

FILED

2018 APR 19 PM 3: 21

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

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ROBERT DANIEL TAYLOR,

Plaintiff,

Case No. 6:18-cv-013-ORL-31-DCI

v.

LEANNE POLHILL; RANDY ELLSWORTH;  
ROBERT PICKARD, MD; JOHN FISCHER;  
DOUGLAS MOORE; PAMELA  
DECMEROWSKI; MARIA HERNANDEZ;  
and THOMAS HOLLERN; each solely in their  
official capacities as Members of the Florida  
Board of Hearing Aid Specialists; CELESTE  
PHILIP, MD, MPH, solely in her official  
capacity as Secretary of the Florida Board of  
Health,

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Defendants.

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1. Plaintiff Robert Daniel (Dan) Taylor, by and through his undersigned counsel, brings this constitutional lawsuit for declaratory and injunctive relief, and alleges as follows:

**INTRODUCTION**

2. Hearing loss affects an estimated 30-million people across America. Yet many of those people lack access to hearing aids, because onerous, outdated, and unconstitutional regulations limit who may sell them and impose conditions on

their sale, which decreases their availability and increases the cost of obtaining them. This case seeks to vindicate the right of Plaintiff Dan Taylor to sell hearing aids to Florida consumers subject only to regulations that are not preempted by federal law and which are rationally related to a legitimate governmental purpose.

3. For more than 30 years, Dan has earned his livelihood selling hearing aids in the State of Florida as a licensed Hearing Aid Specialist. He declined to renew his license last year because he believed the state's requirements that he use antiquated procedures and equipment in the sale of hearing aids unnecessarily burdened his business and prevented him from rendering the best service to his customers. He has sold, and wishes in the future to sell, state of the art hearing aids that use modern software and hardware. These new technologies allow consumers to select hearing aids and have them fitted with common tools, including personal computers or smartphones.

4. Selling a hearing aid without a license has been declared a serious crime in Florida, as is failing to use the state's mandated procedures and equipment as part of the sales process. However, no license is required by federal law to sell hearing aids, and state regulation inconsistent with federal conditions on the sale of hearing aids is expressly preempted by the Medical Device Amendments (MDA) to the Food, Drug, and Cosmetics Act. Moreover, Florida's mandated procedures and equipment are unreasonable in light of advances in technology since its statutes

were enacted. This case therefore raises federal questions under the U.S. Constitution's Supremacy Clause and the Due Process Clause of the Fourteenth Amendment.

5. Florida's regulations require Dan to suspend his business to avoid punishment by the state. He will suffer lost business and the deprivation of his constitutional rights unless the state laws challenged herein are declared unconstitutional and Defendants are enjoined from enforcing them. This action seeks wholly prospective declaratory and injunctive relief and no monetary damages against any party.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) & 1343 (jurisdiction to redress deprivations of civil rights), and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and L.R. 1.02(c) because Plaintiff's residence and principal place of business is within Brevard County, and because the acts or omissions giving rise to this Complaint are occurring within this judicial district.

8. The Court has authority to provide the relief requested under the Supremacy Clause, U.S. Const. art. VI, cl.2, as well as 28 U.S.C §§ 2201 & 2202 (Declaratory Judgment Act), 42 U.S.C. § 1983, and its inherent equitable powers.

## **PARTIES**

9. Plaintiff Dan Taylor is a United States citizen and resident of Brevard County, Florida, who has earned his livelihood selling hearing aids to consumers in Florida for more than 30 years.

10. Defendant Leanne Polhill is the Chair of the Florida Board of Hearing Aid Specialists. Defendant Randy Ellsworth is Vice-Chair of the Florida Board of Hearing Aid Specialists. Defendants Robert Pickard, John Fischer, Douglas Moore, Pamela Decmerowski, Maria Hernandez, and Thomas Holleran are Members of the Florida Board of Hearing Aid Specialists. As members of the Board, they are responsible for licensing and disciplining individuals engaged in the sale of hearing aids in the State of Florida, and for issuing regulations imposing conditions on the sale of hearing aids in the state.

11. Defendant Celeste Philip is Florida's Surgeon General and Secretary of the Florida Board of Health. In her capacity as Secretary of the Florida Board of Health she is charged with enforcing Florida statutes prohibiting the unlicensed sale of hearing aids in the state and issue citations imposing fines and other penalties.

12. All of the Defendants are sued solely in their official capacities pursuant to the doctrine established by *Ex parte Young*, 209 U.S. 123 (1908).

## **FACTUAL ALLEGATIONS**

### **The Market for Hearing Aids**

13. Hearing loss affects an estimated 30-million people in the United States, typically resulting in a diminished quality of life.

14. Hearing aids are medical devices regulated by the U.S. Food and Drug Administration (FDA), and are the most common means by which hearing-impaired individuals mitigate or cope with their condition.

15. A hearing aid is “any wearable instrument or device designed for, offered for the purpose of, or represented as aiding person with or compensating for, impaired hearing.” *See* 21 C.F.R. § 801.420 (FDA definition).

16. More than 3.5-million hearing aid devices have been sold each year in the United States during the past five years.

17. The FDA estimates, however, that only approximately one-fifth of those persons who could benefit from hearing aids actually use them.

18. A significant reason why so few benefit from needed hearing aids is state regulation of hearing aid sales, which impose burdensome or unnecessary “conditions of sale,” making it more difficult for consumers to access hearing aids, restrict who may sell the devices, and tend to increase the price of them to end consumers.

**Federal Law Establishes Exclusive Conditions on the Sale of Hearing Aids**

19. The federal government has established a comprehensive legal scheme regulating “conditions of sale” applicable to hearing aid devices.

20. The federal regulations aim to ensure the safety and effectiveness of hearing aids, while preserving easy access to devices by consumers and imposing minimal restrictions on dispensers of hearing aids.

21. The MDA of 1976 amended the Food, Drug, and Cosmetic Act (FDCA) of 1938, providing the U.S. Food and Drug Administration (FDA) with authority over medical devices, including hearing aids. *See* 21 U.S.C. § 321(h).

22. In enacting the MDA, Congress expressly preempted state laws that regulate hearing aids to impose conditions of sale “different from” or “in addition to” federal rules.

23. The FDA has promulgated regulations governing the sale of hearing aids, including who may purchase them and what conditions are imposed on dispensers who sell them.

24. The FDA’s conditions on the sale of hearing aids require that devices carry specific labeling and that manufacturers provide a brochure that includes product information (including technical information, information on where one may obtain repair service, and various warnings applicable to the dispenser and the consumer related to the use and functioning of the device). *See* 21 C.F.R.

§ 801.420(b)-(c). The FDA defines a “dispenser” of hearing aids to mean “any person, partnership, corporation, or association engaged in the sale, lease, or rental of hearing aids to any member of the consuming public.” 21 C.F.R. § 801.420(a)(3).

25. The FDA regulations require hearing aid dispensers to be aware of eight “red flags” and, if a dispenser learns about one of these flags by observation or by other information, he must “advise a prospective hearing aid user to consult promptly with a licensed physician” prior to sale of a hearing aid. Those red flags are: visible congenital or traumatic deformity of the ear; history of active drainage from the ear within the previous 90 days; history of sudden or rapid hearing loss within the previous 90 days; acute or chronic dizziness; unilateral hearing loss of sudden or recent onset within the previous 90 days; visible evidence of significant cerumen accumulation or a foreign body in the ear canal; a difference in “audiometric air-bone gap” equal to 15 decibels or greater measured at various frequencies; pain or discomfort in the ear. *See* 21 C.F.R. § 801.420.

26. Further, the FDA rules prohibit “a hearing aid dispenser” from selling “a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician” that the patient has been evaluated within the prior six months and deemed a candidate for a hearing aid, or unless the patient is over the age of 18 and signs a “waiver to the medical evaluation requirements.” 21 C.F.R. § 801.421(a).

27. Additionally, the FDA rules require a hearing aid dispenser to retain a copy of either the waiver noted in paragraph 26 or the written statement from the physician noted in paragraph 26.

28. No presale audiometric testing (tests measuring the acuity of hearing) is required as a condition of sale on hearing aids by the MDA or FDA regulations or any other federal law.

29. According to the MDA's express preemption clause, "no State or political subdivision of a State may establish or continue in effect with respect to a device . . . any requirement" that is (1) "different from, or in addition to any requirement applicable" under federal law, and "(2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device." 21 U.S.C. § 360(a).

30. In December, 2016, the FDA issued guidance modifying the "Conditions for Sale for Air-Conduction Hearing Aids" to "communicate to consumers, hearing aid dispensers, hearing aid manufacturers, and hearing health professions that the FDA does not intend to enforce certain conditions for sale of hearing aids that are required per FDA regulation." In particular, the FDA no longer enforces "the medical evaluation (21 C.F.R. § 801.421(a)) or recordkeeping (21 C.F.R. § 801.421(d)) requirements prior to the dispensing of" FDA-approved



“Class I air-conduction hearing aids” and “Class II wireless air-conduction hearing aids” to persons over the age of 18.<sup>1</sup>

31. Upon information and belief, and according to the FDA and the National Academies of Sciences, Engineering and Medicine, the medical evaluation requirement “provides no clinically meaningful benefit [to consumers]” and the need to affirmatively waive the requirement “presents a barrier to access with no substantial enhancement of patient safety.”

32. Air-conduction hearing aids designated by the FDA as “Class I” hearing aid devices are deemed by the FDA to present the lowest risk of harm to consumers; similarly classified “Class I” medical devices include dental floss and tongue depressors.

33. Some wireless air-conduction hearing aids are regulated as “Class II” medical devices by the FDA, requiring manufacturers to obtain premarket approval by the agency. FDA-approved “Class II” hearing aids pose de minimis risks to consumer health or safety; similarly classified “Class II” medical devices include motorized wheelchairs.

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<sup>1</sup> See <https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm531995.pdf>.

**Defendants Impose Additional and Unlawful Conditions on the Sale of  
Hearing Aids in Florida**

34. Notwithstanding the federal law and FDA regulations establishing exclusive conditions of sale on the dispensing of hearing aids, Florida deems the dispensing of hearing aids to be a privilege granted by the state.

35. Florida law defines the “dispensing of hearing aids” broadly, as “[a]ll acts pertaining to the selling, renting, leasing, pricing, delivery, and warranty of hearing aids.” Fla. Stat. § 484.041(3). According to Florida law, dispensing includes “interpreting hearing tests for purposes of selecting suitable hearing aids, making earmolds or ear impressions, and providing appropriate counseling.” *Id.*

36. No one may dispense hearing aids in Florida “unless the person is a licensed hearing aid specialist.” Fla. Stat. § 484.053.

37. Obtaining a hearing aid specialist license requires six months of training, license fees, and successful examination by the Florida Board of Health, and must be maintained by continuing education and fees. Fla. Stat. §§ 484.0445, 484.0447, 484.045, 484.047.

38. Neither federal law nor FDA regulations require hearing aid dispensers to be licensed; Florida’s requirement that only licensed persons dispense hearing aids is different from and in addition to rules promulgated by the MDA and related FDA regulations and is expressly preempted by federal law.

39. Florida law prohibits the sale of hearing aids without a “fitting,” using particular procedures and equipment prescribed by statute and regulation to ensure the effectiveness of the hearing aid. Fla. Stat. § 484.0501. Those minimum procedures include:

- An audiometric test measuring pure tone air-conduction thresholds with measurements from 250 Hz to 8,000 Hz, with masking.
- An audiometric test measuring pure bone-conduction thresholds using a bone-conduction oscillator with measurements from 500 Hz, 1,000 Hz, and 2,000 Hz, with masking.
- Consumers determined to have a significant difference between bone-conduction and air-conduction hearing must be informed of the possibility of medical correction.
- Testing to determine speech reception thresholds, speech discrimination scores, most comfortable listening levels, uncomfortable loudness levels.
- Otoscopy to inspect the ear canal and interrogation of the consumer to learn recent health history.
- At the time of initial examination for fitting and sale of a hearing aid, a licensed hearing aid specialist must notify the prospective purchaser of the benefits of certain hearing aid technology.

40. Neither federal law nor FDA regulations requires a “fitting” of a hearing aid or require audiometric testing prior to sale. Florida’s requirement of a presale fitting, and the particular minimum procedures mandated by Fla. Stat. § 484.0501, are different from and in addition to rules promulgated by the MDA and related FDA regulations and are expressly preempted by them.

41. Further, Florida law requires that the above minimum procedures be conducted using particular equipment, Fla. Stat. § 484.0501, and mandates that:

- Testing shall be done using a currently calibrated wide range audiometer that meets the specifications of the American National Standards Institute.
- Testing shall be conducted using a speech audiometer or master hearing aid.
- Licensed hearing aid specialists conduct testing in a specially constructed testing room certified by the Florida Department of Health or by an agent approved by the department not to exceed particular sound pressure levels at specified frequencies.

42. Neither federal law nor FDA regulations requires audiometric testing of any kind prior to the sale of a hearing aid nor that it be done with any particular kind of equipment. Florida’s “equipment” mandates are different from and in

addition to rules promulgated by the MDA and related FDA regulations and expressly preempted by them.

43. Federal regulations establish a process by which a State or its political subdivision may seek a waiver of express preemptions of state regulatory actions imposed by the MDA (*see* 21 C.F.R. § 808.1(c)), but neither Florida nor its agencies have been granted such a waiver.

44. By becoming a Hearing Aid Specialist licensed by the State of Florida, one agrees to adhere to the Board of Hearing Aid Specialists rules and regulations for the dispensing of hearing aids.

45. A licensed Hearing Aid Specialist is subject to discipline for failing to dispense hearing aids using the procedures and equipment prescribed by Florida's law and Board of Hearing Aid Specialists regulations, including citations and fines of up to \$5,000. Fla. Stat. § 456.065.

46. Anyone dispensing a hearing aid without a hearing aid specialist's license is guilty of a third degree felony, and subject to a fine of \$5,000 and jail time of up to five (5) years for each violation. *See* Fla. Stat. §§ 775.083(1)(c) & 775.082(3)(e).

47. Upon information and belief, hearing aid dispensers violate Florida state law even when selling lawfully under federal law, pursuant to procedures promulgated by the MDA and related FDA regulations.

48. Florida law and Defendants violate the Supremacy Clause by imposing a licensure requirement for dispensers of hearing aids, requiring a presale “fitting,” and mandating minimum procedures and equipment in fitting and dispensing, because those requirements impose conditions on the sale of hearing aid devices that are different from or in addition to federal law.

49. Upon information and belief, the procedures and equipment for presale audiometric testing mandated by Fla. Stat. § 484.0501 are antiquated. They no longer represent the state of the art, and in fact, require procedures rendered wholly unnecessary by modern technology. Whatever rational basis may have existed for the regulation at the time of its enactment has been superseded by changes in hearing aid technology that render the particular procedures and equipment mandated by the law unnecessary or irrational.

50. Today, there are many means of effectively selecting and fitting a hearing aid available beyond those mandated by Florida’s regulations. Modern hearing aids include technology that allows hearing aid dispensers with minimal training to assist consumers in the selection of appropriate hearing aids without risk to consumer health and without performing the particular procedures or using the particular equipment mandated by Fla. Stat. § 484.0501.

51. Requiring sellers of hearing aids to engage in unnecessary testing or use procedures that serve no useful purpose in light of current hearing aid

technology irrationally burdens sellers' constitutional right to earn a living in the occupation of their choice.

**Defendants Unlawfully Prohibit Mail Order and Internet Sales of Hearing Aids in Florida**

52. Florida also prohibits all sales and distribution of hearing aids through the mail to an ultimate consumer, thereby barring the mail order or internet sale of hearing aid devices to Florida consumers. *See Fla. Stat. § 484.054.*

53. Anyone selling or distributing a hearing aid device by mail is guilty of a misdemeanor, and subject to a fine of \$500 and jail time of up to 60 days for each violation. *See Fla. Stat. §§ 775.083(1)(e) & 775.082(e)(4)(b).*

54. The mail order sales ban has the purpose and effect of prohibiting the sale of hearing aid devices in Florida by a person unlicensed by the state as a Hearing Aid Specialist.

55. The mail order sales ban has the purpose and effect of prohibiting the sale of hearing aid devices in Florida without prior fitting and testing by a Florida-licensed Hearing Aid Specialist.

56. Moreover, the prohibition on mail order sales to Florida consumers serves the purpose of protecting hearing aid dispensers licensed by the Board of Hearing Aid Specialists from competition from unlicensed sellers.

57. Federal law expressly preempts state regulation of the conditions of sale of hearing aid devices that are “different from, or in addition to” the MDA and related FDA regulations relating to the safety or effectiveness of the device. *See* 21 U.S.C. § 360(k).

58. Upon information and belief, Florida’s ban on mail order sales is aimed at ensuring the safety and effectiveness of hearing aids purchased by Florida consumers.

59. Section 484.054 is expressly preempted by the MDA and related FDA regulations because it effectively requires hearing aids to be sold in Florida only by state-licensed dispensers, which is a condition of sale different from and in addition to the conditions of sale established by federal law.

60. Section 484.054 is also expressly preempted by the MDA and related FDA regulations because it prohibits sale of hearing aids without performing state-mandated presale procedures aimed at assuring the effectiveness of the devices, which are conditions of sale different from and in addition to the conditions of sale established by federal law.

61. Further, the FDA, acting under authority delegated to it by Congress, has specifically determined that state regulation requiring presale audiometric testing, as Florida’s Hearing Aid Specialist License statute requires, is preempted by the MDA.



**Plaintiff and His Business**

62. Dan Taylor is an entrepreneur who was a licensed Hearing Aid Specialist for more than 30 years. He was previously a Florida Highway Patrol state trooper.

63. He was continuously licensed as a Hearing Aid Specialist by the Board of Hearing Aid Specialists from 1984 until his license expired in February, 2017.

64. During his years as a Hearing Aid Specialist, Dan dispensed hearing aids as an employee of various hearing aid retailers, and worked as an equipment representative selling hearing aids and related equipment to retailers.

65. In 1992, Dan opened his own hearing aid retail store, A Advanced Hearing Care, in downtown Melbourne, Florida. His business was successful and he moved it to a larger suite in the same building in 1994. He operated at that same location for more than 26 years.

66. In all of his years as a licensed Hearing Aid Specialist, Dan was never disciplined or sanctioned by the Board of Hearing Aid Specialists or any other administrative or law enforcement agency due to any consumer complaint.

67. For at least the past 10 years, Dan has sold only Class I and Class II air-conduction hearing aid devices and those are the only type of hearing aids he wishes to sell in the future.

68. As part of his process for dispensing hearing aids, Dan would engage in “fitting” to help customers select hearing aids.

69. Modern hearing aids of the type sold by Dan allow for fitting to be done using *in situ* audiometric testing. Modern firmware and software built into the devices allows for a fitting of a hearing aid to be performed to standards that are as good or superior to the minimum procedures and equipment mandated by the Florida laws challenged herein.

70. *In situ* audiometric testing is less time-consuming and more convenient for many consumers than the minimum procedures and equipment mandated by Defendants, and results in equal or greater consumer satisfaction than older methods of “fitting.”

71. Modern hearing aids allow for effective selection and fitting of hearing aids without the minimum procedures and equipment mandated by the Florida laws challenged herein.

72. The effective selection of hearing aids today can be done using personal computers and smartphones with minimal, non-medical training; some hearing aid models are designed to allow consumers themselves to fit their hearing aids for comfort using smartphone applications or with a PC using “Bluetooth” technology.

73. The more intrusive and time-consuming sales and fitting procedures mandated by Florida law tend to dissuade consumers from seeking information or engaging in the process to select a hearing aid.

74. Dan wants to provide the best service he can to consumers, and to effectively serve as many consumers as feasible. For this reason, he does not want to conduct hearing aid fitting according to the minimum procedures mandated by Florida law but instead wants to conduct his business using superior software and hardware available with modern hearing aids.

75. In 2017, after considering FDA guidance and reading about hearing aid licensing-related lawsuits in other states, Dan decided not to renew his Hearing Aid Specialists license and to continue his business.

#### **The Government's Past Enforcement Action Against Plaintiff**

76. On October 11, 2017, the Florida Board of Health issued a Notice to Cease and Desist "from practicing as a Hearing Aid Specialist in the State of Florida unless and until he is appropriately licensed by the Department."

77. The government's Notice indicated that practicing without a Hearing Aid Specialist license "constitutes a crime" subject to civil and criminal penalties, including significant jail time.

78. The government's cease-and-desist notice also came with a Citation, issued on October 11, 2017, for violations of Fla. Stat. §§ 456.072(1)(k)(dd);

484.053(1); and 456.065(2)(d) for practicing or attempting to practice or offering to practice as a Hearing Aid Specialist without an active Florida Hearing Aid Specialists license. In particular, “Robert Daniel Taylor offered a hearing aid exam, to fit hearing aids, and provide the hearing aid device” to an “undercover Department of Health investigator.” The citation imposed a fine of \$1,000 and costs in the amount of \$212.72. *See* Attachment A.

79. Dan acknowledged the citation and paid the fine and costs imposed by the citation. On November 6, 2017, he received a letter from the Florida Board of Health confirming payment of the fine and stating that “[t]his matter is now closed, effective today.” *See* Attachment B.

80. This action does not seek to challenge the government’s past enforcement action or fine. This lawsuit seeks wholly prospective declaratory and injunctive relief, allowing Dan to resume his business dispensing hearing aids in the future, free of unconstitutional burdens imposed by the laws challenged herein.

#### **INJURY TO PLAINTIFF**

81. Dan is unable to pursue his livelihood selling hearing aids in Florida because Defendants prohibit the dispensing of hearing aids by anyone not licensed by the State of Florida as a Hearing Aid Specialist.

82. Dan is unable to conduct his business in the best way he knows how because Defendants and Florida law require he dispense hearing aids and provide

fitting services using antiquated procedures and equipment that constitute conditions on the sale of hearing aids different from and in addition to federal rules set out by the MDA and related FDA regulations.

83. Dan is unable to pursue his livelihood because Defendants have issued a cease-and-desist order threatening him with fines and other punishments, including jail time, for continuing to dispense hearing aids without a Hearing Aid Specialist license and without using the state's mandated procedures and equipment.

84. Dan is unable to pursue his plan of selling hearing aids through a website (via mail order) to Florida consumers because that activity is prohibited by Fla. Stat. § 484.054, challenged herein.

85. But for Florida's prohibition on the sale of hearing aids by persons not holding a valid Hearing Aid Specialists license, Dan would immediately begin dispensing hearing aids again in the state.

86. But for Florida's penalties for dispensing hearing aids without using its required fitting procedures and equipment, Dan would immediately begin dispensing hearing aids in the state using the modern techniques and equipment that he believes provide superior service to consumers.

## **CONSTITUTIONAL VIOLATIONS**

### **Count I**

**(Federal Preemption as to Fla. Stat. § 484.053 & Fla. Stat. § 484.0501)**

87. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 86 of this Complaint as if fully set forth herein.

88. Fla. Stat. § 484.053 prohibits anyone who is not licensed by the State of Florida as a Hearing Aid Specialist from dispensing hearing aids in the State of Florida.

89. Fla. Stat. § 484.0501 require that licensed Hearing Aid Specialists dispense hearing aids dispensed using particular selection and fitting procedures and equipment, including presale audiometric testing, subject to penalty including fines and jail time for noncompliance.

90. Federal law expressly preempts state regulation of the conditions of sale of hearing aid devices that are “different from, or in addition to” the MDA and related FDA regulations relating to the safety or effectiveness of the device. *See* 21 U.S.C. § 360(k). Fla. Stat. §§ 484.053 and 484.0501 are aimed at ensuring the safety and effectiveness of hearing aids sold in Florida.

91. Fla. Stat. §§ 484.053 and 484.0501 impose conditions on the sale of hearing aids that are different from or in addition to conditions of sale established by the MDA and related FDA regulations.

92. Fla. Stat. §§ 484.053 and 484.0501 are in conflict with the MDA and related FDA regulations, including federal law expressly preempting such conflicting state laws. *See* 21 U.S.C. § 360(k).

93. Plaintiff is unable to pursue his livelihood dispensing hearing aids, even though he complies with all federal laws applicable to the dispensing of hearing aids, due to Florida's conflicting laws.

94. Unless Defendants are enjoined from enforcing these state laws, Plaintiff will be forced to close his business and continue to suffer great and irreparable harm.

95. Plaintiff therefore seeks declaratory and injunctive relief, preventing Defendants from enforcing Fla. Stat. § 484.053 and Fla. Stat. § 484.0501 on grounds that these statutes are expressly preempted by federal law and in violation of the Supremacy Clause of the U.S. Constitution.

**Count II**

**(Federal Preemption as to Fla. Stat. § 484.054)**

96. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 95 of this Complaint as if fully set forth herein.

97. Fla. Stat. § 484.054 prohibits all sales and distribution of hearing aids through the mail to an ultimate consumer in Florida, subject to civil and criminal penalties.

98. The mail order sales ban has the purpose and effect of prohibiting the sale of hearing aid devices in Florida by a person unlicensed by the state as a Hearing Aid Specialist.

99. The mail order sales ban has the purpose and effect of prohibiting the sale of hearing aid devices in Florida without prior fitting and testing by a Florida-licensed Hearing Aid Specialist.

100. Federal law expressly preempts state regulation of the conditions of sale of hearing aid devices that are “different from, or in addition to” the MDA and related FDA regulations relating to the safety or effectiveness of the device. *See* 21 U.S.C. § 360(k).



101. The state's prohibition against sales of hearing aids by persons not licensed by Florida as Hearing Aid Specialists and its requirement of presale fitting and audiometric testing are in conflict with the MDA and related FDA regulations.

102. Plaintiff is unable to pursue his plan of selling hearing aids to Florida consumers through the internet and by mail, even though he complies with all federal laws applicable to the dispensing of hearing aids, due to Florida's conflicting laws.

103. Unless Defendants are enjoined from enforcing Fla. Stat. § 484.054, Plaintiff will continue to suffer great and irreparable harm.

104. Plaintiff therefore seeks declaratory and injunctive relief, preventing Defendants from enforcing Fla. Stat. § 484.054 on grounds that this statute is expressly preempted by federal law and in violation of the Supremacy Clause of the U.S. Constitution.

### **Count III**

(Due Process as to presale requirements imposed by Fla. Stat. § 484.0501)

105. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 104 of this Complaint as if fully set forth herein.

106. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects the right of every American to pursue legitimate

occupations, subject only to regulations that are rationally related to a legitimate governmental purpose.

107. Fla. Stat. § 484.0501 imposes “minimum procedures and equipment” requirements conditioning the sale of the type of Class I and Class II FDA-regulated hearing aids sold by Plaintiff.

108. Modern technology has rendered Florida’s minimum procedures and equipment requirements unnecessary to the selection and fitting of hearing aids.

109. There is no rational basis for requiring a presale audiometric test as a condition of hearing aid sales to consumers.

110. There is no rational basis for requiring audiometric testing or the fitting of hearing aids to be conducted according to the minimum procedures established by Fla. Stat. § 484.0501.

111. There is no rational basis for prohibiting anyone from lawfully dispensing a hearing aid consistent with the conditions of sale established by the MDA and related FDA regulations.

112. If there was at one time a rational basis for requiring presale audiometric testing, and particularly the audiometric testing mandated by Fla. Stat. § 484.0501, advances in hearing aid technology present changing circumstances that render Florida’s mandates irrational today.

113. Unless Defendants are enjoined from enforcing Fla. Stat. § 484.0501, Plaintiff will suffer great and irreparable harm by being denied his right to pursue the occupation of his choosing free of unnecessary and unreasonable governmental interference.

114. Plaintiff therefore seeks declaratory and injunctive relief, preventing Defendants from enforcing Fla. Stat. § 484.0501 on grounds that this statute violates the Due Process Clause of the Fourteenth Amendment.

#### **REQUEST FOR RELIEF**

Wherefore, Plaintiff requests judgment as follows:

A. A declaration that Fla. Stat. §§ 484.053, 484.054, and 484.0501, are unconstitutional on their face and as applied to the sale of Class I and Class II air-conduction hearing aids by Plaintiff and others similarly situated;

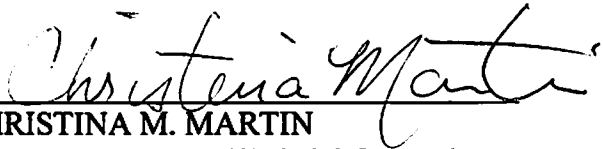
B. An injunction permanently enjoining Defendants from enforcing Fla. Stat. §§ 484.053, 484.054, and 484.0501, to the extent they violate the Supremacy Clause and Plaintiff's constitutionally protected due process right to earn a living free of unreasonable governmental interference;

C. An award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

D. All further legal and equitable relief as the Court may deem just and proper.

DATED: April 18, 2018.

Respectfully submitted:

By   
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*Attorneys for Plaintiff*

**\*Special Admission Applications Pending**

**ATTACHMENT A**

**Mission:**

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



**Rick Scott**  
Governor

**Celeste Philip, MD, MPH**  
Surgeon General and Secretary

**Vision: To be the Healthiest State in the Nation**

**NOTICE TO CEASE AND DESIST**

Department of Health Complaint #: 201713453

The Department of Health ("the Department") is the state agency charged with regulating the unlicensed practice of health care professions in the State of Florida. Section 456.065, Florida Statutes (2016) empowers the Department to issue a Notice to Cease and Desist when the Department has probable cause to believe that any person is practicing a health care profession without an active, valid license to practice that profession.

The Department has probable cause to believe that **Robert Daniel Taylor of 720 E. New Haven Avenue Suite #12, Melbourne, Florida 32901**, is not licensed by the Department or the Board of Hearing Aid Specialists and is practicing as a **Hearing Aid Specialist** in violation of Section 456.065, 456.072(1)(k)(dd), 484.053(1)(e), Florida Statutes, to wit on 08/11/2017, Robert Daniel Taylor offered a hearing aid exam, services, and device for a price beginning at \$3200.00 and up for a new device to a Department of Health Investigator. Per DOH records **Robert Daniel Taylor** is not a licensed **Hearing Aid Specialist** in the State of Florida. The practice of **Hearing Aid Specialist** without an active, valid license or permit is strictly prohibited by Section 456.065, Florida Statutes, and constitutes a crime.

WHEREFORE, in accordance with Section 456.065, Florida Statutes (2016), **Robert Daniel Taylor** is hereby notified to **cease and desist** from practicing as a **Hearing Aid Specialist** in the State of Florida unless and until he is appropriately licensed by the Department.

The Department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provision of this Cease and Desist. If the violation continues and the Department is required to seek enforcement of this Notice to Cease and Desist, the Department shall be entitled to collect its attorney's fees and costs.

Issued this 11th day of October, 2016, on behalf of the State Surgeon General of the Florida Department of Health by:

  
\_\_\_\_\_  
Signature of Department Representative

Rebecca Schutt, MQAI  
Printed/Typed Name of Representative

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of October, 2017, a true and correct original of the foregoing notice to cease and desist has been served upon **Robert Daniel Taylor at 720 E. New Haven Avenue Suite #12, Melbourne, Florida 32901**.

By personal service

U.S. Certified Mail, Item Number \_\_\_\_\_, Received on \_\_\_\_\_

U.S. Priority Mail, Tracking Number \_\_\_\_\_, Received on \_\_\_\_\_; Date Certified Mail was returned \_\_\_\_\_

  
\_\_\_\_\_  
DOH Representative Signature

Rebecca Schutt, MQAI  
DOH Representative Printed Name



**UNIFORM UNLICENSED ACTIVITY CITATION  
FLORIDA DEPARTMENT OF HEALTH**

<b>Issued to:</b>	<b>Robert Daniel Taylor</b>	<b>Case Number:</b>	<b>2017-13453</b>
<b>Address:</b>	<b>720 E. New Haven Avenue Suite #12, Melbourne, Florida 32901</b>	<b>Date(s) of Violation</b>	<b>08/11/2017</b>
<b>Phone:</b>	<b>(321) 722-2894</b>	<b>Profession:</b>	<b>Hearing Aid Specialist</b>
<b>E-mail Address:</b>		<b>Driver's License</b>	<b>Driver's License Verified</b>
<b>Wk. Address</b>	<b>720 E. New Haven Avenue Suite #12, Melbourne, Florida 32901</b>	<b>Date of Birth:</b>	<b>03/19/1951</b>
<b>Wk. Phone</b>	<b>(321) 722-2894</b>		

Pursuant to Section 456.065, F.S. the undersigned, who is an Investigator for the Department of Health, hereby certifies that he/she has probable cause to believe that the above referenced subject did violate the following provision(s) of law, F.S. 456.072(1)(k)(dd), 484.053(1)(e) and 456.065(2)(d), by committing the following, including but not limited to, acts: did practice, attempt to practice, or offer to practice as a Hearing Aid Specialist without an active, valid Florida license to practice that profession, to wit on 08/11/2017, Robert Daniel Taylor offered a hearing aid exam, to fit hearing aids, and provide the hearing aid devices for a starting price \$3200.00 and up for a new device to an undercover Department of Health Investigator. Per DOH records Robert Daniel Taylor is not a licensed Hearing Aid Specialist in the State of Florida. The practice of Hearing Aid Specialist without an active, valid license or permit is strictly prohibited by Section 456.065, Florida Statutes, and constitutes a crime.

Pursuant to Section 456.065, F.S., and Rule 64B-6.003, F.A.C., the Department has set the following penalty for violations of the aforesaid provision: a fine in the amount of \$1000.00 plus costs in the amount of \$212.72 . Total due: \$1212.72 .

ISSUED this 11th day of October , 2017, on behalf of the State Surgeon General of the Department of Health, by:

*Rebecca Schutt*  
DOH Representative Signature

Rebecca Schutt, MQAI  
DOH Representative Printed Name

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11th day of October, 2017, a true and correct original of the foregoing citation has been served upon Robert Daniel Taylor at 720 E. New Haven Avenue Suite #12, Melbourne, Florida 32901.

By personal service

U.S. Certified Mail, Item Number , Received on

U.S. Priority Mail, Tracking Number , Received on ; Date Certified Mail was Returned

*Rebecca Schutt*  
DOH Representative Signature

Rebecca Schutt, MQAI  
DOH Representative Printed Name

**PLEASE READ IMPORTANT NOTICES ON PAGE TWO REGARDING  
YOUR LEGAL RIGHTS TO CHALLENGE, ACCEPT OR APPEAL THIS CITATION**

## **INSTRUCTIONS FOR RESPONDING**

### **ACCEPTING THE CITATION**

Fines and costs are due within 30 calendar days from the date the date of service of the citation. To ensure proper credit for payment please attach a copy of the citation with payment and send to:

Department of Health / Compliance Management Unit  
P.O. Box 6320  
Tallahassee, Florida 32314-6320

### **DISPUTING THE CITATION**

You may seek review of the citation by filing an appropriate petition with the Agency Clerk. The petition must be filed in conformance with Florida Administrative Code Rules 28-106.201 or 28-106.301, as applicable. Mediation is not available. The petition must be received by the Department within 30 calendar days of the date of service of the citation. The petition may be sent by mail, hand delivery or facsimile.

By mail:

Agency Clerk, Department of Health, 4052 Bald Cypress Way, BIN #A-02, Tallahassee, FL 32399-1703

By hand delivery:

Agency Clerk, Department of Health, 2585 Merchants Row Blvd., Prather Building, Suite 110, Tallahassee, FL

By facsimile:

(850) 413-8743

Failure to file a dispute within 30 calendar days of service shall constitute a waiver of hearing, and the citation shall automatically become a Final Order of the Department. Failure to comply with the Final Order may result in further legal action by the Department, as well as additional fines and costs, in accordance with Section 456.065(2), Florida Statutes.

### **RIGHT TO JUDICIAL REVIEW UNLESS WAIVED**

If no request for hearing is received by the Department within 30 days of the date of service of the citation, the citation automatically becomes a Final Order which constitute final agency action of the Department. If this notice should become a Final Order, a party who is adversely affected is entitled to judicial review, unless waiver, pursuant to section 120.68, Florida Statutes. Proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of the Notice of Appeal with the Agency Clerk of the Department of Health and a second copy, accompanied by the filing fees prescribed by law, with the appropriate district court of appeal in accordance with the provisions of Florida Rule of Appellate Procedure 9.110. The Notice of Appeal must be filed within 30 days of rendition of the Final Order to be reviewed. The rendition date is the date the citation becomes final agency action.

### **ATTORNEY'S FEES AND COSTS**

If the Department is required to seek enforcement of the final agency order in circuit court, it shall be entitled to collect attorney's fees and costs. This citation does not prevent other administrative, civil or criminal prosecutions involving the same facts relied on in this agency action.



**ATTACHMENT B**

**Mission:**

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.



**Rick Scott**  
Governor

**Celeste Philip, MD, MPH**  
Surgeon General and Secretary

**Vision:** To be the Healthiest State in the Nation

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November 6, 2017

Robert Daniel Taylor  
720 E. New Haven Avenue, Ste 12  
Melbourne, FL 32901

RE: Department of Health ULA Case No. 2017-13453  
Subject: Robert Daniel Taylor

Dear Mr. Taylor:

The Department has received and processed your payment of the citation issued to you in the above-referenced case on October 11, 2017. Your payment was processed on November 2, 2017, and the confirmation number regarding the payment is 917015939.

This matter is now closed, effective today. Please keep this letter as confirmation that the Department of Health will not pursue any further agency action against you regarding this matter. You will not receive any additional correspondence from the Department regarding the status of this case.

Please feel free to contact me should you require any additional information.

Respectfully,

A handwritten signature in black ink that reads "Jenna Partin".

Jenna Partin  
Assistant General Counsel

JS 44 (Rev. 06/17)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>ROBERT DANIEL TAYLOR</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Brevard</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c) Attorneys (Firm Name, Address, and Telephone Number)</b> CHRISTINA M. MARTIN Pacific Legal Foundation, 8645 North Military Trail, Suite 511, Palm Beach Gardens, FL 33410, Telephone: (561) 691-5000</p>	<p><b>DEFENDANTS</b></p> <p>*see attachment*</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER/STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			<p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding   
 2 Removed from State Court   
 3 Remanded from Appellate Court   
 4 Reinstated or Reopened   
 5 Transferred from Another District (specify)   
 6 Multidistrict Litigation - Transfer   
 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

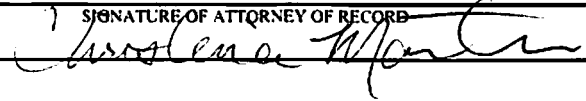
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
42 U.S.C. § 1983

Brief description of cause:  
Federal preemption and due process challenge to hearing aid specialist licensing statute.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ 0.00    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):* JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 04/18/2018 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

Civil Cover Sheet Attachment

Defendants:

LEANNE POLHILL;  
RANDY ELLSWORTH;  
ROBERT PICKARD, MD;  
JOHN FISCHER;  
DOUGLAS MOORE;  
PAMELA DECMEROWSKI;  
MARIA HERNANDEZ; and  
THOMAS HOLLERN; each solely in their official capacities as Members of the Florida Board of Hearing Aid Specialists;  
CELESTE PHILIP, MD, MPH, solely in her official capacity as Secretary of the Florida Board of Health,