



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

June 29, 1971

Mr. John F. Boff
Executive Director
Texas Board of Examiners in the
Fitting and Dispensing of
Hearing Aids
Penthouse Apts. Room 105
1212 Guadalupe
Austin, Texas 78701

Opinion No. M-895

Re: Whether certain activities
relating to preparation of
earmolds for hearing aids
constitute sales of hearing
aids under Article 4566,
Vernon's Civil Statutes.

Dear Mr. Boff:

In your letter requesting an opinion from this office,
you state the following:

"It has come to our attention that some
confusion as to the role of those individuals
employed by non-profit organizations or institu-
tions of higher learning, in the fitting and
dispensing of hearing aids in the State of
Texas exist. We would like a formal opinion
to clarify this role.

"We feel that it is understood that those
individuals employed by institutions of higher
learning, non-profit organizations, or under the
supervision of a physician and surgeon can carry
out hearing aid evaluations, hearing aid selec-
tions, hearing aid fitting (what ever the
preferred clinical terminology might be) as
long as they do not sell hearing aids."

In addition, you have advised this office that an earmold
is an essential component part of any "hearing aid" as the latter
term is defined by the provisions of Article 4566-1.01(d), Vernon's
Civil Statutes.

In this regard you question whether a clinic or individual
who takes an ear impression, has an earmold prepared from the im-
pression, pays for the mold and in turn sells the mold to an in-
dividual, is engaging in the sale of a hearing aid and is required
to be licensed to sell and dispense hearing aids by the Texas State
Board of Examiners in the Fitting and Dispensing of Hearing Aids.

Under the provisions of Article 4566-1.06(a):

"Every person desiring to engage in fitting and dispensing hearing aids in the State of Texas shall be required to pass an examination given by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids."

The term "fitting and dispensing of hearing aids" is defined by the provisions of Article 4566-1.01(f) as follows:

"(f) 'Fitting and Dispensing hearing aids' means the measurement of human hearing by the use of an audiometer or by any means for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid."

Article 4566-1.19, which exempts certain persons and practices from the provisions of the Act, is quoted as follows:

"Nothing in this Act shall be construed to apply to the following:

"(1) Persons engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning.

"(2) Persons engaged in the practice of measuring human hearing as a part of a program conducted by a nonprofit organization, provided such organization or its employees does not sell hearing aids.

"(3) Physicians and surgeons duly licensed by the Texas State Board of Medical Examiners and qualified to practice in the State of Texas.

"(4) Persons employed and directly supervised by a physician and surgeon to test or measure human hearing, provided such persons do not sell hearing aids."

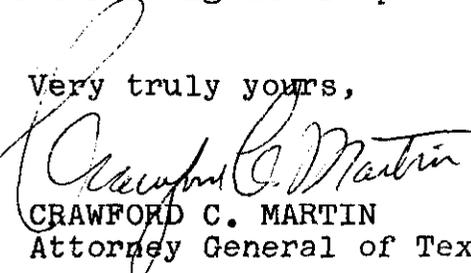
The language of the above quoted provisions of these Articles is clear and unambiguous. "A statute that is plain and unambiguous will ordinarily be interpreted literally. . . ." 53 Tex.Jur.2d 197, Statutes, §135.

Consequently, it is our opinion that an individual, other than a physician, licensed to practice in this State, or a clinic, who sells an earmold to an individual which is intended to be used as a component part of a hearing aid, is selling hearing aids and is not exempted by the provisions of Article 4566-1.19, Vernon's Civil Statutes, from the requirement of being licensed by the Texas State Board of Examiners in the Fitting and Dispensing of Hearing Aids.

S U M M A R Y

An individual, other than a physician licensed to practice in this State or a clinic, which sells an earmold to an individual which is intended to be used as a component part of a hearing aid, is selling hearing aids and is not exempted by the provisions of Article 4566-1.19, Vernon's Civil Statutes, from the requirement of being licensed by the Texas State Board of Examiners in the Fitting and Dispensing of Hearing Aids.

Very truly yours,


CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Ivan R. Williams, Jr.
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
W. E. Allen, Co-Chairman
Malcolm Quick
Bill Corbusier
Pat Bailey
Ken Nordquist

Mr. John F. Boff, page 4

(M-895)

MEADE F. GRIFFIN
Staff Legal Assistant

ALFRED WALKER
Executive Assistant

NOLA WHITE
First Assistant