

## Clearinghouse Rule 24-093

### STATE OF WISCONSIN HEARING AND SPEECH EXAMINING BOARD

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IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	HEARING AND SPEECH
HEARING AND SPEECH	:	EXAMINING BOARD
EXAMINING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE )

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#### PROPOSED ORDER

An order of the Hearing and Speech Examining Board to amend HAS 1.01 (2a) and (5). 5.02 (3), and 6.02 (6a) and create HAS 5.02 (2) (g) (Note), relating to hearing aids.

Analysis prepared by the Department of Safety and Professional Services.

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#### ANALYSIS

**Statutes interpreted:** Section 459.02, Stats.

**Statutory authority:** Sections 15.08 (5) (b) and 459.12 (1), Stats.

**Explanation of agency authority:**

Section 15.08 (5) (b), Stats.: “Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 459.12 (1), Stats.: “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.”

**Related statute or rule:** 2023 Wisconsin Act 179

**Plain language analysis:**

The objective of the rule is to implement 2023 Wisconsin Act 82 by updating Wisconsin Administrative Code Chapters HAS 1, 5, and 6. These changes include:

- Updating the definition of “direct supervision” in HAS 1.01 (2a).
- Updating the definition of “practice” in HAS 1.01 (5).
- Adding a Note to HAS 5.02 (2) (g) regarding receipts for over the counter hearing aids.
- Updates to HAS 5.02 (3) regarding the ordering, fitting, and dealing of hearing aids.
- Updating the definition of “practice” in HAS 6.02 (6a).

**Summary of, and comparison with, existing or proposed federal regulation:**

Listed in the Federal Food, Drug, and Cosmetic Act Subchapter V Part A under Section 360j (q) are regulations for over-the-counter hearing aids. According to these regulations, over-the-counter hearing aids are those devices used by those with hearing impairment that are available without the supervision of or prescription from a licensed individual.

**Comparison with rules in adjacent states:**

**Illinois:** In the Illinois Compiled Statutes Chapter 225, the Hearing Instrument Consumer Protection Act outlines the requirements for licensure, continuing education, renewal, and discipline of Hearing Instrument Dispensers or Professionals. The practice of a Hearing Instrument Dispenser in Illinois includes the selling, practice of testing, fitting, selecting, recommending, adapting, dispensing, or servicing hearing aids [225 Illinois Compiled Statutes 50].

**Iowa:** Chapter 154A of the Iowa Code outlines the requirements for the licensure of Hearing Aid Specialists. Hearing Aid Specialists may perform hearing aid fitting which includes the sale of hearing aids and making earmold impressions as part of the fitting process [Iowa Code Chapter 154A]. Chapters 121 through 124 further elaborate on the requirements for the practice of Hearing Aid Specialists including licensure, supervision, continuing education, and dispensing of hearing aids [645 Iowa Administrative Code Chapter 123].

**Michigan:** The Michigan Compiled Laws, Chapter 339, Act 299 includes requirements for licensure and regulation of Hearing Aid Dealers and Salespersons, as well as the Board of hearing aid dealers. In Michigan, licensed Hearing Aid Dealers perform the practice of selling or fitting a hearing aid, which includes audiometric testing and making ear mold impressions [Michigan Compiled Laws 333.1301 to 1309].

**Minnesota:** The Minnesota Statutes chapter 148 includes requirements for audiology, as well as the practice of hearing aid dispensing. The practice of hearing aid dispensing includes making ear mold impressions, prescribing a hearing aid, testing human hearing and helping a customer select a prescription hearing aid. In Minnesota, prescription hearing aids may be dispensed by Audiologists or Certified Hearing Dispensers. Hearing aid dispensing does not include the sale of over-the counter hearing aids in Minnesota [Michigan Compiled Laws 333.1301 to 1309].

**Summary of factual data and analytical methodologies:**

While promulgating this rule, the Board reviewed 2023 Wisconsin Act 179 and made changes to the Wisconsin Administrative Code accordingly.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

The proposed rules were posted for a period of 14 days on the Department's website to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at [Jennifer.Garrett@wisconsin.gov](mailto:Jennifer.Garrett@wisconsin.gov) or phone at 608-266-2112.

**Agency contact person:**

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8306; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov). Comments must be received on or before the public hearing, January 20, 2025, to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. HAS 1.01 (2a) and (5) are amended to read:

**HAS 1.01 (2a)** "Direct supervision" means being physically present at the time the trainee makes ear impressions or measurements of human hearing for the purpose of ordering, fitting, and dealing in ~~in or selling a hearing instrument~~ instruments.

**(5)** "Practice" means the practice of ordering, fitting, and dealing in hearing instruments, as defined in s. 459.01 (5), Stats.

SECTION 2. HAS 5.02 (2) (g) (Note) is created to read:

**HAS 5.02 (2) (g) (Note):** Pursuant to s. 459.03 (1m), a receipt is not required if the hearing aid is an over the counter hearing aid as defined in 21 USC 360j (q).

SECTION 3. HAS 5.02 (3) is amended to read:

**HAS 5.02 (3)** A person engaging in the practice of ordering, ~~selling or~~ fitting, and dealing in hearing aids to a patient located in this state, whether in-person or via telehealth, shall be licensed under ch. 459, Stats., as a hearing instrument specialist or audiologist.

SECTION 4. HAS 6.02 (6a) is amended to read:

**HAS 6.02 (6a)** "Practice of ordering, fitting, and dealing in hearing aids" has the meaning given in s. 459.20 (3p), Stats.

SECTION 5. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)

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