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ATTORNEY GENERAL OPINION NO. 92-159

Ms. Sherry DuPerier, Chairman
Kansas Board of Hearing Aid Examiners
Box 252
Wichita, Kansas 67201-0252

Re: State Boards, Commissions and Authorities--Board of
Examiners for Hearing Aids--Certain Persons Exempt
from Act

Synopsis: Practitioners licensed by the board of healing arts
are exempt from K.S.A. 74-5801 et seq., regulating
the fitting and dispensing of hearing aids, when
they are providing treatment or fitting a hearing
aid. The exemption does not apply if such
practitioners are engaged in the sale of hearing
aids. Cited herein: K.S.A. 65-2802; 74-5808;
74-5810.

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Dear Ms. DuPerier:

As chair of the Kansas board of hearing aid examiners
(hereinafter "board") you inquire about the scope of the
exemption for physicians found in K.S.A. 74-5810.
Specifically you ask whether all physicians licensed by the
board of healing arts are exempt from the board's
jurisdiction.

K.S.A. 74-5810 states in pertinent part:

"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 treatment of any kind or in fitting hearing aids to the human ear."

The above exemption applies to any person engaged in the practice of fitting hearing aids who is a practitioner and licensed by the board of healing arts. The exemption statute states that the act may not be construed to limit a practitioner "in treatment of any kind" and "in fitting hearing aids to the human ear." When plain and unambiguous, a statute must be given its intended effect, as expressed by the legislature. Randall v. Seeman, 228 Kan. 395 (1980). The language of the exemption regarding physicians is clear. The exemption applies to any practitioner who is licensed by the board of healing arts. Thus in our judgment all physicians who are practitioners licensed by the board of healing arts are exempt from the board of hearing aid examiners' jurisdiction when rendering treatment of any kind and when fitting hearing aids to the human ear.

Your second question is whether the above exemption for physicians applies to the sale of hearing aids. The sale of hearing aids is regulated by the board and restricted to those holding either a license or a certificate of endorsement. K.S.A. 74-5808.

The exemption in question applies when rendering "treatment of any kind" and when "fitting hearing aids to the human ear." We must determine whether it was the legislature's intent to allow physicians to sell hearing aids pursuant to the exemption in question. If the legislature intended to allow that physicians sell hearing aids they did not so state. The exemption does not generally exclude physicians from the board's jurisdiction; it excludes them only when rendering treatment and when fitting hearing aids. See Breedlove v. General Baking Co., 138 Kan. 143, 145 (1933). We believe that the general rule of the express mention of one thing implies the exclusion of another is applicable when there is an affirmative description of powers granted. The maxim expressio unius est exclusio alterius should be applied with care and never be permitted to defeat the plainly indicated purpose of the legislature. 82 C.J.S. Statutes § 333 (1953); LeSueur v. LeSueur, 197 Kan. 495, 500 (1966). The legislature plainly indicates that physicians can provide treatment and can fit hearing aids under their license to practice the healing arts. A physician's practice is defined by K.S.A. 65-2802 and includes any

"[s]ystem, treatment, operation, diagnosis, prescription, or practice for the ascertainment, cure, relief, palliation, adjustment, or correction of any human disease, ailment, deformity, or injury, and includes specifically but not by way of limitation the practice of medicine and surgery; the practice of osteopathic medicine and surgery; and the practice of chiropractic." K.S.A. 65-2802.

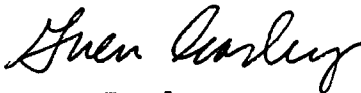
The authorization to practice the healing arts does not however, expressly or impliedly permit physicians licensed under chapter 65 to sell hearing aids. In our judgment they cannot do so without obtaining a license under chapter 74 authorizing the sale of hearing aids.

In conclusion we opine that any practitioner licensed by the board of healing arts is exempt from the licensure requirements of K.S.A. 74-5801 et seq. when rendering treatment or fitting a hearing aid. The exemption does not apply, however, to allow unlicensed, uncertified sale of hearing aids. Practitioners engaged in the sale of hearing aids are subject to the board of hearing aid examiner's jurisdiction.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

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