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Hearing Aid Dispensers Examining Committee Law

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45:9A-1. Legislative findings

The Legislature hereby finds and declares that the practice of hearing aid dispensing need be regulated for the protection of the health, safety and welfare of the citizens of this State. The Legislature further finds and declares that peer regulation and the creation of a new board of examiners to carry out the provisions of this act are not in the public interest and it has hereby devised a regulatory mechanism which is consonant with the licensing policies of this State.

L.1973, c. 19, s. 1, eff. Jan. 31, 1973.

45:9A-2. Definitions

As used in this act:

- a. "Board" means the State Board of Medical Examiners.
- b. "Committee" means the Hearing Aid Dispensers Examining Committee.
- c. "Hearing aid" means an electro-acoustic system scientifically designed to be head or body worn by an individual. Its basic components shall be a microphone, amplifier, and receiver. Each component shall be adapted to the needs of the individual. These needs shall be measured in acoustic gain, frequency response, and maximum power output.
- d. "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the power or range of human hearing by means of an audiometer or by any other means devised and the consequent selection of adaptation or sale of hearing aids intended to compensate for hearing loss, including the making of an impression of the ear.
- e. "Hearing aid dispenser" means a person engaged in the fitting and selling of hearing aids to a person with impaired hearing.
- f. "Director" means the Director of the Division of Consumer Affairs.

L.1973, c. 19, s. 2, eff. Jan. 31, 1973.

45:9A-3. Hearing aid dispensers examining committee; members

There is hereby created in the Division of Consumer Affairs of the Department of Law and Public Safety, under the State Board of Medical Examiners, a Hearing Aid Dispensers Examining Committee to consist of seven members six of whom are to be appointed by the Governor with the advice and consent of the Senate. The seventh member shall be the Director of the Division of Consumer Affairs, ex officio, or his designated representative.

Three members of the committee shall be qualified hearing aid dispensers for a period of at least 3 years immediately preceding the effective date of this act and shall hold certification, from the National Hearing Aid Society or its equivalent. All hearing aid dispenser members, other than those first appointed, shall be holders of a valid license as provided by this act. Those first appointed shall not be

exempt from the requirements of sections 10 and 11 of this act, provided, however, that the board shall make provision for their examination and licensure as soon as practicable after their appointment.

One member of the committee shall be a physician and diplomate of the American Board of Otolaryngology. One member shall be a clinical audiologist and hold certification from the American Speech and Hearing Association and one member shall be a public member to represent the interests of the general public.

L.1973, c. 19, s. 3, eff. Jan. 31, 1973.

45:9A-4. Term of office

Each member of the committee, except the members first appointed and the director, shall serve for a term of 5 years. Each member shall hold office until the appointment of his successor. The initial appointments to the committee shall be two members for a term of 1 year; two members for a term of 2 years and two members for a term of 3 years.

Vacancies shall be filled for the unexpired term only. No member may be appointed for more than two terms.

L.1973, c. 19, s. 4, eff. Jan. 31, 1973.

45:9A-5. Compensation

Each member of the committee shall receive \$25.00 for each day of actual service in attending meetings of the committee at which business is transacted and in addition shall be entitled to be reimbursed for his necessary travel expenses; provided, such compensation in any 1 fiscal year shall not exceed \$1,000.00.

L.1973, c. 19, s. 5, eff. Jan. 31, 1973.

45:9A-6. Oath; filing; president; secretary treasurer

The members of the committee shall, before entering the discharge of their duties, and within 30 days after their appointment, take and subscribe to an oath before an officer authorized to administer oaths in this State, for the faithful performance of their duties, and file the same with the Secretary of State.

They shall annually elect from their number a president and a secretary-treasurer each of which officers shall hold office for 1 year and until his successor shall have been duly elected and qualified.

L.1973, c. 19, s. 6, eff. Jan. 31, 1973.

45:9A-7. Duties; rules and regulations; record of proceedings

The committee shall ascertain the facts concerning the dispensing and sale of hearing aids, for the purpose of determining the need for, and desirability of, rules and regulations to promote the health,

safety, and welfare of the public and to effectuate the purposes of this act and to aid the committee in the performance of its powers and duties hereunder, and the committee shall make and promulgate, with the approval of the board, rules and regulations for said purposes pursuant to the Administrative Procedures Act. The secretary-treasurer of the committee shall keep a record of all the proceedings of the committee which shall be transmitted to the board and shall be open to public examination.

L.1973, c. 19, s. 7, eff. Jan. 31, 1973.

45:9A-8. Course of instruction; recommendation; qualification for licensees; examination requirements; renewal of license

The committee may recommend the preparation of and administration by the State Department of Education or Department of Higher Education or public institutions designated by either of said departments of a course of instruction concerned with the fitting and selection of hearing aids. The committee may require, with the approval of the board, that prospective licensees shall complete such a course of instruction as a condition of licensure. The committee shall publish and distribute information concerning the examination requirements for obtaining a license to engage in the practice of fitting and selling hearing aids within this State. The committee may require, with the approval of the board, that licensees, as a condition of renewal, attend courses designed to update and refresh their knowledge and skills.

L.1973, c. 19, s. 8, eff. Jan. 31, 1973.

45:9A-9. Application for license

Any person desiring to commence the practice of dispensing and fitting hearing aids in this State shall file with the secretary of the committee an application, to be furnished by said secretary and verified by oath of the applicant, stating therein that he is a person of good moral character, more than 18 years of age, has received training and has had experience in the practice of dispensing and fitting hearing aids. The applicant shall file with the secretary of the committee a fee of \$20.00 for the examination.

L.1973, c. 19, s. 9, eff. Jan. 31, 1973.

45:9A-10. Verification of qualifications; time of examinations

An applicant for a license who is notified by the committee that he has fulfilled to its satisfaction the requirements set forth in section 9 of this act shall appear at such time and place to be examined by written and practical tests in order to demonstrate that he is qualified to practice dispensing and fitting hearing aids. The committee shall give at least one examination of the type prescribed in this act each year, and such additional examinations as the volume of applications therefor may make appropriate. The committee shall give due public notice of the date, time and place of said examinations.

L.1973, c. 19, s. 10, eff. Jan. 31, 1973.

45:9A-11. Contents of examination

The examination provided in this act shall consist of:

- a. Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:
 - (1) Basic physics of sound.
 - (2) The human hearing mechanism, including the science of hearing and the causes and rehabilitation of abnormal hearing and hearing disorders.
 - (3) Structure and function of hearing aids.
- b. Tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:
 - (1) Pure tone audiometry, including air conduction testing and bone conduction testing.
 - (2) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing.
 - (3) Effective masking.
 - (4) Recording and evaluation of audiograms and speech audiometry to determine hearing aid candidacy.
 - (5) Selection and adaptation of hearing aids and testing of hearing aids.
 - (6) Taking earmold impressions.
 - (7) Other skills as may be required for the fitting of hearing aids.

The tests under this section shall not include questions requiring a medical or surgical education.

L.1973, c. 19, s. 11, eff. Jan. 31, 1973.

45:9A-12. Certificate of registration; issuance; conditions; duration of license

Upon payment of \$25.00 the committee shall register each applicant who satisfactorily passes the examination. Thereupon the board shall issue to the applicant a certificate of registration. The license shall be effective for 1 year.

L.1973, c. 19, s. 12, eff. Jan. 31, 1973.

45:9A-13. Reciprocity with other states; certificates of endorsement

Whenever the committee determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this act for the practice of fitting and dispensing hearing aids, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this act are qualified to dispense and fit hearing aids, the committee may issue certificates of endorsement to applicants therefor who hold current, unsuspended

and unrevoked certificates or licenses to dispense and fit hearing aids in such other state or jurisdiction. No such applicant for a certificate of endorsement pursuant to this subsection shall be required to submit to or undergo any examination, investigation or other procedure, other than the payment of fees, pursuant to this act. The holder of a certificate of endorsement shall be registered in the same manner as holders of a license. The fee for an initial certificate of endorsement shall be the same as the fee for an initial license. Fees, grounds for renewal and procedures therefor, suspension and revocation of certificates of endorsement shall be the same as for renewal, suspension and revocation of a license.

L.1973, c. 19, s. 13, eff. Jan. 31, 1973.

45:9A-14. Holder of certificate of endorsement; place of practice; notice to committee; record

A person who holds a certificate of endorsement shall notify the committee in writing of the address of the place or places where he engages or intends to engage in the practice of fitting or dispensing of hearing aids.

The committee shall keep a record of the places of practices of persons who hold licenses or certificates of endorsements. Any notice required to be given by the committee to a person who holds a license or certificate of endorsement may be given by mailing it to him at the address given by him to the committee.

L.1973, c. 19, s. 14, eff. Jan. 31, 1973.

45:9A-15. Renewal fee; suspension of license or certificate for failure to renew

A person except a medical physician or osteopath who practices the dispensing and fitting of hearing aids shall annually pay to the committee a fee of \$25.00 for a renewal of his license or certificate of endorsement. The committee may suspend the license or certificate of any person who fails to have his license or certificate renewed.

L.1973, c. 19, s. 15, eff. Jan. 31, 1973.

45:9A-16. Temporary licenses

a. An applicant who fulfills the requirements of section 9 of this act who has not previously applied to take the examination provided under section 10 of this act may apply to the board for a temporary license.

Upon receiving an application for said temporary license, accompanied by a fee of \$5.00, the committee shall issue a temporary license which shall entitle the applicant to practice the dispensing and fitting of hearing aids for a period ending 30 days after the conclusion of the next examination given after the date of issue.

No temporary license shall be issued by the committee unless the applicant shows to the satisfaction of the committee that he is or will be supervised and trained by a person who holds a valid license or certificate of endorsement issued pursuant to this act.

If a person who holds a temporary license issued under this section does not take the next examination given after the date of issue, the temporary license shall not be renewed, except for good cause shown to the satisfaction of the committee.

If a person who holds a temporary license issued under this section takes and fails to pass the next examination given after the date of issue, the committee may renew the temporary license for a period ending 30 days after the results of the next examination given after the date of renewal are announced. In no event shall more than one renewal be permitted. The fee for renewal shall be \$20.00.

b. An applicant who meets the requirements of section 9 of this act except with respect to training and experience and is desirous of obtaining the requisite training and experience in order to qualify for a license and who proves to the satisfaction of the committee that he will be directly supervised and trained by a person who holds a valid license or certificate of endorsement issued pursuant to this act, may have a temporary license issued to him which shall entitle him to be engaged, under such direct supervision, in the fitting and selling of hearing aids for a period ending 30 days after the results of the next examination are announced. Such a temporary license may be renewed from period to period not to exceed 2 consecutive years.

L.1973, c. 19, s. 16, eff. Jan. 31, 1973.

45:9A-17. Revocation, suspension, refusal to renew of license, certificate of endorsement

17. The Director of the Division of Consumer Affairs shall have the power after notice and opportunity for a hearing to revoke, suspend, or refuse to renew any license, temporary license or certificate of endorsement issued pursuant to this act as provided by section 8 of P.L.1978, c.73 (C.45:1-21).

L.1973,c.19,s.17; amended 1999, c.403, s.10.

45:9A-18. Fees; disposition; expenditures of committee

All fees coming into the custody of the committee, including examination fees, license fees, renewal fees, fines, penalties and other payment, shall be paid by the board to the State Treasurer and become a part of the general fund.

All expenditures deemed necessary to carry out the provisions of this act shall be paid by the State Treasurer from the license fees and other sources of income of the committee, within the limits of available appropriations according to law, but in no event shall expenditures exceed the revenues of the committee during any fiscal year.

L.1973, c. 19, s. 18, eff. Jan. 31, 1973.

45:9A-22. Exemptions

This act shall not apply to any person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a

program conducted by a public, charitable institution or nonprofit organization, which is primarily supported by voluntary contributions unless they sell hearing aids.

This act shall not be construed to prevent any person who is a medical or osteopathic physician licensed to practice by the board from treating, or fitting hearing aids to, the human ear.

L.1973, c. 19, s. 22, eff. Jan. 31, 1973.

45:9A-23. Purchasers; statements by licensee; receipt; contents

a. A licensee shall advise a prospective hearing aid user at the outset of their relationship that any examination or representation made by the licensed hearing aid dispenser in connection with the practice of fitting and selling of a hearing aid is not an examination, diagnosis or prescription by a person licensed to practice medicine in this State or by a certified audiologist and, therefore, must not be regarded as medical opinion.

b. A licensee shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser a written receipt, signed by or on behalf of the licensee, containing all of the following:

(1) the date of consummation of the sale,

(2) specifications as to the make, serial number, and model number of the hearing aid or aids sold,

(3) the address of the principal place of business of the licensee,

(4) a statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, as the case may be, if that is the fact,

(5) the number of the licensee's license,

(6) the terms of any guarantee or express warranty, if any, made to the purchaser with respect to such hearing aid or hearing aids,

(7) such receipt shall bear, or have attached to it in no smaller type than the largest used in the body copy portion, the following: The purchaser has been advised at the outset of his relationship with the hearing aid dispenser that any examination or representation made by a licensed hearing aid dispenser in connection with the practice of fitting and selling of this hearing aid, or hearing aids, is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this State, or by certified audiologists and therefore must not be regarded as medical opinion.

L.1973, c. 19, s. 23, eff. Jan. 31, 1973.

45:9A-24. Written recommendation to consult licensed physician; conditions; signature for receipt; list of physicians

Whenever any of the following conditions are found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user, a licensee shall,

prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that his best interests would be served if he would consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to a duly licensed physician:

- (a) visible congenital or traumatic deformity of the ear,
- (b) history of, or active drainage from the ear within the previous 90 days,
- (c) history of sudden or rapidly progressive hearing loss within the previous 90 days,
- (d) acute or chronic dizziness,
- (e) unilateral hearing loss of sudden or recent onset within the previous 90 days,
- (f) significant air-bone gap.

A person receiving the written recommendation to purchase a hearing aid shall sign a receipt for the same.

The licensee shall provide the prospective hearing aid user with a list of at least three physicians specializing in diseases of the ear, practicing in the area, and their addresses or if none are practicing in the area, then a list of at least three physicians and their addresses.

L.1973, c. 19, s. 24, eff. Jan. 31, 1973.

45:9A-25. Sale of hearing aid to person under 18

No hearing aid shall be sold by an individual licensed under this chapter, to a person less than 18 years of age unless within the preceding 6 months a recommendation for a hearing aid has been made by a board-certified, or a board-eligible physician specializing in otolaryngology, or by an audiologist certified by the American Speech and Hearing Association after examination and diagnosis by a board-certified or board-eligible otolaryngologist. A replacement of an identical hearing aid within 1 year shall be an exception to this requirement.

L.1973, c. 19, s. 25, eff. Jan. 31, 1973.

45:9A-26. Records to be maintained by licensee

A licensee shall keep and maintain in his office or place of business the following records:

- (a) results of tests as they pertain to the fitting of the hearing aid,
- (b) a copy of the written receipt required by section 23 and a copy of the written recommendation and receipt required by section 24, and
- (c) copies of such other records as the committee or the director shall reasonably require.

All such records shall be kept and maintained by the licensee for a period of 7 years.

L.1973, c. 19, s. 26, eff. Jan. 31, 1973.

45:9A-27. Unlawful practice or advertisement of fitting and selling of hearing aids

It is unlawful for an individual to engage in the practice of fitting and selling of hearing aids or to display a sign or in any other way to advertise or hold himself out as being so engaged without having at the time of so doing a valid unsuspended, unrevoked and unexpired license, temporary license or certificate of endorsement. Such license, temporary license or certificate of endorsement shall be conspicuously posted in the licensee's office or place of business at all times.

L.1973, c. 19, s. 27, eff. Jan. 31, 1973.