



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

July 6, 1976

ATTORNEY GENERAL OPINION NO. 76-204

Ms. Dorothea Klein
Chairman, Kansas Board of
Hearing Aid Examiners
1710 West Tenth Street
Topeka, Kansas

Re: Hearing Aids--Dispensing--Exemptions from Licensing

Synopsis: A practitioner of the healing arts who is licensed by the State Board of Healing Arts may not sell or otherwise dispense hearing aids unless licensed to do so by the State Board of Hearing Aid Examiners.

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Dear Ms. Klein:

You inquire whether a person licensed by the Board of Healing Arts is required to be licensed by the Board of Hearing Aid Examiners before the physician may sell hearing aids in the State of Kansas.

K.S.A. 74-5808 states in pertinent part:

"No person shall engage in the sale of or practice of dispensing and fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the dispensing and fitting of hearing aids unless he holds a current, unsuspended, unrevoked licensed issued by the board"

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K.S.A. 74-5810 exempts practitioners of the healing arts thus:

"This act shall not be construed to prevent or limit any person who is a practitioner of the healing arts licensed by the state board of healing arts in the treatment of any kind or in fitting hearing aids to the human ear."

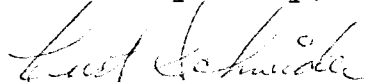
K.S.A. 74-5807(d) defines the "practice of dispensing and fitting hearing aids" thus:

". . . the evaluation or measurement of the powers or range of human hearing by means of any audiometer or by any other means devised and the consequent selection or adaptation or sale of hearing aids intended to compensate for hearing loss, including the making of an impression of the ear."

The terms "dispensing" and "fitting" are used conjunctively throughout the act, except in the exemption in K.S.A. 74-5810, relating to practitioners licensed by the State Board of Healing Arts. By the terms of this exemption, the act is not to be construed to limit or affect such practitioners "in treatment of any kind" or in "fitting hearing aids to the human ear." However, although the exemption permits such practitioners to fit hearing aids, it conspicuously omits any reference to dispensing of hearing aids by such practitioners.

I cannot construe the exemption more broadly than its plain terms permit. Accordingly, I must conclude that practitioners of the healing arts who are licensed by the State Board of Healing Arts may not sell or otherwise dispense hearing aids, as that term is defined by K.S.A. 74-5807, unless licensed by the State Board of Examiners in Fitting and Dispensing of Hearing Aids.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj