

Effective June 11, 2001

**HEALTH OCCUPATIONS PROGRAM
STAFF RECOMMENDATION
In the Matter of Scott Sandberg;
New Civil Penalty Installment Agreement for June 30, 1999 Order**

AUTHORITY AND LEGAL REQUIREMENTS

The Minnesota Department of Health 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, 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.

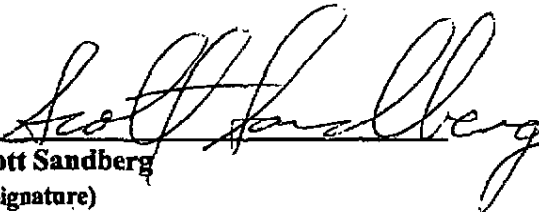
FACTS

1. Practitioner was subject to a disciplinary action effective June 30, 1999, for illegally dispensing hearing aids for four years in Minnesota, failing to provide all potential buyers of hearing aids with a consumer brochure printed by the Department of Health, and failing to provide information in a timely manner in response to a request by the Commissioner. Practitioner was fined \$16,376 plus a penalty of \$312 representing the costs of investigation. As part of the order, Practitioner would pay the civil penalty over twelve months.
2. In October 1999, Practitioner requested and obtained permission from the Department to extend the civil penalty installments over twenty-eight months instead.
3. In a letter received April 3, 2001, Practitioner asked for forgiveness of the balance owed on the civil penalty.
4. In a letter dated May 1, 2001, the Department declined Practitioner's request for forgiveness of the civil penalty assessed in June 1999, and instead offered Practitioner an installment arrangement of paying the balance owed over twenty-four months. In a letter received May 21, 2001, Practitioner accepted the new installment plan.
5. As of June 4, 2001, Practitioner has paid a total of \$12,714.72 and owes a balance of \$3,972.95 on the civil penalty amount.
6. The new civil penalty installment plan requires the Practitioner to pay twenty-three payments of \$165.53 and one payment of \$165.76 over the next twenty-four months. The first payment is due by July 1, 2001, and the final payment under this plan would be due on June 1, 2003. Practitioner could pay the balance owed at any time before June 1, 2003 without penalty.

STAFF RECOMMENDATION

The Department should accept this new civil penalty installment plan.

I do not contest the authority, findings of fact, and staff recommendation as stated above.



Scott Sandberg (Signature) June 7, 2001
Date (Month, date, year)

Health Occupations Program

JUN 11 2001

Minnesota Department of Health

HEALTH OCCUPATIONS PROGRAM
STAFF RECOMMENDATION
In the Matter of Scott Sandberg

AUTHORITY AND LEGAL REQUIREMENTS

1. The Minnesota Department of Health 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, 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.

2. Since March 15, 1990, Minnesota law (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. 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.

4. Minnesota Statutes, section 153A.14, subd. 9, requires hearing instrument dispensers to give a consumer rights brochure prepared by the Department and containing information about legal requirements pertaining to sales of hearing aids to each potential buyer of hearing aids. The Department mailed all hearing instrument dispensers the brochure in 1993 and in 1995, the brochure was revised and mailed to all certified hearing instrument dispensers and trainees.

5. Pursuant to Minnesota Statutes, section 153A.14, subd. 2i, all hearing instrument dispensers are required to submit evidence of 10 course hours of continuing education (CE) earned within the 12-month period of July 1 to June 30 immediately preceding the renewal of certification. This requirement was effective on May 16, 1995, and the first reporting date was October 1, 1997.

FACTS

1. Practitioner has been dispensing in Minnesota since January 1978. Practitioner first obtained a hearing instrument seller permit on January 29, 1990, and Practitioner renewed it in 1991, 1992, and 1993. Practitioner's permit expired on October 31, 1994. Practitioner has owned and

operated Sandberg Hearing Aid Service at the same address since he first obtained a permit in 1990.

2. Practitioner obtained a Minnesota dispenser registration on September 10, 1991, and he renewed it in 1992 and 1993. Practitioner's registration expired in 1994.

3. In a letter dated July 7, 1993, and addressed to all permittees and registrants, the Department notified practitioners about the change in the law which required certification by November 1, 1994. Since Practitioner had already taken and passed the registration examination, the July 7, 1993, letter informed Practitioner that he would not be required to retake the examination. The letter further stated "All persons who dispense hearing instruments must be certified by November 1, 1994".

4. In a package of materials dated August 10, 1993, the Department mailed all permittees and registrants the following information:

a. a complete set of state and federal laws governing hearing aid dispensing in Minnesota, including the new 1993 laws requiring certification, and an index to the laws;

b. a memo dated August 10, 1993, which described the new 1993 laws affecting investigations and enforcement. In the first paragraph, the memo stated that it is a criminal gross misdemeanor to advertise, hold out to the public, or to otherwise represent that the person is authorized to dispense hearing instruments without a certificate. The memo further stated "after November 1, 1994, to dispense hearing instruments in Minnesota, practitioners must either have a valid certificate issued by the Commissioner of Health or be an approved Trainee."

c. a postcard to request information on the certification examination, including an examination schedule.

d. a cover memo which described the above materials and further stating that everyone who was registered by the Commissioner has met the examination requirement for certification and these persons must still apply and be approved for certification.

5. In letters dated June 15, 1993, June 20, 1994, and July 19, 1994, the Department also informed Practitioner about the certification requirement.

6. Practitioner failed to apply for certification before his permit expired on October 31, 1994. The Practitioner retook the certification examination in 1998. After the Practitioner passed the whole examination, the Department sent him a certification application in a letter dated January 28, 1999. On the bottom of the letter in bold letters it stated, "REMEMBER: All persons who dispense hearing instruments must be certified or an authorized trainee. Dispensing hearing instruments without a current Hearing Instrument Dispenser certificate or trainee status is a criminal gross misdemeanor."

7. On February 16, 1999, the Department received information that Practitioner was dispensing hearing aids and he was not a trainee or a certified dispenser. In a letter dated March 24, 1999, the Department sent Practitioner a notice advising him that it had a copy of his 1998-1999 yellow pages hearing aid advertisement and that the Department's records showed he was not a certified dispenser or trainee. The Department gave him until April 26, 1999, to respond to the allegations in writing.

8. Practitioner called the Department on March 25, 1999, and spoke to Susan Winkelmann, Investigations and Enforcement Supervisor, and Ms. Winkelmann advised him that his dispensing without certification was illegal. Practitioner told Ms. Winkelmann that he had been dispensing for twenty years. In response to her question of when his permit expired, Practitioner said it had expired several years before. Ms. Winkelmann reiterated his responsibility to submit a response in writing.

9. On April 14, 1999, the Department received Practitioner's certification application dated April 8, 1999. Practitioner did not answer Questions 12 - 16 and 18, and the Department returned these questions to Practitioner on April 15, 1999. Practitioner completed these answers and returned them in the same month.

10. In response to Question 30 C. on the certification application which asked whether Practitioner had ever engaged in failing to provide the consumer brochure required by section 153A.14, subdivision 9, Practitioner responded "no".

11. In response to Question 30 D. on the certification application which asked whether Practitioner had ever presented advertising that was false or misleading, Practitioner responded "no".

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

13. In response to Question 30 J. on the certification application which asked whether Practitioner had ever engaged in failing to comply with restriction in sales of hearing aids in Minnesota Statutes section 153A.19, subd. 2 (the 30 day refund law) and section 153A.14, subd. 4 (illegal sales), Practitioner responded "no".

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

15. When the Department did not receive a written response to the allegations of dispensing illegally by the April 26, 1999, deadline, Susan Winkelmann wrote another letter dated April 30,

1999, informing Practitioner that failing to cooperate with this investigation could itself lead to discipline. Ms. Winkelmann added specific questions for Practitioner to answer and gave him until May 31, 1999, to respond in writing.

16. On May 5, 1999, the Department received a letter from Practitioner in which he asked for information about his permit dates and also stated that when he stopped receiving "invoices," he assumed he did not need to continue renewing. Practitioner also stated that he was never informed that he needed to stop selling hearing aids.

17. Income tax records show that Practitioner's net profits for the following years as follows:

- i) 1995 net profit from all sales was \$11,493;
- ii) 1996 net profit from all sales was \$16,723;
- iii) 1997 net profit from all sales was \$12,426;
- iv) 1998 net profit from all sales was \$17,938;

18. Practitioner completed ten course hours of Continuing Education (CE) in 1994, 1998, and 1999. He did not complete CE hours in 1997.

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); subd. 9 (requiring all dispensers to give all potential buyers an updated brochure prepared by the Department); subd. 2i (requiring all dispensers to submit evidence of CE to the Department every year since 1997); Minnesota Statutes, section 153A.15, subd. 1(5) (presenting false or misleading advertising); 1(7) (engaging in conduct likely to deceive, defraud or harm the public); 1(11) (failing to comply with restrictions on sales of hearing aids in sections 153A.14, subd. 9); 1(14) (failing to provide information in a timely manner in response to a request by the commissioner, the commissioner's designee, or the advisory council); 1(22) (violating any provisions of sections 153A.13 to 153A.19).

STAFF RECOMMENDATION

Dispensing hearing instruments without legal authorization is a serious violation. In addition to failing to apply for certification in 1995 and renewing each year as required, Practitioner failed to comply with CE requirements, and he failed to provide each of his consumers with the 1995 revised brochure.

1. Practitioner must pay a civil penalty of \$16,376 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 \$312 representing the costs of investigation for this matter to date.

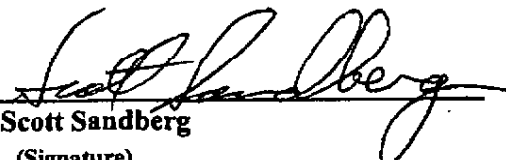
Practitioner may pay the \$16,688 civil penalty in monthly installments over twelve months after the effective date of this action. Each payment will be made by money order or certified check, made payable to "State of Minnesota, Treasurer", and mailed to Susan Winkelmann, Minnesota Department of Health, Health Occupations program, 121 East Seventh Place, P.O. Box 64975, St. Paul, MN 55164-0975, or other address specified by the Department. Payments shall be in monthly installments of \$1390.66 and are due by the last day of each month. Practitioner may prepay at any time without penalty;

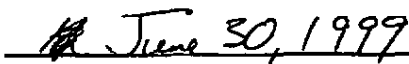
2. Practitioner must cease dispensing hearing instruments until such time as he obtains a valid hearing instrument dispensing certificate issued by the Commissioner of Health;

3. Practitioner must accept this Determination as including a written reprimand from the Commissioner of Health for dispensing hearing instruments illegally;

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

I do not contest the authority, findings of fact, conclusion and staff recommendation as stated above.


Scott Sandberg
(Signature)


Date
(Month, date, year)