



OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

August 28, 1975

(R 75-259)

McDungall

BRUCE E. BABBITT
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75-318

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Department of Health Services
200 North Curry Road
Tempe, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Doctor Colton:

In your letter of April 15, 1975 you asked the following question:

Is the use of the term "Certified Hearing Aid Audiologist" by an Arizona licensed hearing aid dispenser "unethical conduct as defined by A.R.S. § 36-1901.7?

The answer is no if conferred by the National Hearing Aid Society.

The term "Certified Hearing Aid Audiologist" was first conferred in 1952 by the Society of Hearing Aid Audiologists, a forerunner of the National Hearing Aid Society. The term is conferred by that organization to persons in the hearing aid marketing industry who have successfully passed a test given by the Society.

Concurrently, a number of accredited colleges and universities have established post-graduate degree programs in audiology. Graduates of such programs may qualify for a Certificate of Competence in Audiology from the American Speech and Hearing Association. Other such graduates belong to the American Academy of Private Practice in Speech Pathology and Audiology. It has become generally understood that the terms "audiologist" and "clinical audiologist" refer to persons who have a degree resulting from post-graduate study in audiology in an accredited university.

Arizona's Hearing Aid Dispenser Licensing Act, A.R.S., Title 36, Chapter 17, was adopted in 1970. Section 36-1934 provides for the revocation or suspension of a hearing aid dispenser's

license for unethical conduct which is defined in pertinent part by A.R.S. § 36-1901.7 as:

7. 'Unethical conduct' means:

...

(c) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceiving, improbable or untruthful.

Clearly the licensee is authorized and expected to utilize an audiometer in the practice of his profession. The Department of Health Services is required to administer qualifying examinations to persons who entered the field of hearing aid dispensing less than two years prior to the effective date of the Act. The examination is required to include:

...

5. Practical tests of proficiency in the techniques of taking earmold impressions and measurement of hearing by pure tone audiometry, including the air, bone and masking methods; and speech audiometry and other skills as they pertain to the candidacy for, selection of and adaptation of hearing aids.

Since the National Hearing Aid Society had been certifying hearing aid audiologists for a considerable time prior to the adoption of the Arizona licensure act and since the degree programs and certification of audiologists by the American Speech and Hearing Association similarly preceded adoption of the Arizona licensure act, we may assume that the Legislature was aware of the respective terms applicable to the various persons that provide audiology services. We cannot, as a matter of law, assume that the use of the words "misleading or deceiving" in Section 36-1901.7.(c), *infra*, was intended to prohibit further use of the term "Certified Hearing Aid Audiologist" by a licensee who had or might subsequently meet the National Hearing Aid Society's qualifications therefor.

Warren A. Colton, Jr., M.D.

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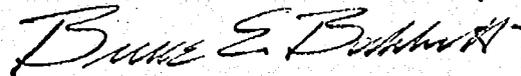
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Similarly, we believe that the terms which have become understood generally as descriptive of the degreed audiologists are also entitled to protection. Obviously, none of these terms should be utilized in a manner which might lead the public to believe that the term was conferred by the Department of Health Services through its hearing aid dispensers' licensing program.

Therefore, it is the opinion of this office that if an Arizona licensed hearing aid dispenser uses in his advertising or letterhead the term "Certified Hearing Aid Audiologist" which has been conferred by the National Hearing Aid Society, such use is not unethical conduct as defined in the Arizona Hearing Aid Dispenser Licensing Act provided that the phrase is clearly segregated from any reference to the Arizona license or licensing agency. Preferably the phrase should be displayed as "Certified by the National Hearing Aid Society as a Hearing Aid Audiologist."

On the other hand, in recognition of the public awareness of the qualifications of persons who have received a graduate degree in audiology from an accredited college or university, it is our opinion that it would be unethical conduct, i.e., misleading or deceiving, for a hearing aid dispenser who does not have the additional qualifications to use the word "Audiologist" alone or the phrases "Licensed Audiologist", "Clinical Audiologist", "Certified Audiologist", or any similar combination of words other than those specifically approved in the foregoing paragraph.

Sincerely,



BRUCE E. BABBITT
Attorney General

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