

(717) 783-8665

October 15, 2010

Ms. Carole M. Rogin
President
Hearing Industries Association
1444 I Street, NW, Suite 700
Washington, DC 20005

Re: Advertisements of In the Ear Canal Hearing Aids under 28 Pa. Code § 25.215(18)(i)

Dear Ms. Rogin:

This letter is in response to various requests, through meetings and correspondence, by hearing aid manufacturers and associations and healthcare professionals for clarification concerning whether the use of the term "invisible," or other similar term, violates the regulations promulgated by the Department of Health (Department), and in particular 28 Pa. Code 25.215(18)(i).

Pursuant to our authority under the Hearing Aid Sales Registration Law, 35 P.S. § 6700-101, et seq., the Department promulgated § 25.215(18)(i), which states:

The Secretary may deny, suspend or revoke a registration certificate provided under the act or the Secretary may impose conditions of probation upon a registrant for any of the following causes:

(18) Making a deceptive representation as to the visibility or the construction of a hearing aid. A registrant may not do any of the following:

(i) Represent, directly or by implication, through the use of such words or expressions as "invisible," "hidden," "hidden hearing," "completely out of sight," "conceal your deafness," "hear in secret," "unnoticed even by your closest friends," "no one will know you are hard of hearing," "your hearing loss is your secret," "no one need know you are wearing a hearing-aid," "hidden out of sight when inserted in the ear canal" or by any other words or expressions of similar import, that any hearing aid, device, or part is hidden or cannot be seen unless it is hidden or cannot be seen.

The intent of this paragraph is to prevent claims by hearing aid fitter registrants and other health care professionals registered by the Department that misrepresent, or mislead consumers to believe, that a hearing aid is invisible when in use, when in fact the hearing aid can be seen when the device is worn. This paragraph also aims to prevent hearing aid fitter registrants and

healthcare professionals from using "bait and switch" tactics to induce a consumer into purchasing another type of hearing aid based on these advertisements. An example of this would be representing that a hearing aid is invisible when in use when, in fact, a part of it can still be seen when looking at the individual wearing the hearing aid.

Based on the correspondence received and a thorough review of the materials presented, the Department has determined that the use of the term "invisible," "100% invisible," or other similar term, for a deep in the ear canal (IIC) hearing aid is not a violation of paragraph (18) provided that the hearing aid being advertised is invisible or hidden to the naked eye when in use and the advertisement on its face clearly identifies this specific type of hearing aid.

While the Department has no authority to mandate that advertisements for IIC hearing aids contain certain information, the advertisement cannot contain any information that is deceptive, unclear, or confusing to the consumer. The Department provides the following recommendations as a suggestion only:

- All advertisements for IIC hearing aids should clearly identify the type and brand of hearing aid being advertised as invisible or hidden when in use and provide an explanation or visual aid to show the consumer why the hearing aid is in fact invisible or hidden.

As stated, this is only a suggestion and in no way serves to act as a mandate from the Department for what type of information must be contained in an advertisement. This suggestion is not meant to be all inclusive. Further, any language or visual descriptions in advertisements in no way waive requirements by registrant to fully discuss appropriate hearing aid options and usage with a consumer.

The Department will continue to review all advertisements, including IIC advertisements that portray a hearing aid to be invisible or hidden, on a case by case basis to determine whether such advertisements accurately portray what they describe and whether there has been a violation of any law or regulation under the Department's jurisdiction. If the Department determines that any advertisement or related sale violates these laws or regulations, the Department reserves the right to take such action as is permissible under the law. The Department also reserves the right to forward any complaints to the Pennsylvania Office of Attorney General for possible violations of any consumer protection or unfair trade practice law.

If you have any questions or concerns, or need further clarification, please do not hesitate to contact the Department.

Sincerely,



Melia Belnous, Director
Bureau of Community Program Licensure
and Certification