

CHAPTER 459

HEARING AID DEALERS AND FITTERS EXAMINING BOARD

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459.01 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. 459.05, 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. 459.05 to engage in the practice of dealing in or fitting hearing aids.

459.02 License required to sell and fit hearing aids. (1) No person may engage in the practice of selling or fitting hearing aids or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting or sale of hearing aids unless he or she holds a valid license issued under this chapter. The license required by s. 459.05 shall be conspicuously posted in his or her office or place of business as registered with the depart-

ment 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.

History: 1979 c. 162.

459.03 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.

459.035 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 or she has any physical deficiencies that would prohibit the effective use of a hearing aid.

History: 1979 c. 162 s. 38 (4).

459.04 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.

459.05 Issuance of license. The department shall register each applicant who passes an examination as provided in s. 459.06 and 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 under this subsection shall be required to submit to or undergo a qualifying examination, other than the payment of the fee under s. 440.05 (2) provided the 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. Grounds for renewal and procedures for reprimand or for the limitation, suspension and revocation of a license by reciprocity shall be the same as for reprimand, renewal, limitation, suspension and revocation of a license.

(2) Any person may be issued a license without examination if he or she held a valid

license issued by this examining board which expired not more than one year prior to the date of application.

History: 1975 c. 224; 1977 c. 29, 418; 1979 c. 162 s. 38 (4).

459.06 License by examination. (1) Applicants may obtain a license by successfully passing a qualifying examination, provided the applicant is 18 years of age or older, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, and 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 adaption 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 or she 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.

(4) Applications for examinations shall be submitted to the examining board at least 10 days before the date set for the examination and shall be accompanied by the examination fee specified under s. 440.05 (1).

History: 1975 c. 224; 1977 c. 29; 1979 c. 162 s. 38 (4); 1981 c. 380; 1981 c. 391 s. 211.

459.07 Temporary trainee permit. (1) An applicant who fulfills the requirements regarding age, character and high school education as set forth in s. 459.06, 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 the fee under s. 440.05 (6), 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 the 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 regrant once if the trainee shows that he or she 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.

History: 1977 c. 29; 1979 c. 162 s. 38 (4).

459.08 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 or she 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 the person by certified mail at the address of the last place of practice of which he or she has notified the department.

History: 1979 c. 162 ss. 37, 38 (4).

459.085 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. 459.09.

459.09 Renewal of license; fees; effect of failure to renew. Each person who practices dealing in or fitting hearing aids shall, on or before January 30 of even-numbered years following licensure, pay to the department the renewal fee specified in s. 440.05 (3) and keep the certificate conspicuously posted in the person's 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.

History: 1977 c. 29.

459.10 Reprimand; revocation, limitation or suspension of license. Any person licensed under s. 459.05 or 459.06 may have the license revoked, limited or suspended for a fixed period by the examining board for any of the following causes, but a reprimand, revocation, limitation or suspension shall not be made until the licensee has had a hearing before the examining board, subject to the rules promulgated under s. 440.03 (1):

(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) Addiction to alcohol or other drugs.

(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 prod-

ucts 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.

History: 1971 c. 211 s. 126; 1977 c. 418; 1981 c. 380.

459.11 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.

459.12 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. 459.085.

(3) The examining board shall by rule prescribe the number of trainees a licensee may supervise under s. 459.07.

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

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