

October 15, 2014



*Protecting, maintaining and improving the health of all Minnesotans*

July 25, 2014

Joel C. Chopin

RE: MDH File Number: HDA13002

Dear Mr. Chopin:

Based on the facts and law in this matter as described in the enclosed Staff Determination, the Minnesota Department of Health (MDH) has determined that you provided hearing instrument dispensing services without certification from November 1, 2011 to May 31, 2012, in violation of Minnesota Statutes, section 153A.15, subdivision 1(19). Therefore, the Department is reprimanding you and assessing you a civil penalty in the amount of \$10,763.00. The assessment of civil penalties is authorized pursuant to Minnesota Statutes, section 153A.15, subdivision 2(4).

This decision will be made final and effective 30 days from the date it is received by you. During that 30-day period, you have the right to challenge this decision in a contested-case hearing, as provided under Minnesota Statutes, Chapter 14. Requests for a hearing should be made in writing and include specific grounds for challenging the Department's decision. If you wish to request a hearing, please send a written hearing request, within 30 days of your receipt of this letter, to:

Gilbert Acevedo, Director  
Health Occupations Program  
Minnesota Department of Health  
PO Box 64882  
Saint Paul, MN 55164-0882

You may also deliver your request to 85 East Seventh Place, Suite 220, Saint Paul, MN; or fax it to Mr. Acevedo at (651)201-3839. If you have any questions about this matter, please contact Catherine Dittberner-Lloyd at (651)201-3729.

Sincerely,

A handwritten signature in cursive script, appearing to read "Darcy Miner".

Darcy Miner, Director  
Compliance Monitoring Division

Enclosure

cc: Gilbert Acevedo, Director  
Anne Kukowski, Assistant Director

**HEALTH OCCUPATIONS PROGRAM  
MINNESOTA DEPARTMENT OF HEALTH**

**A Determination In the Matter of  
Joel C Chopin  
Hearing Instrument Dispenser**

**AUTHORITY**

1. The Minnesota Department of Health (MDH) has the authority to discipline Hearing Instrument Dispensers for violations of Minnesota Statutes, section 153A.15. Pursuant to Minnesota Statutes, section 153A.15, subdivision 2, the types of discipline MDH may impose include the assessment of a civil penalty that deprives the dispenser of any economic advantage gained by the violation and that reimburses MDH for the costs of the investigation.
2. Pursuant to Minnesota Statutes, section 153A.15, subdivision 1(19), MDH may take disciplinary action against a hearing instrument dispensing for violating any of the provisions of sections 148.5195, subdivision 3, clause (20); 148.5197, 148.5198; and 153A.13 to 153A.18.
3. Pursuant to Minnesota Statutes, section 153A.175, the penalty fee for holding oneself out as a hearing instrument dispenser without a current certificate after the credential has expired and before it is renewed is one-half the amount of the certificate renewal fee for any part of the first day, plus one-half the certificate renewal fee for any part of any subsequent days up to 30 days.

**FINDINGS OF FACT**

1. Joel C. Chopin (hereinafter "Practitioner") was issued a certificate to dispense hearing instruments on September 24, 2007.
2. By letter dated October 14, 2010, MDH sent Practitioner a letter renewing his certificate to dispense hearing instruments with an effective date of November 1, 2010 and an expiration date of October 31, 2011.
3. By letter dated August 22, 2011, MDH sent a letter to Practitioner with instructions on how to renew his certificate to dispense hearing instruments. MDH instructed Practitioner to submit his application and renewal fees by October 1, 2011 to avoid a late fee.

4. By letter dated November 1, 2011, MDH sent Practitioner a letter notifying him his certificate was expired because he failed to renew. In its letter, MDH asked Practitioner to submit his renewal application and include a \$200 late fee, plus the renewal fee of \$600 and a surcharge fee of \$100. MDH also gave Practitioner the following notice: "PLEASE NOTE: The sale of hearing instruments without a valid certification issued by the Commissioner of Health is a gross misdemeanor pursuant to Minnesota Statute, section 153A.14, subdivision 4. Failure to submit your renewal documents and a lapse between expiration of your certification and issuance of a renewal certification may constitute grounds for the Department to initiate an enforcement action against you." Practitioner did not respond to MDH's notice of renewal.
5. On May 31, 2012, Practitioner contacted MDH stating he forgot to renew his certificate to dispense hearing instruments and asked for information on how to immediately renew his certificate.
6. On June 6, 2014, Practitioner's certificate to dispense hearing instruments was renewed. In the cover letter, MDH advised Practitioner his certificate to dispense was approved, but additional information was needed from his employer to determine if Practitioner illegally dispensed hearing instruments after his certificate expired.
7. On July 12, 2012, MDH received information from Practitioner's employer indicating he continued to practice as a hearing instrument dispenser after his certificate expired. On July 18, 2012, MDH sent Practitioner a letter stating the issues concerning his employment and illegal practice were referred to the Investigation and Enforcement Unit.
8. By letters dated August 7 and September 20, 2012, MDH Investigation and Enforcement Unit asked Practitioner for information related to the types of services he provided and titles he used during the period from November 1, 2011 to June 6, 2012. Practitioner was asked to provide the number of hearing instruments he dispensed, the number of consumers involved in the transactions, the total purchase price of the instruments, the invoice price and his remuneration for the sales.
9. On September 28, 2012, MDH received Practitioner's response. Practitioner indicated during the period of illegal practice, he saw approximately 50 consumers, signed 39 purchase agreements, and dispensed 94 hearing instruments for a total purchase price of \$210,651.00.
10. On May 14, 2014, the Competency Review Committee (CRC) of the Hearing Instrument Dispenser Advisory Council met to review the issues in this matter and specifically, the assessment of civil penalties for illegal sales. Due to the volume of illegal sales, the CRC recommended MDH stay the assessment of a civil penalty based on the purchase price. The CRC recommended MDH reprimand the dispenser, charge the dispenser for the cost of the investigation, and issue Practitioner the civil penalty described in Minnesota Statutes, section 153A.175 (a), or \$10,500.

## CONCLUSION

Practitioner did not comply with the provisions of Minnesota Statutes, section 153A.13, subdivision 5; section 153A.14, subdivision 2e; and section 153A.14, subdivision 4 because he failed to renew his certificate to dispense hearing instruments by October 31, 2011 and dispensed illegally from November 1, 2011 through May 31, 2012.

## DETERMINATION

1. Practitioner is reprimanded.
2. Within 30 days of the effective date of this Determination, Practitioner shall pay a civil penalty of \$10,500.00 representing the economic advantage gained by the violation and \$263.00 to reimburse the Department for the costs of the investigation and proceedings to date. Practitioner must make the payment by check, in the amount of \$10,763.00, made payable to the "State of Minnesota, Treasurer" and mail the check to the attention of: HOP Investigations and Enforcement, PO Box 64882, Saint Paul, MN 55164-0882.
3. Practitioner may pay the \$10,763.00 civil penalty in monthly installments for up to thirty-six months. If Practitioner chooses to make installments, he must notify the Department in writing about his intentions, including how many installments he intends to make, in what amount, and over which time period. Practitioner must send this information to: HOP Investigations and Enforcement, PO Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of this Determination.
4. Each payment will be made by check payable to "State of Minnesota, Treasurer", and mailed to HOP Investigations and Enforcement, PO Box 64882, Saint Paul, MN 55164-0882, or any other address specified by MDH. Each payment is due by the last day of each month; however, Practitioner may prepay at any time.
5. The penalty may be referred to the Minnesota Collection Enterprise (MCE), part of the Minnesota Department of Revenue, or any other source for collection, if Practitioner misses a monthly payment by 14 calendar days after the established deadline. When this Order for a penalty becomes public and MDH refers the matter to MCE, MCE is authorized by Minnesota Statutes, section 16D.17, to obtain a judgment against Practitioner without further notice or proceeding.