

STATE OF WISCONSIN
HEARING AND SPEECH EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : HEARING AND SPEECH EXAMINING
HEARING AND SPEECH EXAMINING : BOARD ADOPTING RULES
BOARD : (CLEARINGHOUSE RULE 05-026)

ORDER

An order of the Hearing and Speech Examining Board to repeal HAS 6.02 (4g), (4m), (5g) and (6b); to renumber HAS 6.09 (1) and 6.10 (3); to renumber and amend HAS 6.03 (7), 6.18 (2) and (3); to amend HAS 2.01 (2), 5.02 (2) (g) (intro.) and 2., 6.02 (1m), 6.10 (title), (1) (intro.) and (2), 7.02, 7.03 (1) (d), (2) (c), 8.03 (1) and 8.04 (1); to repeal and recreate HAS 6.18 (1) (h); and to create HAS 6.03 (7) (a) and (b), 6.09 (1), 6.10 (3), (4) and (5), 6.175, 7.03 (1) (e) and (2) (d), and 8.03 (6), relating to definitions, temporary trainees, continuing education, temporary licenses, and unprofessional conduct.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statute interpreted:

Sections 459.07 (2), 459.24 (2) (f), 459.24 (5), 459.24 (6), 459.34 (2), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2), 459.12, 459.24 (5m) and (6) (c), Stats.

Explanation of agency authority:

The Hearing and Speech Examining Board licenses and regulates the conduct of hearing instrument specialists, audiologists and speech-language pathologists. The board is authorized under ss. 459.12 and 459.24 (5m) and (6) (c), Stats., to promulgate rules relating to the supervision of hearing instrument specialist trainees by audiologists; the grant of temporary licenses to individuals applying for licenses to practice speech-language pathology and audiology; continuing education requirements and unprofessional conduct.

Related statute or rule:

There are no related statutes or rules other than those listed above.

Plain language analysis:

The Hearing and Speech Examining Board herein sets forth revisions to its rules. Audiologists are granted the authority to supervise hearing instrument trainees, standards of unprofessional conduct for hearing instrument specialists and audiologists are broadened and restructured, the definition of audiologist is modified, an equivalency provision is added to the speech-language pathology application procedure, the periods of temporary licensure for speech-language pathologists and audiologists are amended, the renewal deadline for hearing instrument specialists is changed from even to odd-numbered years, the deadline for reporting continuing education course completion is extended from the first to the second renewal date following the initial granting of a license, and the time allowed for sponsors to submit an application for continuing education course approval is reduced.

SECTION 1 amends s. HAS 2.01 (2) to allow licensed audiologists to directly supervise trainees granted a permit to practice fitting hearing instruments, and making ear impressions and taking hearing measurements for the purpose of fitting hearing instruments. Currently, s. HAS 2.01 (2) only allows hearing instrument specialists to provide direct supervision. Audiologist supervisors would be liable for the trainee's negligent acts and omissions in the fitting of hearing instruments, as hearing instrument specialists are under the current rule.

SECTION 2 amends s. HAS 5.02 (2) (g) (intro.) and 2. to make failure to comply with the terms of sale on a receipt, such as the product repair policy or guarantee, an act of unprofessional conduct. The current rule only requires those terms to be clearly stated on the receipt, with no explicit authority for the board to act against the licensee for failure to comply with the terms.

SECTION 3 amends the definition of "Au.D." to clarify that the board need not approve the college or university granting the degree.

SECTION 4 makes deletions to the definitions section of s. HAS 6.02, relating to speech-language pathologists, audiologists, and temporary licensees.

SECTION 5 renumbers and amends s. HAS 6.03 (7) and SECTION 6 creates s. HAS 6.03 (7) (a) and (b), to allow the board to decide if an applicant's education or training is equivalent to the completion of a postgraduate clinical fellowship. This is consistent with the licensure requirements for audiologists under s. HAS 6.04 and builds flexibility into the rule in the event that national certification requirements for postgraduate clinical fellowships are increased beyond what the board believes is necessary to protect public health and safety.

SECTION 7 renumbers s. HAS 6.09 (1).

SECTION 8 creates a definition of "hardship."

SECTIONS 9 to 11 relate to temporary licenses. These amendments implement the statutory change that allowed the board to expand the period of validity for a temporary license to practice speech-language pathology and audiology. For speech-language pathologists, the 9 month period of validity and one-time renewal previously recognized by s. 459.24 (6) (c), Wis. Stats.,

was changed by 2003 Wisconsin Act 270 to make the length of the period of validity discretionary for the board. The rule allows 18 months with a one-time renewal that may exceed 18 months as a matter of board discretion. This change was spurred by a shortage of speech-language pathologist Ph.D. students and faculty in Communicative Disorders programs. Since the clinical fellowship year is completed after the master's degree, the board's purpose is to accommodate students who may wish to complete the Ph.D. under a temporary license. For audiologists, the period is increased from 9 to 12 months, with a one-time renewal that may exceed 12 months at the board's discretion, but only in those instances where a permit holder who fails a licensure examination applies to take the next available examination or shows sufficient cause for renewal. The additional three months brings the time allowed under a temporary license for audiologists closer to the standard for speech-language pathologists.

SECTION 12 creates s. HAS 6.175, with definitions of "full terms of sale," "cerumen management," "personal guarantee," and "sell" or "sale."

SECTION 13 repeals and recreates s. HAS 6.18 (1) (h) to include engaging in unprofessional conduct as an enumerated ground for discipline.

SECTION 14 renumbers and amends s. HAS 6.18 (2). In setting forth additional bases for unprofessional conduct, such as failure to comply with the terms of sale on a receipt, explicit recognition of other states' hearing instrument specialist and audiologist hearing tests is allowed as a sufficient basis for sale if proper procedures, instrumentation and measurement are conducted.

SECTION 15 renumbers and amends s. HAS 6.18 (3). Currently, s. HAS 6.18 (3) describes, by enumeration, conduct defined in s. HAS 6.18 (1) (b) with exclusive reference to conduct evidencing a lack of knowledge or ability to apply professional principles or skills rather than as unprofessional conduct generally.

SECTION 16 amends s. HAS 7.02 to change the renewal date for hearing instrument specialists from even-numbered years to odd-numbered years.

SECTIONS 17 to 22 relate to completing continuing education hours for the renewal of a license. It also extends the first continuing education reporting deadline from the first to the second renewal date following the initial granting of a hearing instrument specialist, speech-language pathologist, or audiologist license. The purpose of this change is to avoid a truncated timeline for compliance with continuing education requirements after initial licensure. This eliminates the truncated compliance timeline on initial license applications that are completed close before an application deadline.

SECTION 23 reduces the time allowed for continuing education sponsors to submit an application from 45 to 30 days prior to the first date the program or course of study is offered.

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

None. Checked the U.S. Code and Federal Register.

Comparison with rules in adjacent states:

The following is a summary of the requirements to obtain and maintain a license in Illinois, Iowa, Michigan and Minnesota.

Illinois:

Requires an individual to obtain a temporary license prior to completing a postgraduate clinical fellowship in speech-language pathology. Exempts audiologists and speech-language pathologists from the continuing education requirements during the first renewal period following initial licensure. Has adopted a provision that authorizes disciplinary action based upon unprofessional conduct, unethical conduct or similar language. Does not authorize audiologists to supervise hearing instrument specialist trainees. Does not permit applicants to claim “hardship” for failure to take the required examinations. Has adopted a provision that authorizes disciplinary action based upon unprofessional conduct, unethical conduct or similar language.

Minnesota:

Requires an individual to obtain a temporary license prior to completing a postgraduate clinical fellowship in audiology. Exempts certified dispensers, who have been licensed less than one year, from the continuing education requirements. Has adopted a provision that authorizes disciplinary action based upon unprofessional conduct, unethical conduct or similar language. Does not authorize audiologists to supervise hearing instrument specialist trainees. Does not permit applicants to claim “hardship” for failure to take the required examinations. Has adopted a provision that authorizes disciplinary action based upon unprofessional conduct, unethical conduct or similar language.

Iowa:

Does not authorize audiologists to supervise hearing instrument specialist trainees. Does not permit applicants to claim “hardship” for failure to take the required examinations. Has adopted a provision that authorizes disciplinary action based upon unprofessional conduct, unethical conduct or similar language. Has adopted a provision that authorizes disciplinary action based upon unprofessional conduct, unethical conduct or similar language.

Michigan:

Does not authorize audiologists to supervise hearing instrument specialist trainees. Does not permit applicants to claim “hardship” for failure to take the required examinations. Has adopted a provision that authorizes disciplinary action based upon unprofessional conduct, unethical conduct or similar language.

Summary of factual data and analytical methodologies:

The Hearing and Speech Examining Board considered its past experience as the credentialing and enforcement authority overseeing hearing instrument specialists, audiologists and speech-language pathologists in drafting the rules. The board also researched proposed national licensure standard changes to ensure Wisconsin license application requirements will remain current notwithstanding new standards that may be imposed, and to ensure a continuing role for the board in deciding on the adequacy of training to protect public health and safety. The board reviewed license applications in cooperation with department staff to clarify and amend where needs have been identified. Enforcement provisions were modified slightly to allow the board to act where its authority was less than clear in the past and to improve the overall structure of the enforcement rules.

Determination of significant fiscal effect on the private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal effect:

The proposed rules will have no impact on the department's funds.

Effect on small business:

Pursuant to s. 227.114 (1) (a), Stats., these proposed rules will have no significant economic impact on a substantial number of small businesses. The Department's Small Business Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 171, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

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

Comments may be submitted to the addresses listed above. Comments must be received on or before May 13, 2005 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. HAS 2.01 (2) is amended to read:

HAS 2.01 (2) A trainee permit issued by the board entitles the trainee to practice fitting hearing instruments, make ear impressions and make measurements of human hearing, for the purpose of fitting hearing instruments, for a period of one year and only while under the direct supervision of a hearing instrument specialist or an audiologist who holds a license issued under

ch. 459, Stats. The licensee is liable for the trainee's negligent acts and omissions in the fitting of hearing instruments.

SECTION 2. HAS 5.02 (2) (g) (intro.) and 2. are amended to read:

HAS 5.02 (2) (g) (intro.) Failing to clearly state the full terms of sale on a receipt, as required in s. 459.03, Stats., and failing to comply with those terms. The full terms of sale shall include all of the following:

2. The date, and place ~~and method~~ of delivery.

SECTION 3. HAS 6.02 (1m) is amended to read:

HAS 6.02 (1m) "Au.D." means a doctor of audiology degree ~~granted by a college or university approved by the board.~~

SECTION 4. HAS 6.02 (4g), (4m), (5g) and (6b) are repealed.

SECTION 5. HAS 6.03 (7) is renumbered HAS 6.03 (7) (intro.) and is amended to read:

HAS 6.03 (7) (intro.) Evidence satisfactory to the board that the applicant has ~~completed a postgraduate clinical fellowship in speech language pathology approved by the board.~~ satisfied one of the following:

SECTION 6. HAS 6.03 (7) (a) and (b) are created to read:

HAS 6.03 (7) (a) Completed a postgraduate clinical fellowship in speech-language pathology approved by the board.

(b) Completed education or training that the board determines is substantially equivalent to the completion of a postgraduate clinical fellowship in speech-language pathology.

SECTION 7. HAS 6.09 (1) is renumbered HAS 6.09 (1m).

SECTION 8. HAS 6.09 (1) is created to read:

HAS 6.09 (1) "Hardship" means serious illness or some other personal adversity, as determined by the board.

SECTION 9. HAS 6.10 (title), (1) (intro.) and (2) are amended to read:

HAS 6.10 (title) Application for licensure temporary license. (1) (intro.) Before commencing a postgraduate clinical fellowship in speech-language pathology or audiology, an individual shall obtain a temporary license under s. 459.24 (6), Stats. The applicant shall submit all of the following:

(2) A temporary license granted by the board to practice speech-language pathology is valid for a period designated by the board, not to exceed 9 18 months.—~~A temporary license granted by the board to practice speech-language pathology and may be renewed once for 18 months or longer, at the discretion of the board. A temporary license granted to practice audiology may be renewed once by the board if the applicant fails an examination for audiologist licensure under s. 459.26 (2) (a) or (b), Stats., and applies to take the next available examination or if the applicant shows, to the satisfaction of the board, sufficient cause for the renewal.~~

SECTION 10. HAS 6.10 (3) is renumbered HAS 6.10 (6).

SECTION 11. HAS 6.10 (3), (4) and (5) are created to read:

HAS 6.10 (3) Except as provided in sub. (5), a temporary license granted to practice audiology is valid for a period designated by the board, not to exceed 12 months.

(4) A temporary license granted under sub. (3) may be renewed once for 12 months or longer, at the discretion of the board, if the applicant fails an examination for licensure under s. 459.26 (2) (a) or (b), Stats., and applies to take the next available examination or if the applicant shows, to the satisfaction of the board, sufficient cause for the renewal.

(5) If an individual who is granted a temporary license under sub. (3) to practice audiology fails to take the next available examination under s. 459.26 (2) (a) or (b), Stats., for reasons other than inaction by the board or hardship, the temporary license granted under sub. (3) automatically expires on the one-hundredth calendar day following the date the individual failed to take the examination.

SECTION 12. HAS 6.175 is created to read:

HAS 6.175 Definitions. In this subchapter and in subchapter II of ch. 459, Stats.:

(1) "Cerumen management" means the removal of cerumen from the external auditory canal by the utilization of methods and techniques performed in accordance with minimum standards and procedures established in the audiological profession.

(2) “Full terms of sale” means the conditions of a sale agreed to by an audiologist and the purchaser of a hearing instrument.

(3) “Personal guarantee” means a promise made by an audiologist to a hearing instrument purchaser to provide the minimum product warranty offered by a manufacturer.

(4) “Sell” or “sale” has the meaning given in s. 459.20 (3t), Stats.

(5) “Unprofessional conduct” means the violation of any standard of professional behavior, which through experience, state statute or administrative rule has become established in the practice of speech-language pathology or audiology.

SECTION 13. HAS 6.18 (1) (h) is repealed and recreated to read:

HAS 6.18 (1) (h) Engaged in unprofessional conduct.

SECTION 14. HAS 6.18 (2) is renumbered HAS 6.18 (3) and is amended to read:

HAS 6.18 (3) (intro.) In addition to the ~~grounds~~ bases for ~~discipline~~ unprofessional conduct set forth ~~in~~ under sub. ~~(1)~~ (2), the board may reprimand an audiologist, or deny, limit, suspend or revoke a license or permit, if it finds that the applicant, licensee or permittee has ~~done any of~~ engaged in the following unprofessional conduct:

(a) Violated any federal or state statute, rule or regulation that relates to the practice of fitting and dealing in hearing aids.

(b) Failed to conduct a direct observation of the ear canal of a ~~purchaser of person for whom~~ a hearing aid is purchased.

(c) Sold a hearing aid ~~to~~ for use by a person who was not given tests by a hearing instrument specialist or an audiologist licensed under ch. 459, Stats., or in another state using appropriate procedures and instrumentation and or without proper measurement of the functional intensity and range of the person’s hearing.

(d) Failed to calibrate audiometric equipment at least once every 12 months.

(e) Failed to maintain adequate records of certification of calibrations of audiometric equipment for a period of 5 years or failed to provide access to those records when requested by the board or its representative.

(f) (intro.) Failed to clearly state the full terms of sale on a receipt, as required in s. 459.24 (3m), Stats., or failed to comply with those terms. The full terms of sale shall include all of the following:

1. The amount and method of payment.

2. The date, and place and method of delivery.
3. The terms of any personal guarantee.
4. The nature and duration of the trial period and extension, if any.
5. The refund policy and amount, if any.
6. The product return and exchange policy, if any.
7. The product repair policy, if any.

(g) Failed to perform cerumen management in a competent manner.

SECTION 15. HAS 6.18 (3) is renumbered HAS 6.18 (2) and is amended to read:

HAS 6.18 (2) (intro.) In this section, “conduct in the practice of speech-language pathology or audiology which evidences a lack of knowledge or ability to apply professional principles or skills” includes subchapter and in s. 459.34 (2) (h), Stats., the following, without limitation because of enumeration, are violations of standards of professional behavior that constitute unprofessional conduct:

- (a) Subject to ss. 111.321, 111.322 and 111.34, Stats., practicing or attempting to practice speech-language pathology or audiology while the person’s ability to practice is impaired by a mental or emotional disorder.
- (b) Using the title “speech-language pathologist,” “audiologist” or any similar title unless the individual holds a current speech-language pathologist or audiologist license granted under s. 459.24 (2) or (3), Stats.
- (c) Violating the conditions or limitations placed upon a license or permit by the board.
- (d) Engaging in conduct likely to deceive, defraud, or harm an individual or the public in the course of the practice of speech-language pathology or audiology.
- (e) Having a license, certificate, permit or registration issued by another jurisdiction to practice as a speech-language pathologist or audiologist limited, suspended or revoked.
- (f) Aiding or abetting an unlicensed person, knowingly conspiring with an unlicensed person, or allowing one’s license to be used by an unlicensed person to evade the use of a title prohibited under s. 459.24 (1) or (1m), Stats.

(g) Engaging in sexual intimacies in connection with the practice of speech-language pathology or audiology.

(h) Failing to fully inform persons served of the nature and possible adverse effects of services rendered and products dispensed.

(i) Failing to evaluate the effectiveness of services rendered or products dispensed.

(j) Providing services or dispensing products when benefits cannot reasonably be expected.

(k) Guaranteeing the results of any treatment or procedure, directly or by implication, except that a reasonable statement of prognosis may be made.

(L) Evaluating or treating speech, language, or hearing disorders except in a professional relationship.

(m) Treating solely by correspondence.

(n) Failing to maintain adequate records of professional services rendered and products dispensed for a period of 5 years.

Note: Speech-language pathologists and audiologists are also required to maintain patient health care records in accordance with ss. 146.81 to 146.84, Stats.

(o) Failing to provide access to records of professional services rendered and products dispensed when requested by the board or its representative in connection with an investigation of a complaint filed against the applicant, licensee or permittee.

(p) Failing to record all of the following information in each client record:

1. The name of the licensee.
2. The date of entry of pertinent information.
3. Information sufficiently legible to allow interpretation by other individuals for the benefit of the client.

(q) Misrepresenting diagnostic information, services rendered, or products dispensed or engaging in any scheme to defraud in connection with obtaining reimbursement.

(r) Using persons in research or as the subject of a teaching demonstration without obtaining their informed consent.

(s) Failing to practice speech-language pathology or audiology within the scope of the licensee's competence, education, training and experience.

(t) Delegating the provision of clinical services to an unlicensed individual for whom the licensee does not provide direct supervision.

(u) Delegating the provision of clinical services to a temporary licensee for whom the licensee does not provide supervision.

(v) Knowingly permitting any professional staff or unlicensed individual to provide clinical services that exceed that person's competence, education, training and experience.

(w) Failing to assign credit to persons who have contributed to clinical services, a publication, presentation or product in proportion to their contribution.

(x) ~~Failed to perform cerumen management in a competent manner~~
Violating any federal or state statute, rule or regulation that relates to the practice of speech-language pathology or audiology, as appropriate.

SECTION 16. HAS 7.02 is amended to read:

HAS 7.02 Licenses. Hearing instrument specialist licenses granted under ss. 459.05 and 459.06, Stats., expire on February 1 of each ~~even-numbered~~ odd-numbered year. Except as provided in s. 459.24 (6), Stats., speech-language pathologist and audiologist licenses granted under ss. 459.24 and 459.28, Stats., expire on February 1 of each odd-numbered year.

SECTION 17. HAS 7.03 (1) (d) is amended to read:

HAS 7.03 (1) (d) ~~Certification~~ Except as provided in par. (e), certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board.

SECTION 18. HAS 7.03 (1) (e) is created to read:

HAS 7.03 (1) (e) A new licensee is not required to report continuing education hours until the second renewal date following the initial grant of his or her license.

SECTION 19. HAS 7.03 (2) (c) is amended to read:

HAS 7.03 (2) (c) ~~Certification~~ Except as provided in par. (d), certification that the applicant has completed, within the 2 years immediately preceding the date of his or her application, 20 hours of continuing education programs or courses of study approved by the board, as provided under s. HAS 8.03.

SECTION 20. HAS 7.03 (2) (d) is created to read:

HAS 7.03 (2) (d) A new licensee is not required to report continuing education hours until the second renewal date following the initial grant of his or her license.

SECTION 21. HAS 8.03 (1) is amended to read:

HAS 8.03 Continuing education. (1) ~~A licensee~~ Except as provided in sub. (6), hearing instrument specialists, audiologists and speech-language pathologists shall complete at least 20 hours of board approved continuing education programs or courses of study which pertain to the practice of fitting and dealing in hearing instruments, audiology or speech-language pathology, as appropriate, in each biennial renewal period.

SECTION 22. HAS 8.03 (6) is created to read:

HAS 8.03 (6) A new licensee is not required to report continuing education hours until the second renewal date following the initial grant of his or her license.

SECTION 23. HAS 8.04 (1) is amended to read:

HAS 8.04 Approval of continuing education programs and courses of study. (1) Except as provided in subs. (6) and (7), to apply for approval of a continuing education program or course of study, a sponsor shall submit to the board office, at least ~~45~~ 30 calendar days prior to the first date the program or course of study is offered, an application on forms provided by the board and shall include the name of the sponsor, the program or course title, general description and an outline of the program or course, the dates, the location, the name and qualifications of each instructor.

(END OF TEXT OF RULE)

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.

Dated _____

Agency _____

Chairperson
Hearing and Speech Examining Board

Chs HAS 2 & 5-8 CR05-026 (Definitions, CE, conduct, temps) Final Draft 7-15-05