

## Opinion No. 70-82

October 26, 1970

**BY:** OPINION OF JAMES A. MALONEY, Attorney General

**TO:** Mr. B.E. Stover, Secretary Hearing Aid Dealers and Fitters Licensing Board P.O.  
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### QUESTIONS

#### QUESTION

May the Hearing Aid Dealers and Fitters Licensing Board, acting under authority of the Hearing Aid Act, Sections 67-36-1, et seq., N.M.S.A., 1953 Compilation, promulgate a regulation requiring all licensees to attend a specified number of hours' technical retraining each year?

#### CONCLUSION

No.

### OPINION

#### {\*141} ANALYSIS

The Hearing Aid Act, Sections 67-36-1, **et seq.**, N.M.S.A., 1953 Compilation, creates a Board vested with the authority to license and regulate the sales and fitting of hearing aids. The powers of this Board are set forth by statute, and explicitly include those enumerated at Section 67-36-4, **supra**:

Powers and duties of board. -- The board shall:

A. authorize all disbursements necessary to carry out the provisions of the Hearing-Aid Act [67-36-1 to 67-36-18];

B. prepare and administer the examinations to test the knowledge and proficiency of applicants for licensure by examination, and set the time and place for such examinations;

C. supervise the issuance of licenses and permits and their renewal;

D. suspend and revoke licenses and permits when a person is guilty of a violation of the Hearing-Aid Act, in accordance with the provisions of the Uniform Licensing Act [67-26-1 to 67-26-28];

E. appoint or employ personnel necessary to administer the Hearing-Aid Act;

F. maintain a register of all applicants for licenses or permits;

G. purchase and maintain or rent equipment necessary to examine applicants for licensure as to their ability to sell and fit hearing-aids; and

H. after public hearings and notice, promulgate and publish rules and regulations necessary to carry out the provisions of the Hearing-Aid Act.

Though the Board is granted authority to promulgate and enforce regulations, that authority is not unlimited. It is a fundamental tenet of administrative law that regulatory power must be exercised within the limits imposed by the purpose and scope of the legislation upon which it is based. **State ex rel. McCulloch v. Ashby**, 73 N.M. 267, 387 P.2d 588 (1963); **Parrack v. Ford**, 68 Ariz. 205, 203 P.2d 872 (1949); **Hernandez v. Frohmiller**, 68 Ariz. 242, 204 P.2d 854 (1949).

A grant of authority to promulgate regulations must be read in the context in which it appears, and specifically-enumerated powers are of great weight in determining the scope of the regulatory authority of an agency. **Senter v. Colarelli**, 145 F. Supp. 569 (E.D.Mos. 1956). In placing restrictions on licensed activity, the agency may not enlarge the restrictions imposed by statute. **Orloff v. Los Angeles Turf Club**, 36 Cal. 2d 734, 227 P.2d 449 (1951). A regulation which attempts to impose improperly-broad restrictions is void. **People v. Mangiagli**, 97 Cal. App. 2d 935, 218 P.2d 1025 (1950).

{\*142} While there may be reason to believe that technical retraining of licensees would benefit the public, the power to require such retraining has not been granted to the Hearing Aid Dealers and Fitters Licensing Board. No requirement exists for technical training before licensing, and no provision is made for any program of post-licensing examination. In specifying the procedures for the annual renewal of licenses, Section 67-36-13, **supra**, grants the Board no authority to review the qualifications of the licensee. Finally, while the Board is granted the power to suspend or revoke a license for, **Inter alia**, "gross ignorance or inefficiency in the profession", Section 67-36-16(E), **supra**, such a determination could be made only on direct evidence of the conditions, and not on a mere showing that the licensee had not attended a certain retraining program. In the absence of statutory authority to do so, it lies beyond the power of the Board to require yearly technical retraining of licensees. **Oregon Newspaper Publishers Ass'n v. Peterson**, 244 Ore. 116, 415 P.2d 21 (1966); **Medical Properties Inc. v. North Dakota Bd. of Pharmacy**, 80 N.W.2d 87 (N.D. 1956).

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