

1976 WL 30791 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 SOUTH CAROLINA CODE SECTION 56-745.12(2)(C)(5), AS AMENDED, PROHIBITS THE USE OF THE TERM 'HEARING AID AUDIOLOGIST' BY PERSONS LICENSED UNDER THE FITTING AND SELLING OF HEARING AIDS ACT. SECTION 106(3) OF 'THE RULES AND REGULATIONS TO REGULATE THE PRACTICE OF SELLING AND FITTING HEARING AIDS' IS INCONSISTENT WITH SECTION 56-745.12(2)(C)(5) AND IS VOID TO THE FULL EXTENT OF THE INCONSISTENCY.

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QUESTION PRESENTED:

May persons licensed under South Carolina Code Section 56-745, as amended, use the term 'hearing aid audiologist?'

STATUTES, REGULATIONS AND CASES INVOLVED:

South Carolina Code, as amended, Sections 56-745.1(8), 56-745.12(2)(C)(5), 56-745.15(9); The Rules and Regulations to Regulate the Practice of Selling and Fitting Hearing Aids, Section 106(3); [Banks v. Batesburg Hauling Co.](#), 24 S.E.2d 496, 202 S.C. 273; [Beaty v. Richardson](#), 34 S.E. 73, 76, 56 S.C. 173; [Independence Insurance Co. v. Independent Life and Accident Insurance Co.](#), 61 S.E.2d 399, 218 S.C. 22; [Southeastern Fire Insurance Co. v. South Carolina Tax Commission](#), 171 S.E.2d 355, 253 S.C. 407.

DISCUSSION OF ISSUES:

The South Carolina Code of Laws, as amended, Section 56-745.1(8), entitled 'The Fitting and Selling of Hearing Aids Act,' defines audiologist as an 'individual completing satisfactory graduate work and holding a certificate of clinical competence and who is actually engaged in audiological practice in this State.' Furthermore, Section 56-745.12(2)(C)(5) states that a license issued pursuant to the Act may be revoked or suspended for unethical conduct consisting of the use of words 'which tend to connote the medical profession.' Among these is the word 'audiologist.' Under the Act, Section 56-745.15(9), the State Board of Health and Environmental Control is empowered to promulgate 'rules and regulations not inconsistent with the laws of this State.' In collaboration with the State Commission for Hearing Aid Dealers and Fitters, the Department of Health and Environmental Control has promulgated 'The Rules and Regulations to Regulate the Practice of Selling and Fitting Hearing Aids.' Section 106(3) of these rules and regulations specifically states that the use of the word 'audiologist' is an unethical practice, but the proviso to Section 106(3) allows the use of the title of 'hearing aid audiologist' . . . 'when the licensee is so certified by the National Hearing Aid Society of the United States.'

As a general proposition, rules and regulations of an administrative agency must be sustained unless plainly inconsistent or broader than the statute empowering the making of rules. [Banks v. Batesburg Hauling Co.](#), 24 S.E.2d 496, 202 S.C. 273. 'To the extent that a regulation is not in conformity with the statute . . . it conflicts with the meaning of such statute and so is unauthorized.' 2 Am Jur 2d Administrative Law Section 296, 300.

*2 The prohibition of the use of the term ‘audiologist’ may have been based on a recognition of the confusion caused by the use of the term by non-professionals. However, an inquiry into legislative intent is unnecessary; the statutes are clear and unambiguous. [Beaty v. Richardson](#), 34 S.E. 73, 76, 56 S.C. 173; [Independence Insurance Co. v. Independent Life and Accident Insurance Co.](#), 61 S.E.2d 399, 218 S.C. 22; [Southeastern Fire Insurance Co. v. South Carolina Tax Commission](#), 171 S.E.2d 355, 253 S.C. 407.

The Department of Health and Environmental Control acted in excess of the scope of authority granted in South Carolina Code Section 56-745.15(9) by enacting the proviso to Section 106(3) of ‘The Rules and Regulations to Regulate the Practice of Selling and Fitting Hearing Aids.’ Therefore, the proviso is unauthorized and should be considered void. [Lake v. Mercer](#), 58 S.E.2d 336, 216 S.C. 391. Persons licensed under the Fitting and Selling of Hearing Aids Act may not use the term ‘Hearing Aid Audiologist.’

CONCLUSION:

South Carolina Code Section 56-745.12(2)(C)(5), as amended, prohibits the use of the term ‘Hearing Aid Audiologist’ by persons licensed under the Fitting and Selling of Hearing Aids Act. Section 106(3) of ‘The Rules and Regulations to Regulate the Practice of Selling and Fitting Hearing Aids’ is inconsistent with Section 56-745.12(2)(C)(5) and is void to the full extent of the inconsistency.

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