

# MEMORANDUM OF UNDERSTANDING

between

**Montana Department of Justice  
Office of Consumer Protection**

and

**Montana Department of Labor and Industry  
Business Standards Division**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into between the Montana Department of Justice, Office of Consumer Protection (OCP) and the Montana Department of Labor and Industry, Business Standards Division (BSD).

## RECITALS

The parties agree that it is in the interest of the public to combine agency resources in protecting consumers from unlawful and deceptive business practices related to the selling, fitting, or dispensing of hearing aids and related devices (hearing aid cases);

BSD counsel assigned to the Montana Board of Hearing Aid Dispensers (the Board) has experience and expertise in prosecuting hearing aid cases;

OCP is authorized to bring an action to restrain unlawful acts under the Consumer Protection Act (CPA); and

OCP and BSD (the parties) enter into this MOU to protect the public health and welfare.

In consideration of the mutual covenants and agreements contained in this MOU, the parties agree as follows:

## SECTION 1 – SCOPE

(A) BSD counsel assigned to the Board may, in his or her discretion, refer hearing aid cases to OCP for litigation under the CPA. OCP counsel shall timely evaluate

each hearing aid case referred by BSD counsel and determine, in his or her discretion, whether to bring an action under the CPA. If OCP counsel brings an action under the CPA, BSD counsel, in his or her capacity as a Special Assistant Attorney General, shall work with OCP counsel to prepare for and litigate the hearing aid case.

(B) The parties may also agree to work together in preparing for and litigating hearing aid cases that are first referred to OCP by consumers.

(C) OCP shall be the party responsible for bring all hearing aid cases under the CPA, with counsel for both parties appearing.

## SECTION 2 - CASE SELECTION

In determining whether to pursue each hearing aid case, OCP shall consider its available resources and its case selection criteria. OCP may defer or decline to prosecute cases in its sole discretion.

## SECTION 3 – EFFECTIVE DATE AND DURATION

This MOU shall become effective upon the signing by both parties and remain effective until one or both parties terminate, pursuant to Section 5 of this MOU.

## SECTION 4 – COSTS AND RECOVERY

(A) OCP shall bear and recover all costs and fees associated with bringing hearing aid cases under the CPA, with the exception of attorneys' fees and costs related to additional staff time in preparing for litigation. The parties shall share all attorneys' fees and costs related to additional staff time recovered under Mont. Code Ann. § 30-14-143 on a pro rata basis, commensurate with the hours spent preparing for and litigating each hearing aid case. The parties shall share all civil fines recovered under Mont. Code Ann. § 30-14-142 equally.

(B) OCP shall transfer to BSD its share of all recovered attorneys' fees, costs, and civil fines within thirty (30) days of receipt, which BSD will in turn deposit into a special state revenue account for the Board.

## SECTION 5 – TERMINATION

(A) Either party may terminate this MOU without cause by giving written notice of its intention to do so to the other party at least thirty (30) days prior to the effective day of termination.

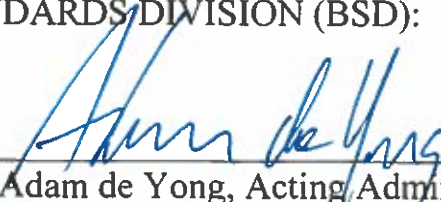
(B) Upon termination of this MOU, the parties shall:

(i) arrange and transfer any records exchanged in the facilitation of this MOU and necessary for the parties to independently perform agency duties; and

(ii) share all recovered attorneys' fees, costs related to additional staff time in preparing for litigation, and civil fines on a pro rata basis, commensurate with the hours each party spent preparing for and litigating the hearing aid cases brought under the CPA.

The parties have executed this contract on the dates set out below.

MONTANA DEPARTMENT OF LABOR AND INDUSTRY, BUSINESS STANDARDS DIVISION (BSD):

By:  Date: 3/25/14  
Adam de Yong, Acting Administrator

 Date: 3/24/14  
Legal Review

MONTANA DEPARTMENT OF JUSTICE, OFFICE OF CONSUMER PROTECTION (OCP):

By:  Date: Mar 31, 2014  
E. Edwin Eck, Office of Consumer Protection