



Texas Board of Examiners

IN THE

Fitting & Dispensing of Hearing Aids

WANDA F. STEWART, EXECUTIVE DIRECTOR

ID# 11483
SG

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March 20, 1991

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Opinion Committee

The Honorable Dan Morales
Attorney General of the State of Texas
7th Floor Supreme Court Building
Austin, Texas 78701

Dear General Morales:

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids hereby requests a formal opinion of your office with reference to Article 4566-1.04(a) which states:

"(a) The Board shall have the power to make such procedural rules consistent with this Act as may be necessary for the performance of its duties."

Over the past several years, the Board has been petitioned for the proposed adoption of rules. After having committee meetings to address the petitions, the Board could not propose the adoption of the rules because they were substantive rules and not procedural rules.

Will you please provide an opinion concerning what do procedural rules include within the authority of Article 4566-1.04(a).

Thank you for your attention to this request.

Sincerely,

Wanda F. Stewart
Wanda F. Stewart
Executive Director

WFS:s

cc: All Board Members
George Warner, Assistant Attorney General

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Opinion Committee

The Honorable Dan Morales
Attorney General of the State of Texas
7th Floor Supreme Court Building
Austin, Texas 78701

Dear General Morales:

The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids hereby requests an opinion of your office with reference to Article 4566-1.12A which states:

"The Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the Board except to prohibit false misleading, or deceptive practices by the person. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the Board a rule that:

- (1) restricts the person's use of any medium for advertising;
- (2) restricts the person's personal appearance or use of his voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person, or
- (4) restricts the person's advertisement under a trade name."

The Board has been petitioned to propose the adoption of the following rule:

"An advertisement or advertising is false, deceptive or misleading if it:

- (A) contains a misrepresentation of facts;
- (B) contains untrue statements as to the license holder's or trainee's professional achievements degrees, trained skills, and qualifications in the hearing aid dispensing profession;

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- (C) its content or the context in which it is presented makes only a partial disclosure of relevant facts-- specifically, it is misleading and deceptive to advertise a discounted price, without identifying either in the advertisement or at the location where sales of products and services take place, the specific product or service against which the discounted price applies and without specifying either in the advertisement or at the location where sales of products and services take place, the usual price for the product or services identified; furthermore, it is misleading and deceptive to advertise, or permit to be advertised, the price of a specifically identified hearing instrument, if more than one hearing aid appears in the same advertisement, without an accompanying price;
- (D) contains a representation that the product innovation is new, when in fact the product was first offered by the manufacturer to the general public in Texas more than twelve (12) months ago;
- (E) contains any representation, statement, or claim which creates a likelihood of confusion or misunderstanding;
- (F) knowingly advertising a model or type of hearing aid for sale when the advertised model is not available for purchase in quantities to supply a reasonable public demand;
- (G) falsely represents that the service of a licensed physician or other health professional will be used or made available in the fitting, adjustment, maintenance or repair of a hearing aid;
- (H) using the term "doctor", "audiologist", "clinic", "clinical audiologist", "audioprosthologist", "state licensed", "state certified", "licensed hearing aid dispenser," "board certified hearing instrument specialist", "hearing instrument specialist:", or any other term or abbreviation, or symbol that falsely gives the impression that:
 - (a) a service is being provided by a person who is licensed or has been awarded a degree or title; or
 - (b) the person providing a service has been recommended by a governmental agency or health provider.
- (I) advertises a manufacturer's product or uses a manufacturer's name or trademark in a way that implies a relationship between a permit or license holder and a manufacturer that does not exist."

Pursuant to Article 4566-1.12A and Article 4566-1.04(a), which grants the Board the authority to make procedural rules, will you please provide your formal opinion concerning the Board's authority to propose the adoption of this rule.

Your assistance in this matter will be appreciated.

Sincerely,

Wanda F. Stewart

Wanda F. Stewart
Executive Director

WFS:s

cc: All Board Members
George Warner, Assistant Attorney General
Ray Jones