



HEALTH REGULATION DIVISION
HEALTH OCCUPATIONS PROGRAM

**A Determination in the Matter of
MICAH WALES, Uncertified**

Authority:

1. The Minnesota Department of Health (MDH) has the authority to discipline Hearing Instrument Dispensers for violations of Minnesota Statutes, Sections 153A and 148.5198.
2. Minnesota Statutes, Section 153A.13 subd. 4 defines “hearing instrument dispensing” as “making ear mold impressions, prescribing, or recommending a hearing instrument, assisting the consumer in instrument selection, selling hearing instruments at retail, or testing human hearing in connection with these activities regardless of whether the person conducting these activities has a monetary interest in the sale of hearing instruments to the consumer.”
3. Minnesota Statutes, Section 153A.13 subd. 5 defines a “dispenser of hearing instruments” as one who “engages in hearing instrument dispensing whether or not certified by the commissioner of health or licensed by an existing health-related board.”
 - a. This does not include supervised students or administrative or clerical staff who do not engage in hearing instrument dispensing.
 - b. This subdivision further requires that “a person who offers to dispense a hearing instrument, or a person who advertises [or] holds out to the public . . . 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.”
4. Minnesota Statutes, Section 153A.14 subd. 4 prohibits dispensing of hearing instruments without a valid certificate. A person who dispenses a hearing instruments without a certificate is guilty of a gross misdemeanor.
 - a. Subdivision 4a of this section allows dispensing as a trainee for a period not to exceed 12 months following application to MDH.

- b. Such a trainee must be directly supervised until the trainee has taken and passed the practical examination for certification; remote supervision is only allowed after passage of the practical examination and until expiration of the 12-month training period.
5. Minnesota Statutes, Section 153A.15 subd. 1(5) prohibits engaging in conduct likely to deceive or defraud the public.
6. Pursuant to Minnesota Statutes, Section 153A.15 subd. 2, MDH may, among other actions, revoke or suspend the certificate of a practitioner, revoke or suspend the right to supervise trainees, impose 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, impose a civil penalty not to exceed \$10,000 for each separate violation, or take any other action reasonably justified by the individual case.

Findings of Fact:

1. The Minnesota Department of Health (MDH) issued Micah Wales (Wales) a hearing instrument dispenser trainee certificate on September 25, 2008. This trainee certificate expired on September 30, 2009. He has not taken the state certification exam or been certified in any capacity since 2009.
2. On September 24, 2018, MDH received a complaint from a hearing instrument dispenser (HID 2) on behalf of a consumer (Consumer). The complaint alleged that Wales, who was employed at Wales hearing Center, Fergus Falls, Minnesota, conducted a hearing test for a consumer. Wales refused to provide his name to the consumer, nor would he sign the hearing test results.
3. On October 23, 2018, MDH sent Notices of Investigation and requests for information to Wales and his employer requesting records of hearing testing, audiograms, hearing aid fittings, and documentation of tasks performed by Wales during the period September 10-14, 2018.
4. On November 20, 2018, MDH received Wales's response to its Notice of Investigation. Wales provided a copy of the invoice provided to Consumer showing Consumer's name and address and payment for a hearing exam with a receipt of Notice of Privacy Practices attached, signed by Consumer. He also provided the results of Consumer's hearing test. Wales offered that he is an officer manager that handles normal day-to-day operations at Fergus Falls address. Wales also purported that the Consumer self-administered an automated procedure with an Amplitude T3 unit.
5. However, on November 26, 2018, MDH received information from Wales's employer stating that Wales did, in fact, conduct a hearing test on Consumer. The employer described the test as an automated, computer assisted test which does not use a traditional audiometer.

The employer stated that Wales didn't sign his name on the results because he didn't want to imply that he had hearing instrument dispenser credentials. The employer supports Wales's role, describing it as a "Patient Care Coordinator."

6. Departmental research ascertained that the "Amplitude T3 unit" Wales admitted using to conduct the hearing test on Consumer is marketed as a computer-based audiometer for air and bone conduction testing. Administration of such an exam requires certification as a hearing instrument dispenser.

Conclusion:

Practitioner violated Minnesota Statutes, Section 153A.14 subd. 4 by dispensing hearing instruments, as defined by Section 153A.13 subd. 4, and by holding himself out as a dispenser of hearing instruments, as defined by Section 153A.13 subd. 5a, absent a valid certificate or trainee status. A person who dispenses a hearing instruments without a certificate is guilty of a gross misdemeanor.

Practitioner violated Minnesota Statutes, Section 153A.15 subd. 1(5) by conducting a hearing test on a consumer as only legally allowed by a certified hearing instrument dispenser and refusing to identify himself to the consumer.

Determination:

1. Wales must immediately cease and desist from conducting any activities reserved by statute to certified hearing instrument dispensers. If he wishes to resume these activities in like manner, he must apply for trainee status; be directly supervised until passing the practical examination; and secure certification, as required to perform this work in the State of Minnesota.
2. Within 30 days of the effective date of this Determination, Wales shall pay a total of \$2,300.00, delineated as follows:
 - a. One thousand dollars (\$1,000.00) for each of the two separate statutory violations enumerated above; and
 - b. Three hundred dollars (\$300.00) representing the cost of the investigation.
3. Wales shall make payment by check in the amount of \$2,300.00, payable to the "Minnesota Department of Health," and mail the check to the attention of: HOP Investigations and Enforcement, Civil Penalty Payment – HID, P.O. Box 64882, Saint Paul, MN 55164-0882.
4. Wales may pay the \$2,300.00 total civil penalty and cost of investigation in monthly installments for up to twenty-four (24) months. If Wales chooses to make installments, he must notify the Department in writing about his intentions, including how many

installments he intends to make, in what amount, and over what time period. Wales must send this information to: HOP Investigations and Enforcement, P.O. Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of this Determination. Each payment is due as determined by the terms of the installment plan; however, Practitioner may prepay at any time without penalty for such.

5. If Wales submits any payment more than 14 calendar days after the established payment date, the penalty may be referred to the Minnesota Collection Enterprise (MCE), part of the Minnesota Department of Revenue, or any other source for collection. In the event that MDH must refer a matter to MCE, MCE is authorized by Minnesota Statutes, Section 16D.17 to obtain a judgment against Wales without further notice or proceeding.