

4753-8-05

Fraud or misrepresentation; hearing aid, assistive listening device; disciplinary action.

(A) Fraud or misrepresentation: No audiologist shall misrepresent the facts or commit fraudulent acts before, during or after the sale of a hearing aid or assistive listening device, and neither shall he/she use either means to obtain any fee. Any of the following representations may be considered as fraudulent or a misrepresentation:

- (1) That the hearing aid or assistive listening device has sponsorship, approval, performance characteristics, accessories, or uses it does not have;
- (2) That the hearing aid or assistive listening device will provide benefits it will not provide;
- (3) That the hearing aid or assistive listening device is of a particular brand, model, engineering design or prescription if it is not;
- (4) That the hearing aid or assistive listening device is new or reconditioned if it is not;
- (5) That a hearing aid or assistive listening device is in need of extensive repairs or is in need of replacement if it is not;
- (6) That the hearing aid or assistive listening device is available to the purchaser for a reason that does not exist; and
- (7) That the hearing aid or assistive listening device may be purchased below the dealer's regular price because of a special price advantage, if it does not.

(B) In determining whether an act or practice is fraudulent or constitutes misrepresentation, the following circumstances shall be considered, but not exclusively. Whether the licensed audiologist:

- (1) Took advantage of the inability of the purchaser reasonably to protect his/her interests because of his/her physical or mental infirmities, ignorance, illiteracy or his/her inability to understand the language of an agreement either verbal or written;
- (2) Did not fully inform the purchaser of a hearing aid or assistive listening device with obviously poor discrimination for speech of his/her inability to obtain a reasonable benefit;

- (3) Made statements to mislead the purchaser into believing his/her hearing will suffer if he/she does not purchase either one or two aids or assistive listening devices;
 - (4) Required the hearing aid or assistive listening device purchaser to agree to contract terms which were substantially one-sided in favor of the audiologist;
 - (5) Made a false statement of fact on which the hearing aid or assistive listening device purchaser was likely to rely, to his/her detriment; and
 - (6) Informed the person(s) served that his/her present hearing aid or assistive listening device was beyond repair or inappropriate for the type or amount of loss when there was no evidence to support these statements.
- (C) By reason of the authority of section 119.061 of the Revised Code, the board may in addition to those reasons enumerated in Chapter 4753 of the Revised Code, also reprimand, place on probation, suspend, revoke, refuse to issue or renew license if the holder thereof engages in a deceptive trade practice as defined under section 4165.02 of the Revised Code; and, as provided by section 4165.02 of the Revised Code, the licensee will be considered to have engaged in a deceptive trade practice if, in the practice of dealing in or fitting of hearing aids or sale of assistive listening devices as defined by Chapter 4753 of the Revised Code, that licensee:
- (1) Passes off goods or services as those of another;
 - (2) Causes likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
 - (3) Causes likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by another;
 - (4) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, in quantities that they do not have or that a person has sponsorship, approval, status affiliation, or connection that he/she does not have;
 - (5) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
 - (6) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

- (7) Disparages the goods, services, or business of another by false representation of fact;
- (8) Advertises goods or services with intent not to sell them as advertised;
- (9) Makes false statements of fact concerning the reasons for existence of or amounts of price reductions; and
- (10) Advertises goods or services with intent not to supply reasonable expectable public demand, unless the advertisements discloses a limitation of quantity.