

VOLUME NO. 38

OPINION NO. 42

AUDIOLOGISTS - Licensed audiologists employed by charitable or nonprofit organizations, licensing as a hearing aid dispenser;

HEARING AID DISPENSERS - License requirements, audiologists, employees of charitable or nonprofit organizations;

MONTANA CODE ANNOTATED - Sections 37-15-101, et seq., 37-16-101, et seq.

HELD: 1. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may make an impression of the ear (which is expressly part of the practice of fitting and dispensing hearing aids) without being licensed as a hearing aid dispenser, based upon the exemption of section 37-16-103, MCA. As explained in 37 Op. Att'y Gen. No. 60, this exemption may be enjoyed only if the hearing aids are not sold, a sale including sales at a profit, at cost, or even at a loss.

2. There is nothing in the law to prohibit a licensed audiologist from acting as an "agent" for a hearing aid dispenser, if he chooses to do so. Since an audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions is entitled to fit and dispense hearing aids, either the audiologist or the hearing aid dispenser may complete the final fitting and delivery.
3. No person may select a particular aid for any other person and force the hearing aid dispenser from whom the aid is purchased to abide by that decision. When a licensed hearing aid dispenser sells an aid he is entitled, if not obligated, to use his training and judgment to select the best aid for that client. This is expressly sanctioned by section 37-15-103(7), MCA.
4. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit an aid, whether permanently or for a trial period, without a dispenser's license. No other person not otherwise licensed or within the exemption of section 37-17-103, MCA, may do so.

24 September 1979

Board of Hearing Aid Dispensers  
Montana Department of Professional  
and Occupational Licensing  
LaLonde Building  
Helena, Montana 59601

Dear Sirs:

You have requested my opinion on the following questions:

1. May a licensed audiologist, as an employee of a charitable or nonprofit organization primarily supported by charitable contributions, or any other person, not licensed as a hearing aid dispenser make an impression of the ear?

2. May a licensed audiologist, as an employee of a charitable or nonprofit organization, or any other person, act as an agent for a licensed dispenser and deliver aids, without the licensed dispenser personally doing the final fitting and delivery?
3. May a licensed audiologist, or any other person, select any special aid to be fit by a licensed dispenser, even for trial fittings?
4. May a licensed audiologist, or any other person, fit an aid, through a charitable or nonprofit organization, for a trial period without a dispenser license?

These questions and the material you attached thereto reveal two apparent areas of dispute. First is the issue of whether a licensed audiologist may fit and dispense hearing aids without obtaining a license as a hearing aid dispenser. Second, whether, when a licensed audiologist in effect prescribes a particular hearing aid for a client, the licensed hearing aid dispenser from whom the aid is purchased is bound to abide by the audiologist's evaluation.

Both the practice of audiology (§ 37-15-101, et seq., MCA) and the dispensing and fitting of hearing aids (§ 37-16-101, et seq., MCA) are regulated by statute in Montana. It is unlawful to practice either profession without a license (§§ 37-15-301 and 37-16-401, MCA) and a separate board has been established for each profession to oversee licensure and trade regulation (§§ 37-15-201, et seq., and 37-16-201, et seq., MCA).

The practice of audiology for which a license is required, is defined by section 37-15-102(8), MCA, as follows:

"Practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory behavior related to hearing impairment.

The practice of "dispensing and fitting hearing aids" for which a license is also required, as defined in section 37-16-102(5), MCA, is defined as follows:

"Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaptation, or sale of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear but does not include batteries, cords, or accessories.

Section 37-15-103, MCA, provides a number of exemptions to the audiological license requirement; subsection 7 providing in particular:

Nothing in this chapter shall restrict any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and which are described in Title 37, chapter 16.

Thus a licensed hearing aid dispenser may clearly practice his trade free from the requirements of the audiologists' licensing statute. The exemption section of the hearing aid dispensers statute, § 37-16-103, MCA, does not specifically mention licensed audiologists, but provides:

This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an institution of higher education or part of a program conducted by a public agency or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids.

On its face, section 37-16-103, MCA, requires an audiologist to obtain a hearing aid dispensers' license if he wishes to engage in the fitting and dispensing of hearing aids as part of his practice, unless he comes within one of the enumerated exceptions. I previously so held in 37 Op. Att'y Gen. No. 60. The fact that the professional licensed practice of audiology does not include the licensed trade of fitting and dispensing hearing aids is reflected in the Code of Ethics adopted by the Montana Board of Speech Pathologists and Audiologists (see 40-3.101(6)-S101010, MAC).

## THEREFORE IT IS MY OPINION:

1. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may make an impression of the ear (which is expressly part of the practice of fitting and dispensing hearing aids) without being licensed as a hearing aid dispenser, based upon the exemption of section 37-16-103, MCA. As explained in 37 Op. Att'y Gen. No. 60, this exemption may be enjoyed only if the hearing aids are not sold, a sale including sales at a profit, at cost, or even at a loss.
2. There is nothing in the law to prohibit a licensed audiologist from acting as an "agent" for a hearing aid dispenser, if he chooses to do so. Since an audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions is entitled to fit and dispense hearing aids, either the audiologist or the hearing aid dispenser may complete the final fitting and delivery.
3. No person may select a particular aid for any other person and force the hearing aid dispenser from whom the aid is purchased to abide by that decision. When a licensed hearing aid dispenser sells an aid he is entitled, if not obligated, to use his training and judgment to select the best aid for that client. This is expressly sanctioned by section 37-15-103(7), MCA.
4. A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit an aid, whether permanently or for a trial period, without a dispenser's license. No other person not otherwise licensed or within the exemption of section 37-17-103, MCA, may do so.

Very truly yours,

MIKE GREELY  
Attorney General