

1969 Assembly Bill 391

Date published:
January 9, 1970

CHAPTER 300, LAWS OF 1969

AN ACT to create 15.401 (7m), 15.405 (6m), 20.165 (2) (ic) and chapter 455 of the statutes, relating to the creation of a hearing aid dealers and fitters examining board in the department of regulation and licensing, granting rule-making authority, providing penalties and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 15.401 (7m) of the statutes is created to read:

15.401 (7m) HEARING AID DEALERS AND FITTERS EXAMINING BOARD. The hearing aid dealers and fitters examining board shall have the program responsibilities specified for the examining board under ch. 455.

SECTION 2. 15.405 (6m) of the statutes is created to read:

15.405 (6m) HEARING AID DEALERS AND FITTERS EXAMINING BOARD. There is created a hearing aid dealers and fitters examining board in the department of regulation and licensing. The hearing aid dealers and fitters examining board shall consist of 6 members appointed for staggered 6-year terms. Members of the examining board shall be residents of this state. Three members shall be hearing aid dealers or fitters, each of whom shall have had at least 5 years' experience and hold a valid license as a hearing aid dealer or fitter under ch. 455, one member shall be a physician, one member shall be an audiologist certified by the American speech and hearing association and one member shall be a hearing aid user.

SECTION 3. 20.165 (2) (ic) of the statutes is created to read:

20.165 (2) (ic) *Hearing aid dealers and fitters examining board.* For the hearing aid dealers and fitters examining board, 90% of all moneys received under ch. 455 for the licensing, rulemaking and regulatory functions of the examining board.

SECTION 4. Chapter 455 of the statutes is created to read:

CHAPTER 455.

HEARING AID DEALERS AND FITTERS EXAMINING BOARD.

455.01 DEFINITIONS. As used in this chapter, unless the context

clearly indicates a different meaning:

(1) "License" means a license issued by the department under s. 455.05, to hearing aid dealers or fitters.

(2) "Trainee permit" means a temporary permit issued while the applicant is in training to become a licensed hearing aid dealer or fitter.

(3) "Examining board" means the hearing aid dealers and fitters examining board.

(4) "Hearing aid" 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 of such an instrument or device, except batteries and cords.

(5) "Practice of fitting and dealing in hearing aids" means the measurement of human hearing by means of an audiometer or by any other means accepted by the examining board solely for the purpose of making selections, adaptations or sales of hearing aids intended to compensate for impaired hearing. This term also includes making impressions for ear molds.

(6) "Sell" or "sale" means a transfer for a consideration of title or of the right to use.

(7) "Hearing aid dealer or fitter" means any person licensed under s. 455.05 to engage in the practice of dealing in or fitting hearing aids.

455.02 LICENSE REQUIRED TO SELL AND FIT HEARING AIDS.

(1) No person shall engage in the practice of selling or fitting hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting or sale of hearing aids unless he holds a valid license issued under this chapter. The license required by s. 455.05 shall be conspicuously posted in his office or place of business as registered with the department at all times. Duplicate licenses shall be issued by the department to valid license holders operating more than one office without additional payment.

(2) Nothing in this chapter shall prohibit any corporation or mercantile establishment which maintains an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided that for the purpose of selling and fitting hearing aids it employs persons licensed under this chapter. Such corporation or mercantile establishment shall annually file with the examining board a list of all persons employed for the purpose of selling and fitting hearing aids.

455.03 RECEIPT REQUIRED TO BE FURNISHED TO A PERSON SUPPLIED WITH HEARING AID.

(1) Whoever practices fitting or sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt. The receipt shall contain the licensee's signature and show his business address and the number of his certificate, together with specifications as to the make and model of the hearing aid furnished and full terms of sale clearly stated. If a hearing aid which is not new is sold, the receipt and the container thereof must be clearly marked as "used" or "reconditioned" whichever is applicable.

(2) The following shall be set out in not less than 8-point type:

(a) The terms of the guarantee, if there is any given; and

(b) A statement that the purchaser has been advised at the outset of his relationship with the hearing aid dealer that any examination or representation made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid 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.

455.035 MEDICAL EXAM BEFORE BEING FITTED. A hearing

aid shall not be fitted for or sold to a child 16 years of age or younger unless within 90 days prior to the fitting the person to be fitted has been examined by a physician to determine whether or not he has any physical deficiencies that would prohibit the effective use of a hearing aid.

455.04 SELLER'S GUARANTEE. The seller of a hearing aid shall give to the purchaser a personal guarantee that is at least identical in its terms to the guarantee of the manufacturer of the hearing aid.

455.05 ISSUANCE OF LICENSE. The department shall register each applicant who passes an examination as provided in s. 455.06, and upon the applicant's payment of \$75, shall issue to the applicant a certificate of license signed by the secretary of regulation and licensing. The certificate of license shall be effective until January 30th of the year following the year in which it is issued.

(1) Whenever the examining board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect in the state for the practice of fitting and selling hearing aids, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants in this state are qualified to fit and sell hearing aids, the department may issue a license by reciprocity to applicants who hold valid certificates or licenses to deal in or fit hearing aids in such other state or jurisdiction and is otherwise qualified for licensure. No such applicant for a license by reciprocity pursuant to this subsection shall be required to submit to or undergo a qualifying examination, other than the payment of the \$75 fee provided such applicant personally appears at the next meeting of the examining board after filing the application to answer any questions the examining board has. The holder of a license by reciprocity shall be registered in the same manner as other holders of a license. The fee for an initial license by reciprocity shall be the same as the fee for an initial license. Fees, grounds for renewal and procedures for the suspension and revocation of a license by reciprocity shall be the same as for renewal, suspension and revocation of a license.

(2) Any person may be issued a license without examination if he held a valid license issued by this examining board which expired not more than one year prior to the date of application.

455.06 LICENSE BY EXAMINATION. (1) Applicants may obtain a license by successfully passing a qualifying examination, provided the applicant is at least 18 years of age, of good moral character, has an education equivalent to a 4-year course in an accredited high school.

(2) The examination shall include but not be limited to:

(a) Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:

1. Basic physics of sound.
2. The anatomy and physiology of the ear.
3. The function of hearing aids.

(b) Practical 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 most comfortable loudness measurements and measurements of tolerance thresholds.

3. Masking when indicated.

4. Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid.

5. Taking ear mold impressions.

(3) The applicant for license by examination shall appear at a time

and place as the examining board designates, to be examined by means of written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids. Such examinations shall be conducted at least twice a year and at such other times and places designated by the examining board.

455.07 TEMPORARY TRAINEE PERMIT. (1) An applicant who fulfills the requirements regarding age, character and high school education as set forth in s. 455.06, may obtain a trainee permit upon application to the examining board. The name of the licensee who is supervising the trainee shall appear on the face of the permit.

(2) Upon receiving an application under this section, accompanied by a fee of \$35, the examining board may grant a trainee permit which may entitle the applicant to practice fitting of hearing aids for a period of one year. A person holding a valid hearing aid dealers or fitters license shall be responsible for the direct supervision and training of such applicant and shall be liable for all negligent acts and omissions of the trainee in the fitting of hearing aids.

(3) A trainee permit may be renewed or regranted once if the trainee shows that he had sufficient cause for being unable to complete the requirements for permanent licensure.

(4) The examining board shall encourage the establishment of educational courses for the training of all persons wishing to become licensed hearing aid dealers and fitters.

455.08 NOTICE TO DEPARTMENT OF PLACE OF PRACTICE; NOTICE TO HOLDERS OF LICENSE; HOW GIVEN. (1) A person who holds a license shall notify the department in writing of the regular address of the places where he engages or intends to engage in the practice of fitting or selling hearing aids. The licensee shall inform the board of any changes in these addresses within 30 days of the change.

(2) The department shall keep a record of the places of practice of persons who hold licenses.

(3) Any notice required to be given by the department to a person who holds a license shall be mailed to him by certified mail at the address of the last place of practice of which he has notified the department.

455.085 CALIBRATION OF AUDIOMETRIC EQUIPMENT. Audiometric equipment used in the evaluation of hearing sensitivity for the fitting and sale of hearing aids shall be calibrated not less than once every 6 months. Certification of these calibrations shall be sent to the examining board with the renewal fee required in s. 455.09.

455.09 ANNUAL RENEWAL OF LICENSE; FEES; EFFECT OF FAILURE TO RENEW. Each person who practices dealing in or fitting hearing aids shall annually, on or before January 30th, pay to the department a fee of \$50 for a renewal of his license and shall keep such certificate conspicuously posted in his office or place of business at all times. Where more than one office is operated by the licensee, duplicate certificates shall be issued by the department for posting in each location.

455.10 REVOCATION OR SUSPENSION OF LICENSE. Any person licensed under s. 455.04 or 455.05 may have his license revoked or suspended for a fixed period by the examining board for any of the following causes, but such revocation or suspension shall not be made until the licensee has had a hearing before the examining board:

- (1) When his license has been secured by fraud or deceit.
- (2) For unethical conduct. Unethical conduct shall consist of:
 - (a) The obtaining of any fee or the making of any sale by fraud.
 - (b) Knowingly employing directly or indirectly any suspended or unregistered person to perform any work regulated under this chapter.

(c) 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.

(d) Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type where 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.

(e) 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 aids when that is not true, or using the word "doctor", "clinic" or similar words, abbreviations or symbols which tend to connote the medical profession when such use is not accurate; or representing the examination made in connection with the fitting of a hearing aid as a medical examination or the equivalent thereof; or giving a diagnosis or recommending treatment for any medical condition.

(f) Habitual intemperance.

(g) Gross immorality.

(h) Permitting another to use his license.

(i) Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship that does not exist.

(j) Directly or indirectly giving or offering to give, or permitting or causing 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 hearing aid fitter, or influencing persons to refrain from dealing in the products of competitors.

(k) Sale of a hearing aid to a person who has not been given tests using appropriate procedures and instrumentation or without proper measurement of the functional intensity and range of the person's hearing.

(3) Practicing dealing in and fitting hearing aids under a false name or alias.

(4) Incompetence or negligence in fitting and selling hearing aids.

(5) For any violation of this chapter.

(6) Wilfully making a false statement in an application for license or application for renewal of a license.

455.11 TESTING EQUIPMENT. The examining board may, in addition to any other powers granted, purchase and maintain or rent audiometric equipment and facilities necessary to carry out the examination of applicants for licenses.

455.12 RULES. (1) The examining board may make rules not inconsistent with the laws of this state which are necessary to carry out the intent of this chapter.

(2) The examining board shall by rules establish standards for the calibrations and certifications required by s. 455.085.

(3) The examining board shall by rule prescribe the number of trainees a licensee may supervise under s. 455.07.

455.13 PENALTY. Any person violating this chapter or any rule promulgated under this chapter shall forfeit not more than \$500.

455.14 EXEMPTIONS. (1) This chapter does not apply to a physician licensed by the medical examining board.

(2) This chapter does not apply to a person engaged in the practice of measuring human hearing for selecting hearing aids or any other pur-

CHAPTER 300

954

pose if the person or the organization employing such person does not sell hearing aids or hearing accessories.

SECTION 5. INITIAL APPOINTMENTS TO BOARD. Of the members first appointed to the hearing aid dealers and fitters examining board under section 15.405 (6m) of the statutes, two shall be for a term expiring on July 1, 1971, and 2 each for terms expiring on July 1, 1973, and July 1, 1975. Thereafter all appointments shall be made in accordance with s. 15.405 (6m). All hearing aid dealers and fitters initially appointed to this board shall be qualified to be licensed under chapter 455 and shall have at least 5 years' experience as hearing aid dealers and fitters.

SECTION 6. EFFECTIVE DATE. This act shall take effect 6 months after passage and publication.

Approved December 10, 1969.
