

## **CHAPTER 43-33 HEARING AID DEALERS**

### **43-33-01. Definitions.**

As used in this chapter, unless the context requires otherwise:

1. "Board" means the board of hearing aid specialists.
2. "Hearing aid" or "hearing instrument" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories including earmold, but excluding batteries, cords, and earmold tubing.
3. "License" means a license issued under this chapter to a hearing aid specialist.
4. "Licensee" means a hearing aid specialist licensed under this chapter.
5. "Practice of fitting and dispensing hearing instruments" means the measurement of human hearing to determine hearing loss by means of an audiometer or by any means solely for the purpose of making selections, adaptations, repairs, or sale of hearing instruments. The term also includes the making of impressions for earmolds. A licensee, at the request of a physician or member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.
6. "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. This excludes wholesale to distributors or dispensers.
7. "Trainee permit" means a temporary permit issued while an applicant is in training to become a licensee.

### **43-33-02. License required to sell or fit hearing instruments.**

1. A person may not engage in the sale of or practice of fitting hearing instruments or display a sign or in any other way advertise or represent that that person practices the fitting and sale of hearing instruments unless that person holds an unsuspended, unrevoked license issued by the board as provided in this chapter. The license must be conspicuously posted in the licensee's office or place of business. Duplicate licenses must be issued by the board to valid licenseholders operating more than one office for a fee determined by the board. A license confers upon the holder the right to select, fit, and sell hearing instruments, and the right to conduct any necessary hearing testing incident to the selecting, fitting, and selling of hearing instruments.
2. This chapter does not prohibit a person maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if that person employs only properly licensed individuals in the direct sale and fitting of such products. Such persons shall file annually with the board a list of all licensees directly or indirectly employed by it. Those persons shall also file with the board a statement on a form approved by the board that they submit themselves to the rules of the board and the provisions of this chapter.

#### **43-33-02.1. Conviction not bar to licensure - Exceptions.**

Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a hearing aid specialist, or determines that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

### **43-33-03. Receipt required to be furnished to a person supplied with hearing instruments.**

1. Any person who practices the fitting and sale of hearing instruments shall deliver to each person supplied with a hearing instrument a receipt that contains the licensee's signature, the licensee's business address, the number of the licensee's certificate, the make and model of the hearing instrument furnished, and the full terms of the sale. If an instrument that is not new is sold, the receipt and the instrument's container must

be clearly marked as "used" or "reconditioned" whichever is applicable, with the terms of guarantee, if any.

2. The receipt must bear in no smaller type than the largest used in the body copy portion the following: Any examination or representation made by a licensed hearing aid specialist in connection with the fitting and selling of this hearing instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice.

#### **43-33-04. Persons and practices not affected.**

This chapter does not prevent or restrict:

1. A person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if the person or organization employing that person does not sell hearing instruments.
2. A person employed as a hearing aid specialist by the federal government from engaging in the practice of fitting and dispensing hearing instruments if the person performs the practice solely within the confines or under the jurisdiction of the government of the United States.
3. Activities and services of a person pursuing a course of study leading to a graduate degree in audiology at a college or university if the activities or services are under the direct supervision of a licensee, constitute a part of a supervised course of study, and the person is designated an audiology intern or trainee or by another title clearly indicating the training status appropriate to the level of training.

#### **43-33-05. License by experience.**

Repealed by S.L. 1991, ch. 474, § 17.

#### **43-33-06. Issuance of license.**

1. The board shall register each applicant without discrimination if the applicant passes an examination as provided in section 43-33-07, and upon the applicant's payment of a fee as established by the board, shall issue to the applicant a license signed by the secretary of the board. The license is effective until the expiration date stated on the license and identification card.
2. Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this chapter for the practice to fit and sell hearing instruments, and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this chapter are qualified to dispense and fit hearing instruments, the board may issue certificates of endorsement to applicants who hold current, unsuspended and unrevoked certificates or licenses by examination to fit and sell hearing instruments in the other state or jurisdiction. The board may not issue a license to an applicant for a certificate of endorsement if the applicant's license or certificate from the other state or jurisdiction was obtained by experience. An applicant for a certificate of endorsement may not be required to submit to or undergo a qualifying examination, but the applicant must pay the fees required by the board. The holder of a certificate of endorsement must be registered in the same manner as holders of a license. The fee for an initial certificate of endorsement must be the same as the fee for an initial license. Fees, grounds for renewal, and procedures for the suspension and revocation of certificates of endorsement must be the same as for renewal, suspension, and revocation of a license.

#### **43-33-07. License by examination.**

1. Applicants may obtain a license by successfully passing a qualifying examination, if the applicant:
  - a. Is at least eighteen years of age.
  - b. Is of good moral character.

- c. Has an education equivalent to a four-year course in an accredited high school.
  - d. Is free of contagious or infectious disease.
- 2. The applicant for license by examination shall appear at a time, place, and before such persons as the board designates, to be examined by means of written and practical tests to demonstrate that the applicant is qualified to practice the fitting and sale of hearing instruments. The examination administered as directed by the board constituting standards for licensing may not be conducted in such a manner that college training is required to pass the examination. The examination may not imply that the applicant must possess the degree of medical competence normally expected of physicians.
- 3. The board shall give examinations once a year at a time and place designated by the board and may give more frequent examinations if deemed necessary by the board.
- 4. In addition to all other fees, the fee for an examination to determine qualifications for license must be set by the board.

**43-33-08. Temporary trainee permit.**

- 1. An applicant who fulfills the requirements regarding age, character, education, and health as set forth in section 43-33-07 may obtain a trainee permit upon application to the board. Previous experience or a waiting period may not be required to obtain a trainee permit.
- 2. Upon receiving an application accompanied by a fee as established by the board, the board shall issue a trainee permit that permits the applicant to engage in the training of fitting and sale of hearing instruments for a period of one year under the direct supervision of a licensee. The trainee shall train in the same place of business as that of the supervisor and must complete at least thirty hours of book and visual aid training and at least ten hours of training with an audiometer, as well as a minimum of one week with the supervisor before the trainee's first public contact alone. A trainee may not deal with the public outside the supervisor's office or place of business until these requirements have been fulfilled. After this initial period of training, the trainee must spend one day per week in the office or place of business with the supervisor. The trainee may not make any sale of a hearing instrument without first consulting with the supervisor and obtaining the supervisor's approval for the sale.
- 3. If a person who holds a temporary trainee permit has not successfully passed the licensing examination during the one-year period from the date of issuance, the temporary trainee permit may be renewed or reissued once upon payment of a fee established by the board.
- 4. A supervisor may not have more than three trainees under supervision at a time.

**43-33-09. Scope of examination.**

The qualifying examination provided in section 43-33-07 consists of:

- 1. Tests of knowledge in the following areas pertaining to the fitting and sale of hearing instruments:
  - a. Basic physics of sound;
  - b. The anatomy and physiology of the ear;
  - c. The function of hearing instruments;
  - d. Elementary audiology; and
  - e. Any other requirements established by the board.
- 2. Practical tests of proficiency in the following techniques pertaining to the fitting of hearing instruments:
  - a. Pure tone audiometry, including air conduction testing and bone conduction testing;
  - b. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
  - c. Masking when indicated;
  - d. Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing instrument;

- e. Taking earmold impressions;
- f. Hearing instrument modification technique; and
- g. Any other requirements established by the board.

**43-33-10. Notice to board of place of business - Notice to licensees - How given by board.**

1. A licensee shall notify the board in writing of a regular address of the place or places where the licensee engages or intends to engage in the fitting or the sale of hearing instruments.
2. The board shall keep a record of the place of business of licensees.
3. Any notice required to be given by the board to a licensee must be mailed by certified mail at the address of the last place of business of which the person has notified the board.
4. The board shall keep a record of the trainees, their place of training, and their supervisors.

**43-33-11. Annual renewal of license - Fees - Continuing education - Effect of failure to renew.**

Each licensee shall annually, before the expiration of the person's license, pay to the board the proper fees, together with a certificate showing attendance for a minimum of ten hours of continuing education per calendar year at schools or seminars approved by the board as defined by rule, pertaining to the fitting and sales of hearing instruments, for a renewal of a license. A thirty-day grace period must be allowed after the expiration of a license when a license may be renewed on payment of the proper fees together with the certificate of continuing education to the board. After expiration of the grace period, the board may renew a license upon the payment of the proper fees together with the certificate of continuing education to the board. A licensee who applies for renewal, whose license has expired, may not be required to submit to an examination as a condition to renewal, if the renewal application is made within two years from the date of the expiration and is accompanied with a certificate of continuing education during the twelve months immediately preceding the date of application.

**43-33-12. Complaint procedure - Grounds for revocation or suspension of license - Appeals.**

1. Any person wishing to make a complaint against a licensee under this chapter shall file a written complaint with the board within one year from the date of the action upon which the complaint is based. If the board determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license may be suspended or revoked, it shall establish a time and place for a hearing and order the licensee complained against to appear and defend against the complaint. The order must have annexed thereto a copy of the complaint, and the order and copy of the complaint must be served upon the licensee at least twenty days before the date set for hearing, either personally or by registered mail sent to the licensee's last-known address. Continuances or adjournments of a hearing date must be made for good cause. At the hearing the licensee complained against may be represented by counsel. The licensee complained against and the board may take depositions in advance of hearing and after service of the complaint and either may compel the attendance of witnesses by subpoenas issued by the board. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party may attend with counsel if desired and cross-examine.
2. The board may revoke or suspend a person's license for any of the following causes:
  - a. The conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a hearing aid specialist, or the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.

- b. Procuring of a license by fraud or deceit.
  - c. Unethical conduct. Unethical conduct means:
    - (1) Obtaining any fee or making any sale by fraud or misrepresentation.
    - (2) Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.
    - (3) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.
    - (4) Advertising a particular model or type of hearing instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
    - (5) Representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when that is not true, or using the word "doctor", "clinic", "audiologist", or similar words, abbreviations, or symbols which tend to connote the medical or audiological profession when that is not accurate, or use of the titles "hearing instrument specialist", "hearing aid specialist", "board-certified hearing aid specialist", or "board-certified hearing instrument specialist" when the qualifying requirements have not been met through the international hearing society or national board for certification in hearing instrument sciences.
    - (6) Habitual intemperance.
    - (7) Gross immorality.
    - (8) Permitting another to use the person's license.
    - (9) Advertising a manufacturer's product or using a manufacturer's name or trademark that implies a relationship with the manufacturer which does not exist.
    - (10) To directly or indirectly give or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a licensee, or to influence persons to refrain from dealing in the products of competitors.
    - (11) Sale of a hearing instrument to a person without adequate and proper audiometric testing.
    - (12) Sale of a hearing instrument to a person when the need for a hearing instrument has not been established after adequate and proper audiometric testing.
  - d. Conducting business while suffering from a contagious or infectious disease.
  - e. Engaging in the fitting and sale of hearing instruments under a false name or alias with fraudulent intent.
  - f. For any violation of this chapter.
  - g. The fitting and sale of a hearing instrument to any person under eighteen years of age unless within six months before the fitting the person to be fitted has been examined by a physician and audiologist to determine whether there exist any physical deficiencies that would prohibit the effective use of a hearing instrument.
3. Appeals from suspension or revocation may be made under chapter 28-32.

### **43-33-13. Prohibited acts and practices.**

A person may not:

- 1. Sell, barter, or offer to sell or barter a license.
- 2. Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice the fitting and sale of hearing instruments.

3. Alter a license with fraudulent intent.
4. Use or attempt to use as a valid license a license that has been purchased, fraudulently obtained, counterfeited, or materially altered.
5. Willfully make a false statement in an application for a license or application for renewal of a license.
6. Advertise without giving the registered business or personal name and business address or telephone number of the person.

**43-33-14. Powers and duties of board.**

The board shall:

1. Authorize all disbursements and collect fees necessary to carry out this chapter.
2. Supervise issuance of licenses and prepare and administer qualifying examinations to test the knowledge and proficiency of applicants licensed by examination.
3. Register persons who apply to the board and who are qualified to engage in the fitting and sale of hearing instruments.
4. Issue and renew licenses.
5. Suspend or revoke licenses.
6. Designate the time and place for examining applicants.
7. Appoint representatives to conduct or supervise the examination.
8. Adopt rules not inconsistent with the laws of this state which are necessary to carry out this chapter.
9. Appoint or employ subordinate employees.
10. At the board's discretion, provide funds to assist in providing continuing education for licensees.

**43-33-15. Board of hearing aid specialists.**

1. There is established a board of hearing aid specialists to carry out this chapter.
2. Members of the board must be residents of the state. The board consists of four licensees who are not audiologists or otolaryngologists, one otolaryngologist, three licensees who are audiologists, and two consumers. Each hearing aid specialist on the board must be primarily engaged as a hearing aid specialist, must have at least five years of experience in this state, and must hold a valid license as a hearing aid specialist.
3. The governor shall appoint the members of the board. The term of office of each member is four years. Before a member's term expires, the governor shall appoint a successor to assume the member's duties at the expiration of the term. A vacancy in the office of a member must be filled by appointment for the unexpired term. The members shall designate annually one member to serve as chairman and another to serve as secretary-treasurer. A member of the board may not be reappointed to the board until at least one year after the expiration of that person's second term of office.
4. Except for the secretary-treasurer, each member shall serve without compensation except mileage and travel expenses while engaged in the performance of the duties of the office as is provided for state employees. The board shall establish the amount of compensation for the secretary-treasurer.

**43-33-16. Duties of the board.**

Repealed by S.L. 1991, ch. 474, § 17.

**43-33-17. Meetings of board.**

The board shall meet not less than twice each year at a place, day, and hour determined by the board. The board shall also meet at such other times and places as are necessary.

**43-33-18. Violations - Penalty - Injunction.**

Any person who fits or dispenses hearing instruments without a license or trainee permit as provided in this chapter or who violates section 43-33-13 is guilty of a class B misdemeanor. In

addition to the criminal penalties provided, the civil remedy of injunction is available to restrain and enjoin violations of any provisions of this chapter without proof of actual damages sustained by any person.

**43-33-19. Severability clause.**

Repealed by S.L. 1983, ch. 82, § 154.