

## License exemption, hearing aid employee

**Number:** AGO 78-168

**Date:** January 20, 1998

**Subject:**  
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### REGULATION OF PROFESSIONS--HEARING AID FITTERS--LICENSING--PHYSICIAN'S ASSISTANTS EXEMPT

To: Emmett Roberts, Secretary, Department of Health and Rehabilitative Services, Tallahassee

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#### QUESTION:

Is a nonphysician who works for and directly under the supervision and control of a licensed physician exempt from the requirements of part III of Ch. 468, F. S., if that individual, as part of his duties while working for the physician, assists the physician who fits and sells hearing aids?

#### SUMMARY:

Assuming a registered nurse or a physician's trained assistant or other person specified in s. 458.13(4), F. S., assists a physician under his supervision and control in the physician's fitting and selling of hearing aids, then such physician and nurse, or trained assistant or other person specified in s. 458.13(4), F. S., are not required to comply with registration under part III of Ch. 468, F. S. Such activities are considered the practice of medicine or the rendition of medical services in the course of the physician's practice of medicine exempted from the registration requirements of part III of Ch. 468, F. S.

Part III of Ch. 468, F. S., provides generally for regulation of the fitting and selling of hearing aids. The purpose of part III is to

"require registration for protection of the public of any person engaged in the fitting or selling of hearing aids, to encourage better educational training programs for such persons to provide against unethical and improper conduct and for the enforcement of this part, and to provide penalties for its violation." [Section 468.121, F. S.]

Section 468.137(2), F. S., exempts from the provisions of part III "any physician licensed to practice in the State of Florida."

The provisions regulating the licensure of physicians to practice in the State of Florida are set forth in Ch. 458, F. S., and, specifically, s. 458.13, F. S., sets out the definition of the practice of medicine. Section 458.13(4), however, provides for the following exemption:

"(4) Nothing in this section shall be construed to prohibit service rendered by a physician's trained assistant, a registered nurse, a registered nurse midwife (nurse obstetric associate), or a licensed practical nurse, if such service be rendered *under the responsible supervision and control of a licensed physician.*" (Emphasis supplied.)

It appears from your inquiry that your question is limited to the "staff" or "nursing staff" of a licensed physician. As set forth above, s. 458.13(4), F. S., allows a specified category of persons under the responsible supervision and control of a licensed physician to perform medical services.

Since s. 468.137(2), F. S., assumes that the fitting and selling of hearing aids fall within a licensed physician's practice of medicine which is not subject to regulation under Ch. 468, F. S., it would follow, unless judicially determined otherwise, under s. 458.13(4), F. S., that a licensed physician, fitting and selling hearing aids, may be assisted by his "trained assistants" or "registered nurses" (or specifically any of those persons listed in s. 458.13(4), F. S.) under his responsible control and supervision, and such persons may perform such services without registration under part III of Ch. 468, F. S. In this respect, see AGO 076-149 wherein it was opined that psychiatric aides and assistants may administer certain medications so long as such duties were performed under the adequate supervision of a licensed physician, dentist, or registered nurse. See *also* AGO 075-218.

Your question is, therefore, answered in the affirmative.