

**A Determination in the Matter of  
GREGORY WALES  
Hearing Instrument Dispenser, Certificate No. 2034**

**Authority:**

1. The Minnesota Department of Health (MDH or the Department) has the authority to discipline Hearing Instrument Dispensers for violations of Minnesota Statutes, Sections 153A and 148.5198.
2. Minnesota Statutes, Section 153A.13 subd. 4 defines “hearing instrument dispensing” as “making ear mold impressions, prescribing, or recommending a hearing instrument, assisting the consumer in instrument selection, selling hearing instruments at retail, or testing human hearing in connection with these activities regardless of whether the person conducting these activities has a monetary interest in the sale of hearing instruments to the consumer.”
3. Minnesota Statutes, Section 153A.13 subd. 5 defines a “dispenser of hearing instruments” as one who “engages in hearing instrument dispensing whether or not certified by the commissioner of health or licensed by an existing health-related board.”
  - a. This does not include supervised students or administrative or clerical staff who do not engage in hearing instrument dispensing.
  - b. This subdivision further requires that “a person who offers to dispense a hearing instrument, or a person who advertises [or] holds out to the public . . . that the person is authorized to dispense hearing instruments must be certified by the commissioner except when the person is an audiologist as defined in section 148.512.”
4. Minnesota Statutes, Section 153A.14 subd. 4 prohibits dispensing of hearing instruments without a valid certificate. A person who dispenses a hearing instruments without a certificate is guilty of a gross misdemeanor.
  - a. Subdivision 4a of this section allows dispensing as a trainee for a period not to exceed 12 months following application to MDH.

- b. Such a trainee must be directly supervised until the trainee has taken and passed the practical examination for certification; remote supervision is only allowed after passage of the practical examination and until expiration of the 12-month training period.
5. Minnesota Statutes, Section 153A.15 subd. 1(10) prohibits failing to comply with the requirements of this chapter as an employer or supervisor.
6. Minnesota Statutes, Section 153A.15 subd. 1(20) prohibits aiding or abetting another person in violating any of the provisions of sections 148.5195, subdivision 3, clause (20); 148.5197; 148.5198; and 153A.13 to 153A.18.
7. Minnesota Statutes, Section 148.5195 subd. 3(20viii) prohibits delegating hearing instrument dispensing authority to a person not authorized to dispense a hearing instrument under this chapter or chapter 153A.
8. Pursuant to Minnesota Statutes, Section 153A.15 subd. 2, MDH may, among other actions, revoke or suspend the certificate of a practitioner, revoke or suspend the right to supervise trainees, impose a civil penalty that deprives the dispenser of any economic advantage gained by the violation and that reimburses the Department of Health for costs of the investigation and proceeding resulting in disciplinary action, impose a civil penalty not to exceed \$10,000 for each separate violation, or take any other action reasonably justified by the individual case.

### **Findings of Fact:**

1. The Minnesota Department of Health (MDH) issued Gregory Wales (Wales) a hearing instrument dispenser certificate effective December 21, 1993. He has renewed his certification annually since. Wales is the owner of Wales Hearing Centers located in Alexandria, Fergus Falls, Long Prairie, and Morris, Minnesota.
2. The Department issued Wales's son, M.W., a hearing instrument dispenser trainee certificate on September 25, 2008. This trainee certificate expired on September 30, 2009. M.W. has not taken the state certification exam or been certified in any capacity since 2009.
3. On December 15, 2016, MDH received a complaint from a consumer (Consumer 1) regarding a billing issue. Department investigation revealed that M.W. had conducted a hearing test on Consumer 1 at the Wales Hearing Center located in Fergus Falls, Minnesota (Fergus Falls WHC).
4. In a December 27, 2016, email from Wales to MDH, Wales stated that he did not employ any hearing instrument dispensers or audiologists at that time and that M.W. worked at Fergus Falls MHC as a contracted office manager, providing reception and scheduling services, as well as providing office maintenance, handling shipping and receiving duties, and ordering batteries and hearing aid cleaning supplies."

5. In a July 6, 2017, letter to MDH, Wales stated that M.W. “does everything and anything he can to help me provide my services to patients that I serve at the Fergus Falls office.” He further expressed that he did not believe M.W. had ever taken the hearing instrument dispenser exam.
6. On September 24, 2018, MDH received a complaint from a hearing instrument dispenser (HID 2) on behalf of a second consumer (Consumer 2). The complaint alleged that during the week of September 13, 2018, M.W. conducted a hearing test on Consumer 2, refusing to provide his name to the consumer or sign the results of the hearing test
7. On October 23, 2018, MDH sent Notices of Investigation and requests for information to Wales and M.W. requesting records of hearing testing, audiograms, hearing aid fittings, or other related tasks performed by M.W. during the period September 10-14, 2018.
8. On November 20, 2018, MDH received M.W.’s response to its Notice of Investigation. His response included the following:
  - a. A copy of the invoice provided to Consumer showing Consumer’s name and address and payment for “1 Hearing Exam,” with a receipt of Notice of Privacy Practices attached, signed by Consumer.
  - b. A copy of “Patient’s Test Results” as obtained from the hearing test conducted upon Consumer.
  - c. Statement provided by M.W. that he is an “Office Manager that handles normal day to day operations at Fergus Falls address.”
  - d. Statement provided by M.W. that “Patient self administered automated procedure with an Amplitude T3 unit.”
9. On November 26, 2018, MDH received Wales’s response to its Notice of Investigation. His response indicated that M.W. conducted a hearing test on Consumer 2 which was an automated, computer-assisted test not using a traditional audiometer. Wales stated that M.W. refused to sign his name because he didn’t want to imply that he had hearing instrument dispenser credentials. Wales went on to say that he “totally support[ed] what M.W. did”; and that M.W. performs the role of “Patient Care Coordinator.”
10. Departmental research ascertained that the Amplitude T3 unit M.W. admitted using to conduct the hearing test on Consumer is marketed as a computer-based audiometer for air and bone conduction testing.
11. The Department’s review of the materials submitted as enclosures by Wales revealed nothing excepting Wales or M.W. from the requirements of Minnesota Statutes, Chapter 153A, and in fact, provided admissions of the violations.

## Conclusion:

Practitioner violated the provisions of Minnesota Statutes, Sections 148.5195 subd. 3(20viii) and 153A.15 subds. 1(10) by employing and delegating to an uncertified individual activities required to be performed by certified hearing instrument dispensers.

Practitioner violated the provisions of Minnesota Statutes, Section 153A.15 subd. 1(20) by aiding and abetting an uncertified individual in violating Section 153A.14 subd. 4 by performing activities required to be performed by certified hearing instrument dispensers.

## Determination:

Upon the effective date of this Determination, Wales's future certification to dispense hearing instruments is conditioned upon satisfaction of the following:

1. Wales must immediately cease and desist from allowing any uncertified employees who are not supervised "trainees" or any employees in unsupervised locations from conducting any activities reserved by statute to certified hearing instrument dispensers.
2. Within 30 days of the effective date of this Determination, Wales shall pay a total of \$4,700.00, delineated as follows:
  - a. One thousand five hundred (\$1,500.00) for each of the three separate statutory violations enumerated above; and
  - b. Investigative costs totaling \$200.00.
3. Wales shall make payment by check in the amount of \$4,700.00, payable to the "Minnesota Department of Health," and mail the check to the attention of: HOP Investigations and Enforcement, Civil Penalty Payment – HID, P.O. Box 64882, Saint Paul, MN 55164-0882.
4. Wales may pay the \$4,700.00 total penalty in monthly installments for up to twenty-four (24) months. If Wales chooses to make installments, he must notify the Department in writing about his intentions, including how many installments he intends to make, in what amount, and over what time period. Wales must send this information to: HOP Investigations and Enforcement, P.O. Box 64882, Saint Paul, MN 55164-0882, within 30 days of receipt of this Determination. Each payment is due as determined by the terms of the installment plan; however, Practitioner may prepay at any time without penalty for such.
5. If Wales submits any payment more than 14 calendar days after the established payment date, the penalty may be referred to the Minnesota Collection Enterprise (MCE), part of the Minnesota Department of Revenue, or any other source for collection. In the event that MDH must refer a matter to MCE, MCE is authorized by

Minnesota Statutes, Section 16D.17 to obtain a judgment against Wales without further notice or proceeding.

6. Within 12 months of the effective date of this Determination, Wales shall have successfully completed four (4) continuing education (CE) units on coursework related to the following, in addition to any CEs regularly required for certification renewal:
  - a. Two CE course hours related to ethics of hearing instrument dispensing, and
  - b. Two CE course hours related to state and federal hearing instrument dispensing regulations.

Once all conditions set forth in paragraphs 1 through 6 have been satisfied, Wales may petition MDH for an unconditional certificate to dispense hearing instruments.