

INTERNATIONAL HEARING SOCIETY



MODEL LICENSURE ACT DISPENSING OF HEARING AIDS

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MODEL LICENSURE ACT
DISPENSING OF HEARING AIDS

100. Purpose.

The Legislature recognizes that the dispensing of hearing aids requires specific knowledge and skill to ensure that the interests of people with hearing loss will be adequately served and safely protected. It also recognizes that appropriately selected and fitted hearing aids will give great satisfaction, improve quality of life, and protect the public health. Therefore, the Legislature deems it necessary in the interest of the public health, safety, and welfare to regulate the dispensing of hearing aids in this state. Restrictions on the dispensing of hearing aids shall be imposed only to the extent necessary to protect the public from physical and economic harm, and restrictions shall not be imposed in a manner which will unreasonably affect the competitive market or impede accessibility for people with hearing loss to all qualified and licensed providers.

101. Definitions.

The following definitions apply as used in this Act, unless the context requires otherwise:

- (1) “Applicant” means any individual who applies to take the licensure examination to become licensed as a hearing aid specialist.
- (2) “Audioprosthologist” means an individual who is entitled to use the title Audioprosthologist by successfully completing the American Conference on Audioprosthology (ACA) program and related requirements.
- (3) “Board” means the Board of Hearing Aid Specialists.
- (4) “Cerumen Management” means the removal of cerumen for the purpose of inspecting the ears, making impressions, and/or fitting and maintaining hearing aids.
- (5) “Department” means the **[insert governing body responsible for professional licensure]**.
- (6) “Direct supervision” means on-site personal oversight and responsibility for all conduct performed.
- (7) “Indirect supervision” means oversight and responsibility for all conduct performed or the failure to perform conduct consistent with professional standards and this Act.
- (8) “Dispensing of hearing aids” includes but is not limited to the following activities, which constitute the scope of practice of a hearing aid specialist:
 - (a) Eliciting patient case histories, including medical, otological, pharmacological, previous amplification history and patient attitudes and expectations;
 - (b) Administering otoscopy for the purpose of identifying possible otological conditions, including but not limited to the Food and Drug Administration (FDA) red flag conditions that may indicate the need for medical referral or which may have a bearing on needed rehabilitative measures, outcomes and/or recommendations;
 - (c) Administering cerumen management in the course of examining ears, taking ear impressions and/or fitting of hearing aids except that if the hearing aid specialist, while engaged in routine cerumen removal, discovers any trauma, including, but not limited to, continuous uncontrolled bleeding, lacerations, or other traumatic

- injuries, he or she shall, as soon as practically possible, refer the patient to an otolaryngologist or a licensed physician if no otolaryngologist is available;
- (d) Administering and interpreting tests of human hearing and middle ear function, including appropriate objective and subjective methodology and measures;
 - (e) Determining candidacy for hearing aids, hearing assistive devices or referral for cochlear implant evaluation or other clinical, rehabilitative, or medical interventions;
 - (f) Selecting, and fitting appropriate hearing aids and assistive devices, including appropriate technology, electroacoustic targets, programming parameters and special applications, as indicated;
 - (g) Assessing hearing aid efficacy utilizing appropriate fitting verification methodology, including available fitting validation methods, and equipment, which may include real-ear/speech mapping, and electroacoustical analysis equipment;
 - (h) Taking ear impressions or electronic scans by any method used for the purpose of creating ear molds, and preparing earmolds for hearing aids, assistive devices, telecommunications applications, ear protection, and other related applications;
 - (i) Designing and modifying earmolds and auditory equipment requisite to meet individual patient needs;
 - (j) Providing counseling and aural rehabilitative services in the use and care of hearing aids and assistive devices and for effectively utilizing communication coping strategies and other approaches to foster optimal patient rehabilitation;
 - (k) Providing tinnitus management, including the assessment of tinnitus, recommendation and selection of tinnitus management devices, therapy, and counseling in accordance with Section 114 of this Act, to clients who exhibit symptoms of tinnitus during an evaluation of hearing loss conducted for the purpose of determining the appropriateness of hearing aids and/or tinnitus devices;
 - (l) Providing supervision and in-service training of those entering the dispensing profession; or
 - (l) Provide post-fitting, and hearing aid care and repair services.
- (m) All other acts of hearing assessment pertaining to hearing testing and/or the selling, renting, leasing, and delivery of hearing aids.
- (9) “Hearing aid specialist” means a person duly licensed by the Board to engage in the practice of dispensing of hearing aids. A person represents oneself to be a hearing aid specialist if the person holds out to the public that the person engages in the practice of dispensing hearing aids, by any means, or by any service or function performed, directly or indirectly, or by using the terms hearing aid specialist, hearing instrument specialist, audioprosthologist, hearing center, hearing office, hearing aid center, hearing aid office, or any variation or synonym which expresses, employs, or implies these terms or functions.
- (10) “Hearing aid” means wearable amplification:
- a) worn by a person with hearing loss; or
 - b) that has the ability to provide 15 dB gain or more at any given frequency, measured in a 2 cc coupler.

Each component of the hearing aid shall be adapted to the needs of the individual consumer.

- (11) “Apprentice” means a person studying the dispensing of hearing aid under the supervision of a Sponsor for the purpose of becoming eligible to sit for the hearing aid specialist licensure examination.
- (12) “Medical Liaison” means a cooperative arrangement for consultation with an otolaryngologist or a licensed physician if no otolaryngologist is available.
- (13) “Sponsor” means a currently licensed hearing aid specialist who has achieved an advanced certification recognized or offered by the International Hearing Society under whose direct supervision an Apprentice(s) is studying the dispensing of hearing aids for the purpose of becoming eligible to sit for the hearing aid specialist licensure examination.
- (14) “Tele-practice” means the application of telecommunications technology to deliver professional service over geographical distances.
- (15) “Tinnitus Management” means the assessment of tinnitus symptoms, and advising patients on sound therapy techniques and other strategies to address tinnitus symptoms.
- (16) “Trainer” means a licensed hearing aid specialist who has achieved an advanced certification recognized or offered by the International Hearing Society, who may work for a company or organization, and who provides specialized training in the practical application of hearing instrument sciences.

102. License Required.

- (1) It shall be unlawful for any person to engage in the practice of dispensing hearing aids unless such person is duly licensed in accordance with this Act.
- (2) A license issued pursuant to this Act shall be conspicuously displayed in the licensee’s place(s) of business or carried upon the person, and shall be presented as proof of licensure upon demand.
- (3) All licensed hearing aid specialists shall report to the Board any name change or changes in business and home addresses within thirty (30) days after the change becomes final.
- (4) Nothing in this chapter shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail, provided that it employ only properly licensed hearing aid specialists in the direct sale and fitting of such hearing aids. Each corporation, partnership, trust association or other like organization shall file annually with the Board on a form provided by the Board, a list of all licensed hearing aid specialists it employs. Each organization shall also file with the division a statement, on a form provided by the division, that it agrees to comply with the rules and regulations of the [insert Department name] and the provisions thereof.
- (5) Nothing in this chapter shall impact the permissible scope of practice of a licensed audiologist or physician as defined by state and federal law and regulations.

103. Board of Hearing Aid Specialists; Membership; Appointment Terms.

- (1) The Board of Hearing Aid Specialists is created within the **[governing body responsible for professional licensure]** and shall consist of seven (7) members to be appointed by the Governor.
 - (a) Four (4) members of the Board shall be hearing aid specialists who have been licensed under this chapter and practicing for at least the preceding four (4) years.
 - (b) One (1) member of the Board shall be a Board Certified otolaryngologist who is not engaged in the practice of dispensing of hearing aids and who has been licensed and practicing medicine for at least the preceding four (4) years.
 - (c) Two (2) members of the Board shall be citizen members who have been residents for not less than one (1) year immediately preceding the Board appointment. One of the citizen members shall be a hearing aid user and the other a person shall have no tie to the hearing aid industry. Neither of the public members may hold nor have held a license as a hearing aid specialist or a closely related profession. Further, such member shall not be associated with or financially interested in the practice or business of audiology, speech-language pathology, or the practice of dispensing of hearing aids.
- (2) Each member shall be appointed for a term of four (4) years with staggered terms by year. In the event of a vacancy other than by expiration of the term, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.
- (3) Members shall disqualify themselves and, upon the motion of any interested party, may, upon proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias that interferes with their fair and impartial service.

104. Nominations for Board Appointments.

The appointment of the hearing aid specialist members may be made from a list of names for each vacancy submitted to the Governor by the **[insert IHS chapter name]**. The appointment of the otolaryngologist member may be made from a list of at least three names submitted to the Governor by the **[insert appropriate otolaryngic society, or if no otolaryngic society exists, insert appropriate medical society]**. In no case shall the Governor be bound to make any appointment from among the nominees.

105. Board Officers; Quorum; Open Public Meetings and Executive Session.

- (1) The Board, within sixty (60) days after the effective date of this Act and annually thereafter, shall hold a meeting and elect one (1) of its members as chairperson, who shall preside at meetings of the Board, and one (1) of its members as vice-chairperson.
- (2) The vice-chairperson shall serve as temporary chairperson in the event of the absence of the chairperson or a vacancy in the position.
- (3) Five (5) members of the Board shall constitute a quorum.
- (4) The Board shall meet at least two (2) times per year at a place, day and hour determined by the Board. Other meetings may be convened at the call of the chairperson or upon the written request of any two (2) Board members provided upon at least thirty (30) days notice to all Board members. Meetings deemed emergent or urgent may be convened at

the call of the chairperson provided upon ten (10) days advance notification to all Board members.

- (5) Based on the intended discussion, the Board chair, in consultation with the legal counsel of the Board if one exists, shall determine whether Board business, in whole or in part, shall be conducted in open public session, or executive session and therefore closed to the public.

106. Powers and Duties of the Board.

- (1) The Board shall have the authority to administer, coordinate and enforce the provisions of this Act including, but not limited to, the following activities:
 - (a) Evaluating the qualifications of Applicants for hearing aid specialist licensure, approving and administering licensure examinations to test the knowledge and proficiency of Applicants for hearing aid specialist licensure, and approving or denying the registration and issuance and renewal of licenses and permits;
 - (b) Authorizing all disbursements necessary to carry out the provisions of this Act;
 - (c) Promulgating rules not inconsistent with the laws of this state which are necessary to carry out the provisions of this Act including, but not limited to, ethical standards of practice, and the filing and processing of complaints;
 - (d) Adopting rules relating to continuing education in accordance with Section 110(2)(c) of this Act;
 - (e) Obtaining restraining orders and injunctions prohibiting conduct in violation of the provisions of this Act; conducting investigations, issuing subpoenas, examining witnesses and administering oaths, concerning practices which are alleged to violate the provisions of this Act;
 - (f) Suspending or revoking or otherwise sanctioning licensees in the manner provided in this Act; or placing a person holding a license under this Act on probation;
 - (g) Requiring the inspection of testing equipment and facilities of persons engaging in any practice pursuant to this Act.
- (2) The Board shall have the authority to investigate and impose sanctions and penalties, as outlined in Section 125, upon companies or individuals who are suspected and found guilty of practicing hearing aid dispensing without the proper licensure according to this Act.

107. Hearing Aid Specialist Licensure Examination.

- (1) The Board shall establish a procedure through which the Board deems an Applicant to have satisfied all applicable requirements set forth in Sections 108 and 109 to sit for the hearing aid specialist licensure examination.
- (2) The hearing aid specialist licensure examination to be approved by the Board shall have three components as follows:
 - (a) A practical examination that requires the Applicant to demonstrate competence in dispensing of hearing aids, which may be taken by an Apprentice upon completion of the direct-supervision practicum training period, as verified by the Sponsor;

- (b) A written examination that tests the Applicant for knowledge of applicable laws and regulations; and
 - (c) A written or computer-based, psychometrically valid, examination that tests the Applicant for knowledge fundamental to the competent assessment, testing, fitting and dispensing of hearing aids such as the International Hearing Society's International Licensing Examination.
- (3) Certain Applicants, as described in Section 108(4), may be waived from taking the written examination pertaining to the competent dispensing of hearing aids.
- (4) The Board shall arrange for the practical, and written or computer-based components of the licensure examination to be offered at least twice a year.
- (5) Failure and retaking of examination.
- (a) Any Applicant who fails one (1) or more portions of the practical examination, the applicant shall retake the entire practical portion of the examination upon payment of the proper examination fee.
 - (b) Any Applicant who fails the written or computer-based portions of the examination, the applicant shall retake the entire written or computer-based portion of the examination upon payment of the proper examination fee.
 - (c) A passing score on the written or computer-based portions of the examination or the practical portion of the examination shall be valid for a maximum of eighteen (18) months.
 - (d) Any Applicant who fails either the written, computer-based, or practical portions of the examination and two (2) subsequent re-examinations shall be disqualified from retaking the examination a fourth time, until meeting with the Board, presenting an acceptable written training plan for passing the examination, and successfully completing that plan. In the case of an Apprentice with a Sponsor, both the Apprentice and the Sponsor are to appear before the Board.
- (6) The Board shall issue a license to practice the dispensing of hearing aids to any Applicant who successfully completes the required components of the licensure examination in accordance with Sections 107, 108 and 109 of this Act.

108. Eligibility to Sit for Hearing Aid Specialist Licensure Examination.

- (1) To be eligible to sit for the hearing aid specialist licensure examination, the Applicant must provide documentation satisfactory to the Board that the Applicant has:
- (a) At a minimum, achieved a high-school diploma, GED or its equivalent as determined by the Board;
 - (b) Successfully completed a hearing aid specialist apprenticeship program as prescribed under Section 109 of this Act;
 - (i) a hearing aid specialist apprenticeship program as prescribed under Section 109 of this Act; or
 - (ii) a hearing aid specialist apprenticeship program registered with the [State Apprenticeship Agency or United States Department of Labor;
 - (c) Provided appropriate documentation from the Applicant's Sponsor that the applicant has completed the minimum number of directly-supervised practicum hours of documented directly supervised practicum as prescribed by the Board;
 - (d) Has not been convicted of a class A felony; and

- (e) Paid all applicable fees as set forth in Section 111.
- (2) To be eligible to sit for the hearing aid specialist licensure examination, the Applicant must also provide an affidavit to the Board attesting that the Applicant has not had a hearing aid specialist license (or equivalent) revoked or otherwise sanctioned as part of a disciplinary action from this or any other jurisdiction.
- (3) An Applicant shall be immediately eligible to take the practical and written examinations if the Applicant provides verification acceptable to the Board that the Applicant possesses:
 - (a) a two year degree in hearing instrument sciences, or its equivalent as determined by the Board, from an accredited institution; or
 - (b) a master's or doctoral degree in audiology from an accredited institution.
- (4) An Applicant shall be immediately eligible to take the practical examination and written examination of applicable laws and regulations if the Applicant provides verification acceptable to the Board that the Applicant (a) has held a current, unsuspended, unrevoked license to dispense hearing aids from another jurisdiction for at least forty-eight (48) of the last sixty (60) months, (b) in another jurisdiction has passed the same examination as defined in Section 107 (2)(c) or a substantially equivalent examination as determined by the Board , and (c) has achieved advanced certification recognized or offered by the International Hearing Society.
- (5) The Board has the authority to establish procedures for recognizing licensure programs outside of the United States for purposes of eligibility to sit for the licensure examination in this state.
- (6) Any individual who holds a license as a hearing aid specialist or its equivalent in this state as of the date of enactment of this Act shall be grandfathered as licensed under this Act.¹

109. Hearing Aid Specialist Apprenticeship Program.

- (1) The training period begins on the date of the issuance of the Apprentice license and will expire eighteen (18) months thereafter.
- (2) The Board shall issue an Apprentice license to an applicant who:
 - (a) has filed a completed application form and paid the Apprentice license fee; and
 - (b) has met all academic qualifications for licensure; and
 - (c) has a signed statement from the Applicant's Sponsor.
- (3) An Apprentice license holder shall maintain a valid apprentice license during his or her supervised training experience.
- (4) The training must be done under the supervision of an approved Sponsor, who has held a valid license from this Board for a minimum of three (3) years, to test hearing and fit and dispense hearing aids, or the Sponsor's designated trainer.
- (5) Required Coursework
 - (a) The Board shall promulgate a list of approved courses for purposes of the training program.

¹ How to accommodate the grandfather of individuals dispensing hearing aids at the time of enactment of this Act is a particularly local issue depending on the nature and extent of laws in effect at the time.

- (b) The Board shall establish a minimum number of hours of coursework.
- (6) An Apprentice license holder shall be required to complete a minimum number of supervised practicum contact hours of inpatient care as determined by the Board, including a Board-designated minimum of directly supervised hours, in order to sit for the written and practical examinations.
- (7) An Apprentice license holder shall be required to successfully complete the International Hearing Society Distance Learning for Professionals in Hearing Health Sciences Course in order to be eligible to sit for the practical examination.
- (8) On completion of the directly supervised practicum training under paragraph (6) of this subsection, an Apprentice shall be eligible to sit for the practical examination.
- (9) Upon successful completion of the practical examination, the Apprentice shall complete the training under the indirect supervision of the Apprentice's Sponsor or designated trainer.
- (10) The Apprentice license shall entitle the Apprentice to engage in the practice of dispensing of hearing aids under the supervision of a Sponsor.
- (11) The Sponsor shall be responsible for the day-to-day supervision of the Apprentice. The Sponsor shall also be ultimately responsible for services provided to a client by the Apprentice permit holder. A Sponsor shall be responsible for any supervision delegated to a Trainer.
- (12) The training period shall be for a period of at least 12 months duration.
- (13) A Sponsor may not supervise more than three Apprentices at one time.
- (14) The Sponsor must submit a written notification of termination of sponsorship to the Board and the Apprentice license holder within 10 working days of cessation of sponsorship.
- (15) The Apprentice license holder shall give written notice to the Board of the change of sponsorship within 10 working days of change in sponsorship.

110. Renewal of License.

- (1) The Board shall establish a process for the annual renewal of a license.
- (2) At a minimum, the licensee shall attest to the following:
 - (a) The licensee has not been convicted of a felony or been convicted of any crime which would have a bearing on any practice pursuant to this Act. Conviction shall include a verdict of guilt, an admission of guilt, or a plea of nolo contendere or its equivalent;
 - (b) The licensee has not had a hearing aid specialist license (or equivalent) revoked or otherwise sanctioned as part of a disciplinary action from this or any other governmental agency within the previous eighteen (18) months;
 - (c) The licensee has completed at least ten (10) hours of International Hearing Society-approved continuing education for the prior annual period, no more than five (5) hours of which may be either manufacturer-sponsored or obtained online, or some combination thereof; and
 - (d) The licensee possesses Board-approved certifications that the equipment meets the quality control requirements set forth in Section 116.
- (3) Any active license which is not renewed shall automatically expire and, unless reinstated within twelve (12) months, become null and void without any further action by the Board

or the Department. Any such license may be reinstated within twelve (12) months thereafter upon payment of the current renewal fee, payment of a late fee set by rule of the Board, and compliance with all other requirements for license renewal.

- (4) Sixty (60) days prior to the time to renew a license, the Board shall send notice by mail to the last known address of the licensee.
- (5) A hearing aid specialist licensed under this Act and not actively practicing may be placed on inactive status by the Board at the written request of the licensee. The Board shall define by rule the conditions for inactive licensure status. The Board shall establish procedures through which a licensee can reactivate an inactive license.

111. Fees.

The Board may establish fees for the following:

- (1) Registration of Apprentices, including the issuance and renewal of Apprentice licenses;
- (2) Registration of Sponsors;
- (3) Validation of completion of a hearing aid specialist training program;
- (4) Examination application;
- (5) Examination and reexamination for practical examination;
- (6) Examination and reexamination for written examinations;
- (7) Initial licensure;
- (8) Renewal of licensure, including late fees as applicable;
- (9) Issuance of duplicate license.
- (10) Administrative cost for information requests.

112. Hearing Assessment.

- (1) No person with hearing loss shall be fitted for or dispensed a hearing aid without first having received a face-to-face hearing assessment which shall include at least the following procedures, and any additional or modified procedures appropriate to technological developments as determined by the Board:
 - (a) Completion of a patient history questionnaire;
 - (b) Otoscope examination;
 - (c) Pure tone air conduction testing at 250, 500, 1000, 2000, 4000, and 8000 Hz and bone conduction testing at 500, 1000, 2000, and 4000 Hz to determine the type and degree of hearing deficiency;
 - (d) Effective masking when indicated;
 - (e) Appropriate testing to determine speech reception thresholds, word recognition scores, most comfortable listening levels, uncomfortable loudness levels, and the selection of the best fitting arrangement for maximum hearing aid benefit when indicated; and
 - (f) Other speech tests commonly used to assess human hearing acuity.
- (2) The hearing assessment may also include tympanometry, and acoustic reflex testing.
- (3) The following equipment shall be used as part of any hearing testing conducted for the purpose of fitting or dispensing a hearing aid:
 - (a) An audiometer that has been calibrated within the last 12 months and that meets the specifications set forth under Section 114 of this Act.

- (b) A speech audiometer or a master hearing aid in order to determine the most comfortable listening level and speech discrimination.
 - (c) A final fitting ensuring physical fit and operational comfort of the hearing aid shall be made.
 - (d) Hearing testing must be performed in an environment with less than 55dBA ambient noise sound levels.
- (4) A hearing assessment as described in Section 112(1) shall be valid for six months.

113. Fitting Verification

The licensee shall demonstrate benefit of the hearing aid fitting by using such measures as aided vs. unaided sound field testing, real ear measurements, speech mapping, self assessment questionnaires, electroacoustic analysis, or any other methods approved by the board.

114. Cerumen Management

- (1) The licensee shall follow federal regulations, and those state regulations established by the Board, regarding Cerumen Management and referral of patients to a Medical Liaison.
- (2) Training, Knowledge, and Skills.
 - (a) The licensee shall be responsible for obtaining the training, knowledge, and skills necessary to perform cerumen management.
 - (b) The licensee shall obtain training that includes:
 - (i) Principles of cerumen management including the anatomy of the ear canal and the ear drum and classification of cerumen;
 - (ii) Use of instruments;
 - (iii) Techniques for cerumen removal;
 - (iv) Recognition of complications;
 - (v) Recognition of contraindications; and
 - (vi) Sanitation and safety procedures.
 - (c) The licensee shall maintain documentation evidencing the satisfactory completion of the training.
- (3) Precautions.
 - (a) The licensee shall have established a Medical Liaison before performing cerumen removal.
 - (b) The licensee may refer patients to a medical liaison who exhibit contraindications to cerumen removal requiring medical consultation or medical intervention.
 - (c) The licensee shall carry appropriate Professional Liability insurance before performing cerumen removal.
 - (d) The licensee shall perform cerumen management using the customary removal techniques that are commensurate with the licensee's training and experience.

115. Tinnitus Management

- (1) The licensee shall follow federal regulations, state licensure regulations, and those state regulations established by the Board, regarding Tinnitus Management.

- (2) The licensee shall be responsible for obtaining the training, knowledge, and skills necessary to perform tinnitus management.

116. Equipment and Quality Control.

- (1) All equipment, utilized for hearing assessment (112) and in the fitting and dispensing of hearing instruments under this Act, shall be calibrated at least annually in conformance with current standards of the American National Standards Institute or such other quality control standards established by the Board. Licensees shall ensure that audiometric equipment has been evaluated electrically and acoustically annually, adjusted or repaired if necessary, and that conformity with such standards was determined at that time. Licensees must maintain calibration records permanently and licensees shall make the records available for inspection by the Board at any time. In addition, all licensees must use routine procedures for the daily inspection of audiometric equipment, or prior to use if used less often than on a daily basis, to generally determine that it is in normal working order.
- (2) Hearing aids, assistive listening devices, and electronic equipment must be maintained according to manufacturer's specifications.
- (3) All instrumental technology shall be maintained in proper working order and be properly calibrated according to accepted standards.
- (4) Proper infection control and sanitation procedures shall be utilized.

117. Consumer Protection.

- (1) A hearing aid specialist shall advise a prospective hearing aid user to consult promptly with an otolaryngologist, or a licensed physician if no otolaryngologist is available, before dispensing a hearing aid if the hearing aid specialist determines through inquiry, actual observation, or review of any other available information concerning the prospective user, that the prospective user has any of the Red Flag conditions as prescribed by 21 CFR 801.420, the U.S. Food and Drug Administration Rules.
- (2) License holders under this Act must comply with all Food and Drug Administration rules governing the fitting and sales of hearing aids as prescribed by 21 CFR 801.420 and 801.421.
- (3) In addition, a consumer shall not be required to obtain a medical evaluation for the repurchase of a hearing aid once a medical evaluation has been obtained for certain otologic conditions that are permanent and will be reidentified at each hearing assessment. At a minimum, such conditions shall include the following:
 - (a) Visible congenital or traumatic deformity of the ear;
 - (b) Unilateral or asymmetric hearing loss, assuming no change in thresholds;
 - (c) Audiometric air-bone gap equal to or greater than an average of 15 decibels (dB) at 500 Hertz (Hz), 1000Hz, and 2000Hz;
 - (d) Bilateral hearing loss of greater than 90dB.
- (4) Each hearing aid delivered shall be sold pursuant to a written contract which shall state the terms of sale.
- (5) Any licensee shall, at the time of delivery, provide the consumer with a receipt containing the licensee's signature, the address of his/her regular place of business, and his/her

license or Apprentice license number, if applicable, together with the brand, model, manufacturer or manufacturer's identification code, and serial number of the hearing aid furnished and the amount charged for the hearing aid. The receipt also shall specify whether the hearing aid is new, used, or rebuilt, as defined by 21 CFR 801.420; the length of time and other terms of the guarantee; and by whom the hearing aid is guaranteed.

- (6) No hearing aid may be sold to any person unless both the packaging containing the hearing aid and the itemized receipt are in compliance with all applicable laws and regulations.
- (7) Upon delivery, the hearing aid specialist shall confirm the physical and operational performance of the hearing aid.
- (8) Any seller offering for sale or selling a hearing aid in this state or to a resident of this state must make available in this state an in-person fitting of the hearing aid by a hearing aid specialist licensed under this Act prior to the sale.

118. Retention of Records.

- (1) A licensee shall keep and maintain in his office or place of business the following records:
 - (a) Results of tests and other records as they pertain to hearing assessments conducted by the licensee and the dispensing of hearing aids by the licensee;
 - (b) A copy of the written contract and if executed, signed medical evaluation waiver; and
 - (c) Copies of such other records as the Board or the Department shall reasonably require.
- (2) All such records shall be kept and maintained by the licensee for a period of seven (7) years or as required by applicable laws and regulations.

119. Tele-practice.

The board shall promulgate rules governing the appropriate use of tele-practice, including which services may not be provided using tele-practice, such as the initial hearing assessment and initial hearing aid fitting.

120. Declaration of Place of Business; Posting of License and Notice

- (1) Each licensee under this Act shall provide the state an address, at which the licensee's license shall be conspicuously displayed.
- (2) If a consumer purchases a hearing aid from a licensee outside of the licensee's regular place of business and the regular place of business is beyond a reasonable distance, as determined by the board, the licensee must provide the purchaser the address of an affiliate location for which the licensee is associated that is within a reasonable distance, at which a licensed hearing aid specialist or audiologist is available for fitting services.
- (3) Each business operating in this state shall:
 - (a) provide the state an address where consumers may conduct normal business transactions. A business must notify the Board of a change of address within ten (10) days of the change;

- (b) provide to the Board a list of all licensees affiliated with the business;
- (c) be responsible for all matters related to the affiliated licensees listed with the state; and
- (d) notify the state of any change in affiliation with licensees listed with the state within 10 days of change in affiliation with licensee.

121. Grounds for Disciplinary Action by Board.

Any conduct or attempted conduct which endangers or is likely to endanger the health, welfare, or safety of the public in the practice of hearing aid dispensing is grounds for disciplinary action and includes without limitation the following:

- (1) Violating any provision of this chapter, any order given by the Board, or rule adopted by the Board, including, without limitation, rules setting forth specific grounds for disciplinary action in addition to those set forth in this section.
- (2) Engaging in illegal or negligent practice.
- (3) Committing any act of unethical or unprofessional conduct.
- (4) Making a material misstatement in an application for a license or permit or for renewal of a license.
- (5) Providing or attempting to provide any license, by sale or otherwise, or obtaining or attempting to obtain a license, by purchase or otherwise, with fraudulent intent.
- (6) Altering a license with fraudulent intent, or knowingly using or attempting to use a license that has been purchased, fraudulently obtained, counterfeited, or altered.
- (7) Conviction of a Class A felony under any circumstances, or of any offense the circumstances of which substantially relate to the practice of hearing aid dispensing.
- (8) Violation of any applicable statute, rule or regulation that relates to the practice of hearing aid dispensing.
- (9) False, deceptive or misleading conduct, through advertising or otherwise, or violation of any federal statute, rule or regulation that relates to advertising.
- (10) Aiding or abetting any conduct that is grounds for disciplinary action.
- (11) Misrepresenting professional services available in the fitting, sale, adjustment, service, or repair of a hearing instrument, or using the terms “doctor,” “medical” or any other term or title which might connote the availability of professional services when such use is not accurate.
- (12) Providing professional services while mentally incompetent, under the influence of alcohol, using any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication or while having a serious infectious or contagious disease and failing to take proper precautions for the protection of patients or others, or otherwise being unable to discharge the functions of a licensee in a manner consistent with the public’s health, safety, and welfare.
- (13) Providing services or promoting the sale of devices, hearing aids, or products to a person who cannot reasonably be expected to benefit from such services, devices, or products.
- (14) Being disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section.
- (15) Violation of any trade practice rules for the hearing aid industry or other applicable laws and rules.

- (16) Violating any provisions of this Act, Board rules, adopted codes of ethics or other applicable laws or rules including, but not limited to, the **[consumer protection act]**, relating directly or indirectly to any practice pursuant to this Act.
- (17) Knowingly making false or fabricated claims or statements that lead to an unwarranted investigation by the Board.
- (18) Noncompliance with the Code of Ethics of the International Hearing Society.

122. Investigations by Board.

- (1) The Board is authorized to institute any investigation, hearing or other legal proceeding necessary to effect compliance with this Act.
- (2) The Board or its hearing officer, upon a finding that action is necessary, shall have the authority pursuant to this Act and any subsequent rules promulgated by the Board to administer oaths, take depositions of witnesses, and shall have power to require the attendance of such witnesses and the production of such books, records and papers as the Board may desire at any hearing. For this purpose, the Board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers.
- (3) When it is brought to the attention of the Board by the written statement of any person that a licensee under this Act has done any act or thing in violation of any provision of this Act, the Board shall make an investigation of such licensee and, if it is determined there is probable cause to institute proceedings against such licensee, the Board shall commence a formal proceeding against the licensee in accordance with this Act and with rules adopted by the Board pursuant to this section.
- (4) The Board may, in the name of the people, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of this Act. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this Act.

123. Board Disciplinary Action; Penalties.

- (1) The Board may take the following disciplinary actions singly or in combination when the Board finds any hearing aid specialist to be guilty of any of the grounds set forth above in Section 125:
 - (a) Issue a formal reprimand;
 - (b) Require additional education as a requirement for continued practice;
 - (c) Impose restrictions and/or conditions as to scope of practice, place of practice, supervision of practice, duration of license status, or type or condition of consumer served. The Board may require a licensee to report regularly to the Board on matters regarding the restricted license;
 - (d) Deny an application for licensure;
 - (e) Suspend a license, the duration of which shall be determined by the Board;
 - (f) Revoke a license;
 - (g) Refuse to issue or renew a license;

- (h) Impose an administrative fine, as determined by the Board, for each count or separate offense under this Act; or
 - (i) Assess costs and attorney's fees against a licensee for any investigation and/or administrative proceeding.
- (2) If a person licensed under this Act allows the dispensing of a hearing aid by an unlicensed person not registered as an Apprentice or fails to comply with the requirements of Section 109 relating to direct supervision of Apprentices, the Board shall, upon determination of that violation, order the full refund to the consumer upon return of the hearing aid to the licensee's place of business. The Board shall prescribe a statute of limitations for refunds under this section.

124. Appeals and Judicial Review.

- (1) The Board shall establish an appeals process through which an Applicant can challenge denial of either initial or renewed licensure or the imposition of disciplinary actions. Such process shall include, at a minimum, written notice of appeal rights and an opportunity to challenge in writing and/or orally a denial.
- (2) Any person who is aggrieved by any action of the Board in denying, refusing to renew, suspending or revoking a license, issuing a censure, imposing any restriction upon a license, or imposing any fine, may seek judicial review thereof in accordance with the provisions of **[applicable statute]**.

125. Unlawful Practice; Criminal Penalties.

- (1) No person shall:
 - (a) Practice the dispensing of hearing aids unless the person holds a valid, unrestricted and unrevoked license that permits them to dispense hearing aids in this jurisdiction;
 - (b) Use the name or title "hearing aid specialist" or any equivalent designation when the person has not been licensed pursuant to this Act;
 - (c) Present as his/her own the license of another;
 - (d) Give false, incomplete, or forged evidence to the Board or a member thereof for the purposes of obtaining a license;
 - (e) Use or attempt to use a hearing aid specialist license which has expired, been suspended, revoked, or placed on inactive status;
 - (f) Knowingly employ unlicensed persons in the practice of dispensing of hearing aids;
 - (g) Dispense hearing aids through the mail or over the Internet to the ultimate consumer;
 - (h) Knowingly conceal information relative to violations of this Act;
 - (i) Discriminate against consumers on the basis of race, national origin, religion, gender, sexual orientation, disability, income or health status; or
 - (j) Violate any provision of this Act.
- (2) Any person who violates any of the provisions of Section 125(1) is guilty of a misdemeanor of the second degree, punishable as provided in **[applicable section of local law on criminal acts]**.

- (3) The Board shall report any criminal violation of this Act to the proper prosecuting authority for prompt prosecution.

126. Severability.

The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.