



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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September 26, 1980

ATTORNEY GENERAL OPINION NO. 214

Dorothea E. Klein, M.S.  
Chairman  
Board of Hearing Aid Examiners  
Room 212, 1710 West 10th St.  
Topeka, Kansas 66604

Re: State Boards, Commissions and Authorities -- Board  
of Examiners for Hearing Aids -- Unethical Conduct

Synopsis: Although K.A.R. 67-7-2 when strictly construed does not require a licensee using only the word "hearing" in its advertisements, letterheads, etc. to include the term "hearing aids" in a conspicuous place, the Board is not precluded from determining that the use of the name "Hearing Associates, Inc." by a licensee without displaying the words "hearing aids" amounts to "unethical conduct" as defined and prohibited by the statutes cited herein. Cited herein: K.S.A. 74-5006, 74-5818, 74-5820, K.A.R. 67-6-1 and 67-7-2.

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Dear Ms. Klein:

You request the opinion of this office as to the meaning of K.A.R. 67-7-2, which provides:

"Whenever a licensee under the hearing aid act uses the term 'hearing services' in advertisements, letterheads, business cards or upon the premises of the place of business, he shall also include therein in a conspicuous place the term 'hearing aids.'"

You question whether a licensee must utilize the term "hearing aids" on business letterheads bearing the corporate name "Hearing Associates,

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Inc.," and not containing the term "hearing services." We do not believe this particular regulation can be given such an expansive reading. The regulation prohibits certain conduct--a very specific conduct. Had the regulation contained more general language which might be read to include words of similar import we might have been able to construe it otherwise.

However, a second question concerns whether the act of using the corporate title, "Hearing Associates, Inc.," may constitute unethical conduct under some other statute or regulation.

K.S.A. 74-5818 provides in part:

"Any person registered under this act may have his license or certificate revoked or suspended for a fixed period to be determined by the board for any of the following causes:

. . . .

"(c) for unethical conduct. . . ."

K.S.A. 74-5806(i) authorizes the Board

"[t]o make rules and regulations for the procedure and conduct and government of applicants for certificates of registration and endorsement, and licensed and registered hearing aid dispensers, and to prescribe by rules and regulations a code of ethics for the practitioner of the hearing aid art within this state, which said rules and regulations shall not be inconsistent with the provisions of this act."

The Board of Hearing Aid Examiners has promulgated an ethical code of conduct. K.A.R. 67-6-1 defines unethical conduct, stating in pertinent part:

"Unethical conduct shall mean:

. . . .

"(c) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation however disseminated or published, which is misleading, deceiving or untruthful.

. . . .

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"(k) To use any trade name, corporate name, trademark, or other trade designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature, or origin of any product of the industry, or of any material used therein, or which is false, deceptive, or misleading in any other material respect."

Whenever the Board has cause to believe a licensee has violated any provision of the Act, including the commission of unethical conduct, proceedings for revocation or suspension may be commenced pursuant to K.S.A. 74-5820. The licensee is to be notified of charges, provided an opportunity to respond and given an opportunity to confront witnesses against him. Whether the conduct in question amounts to unethical conduct is not a legal issue but a factual one. The responsibility for making such determination rests with the Board and is to be based on substantial competent evidence derived from consideration of the evidence submitted at the hearing.

Following such hearing, the Board may suspend or revoke the license of any person found to have practiced unethical conduct. Although the hearing examiner's law does not provide for judicial review of the Board's administrative decisions, these are reviewable for illegal, arbitrary and unreasonable acts of public officials. See Bush v. City of Wichita, 223 Kan. 651 (1978). In addition, aggrieved persons may seek judicial review for the abuse of or unauthorized exercise of power by public bodies or officers. See Kansas City v. Jones and Laughlin Steel Corp., 187 Kan. 701 (1961). Such appeal may be taken pursuant to K.S.A. 60-2101.

The scope of judicial review on such appeal is limited. The district court may not substitute its judgment for that of the administrative tribunal, but is restricted to considering whether, as a matter of law, the tribunal acted fraudulently, arbitrarily or capriciously; whether the administrative order was substantially supported by evidence and whether the tribunal's action was within the scope of its authority. See Swezey v. State Department of Social and Rehabilitation Services, 1 Kan.App.2d 94 (1977).

In summary, although K.A.R. 67-7-2 when strictly construed does not require a licensee using only the word "hearing" in its advertisements,

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letterheads, etc. to include the term "hearing aids" in a conspicuous place, the Board is not precluded from determining that the use of the name "Hearing Associates, Inc." by a licensee without displaying the words "hearing aids" amounts to "unethical conduct" as defined and prohibited by the above cited statutes and regulations.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Bradley J. Smoot  
Deputy Attorney General

RTS:BJS:my