

OPINION NO. 2010-011**Syllabus:**

2010-011

The use of the term “audioprosthologist” “or “certified audioprosthologist” by a person who does not hold a license to practice audiology issued by the Ohio Board of Speech-Language Pathology and Audiology under R.C. Chapter 4753 (including a person licensed as a hearing aid dealer or fitter under R.C. Chapter 4747 who is not also licensed as an audiologist under R.C. Chapter 4753) does not in itself constitute a violation of R.C. 4753.02; however, there may be a violation if the term is used in such a manner as to tend to convey the impression that the person is an audiologist.

To: Valenta Ward-Gravelly, Au.D., Chairperson, Ohio Board of Speech-Language Pathology and Audiology, Columbus, Ohio

By: Richard Cordray, Ohio Attorney General, April 5, 2010

We have received your request, on behalf of the Ohio Board of Speech-Language Pathology and Audiology (“Board”), for an opinion on the question whether the use of the term “Audioprosthologist” by a person who is not licensed by the Board to practice audiology constitutes a violation of R.C. 4753.02. You are asking particularly whether persons who are licensed as hearing aid dealers or fitters under R.C. 4747 may use titles such as “Audioprosthologist” or “Certified Audioprosthologist.”

As explained later in this opinion, the term “audioprosthologist” is defined neither by Ohio statute nor by standard dictionaries of the English language. It is a hybrid of terms associated with the practice of audiology, although it is not generally used by Ohio audiologists in their practices. Rather, the term “audioprosthologist” has gained acceptance among hearing aid dealers and fitters, who assert that the term is an apt description of their role vis-à-vis the purchasers of hearing aids. Thus, to place the Board’s question in context, it is helpful to summarize the statutes enacted by the General Assembly that govern and regulate audiologists and hearing aid dealers and fitters in the pursuit of their respective professions.

Licensure as an Audiologist

R.C. Chapter 4753 creates the Board and gives it authority to license speech-language pathologists and audiologists and to regulate the practice of those fields. R.C. 4753.03, .05. R.C. 4753.02 restricts the practice of speech-language pathology and audiology to persons licensed or permitted under R.C. Chapter 4753, stating:

No person shall practice, offer to practice, or aid and abet the practice of the profession of speech-language pathology or audiology, or use in connection with the person’s name, or otherwise assume, use, or

advertise any title or description tending to convey the impression that the person is a speech-language pathologist or audiologist unless the person is licensed or permitted under this chapter. (Emphasis added.)

An “[a]udiologist” is defined as:

a person who practices audiology and who represents himself to be an audiologist by using the term “audiology,” “audiologist,” “audiometry,” “audiometrist,” “audiological,” “hearing therapy,” “hearing therapist,” “hearing clinic,” “hearing clinician,” or “hearing aid audiologist,” or any similar title. (Emphasis added.)

R.C. 4753.01(D). An individual seeking licensure as an audiologist must hold, at a minimum, a degree as doctor of audiology (or the equivalent as determined by the Board) and also must have appropriate supervised clinical experience and pass examinations prescribed by the Board. R.C. 4753.05, .06.

“Audiology” is defined as “the application of principles, methods, or procedures related to hearing and the disorders of hearing.” R.C. 4753.01(E). The “[p]ractice of audiology” includes the planning and conducting of habilitative or rehabilitative counseling programs for individuals with hearing disorders; audiology services such as prevention, identification, evaluation, consultation, instruction, and research; providing auditory training and speech reading; and administering tests of vestibular function and tests for tinnitus. R.C. 4753.01(G). Of significance to this opinion, the practice of audiology also includes “participating in hearing conservation, hearing aid and assistive listening device evaluation, selection, preparation, dispensing, and orientation; fabricating ear molds.” R.C. 4753.01.

Licensure as a Hearing Aid Dealer or Fitter

R.C. Chapter 4747 creates the Hearing Aid Dealers and Fitters Licensing Board and gives it authority to license hearing aid dealers and hearing aid fitters and to regulate their practice. R.C. 4747.03, .04, .05. The “[p]ractice of dealing in’ or ‘fitting of’ hearing aids” is defined to mean:

the sale of a hearing aid, and the measurement and testing of human hearing by means of an audiometer or by any other means for the purpose of selecting, adapting, and selling a hearing aid to any person, and includes the making of impressions for earmolds.

R.C. 4747.01(B). There is a statutory prohibition against engaging in the practice of dealing in or fitting of hearing aids without being licensed under R.C. Chapter 4747, but exceptions are granted for certain persons, including audiologists licensed under R.C. Chapter 4753. R.C. 4747.02, .15.

An applicant for licensure as a hearing aid dealer or fitter is not required to have any particular academic training, but must pass a qualifying examination specified and administered by the Hearing Aid Dealers and Fitters Licensing Board.

The applicant must be at least eighteen years of age, of good moral character, and free of contagious or infectious disease. R.C. 4747.05.

Relationship Between Audiologists and Hearing Aid Dealers or Fitters

It is clear from the summary set forth above that the practice of audiology is broader than that of a hearing aid dealer or fitter and the academic requirements for the practice of audiology are substantially greater. However, there is an overlap in permitted areas of practice, and a hearing aid dealer or fitter is expressly permitted to perform some of the activities that a licensed audiologist may perform. The disparity in qualifications between an audiologist and a hearing aid dealer or fitter has been recognized as a reason for protecting consumers by assuring that the distinction between these occupations is maintained. *See Gandee v. Glaser*, 785 F. Supp. 684, 690-91 (S.D. Ohio 1992), *aff'd*, 19 F.3d 1432 (6th Cir. 1994).

R.C. Chapter 4753 recognizes that persons licensed as hearing aid dealers or hearing aid fitters under R.C. Chapter 4747 may perform some of the same functions that an audiologist performs, and that their performance of functions for which they are licensed does not violate R.C. 4753.02. In this regard, R.C. 4753.12 states, in part:

Nothing in this chapter shall be construed to:

. . . .

(G) Restrict a person licensed under Chapter 4747. of the Revised Code from engaging in the duties as defined in that chapter related to measuring, testing, and counseling for the purpose of identifying or modifying hearing conditions in connection with the fitting, dispensing, or servicing of a hearing aid, or *affect the authority of hearing aid dealers to deal in hearing aids or advertise the practice of dealing in hearing aids in accordance with Chapter 4747. of the Revised Code.* (Emphasis added.)

Further, the statute directing the Board to “investigate all alleged irregularities in the practices of speech-language pathology and audiology by persons licensed or permitted pursuant to [R.C. Chapter 4753] and any violations of [R.C. Chapter 4753] or rules adopted by the board” expressly restricts the Board’s authority to investigate the practice of hearing aid dealers or fitters, stating:

The board shall not investigate the practice of any person specifically exempted from licensure under this chapter by [R.C. 4753.12], as long as the person is *practicing within the scope of the person’s license* or is carrying out responsibilities as described in division (G) or (H) of [R.C. 4753.12] and *does not claim to be a speech-language pathologist or audiologist.* (Emphasis added.)

R.C. 4753.05(E).

Use of the Term “Audioprosthologist” as a Violation of R.C. 4753.02

The question before us is whether use of the term “audioprosthologist”

constitutes a violation of R.C. 4753.02. The term “audioprosthologist” is not listed in R.C. 4753.01(D) among titles that are defined as representing a person to be an audiologist, nor does it appear elsewhere in the Ohio Revised Code or in the Ohio Administrative Code. Further, it is not generally defined in standard English or medical dictionaries. *See, e.g., Random House Webster’s Unabridged Dictionary* 135 (2001); *Stedman’s Medical Dictionary* 168 (26th ed. 1995); *see also Handbook of Clinical Audiology* (Jack Katz et al. eds., 6th ed. 2009); H. Gustav Mueller, III & James W. Hall, III, *Audiologists’ Desk Reference*, vol. II, at 907 (1998).

The term “audioprosthologist” is, however, used in certain contexts in connection with the training of hearing aid dealers or fitters. One reference book defines “audioprosthologist” as “one who studies prosthetic devices for hearing; term used by some hearing aid dispensers to describe themselves; not a universally accepted term.” Lisa Lucks Mendel et al., *Singular’s Illustrated Dictionary of Audiology* 19 (1999); *see also, e.g., Brad A. Satch, Comprehensive Dictionary of Audiology* 28 (illustrated 2d ed. 2003) (defining “audioprosthologist” as “person credentialed in the fitting and dispensing of hearing aids” and “audioprosthology” as “study of hearing aid fitting”).

A review of the term “audioprosthologist” indicates that it is used most commonly by the International Hearing Society (IHS), a professional organization that administers the American Conference of Audioprosthology (ACA). The ACA provides an educational program in hearing instruments sciences, including a 13-month course and a practicum. According to IHS, the program is offered on weekends, has been determined by the American Council on Education (ACE) College Credit Recommendation Service to be equivalent to fifteen semester hours of upper-level baccalaureate credits, and may be applied to a variety of undergraduate programs. Persons who successfully complete the ACA program are awarded certification as audioprosthologists.¹

The term “audioprosthology” is a combination of “audio,” which means pertaining to sound or hearing; “prosthesis,” which is “a device . . . that substitutes for or supplements a missing or defective part of the body”; and “ology,” pertaining to “any science or branch of knowledge.” *Random House Webster’s Unabridged Dictionary* 135, 1350, 1553 (2001). Thus, the term “audioprosthologist” refers to a person with knowledge about artificial devices relating to sound or hearing, and is a reasonably accurate representation of the practice of a licensed hearing aid dealer or fitter.

“Audio” is used in numerous English words that relate to sound or hearing and frequently appears in contexts that do not pertain to audiology. *See Random House Webster’s Unabridged Dictionary* 135 (2001) (in addition to referring to hu-

¹ *See* http://ihsinfo.org/IhsV2/Education/030__ACA__position.cfm. Information submitted on behalf of IHS indicates that the ACA has been in existence for 19 years and a total of 537 persons have completed the audioprosthology program, with 24 living in Ohio. Fifteen persons completed the program in 2008, and 31 persons completed the program in 2009.

man hearing, “audio” may refer to electronic apparatus and to sound recording, transmission, reception, and reproduction). However, the appearance of the segments of “audiologist” within the term “audioprosthologist” provides a clear link between the two terms. Further, “audioprosthologist” has an appearance that suggests scientific sophistication and constitutes an impressive alternative to the term “hearing aid dealer or fitter.” The relationship between the two terms provides the basis for your concern that use of the term “audioprosthologist” may create confusion or mislead a consumer as to the credentials or training of a hearing aid dealer. Your letter states, in part:

The Hearing Aid Dealers and Fitters Licensing Board has indicated to us that the use of the titles “Audioprosthologist” or “Certified Audioprosthologist” does not violate R.C. Chapter 4747, so long as the hearing aid dealer or fitter is in fact certified by the IHS. This Board believes that the use of this term or any similar title or descriptions of hearing service using the prefix “audio” has the significant potential to mislead consumers; therefore, the use of these terms should be prohibited by those not licensed as audiologists under Revised Code Chapter 4753.

Our research of “audioprosthologist” in provisions of law confirms the conflicting positions taken with regard to the use of the word. Some states expressly prohibit the use of the term “audioprosthologist” by a person who is not licensed as an audiologist. *See* Minn. Stat. § 148.513 (2009) (the use of the term “audioprosthologist,” alone or in combination with any word or words, to form an occupational title is prohibited except by a person who is licensed as a speech-language pathologist or an audiologist); N.M. Stat. Ann. § 61-14B-7 (2009) (no person shall represent himself to be an audiologist by using the term “audioprosthologist” unless licensed as an audiologist); *see also* Me. Code R. 02-164-007 (2009) (the Board of Hearing Aid Dealers and Fitters has determined it to be unacceptable practice within the profession to “misrepresent, either directly or by implication,” that “the services or advice of a physician, otologist, otolaryngologist, audiologist or audioprosthologist have been, are being or will be used in the designing, manufacturing, selecting, testing, fitting, adapting, maintaining, or repairing of any hearing aid, part, or accessory thereof”).²

Other states use the term “audioprosthologist” in connection with hearing aid dealers. For example, several states include training as an audioprosthologist among various types of training that qualify a person to be licensed as a hearing aid dealer. *See* Ark. Code Ann. § 17-84-304 (2009) (including among ways to satisfy educational requirements for licensure by the Arkansas Board of Hearing Instru-

² The American Academy of Audiology has taken the position that hearing aid dispensers who are not audiologists should be prohibited from using the title “audioprosthologist.” *See* www.audiology.org/resources/documentlibrary/Pages/Audioprosthologist.aspx; www.audiology.org/advocacy/grnews/Documents/gr200711a.pdf.

ment Dispensers: “Be a graduate of an American Conference of Audioprosthology program”); Mont. Admin. R. 24.150.2201 (2009) (courses that meet continuing education requirements for hearing aid dispensers include courses sponsored by “the American conference of audioprosthology”); 138-1 Nev. Reg. Admin. Regs. § 637A.030 (Feb. 11, 2009) (an applicant for licensure as a hearing aid specialist must possess one of several specified educational qualifications, including “[a]n associates degree or higher degree from an accredited college or university in hearing aid technology, audioprosthology, or other curriculum approved by the Board [of Hearing Aid Specialists] which includes the testing of hearing and the dispensing and modification of hearing aids”).

You have referred to 1986 Op. Att’y Gen. No. 86-063, which concludes in the syllabus that “[p]ursuant to R.C. 4753.02, no person, including a hearing aid dealer or fitter licensed pursuant to R.C. Chapter 4747, may use the word ‘audiologist’ as a title or as part of a title or description of services unless that person holds a license to practice audiology issued by the Ohio Board of Speech Pathology and Audiology pursuant to R.C. Chapter 4753.” The 1986 opinion considers the titles “audiologist,” “hearing aid audiologist,” and “certified hearing aid audiologist.” Each of these titles includes the word “audiologist,” which is expressly mentioned in R.C. 4753.01(D) as a term that is used by a person “who represents himself to be an audiologist.” The opinion finds that use of the term “audiologist,” as a title or as part of a title, tends to convey the impression that the person using the title is an audiologist, thereby resulting in a violation of R.C. 4753.02.

A similar conclusion was reached in *Gandee v. Glaser*, with the court upholding as constitutional the position of the Ohio Board of Speech Pathology and Audiology that R.C. 4753.02 prevented hearing aid dealers from using the term “certified hearing audiologist” because the term “audiologist” could be used only by audiologists licensed under R.C. Chapter 4753. The court found that use of the term “certified hearing audiologist” by hearing aid dealers was inherently misleading and constituted commercial speech that was subject to regulation by the Board. *Gandee v. Glaser*, 785 F. Supp. at 693 (“the use of the term ‘audiologist’ by anyone other than a licensed audiologist is inherently misleading and may be proscribed by the state of Ohio as a valid exercise of its police powers”).³

We do not question the conclusion that the use of the term “audiologist” by

³ Various constitutional issues are raised by laws that restrict the use of particular terms by an individual pursuing a commercial endeavor, and care must be taken to protect the rights of the individual. *Gandee v. Glaser*, 785 F. Supp. 684 (S.D. Ohio 1992), *aff’d*, 19 F.3d 1432 (6th Cir. 1994); *see also Ibanez v. Fla. Dep’t of Bus. & Prof’l Regl’n*, 512 U.S. 136 (1994) (state may restrict professional’s use of credentials granted by public board or private organization only upon a showing that the restriction advances a substantial state interest in a manner no more extensive than necessary to serve that interest); *Peel v. Att’y Registration & Disciplinary Comm’n of Illinois*, 496 U.S. 91 (1990) (holding that the First Amendment of the United States Constitution prevents a state from completely prohibiting a lawyer who is certified as a specialist by a private professional organization from

a person who is not licensed as an audiologist is prohibited by R.C. 4753.02. This conclusion is consistent with the fact that “audiologist” is expressly used in R.C. Chapter 4753 to describe a licensed audiologist. *See also American Speech-Language-Hearing Ass’n v. Nat’l Hearing Aid Soc’y*, 1984 TTAB LEXIS 19, 45-47, 224 U.S.P.Q. (BNA) 798 (Trademark Trial & App. Bd. Oct. 26, 1984) (discussing the common understanding of the term “audiologist” in the United States and concluding that “the inclusion of the term ‘CERTIFIED HEARING AID AUDIOLOGIST’ in respondent’s mark is likely to deceive consumers into believing that the hearing aid dealers who use the mark are audiologists (i.e., persons academically trained to at least the master’s degree level in audiology) in the hearing aid aspect of the hearing field, when in fact the hearing aid dealers do not have that degree of training; and that the registered mark is deceptive within the meaning of Section 2(a) of the Trademark Act”).

However, we cannot find that the same conclusion applies to the use of the term “audioprosthologist.” Unlike “audiologist,” the term “audioprosthologist” is not mentioned in R.C. Chapter 4753 as a term restricted to use by licensed audiologists. Further, neither R.C. Chapter 4753 nor 1986 Op. Att’y Gen. No. 86-063 mentions the term “audioprosthologist.” On the information before us, it cannot be concluded definitively that the use of the term “audioprosthologist” would tend to convey the impression that a hearing aid dealer or fitter is an audiologist, in violation of R.C. 4753.02.⁴

It is possible, nonetheless, that the term “audioprosthologist” may be used referring to that certification in the lawyer’s letterhead; dissenters would permit the state to limit or prohibit such a reference because it is potentially misleading or inherently likely to deceive the public).

⁴ 1986 Op. Att’y Gen. No. 86-063 considers the common meanings of the words “impression,” “convey,” and “tend,” as used in R.C. 4753.02, and states, at 2-343:

An “impression” is defined as “an effect produced, as on the mind or senses, by some force or influence,” and as “a notion, feeling, or recollection, esp[ecially] a vague one.” *Webster’s New World Dictionary*, 706 (2d college ed. 1982). “Convey” is defined as serving “as a channel or medium” for transmitting, or “to make known; communicate in words, actions, appearance, etc.” *Id.* at 311. Finally, “tend” is defined as: “to have an inclination, tendency, bias, etc. to do something; incline . . . to lead or be directed.” *Id.* at 1465. Thus, it does not appear that R.C. 4753.02 requires that a consumer actually misperceive or be misled by a title or advertisement for a violation of the statute to occur. Rather, the use of the broad language “tending to convey the impression” indicates that the statute will be violated if the use of a term might lead or incline a person to have the notion or feeling that one using the term is an audiologist. I believe that a consumer who sees a sign identifying a practitioner as a “hearing aid audiologist” or a “certified hearing aid audiologist” might think, or might have the “vague feeling,” that the practitioner is an audiologist. Indeed, I find that the possibility of misperception is very real.

in some contexts as part of a claim to be an audiologist, and the Board is authorized to investigate such uses. Depending upon its findings, the Board might determine that there is a violation of R.C. 4753.02 in particular circumstances. *See* R.C. 4753.05, .10, .12. For example, a person licensed under R.C. Chapter 4747 who has completed a course of study that awards a certificate in “audioprosthology” and uses this term in describing his or her qualifications might be found to be in compliance with both Chapter 4747 and Chapter 4753 if the person also includes clear identification as a licensed hearing aid dealer or fitter and in no way purports to be authorized to perform any activities for which licensing as an audiologist is required. Conversely, a violation of R.C. 4753.02 might be found if a particular use of the term “audioprosthologist” tends to convey the impression that a person not licensed under R.C. Chapter 4753 is an audiologist.⁵

Thus, under current Ohio law, the use of the term “audioprosthologist” by a hearing aid dealer or fitter is not prohibited by R.C. 4753.02 unless it is found in particular circumstances that its use tends to convey the impression that the person is an audiologist and thus violates R.C. 4753.02. The responsibility for determining whether that finding is justified is given to the Board. *See* R.C. 4753.02, .05, .10, .12.

The analysis and conclusions set forth in this opinion are based upon existing statutes of the State of Ohio. If different conclusions are desired, appropriate legislative changes may be made. *See Bd. of Educ. v. Fulton County Budget Comm’n*, 41 Ohio St. 2d 147, 156, 324 N.E.2d 566 (1975); 2009 Op. Att’y Gen. No. 2009-006, at 2-47. For example, the General Assembly might adopt a statute

There may be a question whether the possibility of a “vague feeling” that the use of the term “audioprosthologist” might refer to an audiologist would be sufficient to establish a violation of R.C. 4753.02. *See* note 3, *supra*. Even under this nebulous standard, however, the information before us provides no more than speculation and does not establish a foundation for completely prohibiting the use of the term “audioprosthologist” by a hearing aid dealer or fitter.

⁵ Some other state attorneys general have reached similar conclusions. For example, in Opinion No. 2004-031, the Attorney General of Arkansas concluded:

It is my opinion that the use of the title “Audioprosthologist,” in and of itself, is not misleading and does not constitute a violation of the law governing the licensure of speech-language pathologists and audiologists. However, a person using the title “Audioprosthologist” cannot practice “audiology” without being licensed as an audiologist.

An informal opinion of the Florida Attorney General dated March 12, 1992, stated:

The use of the term “audioprosthologist” by itself, without any representation that services other than those authorized to be performed by a licensed hearing aid specialist are offered, would not appear to indicate that the individual is or holds himself out to be a licensed audiologist.

expressly addressing whether or when a hearing aid dealer or fitter may use the term “audioprosthologist.”

Conclusion

For the reasons discussed above, it is my opinion, and you are advised, that the use of the term “audioprosthologist” “or “certified audioprosthologist” by a person who does not hold a license to practice audiology issued by the Ohio Board of Speech-Language Pathology and Audiology under R.C. Chapter 4753 (including a person licensed as a hearing aid dealer or fitter under R.C. Chapter 4747 who is not also licensed as an audiologist under R.C. Chapter 4753) does not in itself constitute a violation of R.C. 4753.02; however, there may be a violation if the term is used in such a manner as to tend to convey the impression that the person is an audiologist.