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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

February 2, 1970
Member, Board for Licensing Hearing
Aid Dealers and Fitters

Henry R. Tobin

Practices Subject to Licensure Under 32 M.R.S.A. Chapter 23-A – Hearing Aid Dealers and Fitters

SYLLABUS:

A person who in the process of administering hearing aid evaluation and testing, utilizing a hearing aid, determines the performance of such aid with respect to its capacity to compensate for the lack of hearing acuity of an individual, and following such determination recommends a particular hearing aid as being satisfactory for such individual's use is clearly demonstrating and fitting hearing aids, both being controlled by 32 M.R.S.A. Chapter 23-A, P.L. 1969, Chapter 320, requiring that the person making such determination and recommendation be licensed under such statute.

FACTS:

This office has been advised by a Member of the Board for Licensing Hearing Aid Dealers and Fitters that at a particular speech and hearing center, personnel of such center are involved in the practice of testing hearing acuity of individuals, and that in such process such personnel following an evaluation and testing, place upon the person of individuals tested, a hearing aid for the purpose of determining the capacity of such instrument to compensate for the lack of hearing acuity of such individual. Following such procedure such personnel recommend to the individuals tested that they obtain a certain hearing aid or hearing aids in the alternative, such instrument or instruments being considered by such personnel to be satisfactory for use by the tested individuals.

QUESTION:

Is the practice described in the facts an activity or procedure controlled by 32 M.R.S.A. Chapter 23-A and thus, subject to licensure thereunder?

ANSWER:

Yes.

REASON:

32 M.R.S.A. § 1658, sub § 5, provides as follows:

“ ‘Practice of fitting and dealing in hearing aids’ shall mean the measurement of human hearing by means of an audiometer or by any means solely for the purpose of making selections, adaptations or sale of hearing aids. The term includes the making of impressions for earmolds. A dealer, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.”

32 M.R.S.A. § 1658-C provides as follows:

“This chapter is not intended to prevent any person from engaging in the practice of measuring human hearing; such person, however, shall not demonstrate or offer for sale hearing aids and accessories.

“This chapter does not apply to a person who is a physician or osteopath duly licensed under the laws of the State of Maine.”

Under the facts given it is the opinion of this office that the described practice of placing a hearing aid upon the person of an individual, whose hearing acuity is being tested, for the purpose of determining the performance of such instrument and following which, recommendation is made that the tested individual obtain a particular hearing aid is the practice of “selection” of a hearing aid for an individual and thus, falls within the definition of the practice of fitting, controlled by the first above cited provision. It is further the opinion of this office that the practice of determining the performance of a particular hearing aid, followed by recommendation as described in the facts is a method of demonstrating hearing aids forbidden by the second above cited provision, unless the person demonstrating the hearing aid is licensed.

32 M.R.S.A. Chapter 23-A is designed to control practices of the type giving rise to the question here under consideration. Once the described practices are completed with respect to an individual, the licensed hearing aid dealer with respect to the individual entering his place of business for the purpose of purchase, is reduced to the level of a retail clerk making a sale without the exercise of judgment or skill for which he is licensed, all of the determinations subject to licensure under the statute are completed by personnel of the hearing and speech center. Such practices fly in the teeth of 32 M.R.S.A. Chapter 23-A and are violative of that Chapter.

Personnel appearing in speech centers involved in practices described in the facts are clearly subject to licensure under Chapter 23-A, and should be advised by the Board for Licensing Hearing Aid Dealers and Fitters to comply with the licensing provisions.

Reference was made in the memorandum received by this office giving rise to this opinion to the fact that the hearing and speech center does not utilize all types of hearing aids in its evaluation and testing process. It is considered unnecessary for us to comment in respect to such fact, further than to say, in view of the result which we reach in this opinion, i.e., the personnel of the hearing and speech center engaged in practices described in the facts are subject to licensure, such fact becomes irrelevant since hearing aid dealers and fitters are free to utilize instruments of their choice.

COURTLAND D. PERRY
Assistant Attorney General

February 3, 1970
Forestry

Austin H. Wilkins, Commissioner

Executive Director – Maine Land Use Regulation Commission

SYLLABUS:

The position of Executive Director of the Maine Land Use Regulation Commission falls within the classified service.