

Effective Date
9/16/16

**BEFORE THE MINNESOTA
DEPARTMENT OF HEALTH
HEALTH OCCUPATIONS PROGRAM**

In the Matter of William F. Austin

**STIPULATION AND
CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by William F, Austin (hereinafter "Austin") and the Minnesota Department of Health (hereinafter "Department"), that without trial or adjudication of any issue of fact or law herein or admission of violation or wrongdoing:

1. The purpose of occupational regulation, including the requirement in Minnesota Statutes Chapter 153A that individuals obtain a certificate to dispense hearing instruments, is to protect the public from harm by setting minimal qualifications and competencies for entry-level practitioners. While the general public may not have sufficient information, experience or resources to determine whether a health care provider is qualified, a credential issued by a government entity provides assurance that the licensee or certificate holder has met at least the predetermined minimal standards. The practice of a health occupation by someone who is unprepared and/or incompetent poses a risk of harm to the public, both because of the nature of the services offered and because individuals in need of health services may be particularly vulnerable.
2. Effective November 1, 1994, it became illegal in Minnesota to dispense hearing instruments without obtaining a certificate to dispense. To obtain a certificate, an individual must submit an application, pay the application fee, and take and pass a written

and practical examination as defined in Minnesota Statutes, section 153A.14, subdivision 2h.

LEGAL AUTHORITY

1. The Department is charged with enforcement of Minnesota Statutes, section 153A, which governs the dispensing of hearing aids.
 - (a) The Department has statutory authority to discipline Hearing Instrument Dispensers under Minnesota Statutes, section 153A.15. The types of discipline the Department may impose include, but are not limited to, one or more of the following: issuance of a public reprimand; or assessment of a civil penalty not to exceed \$10,000 for each separate violation that deprives the dispenser of an economic advantage gained by the violation and that reimburses MDH for the costs of the investigation. Pursuant to Minnesota Statutes, section 13.41, disciplinary actions are public data.
 - (b) Pursuant to Minnesota Statutes, section 153A, subdivision 4, hearing instrument dispensing means 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.
 - (c) Pursuant to Minnesota Statutes, section 153A.13, subdivision 5, "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 . . . A person who offers to dispense hearing instruments, 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.

- (d) Pursuant to Minnesota Statutes, section 153A.14, subdivision 4, 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.
- (e) Pursuant to Minnesota Statutes, section 153A.15, subdivision 1(19), the Department may take enforcement action against a practitioner for violation of any of the provisions of section 148.5195, subdivision 3(20); 148.5197; 148.5198; and 153A.13 to 153A.19.

FACTS

1. The Department and Austin acknowledge the following:
 - (a) William ("Bill") Franklin Austin (hereinafter "Austin") is Chief Executive Officer, President and Sole Board Member of Starkey Laboratories, Inc., doing business as Starkey Hearing Technologies, 6700 Washington Avenue South, Eden Prairie, Minnesota 55344 (hereinafter "Starkey").

- (b) The Department alleges that Austin is subject to the jurisdiction of the Department because he is a natural person who engaged in hearing instrument dispensing in the State of Minnesota, pursuant to Minnesota Statutes, section 153A.13, subdivision 5.
- (c) For the purposes of the events and actions that are addressed in the Stipulation and Consent Order, Austin has been represented by David Bradley Olsen, Henson Efron, 220 South Sixth Street, Suite 1800, Minneapolis, Minnesota, 55402-4503.
- (d) Austin was approved as a hearing instrument dispenser trainee effective December 13, 2007, and held this status until expiration on December 31, 2008. Austin was never certified as a hearing instrument dispenser in the State of Minnesota.
- (e) Between 2005 and 2015, MDH obtained information indicating that Austin may have been dispensing hearing instruments without the proper certification. The information obtained by MDH includes the following:
- i. An attendee at a seminar offered by Starkey stated that the attendee witnessed Austin going around from person to person "fitting" people's ears with hearing instruments; witnessed Austin buffing molds, measuring receivers, and looking over audiograms to pick matrices; and that Austin "fit" the attendee with a new hearing instrument, including the ear mold and receiver.
 - ii. Austin allegedly assists hearing instrument dispensers and licensed audiologists in evaluating the results of the audiograms and hearing tests,

selecting the matrix, programming hearing aids and fitting the consumer with the hearing instruments.

- iii. Austin has been photographed, videotaped and broadcast appearing to examine people's ears and appearing to fit people with hearing instruments. News articles have portrayed him as one who fits hearing instruments.
- iv. The Department maintains that Austin's actions as depicted in the photographs, videos, and broadcasts constitute "holding out as a dispenser" because Austin appears to be fitting hearing aids and the public.
- v. Austin denies that he has engaged in hearing instrument dispensing, or that he has held himself out to the public as one who dispenses hearing instruments. Austin acknowledges assisting hearing instrument dispensers and audiologists.
- vi. Austin describes the procedures followed at Starkey's Center for Excellence to be as follows: (A) patient check in and records, performed by Patient Coordinator/ Administration; (B) Otoscopy / Cerumen Management, performed by Audiologists and Certified Hearing Instrument Dispensers; (C) Hearing Tests, performed by Audiologists and Certified Hearing Instrument Dispensers; (D) Consultation and Patient Contracts, performed by Audiologists and Certified Hearing Instrument Dispensers; (E) Ear Impressions for custom fitting solutions, performed by Audiologists and Certified Hearing Instrument Dispensers; (F) Shell Housing

Manufacture, performed by skilled technicians, including Austin; (G) Custom Contouring of Shell Housing, performed by skilled technicians, including Austin; (H) Final Manufacturing, performed by skilled technicians; (I) Final Hearing Aid Fitting and Counseling, performed by Audiologists and Certified Hearing Instrument Dispensers; (J) Final Quality Control, performed by Audiologists and Certified Hearing Instrument Dispensers; and (K) Final Contract and Warranties, performed by Certified Hearing Instrument Dispensers and administration.

- ix. Starkey's Center for Excellence attracts media attention due to the nature of the public service work performed there and Austin's high profile in the philanthropy community.

ORDER

1. The purpose of this Stipulation and Consent Order (hereinafter "Stipulation") is to resolve the violations alleged above. **NOW THEREFORE**, in order to avoid the expense and uncertainty of contested enforcement proceedings, and without any admission of violation or wrongdoing, **THE DEPARTMENT AND AUSTIN AGREE THAT:**
 - (a) Austin shall not dispense hearing instruments in the State of Minnesota, as defined by Minnesota Statutes, section 153A.13, subdivision 4, to include 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. Austin shall


not be prohibited from continuing to work as a hearing instrument manufacturing technician, or from being affiliated with certified hearing instrument dispensers or audiologists but shall only do so in the capacity as an observer and shall not insert hearing instruments into people's ears.

(b) Austin shall not advertise or hold himself out in the State of Minnesota as a hearing instrument dispenser. Nor shall Austin knowingly consent to be photographed or filmed for promotional or publicity purposes if it would lead a reasonable person to conclude that he is dispensing or is certified to dispense hearing instruments. As defined by Minnesota Statutes, section 153A.13, subdivision 4, "Hearing instrument dispensing" means 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.

2. This Stipulation shall not in any way or manner limit or affect the authority of the Department to proceed against Austin for any alleged violation of Chapter 153A that occurs after the effective date of this Stipulation.
3. Austin hereby acknowledges that he has read, understood and agreed to this and freely and voluntarily signed it.
4. Except as otherwise specified herein, this Stipulation and Consent Order, supporting investigative reports and related documents shall constitute the entire record upon which this Stipulation is based.

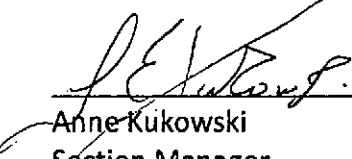
5. This Stipulation is public data pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 ("MGDPA").
6. This Stipulation shall be binding upon Austin and upon the Minnesota Department of Health.
7. The terms of this Stipulation shall be legally enforceable by either party in a court of appropriate jurisdiction.
8. This Stipulation may not be modified or amended except in writing and any modifications or amendments must be signed by all the parties.
9. In the event the Assistant Division Director, in her discretion, does not approve this Stipulation or a lesser remedy than specified herein, this Stipulation shall be of no evidentiary value and shall not be relied upon, offered or received in evidence in any administrative, legal, court or other proceeding, or used for any purpose by either party. If this should occur and thereafter an administrative contested case is initiated pursuant to Minnesota Statutes Chapter 14 and Minnesota Statutes, section 153A.15, subdivision 1(19), Austin agrees to assert no claim that the Assistant Division Director or her successor was disqualified due to the review and consideration of this Stipulation or any records relating hereto.
10. This Stipulation is effective on the date it is signed on behalf of the Minnesota Department of Health.
11. A copy of this Stipulation, when issued by the Assistant Division Director, shall be served by first class mail on Austin, at his attorney's office at Henson Efron, 220 South Sixth Street, Suite 1800, Minneapolis, Minnesota 55402-4503, attn.: David Bradley Olsen.

Dated August 31, 2016



William F. Austin


Dated September 12, 2016



Anne Kukowski
Section Manager
Health Occupations Program

Upon consideration of this Stipulation and all the files, records, and proceedings herein by the Division Director, **IT IS HEREBY ORDERED** that the terms of this Stipulation are adopted and implemented by the Division Director on this 12 day of September, 2016

STATE OF MINNESOTA
DEPARTMENT OF HEALTH



Susan Winkelmann,
Assistant Division Director
Health Regulation Division