years of the effective date of this enforcement action pursuant to Minnesota Statutes, section 153A.14, subd. 4a(b);

5. This Determination and action also constitutes a public written reprimand.

6. Practitioner's dispenser certification and audiologist registration will be issued subject to these conditions and after effective date of this action. Practitioner must complete the applications, submit all required fees and answer all questions asked by Department staff as part of the application process.

9. If there is evidence of any illegal activity by Practitioner which is not included within the facts of this Determination, the Department will investigate that conduct and take enforcement action if appropriate.

10. If Practitioner fails to comply with the conditions outlined herein, Practitioner will be subject to revocation of her dispenser certification and audiologist registration.

11. Practitioner must comply with Minnesota Statutes, Ch. 153A and 325G;

12. Regarding the civil penalty described in paragraphs 1, 2, and 3 above, the penalties may be referred to the Minnesota Collection Enterprise (MCE) in the Minnesota Department of Revenue, or other source for collection if Practitioner misses a monthly payment by 14 calendar days after the deadline. When this Order for a penalty becomes public and the Department refers the matter to MCE, MCE is authorized by the Minnesota Statutes, sec. 16D.17, to obtain a judgement against the practitioner without further notice or additional proceedings.