

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 83

HEARING AID DEALERS AND FITTERS

Subchapter 1 General Provisions

- §16-83-1 Objective
- §16-83-2 Definitions

Subchapter 2 Hearing Aid Devices: Conditions for Sale

- §16-83-3 Warning to hearing aid dealers and fitters
- §16-83-4 Medical evaluation
- §16-83-5 Purpose of hearing test
- §16-83-6 Opportunity to review user instructional brochure
- §16-83-7 Availability of user instructional brochure
- §16-83-8 Record keeping

Subchapter 3 Applications

- §16-83-12 Forms and instructions
- §16-83-13 Application for license
- §16-83-14 Application for temporary permit
- §16-83-15 Application for examination and reexamination
- §16-83-16 Denial of application

Subchapter 4 License Requirements

- §16-83-20 Educational qualifications
- §16-83-21 Repealed
- §16-83-22 Repealed

§16-83-1

Subchapter 5 Examination

- §16-83-27 Licensing Examination
- §16-83-28 Repealed
- §16-83-29 Repealed
- §16-83-30 Passing score
- §16-83-31 Frequency of examination
- §16-83-32 Reexamination

Subchapter 6 Advertising

- §16-83-36 Repealed
- §16-83-37 Restrictions of terms

Subchapter 7 Oral Testimony

- §16-83-41 Oral testimony

Subchapter 8 Practice and Procedure

- §16-83-46 Administrative practice and procedure

SUBCHAPTER 1

GENERAL PROVISIONS

§16-83-1 Objective. This chapter is intended to clarify and implement chapter 451A, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 11/22/82; comp 8/8/86; comp 7/18/94] (Auth: HRS §451A-5(1)) (Imp: HRS §451A-5)

§16-83-2 Definitions. As used in this chapter:

"Branch office" means any office, facility, or space from which the business of providing hearing aid services is conducted regularly and on a continuing basis away from the principal place of business.

"Direct supervision" means a licensed hearing aid dealer and fitter being physically present to oversee and be responsible for all work performed within the

office, facility, or space from which the business of providing hearing aid services is conducted.

"Hearing aid dealer" means a person engaged in the sale, lease, or rental of hearing aids to any member of the consuming public, or an employee, agent, salesperson, or representative of the person, or both.

"Hearing aid fitter" means any person engaged in the testing for the proper selection of a hearing aid for an individual user, the fitting of a hearing aid to the individual, and the sale of the hearing aid.

"Person" means individuals, partnerships, corporations, associations, or public or private organizations of any character other than government agencies.

"Practice of dealing and fitting of hearing aids" means the measurement of human hearing by an audiometer solely for the purpose of making selections, adaptations, or sales of hearing aids or the manufacture of impressions for earmolds, and, at the request of a physician or a member of a profession related to the practice of medicine and surgery, the administrations of audiograms for use in consultations with the hard-of-hearing.

"Principal place of business" means any office, facility, or space from which the business of providing hearing aid services is conducted. No person, other than a licensee, shall own, maintain, operate, manage or conduct as manager, a place where hearing aid services are performed, except as provided in section 451A-18, HRS.

"Record" means medical authorization, waiver, and audiogram.

"Sale" means the sale, lease, rent, or transfer of title, interest, or possession of any hearing aid, except transactions with distributors or dealers. [Eff 11/22/82; am and comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §§451A-1, 451A-9)

SUBCHAPTER 2

HEARING AID DEVICES: CONDITIONS FOR SALE

§16-83-3 Warning to hearing aid dealers and fitters. (a) A hearing aid dealer and fitter shall advise a prospective hearing aid user to consult promptly with a licensed physician before dispensing a hearing aid if the hearing aid dealer and fitter determines through inquiry, actual observation, or review of any other available information concerning the prospective user, that the prospective user has any of the following conditions:

- (1) Visible congenital or traumatic deformity of the ear;

§16-83-3

- (2) History of active drainage from the ear within the previous ninety days;
 - (3) History of sudden or rapidly progressive hearing loss within the previous ninety days;
 - (4) Acute or chronic dizziness;
 - (5) Unilateral hearing loss;
 - (6) Audiometric air-bone gap equal to or greater than fifteen decibels at two or more of the frequencies tested between two hundred fifty hertz (Hz) and two thousand Hz;
 - (7) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal; or
 - (8) Pain or discomfort in the ear.
- (b) Special care shall be exercised in selecting and fitting a hearing aid

whose maximum sound pressure level exceeds one hundred thirty-two decibels (dB) because there may be risk of impairing the remaining hearing of the hearing aid user. This subsection applies only to those hearing aids with a maximum sound pressure capability greater than one hundred thirty-two decibels. [Eff 11/22/82; comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-14.1)

§16-83-4 Medical evaluation. A hearing aid dealer and fitter shall not sell a hearing aid unless the prospective user has presented to the hearing aid dealer a written statement signed by a licensed physician, preferably an otorhinolaryngologist, that the patient's hearing loss has been medically evaluated or the prospective user signs a waiver of the medical evaluation. The medical evaluation must have taken place within the preceding six months prior to the date of sale, barter, offer, or commencement of a commercial relationship, and in the case of a child seventeen years of age or under shall have been performed by an otorhinolaryngologist. [Eff 11/22/82; comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-14.1)

§16-83-5 Purpose of hearing test. The principal purpose of giving a hearing test shall be for making selections, adaptations, or sales of hearing aids or the manufacture of impressions for earmold, and, at the request of a physician or a member of a profession related to the practice of medicine and surgery, the administration of audiograms for use in consultation with the hearing impaired. [Eff 11/22/82; comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-1)

§16-83-6 Opportunity to review user instructional brochure. Before the sale of a hearing aid to a prospective user, the hearing aid dealer and fitter shall:

- (1) Provide the prospective user with a copy of the user instructional brochure for a hearing aid that has been selected for the prospective user;
- (2) Review the content of the user instructional brochure with the prospective user orally, or in the predominate method of communications used during the sale; and
- (3) Afford the prospective user an opportunity to read the user instructional brochure. [Eff 11/22/82; am and comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-5)

§16-83-7 Availability of user instructional brochure. Upon request by an individual who is considering purchase of a hearing aid, a dealer and fitter, with respect to any hearing aid that the dealer and fitter dispenses, shall provide a copy of the user instructional brochure for the hearing aid. [Eff 11/22/82; comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-14)

§16-83-8 Record keeping. The hearing aid dealer and fitter shall retain for five years after the dispensing of a hearing aid a copy of any written statement from a physician required under section 16-83-4 or waivers as required under sections 451A-5(9) and 451A-14.1, HRS. The book, file, or microfilm of the authorizations and statements shall at all times be open to inspection by the board of hearing aid dealers and fitters and other law enforcement agencies. [Eff 11/22/82; am and comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-14.1)

SUBCHAPTER 3

APPLICATIONS

§16-83-12 Forms and instructions. (a) An application for license or permit shall be made under oath on forms provided by the board and shall not be considered complete unless accompanied with the required documentation and fees. It shall be each applicant's responsibility to furnish all information and any documentation requested by the board.

(b) The application form may require the applicant to provide the following:

§16-83-12

- (1) The applicant's full name;
 - (2) A statement that the applicant has attained the age of majority;
 - (3) The applicant's current business or mailing address for publication, and the applicant's current residence address;
 - (4) The applicant's social security number;
 - (5) The applicant's educational history and evidence of the education;
 - (6) The date and place of any conviction of a crime in which a jail sentence was imposed, unless the conviction has been expunged or annulled or is otherwise precluded from consideration by section 831-3.1, HRS;
 - (7) The state(s) or jurisdiction(s) in which the applicant is currently licensed, and any information regarding any disciplinary proceedings or disciplinary actions taken by any state or jurisdiction against the license;
 - (8) A statement that the applicant is a United States citizen or an alien authorized to work in the United States;
 - (9) The name, license number, and place of business of the hearing aid dealer and fitter who will be supervising the training of a person issued a temporary permit;
 - (10) The applicant's intended business address either as an employee or an owner of the business; and
 - (11) Any other information the board may require to investigate the applicant's qualifications for license or permit.
- (c) Any requirement that the board provide notice to licensees or permittees shall be deemed met if notice is sent to the address on file with the board.
- (d) Any change in the application or of any information filed with the board shall be reported to the board, in writing, within thirty days of the change. [Eff 11/22/82; comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §§451A-2, 451A-5, 451A-7, 451A-9, 451A-10, 451A-11, 436B-10, 436B-11)

§16-83-13 Application for license. (a) An application to engage in the business of dealing and fitting of hearing aids shall be filed with the board and shall be accompanied by the required fee.

(b) The board may delegate to the executive secretary, to an application review committee comprised of at least one board member, or to both, the authority to review the sufficiency of qualifications for admission to the examination for licensure, and report the findings or actions to the board. [Eff

11/22/82; am and comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5)
(Imp: HRS §451A-7)

§16-83-14 Application for temporary permit. (a) An application for a temporary permit to engage in the business of dealing and fitting of hearing aids under the direct supervision of a licensed hearing aid dealer and fitter shall be filed with the board at any time and shall be accompanied by the required fee. The board may delegate to the board's executive secretary the authority to issue a temporary permit to qualified applicants which shall be good for one year.

(b) In the event the holder of a temporary permit has not passed the examination within one year from the date of issuance, the executive secretary may reissue the temporary permit once upon written request and payment of the required fee. [Eff 11/22/82; am and comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-9)

§16-83-15 Application for examination and reexamination. An application for examination shall be filed at least sixty days before the date of examination. [Eff 11/22/82; am and comp 8/8/86; comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-5)

§16-83-16 Denial of application. In the event an application is denied, the board shall notify the applicant in writing of the board's action, which shall include a concise statement of the reasons and a statement informing the applicant of the rights to a hearing if so desired. [Eff 11/22/82; am and comp 8/8/86; comp 7/18/94] (Auth: HRS §451A-5(1)) (Imp: HRS §§451A-2, 451A-7)

SUBCHAPTER 4

LICENSE REQUIREMENTS

§16-83-20 Educational qualifications. The board shall accept:

- (1) A photostat or certified copy of a diploma or certificate of graduation from high school;
- (2) A certified photostatic copy of a transcript of high school record;

§16-83-20

- (3) In the absence of paragraphs (1) and (2), a statement from the department of education certifying that the equivalent of a high school education has been completed; or
- (4) In lieu of paragraphs (1), (2), and (3), a photostatic or certified copy of a diploma or certificate of graduation from a college or university accredited by a regional or national accrediting body recognized by the United States Department of Education. [Eff 11/22/82; am and comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-2)

§16-83-21 Repealed. [R 8/8/86]

§16-83-22 Repealed. [R 8/8/86]

SUBCHAPTER 5

EXAMINATION

§16-83-27 Licensing examination. (a) An applicant shall be required to take and pass a licensing examination which shall consist of a written and a practical portion. The written portion shall assess the applicant's knowledge of the following areas:

- (1) Acoustics: general principles;
- (2) Frequency, pitch, and tone quality of sound;
- (3) Intensity and loudness of sound;
- (4) Acoustics: hearing and speech;
- (5) The human ear: external and middle ear;
- (6) The human ear: inner ear;
- (7) The hearing process;
- (8) Disorders of hearing: conductive;
- (9) Disorders of hearing: sensori-neural, central, non-organic;
- (10) Pure-tone audiometry: theory;
- (11) Pure-tone audiometry: air conduction;
- (12) Pure-tone audiometry: bone conduction;
- (13) Speech audiometry;
- (14) The hearing analysis: the audiogram;
- (15) The hearing analysis: the auditory area;

- (16) An introduction to electronics;
- (17) Hearing aids: history;
- (18) Hearing aids: characteristics and components;
- (19) Hearing aid fitting, part I;
- (20) Hearing aid fitting, part II;
- (21) The earmold; and
- (22) Delivery and check-up.
 - (b) The practical portion shall consist of a written and a hands-on segment testing the taking of earmold impressions which shall cover:
 - (1) The examination of the ear which shall include the inspection for abnormalities, discharge, wax impaction or infection; and an external check for moles, scars, and malformations;
 - (2) Techniques of taking an earmold impression;
 - (3) The proper handling of an otoscope; and
 - (4) The taking of an earmold impression which shall consist of the insertion of a block, the mixing of impression material, and impression technique. The finished impression shall be checked for accuracy in the following areas:
 - (A) Helix area filled;
 - (B) Canal properly filled;
 - (C) Proper canal length; and
 - (D) No bubbles or open spaces. [Eff 11/22/82; comp 8/8/86; am and comp 7/18/94] Auth: HRS §451A-5) (Imp: HRS §§451A-5, 451A-6)

Historical note: The substance of this section is based substantially on sections 16-83-28 and 16-83-29. [Eff 11/22/82; am and comp 8/8/86; R 7/18/94]

§16-83-28 Repealed.

§16-83-29 Repealed.

§16-83-30 Passing score. A grade of seventy shall be a passing score for each section of the written and practical portions of the licensing examination. [Eff 11/22/82; am and comp 8/8/86; am and comp 7/18/94] (Auth: HRS 451A-5) (Imp: HRS §§451A-5, 451A-6)

§16-83-31

§16-83-31 Frequency of examination. Examinations shall be conducted within the State at least twice each year. [Eff 11/22/82; comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5(1)) (Imp: HRS §451A-5(3))

§16-83-32 Reexamination. (a) An applicant who fails to attain a passing score in each section of the written and practical portions of the licensing examination shall be given credit for the sections passed and shall be permitted to be reexamined within the next two scheduled examinations.

(b) If the applicant fails to pass all sections of the written and practical portions of the licensing examination within the next two scheduled examinations, the applicant will lose the credits granted for the sections in which a passing score was attained and the applicant shall be required to refile an application for examination as a new applicant. [Eff 11/22/82; am and comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §451A-5)

SUBCHAPTER 6

ADVERTISING

§16-83-36 Repealed.

§16-83-37 Restrictions of terms. In the text of all advertisements, promotional literature, or any matter for public consumption in all media, such terms as "free," "no charge," and other similar terms which convey a gratis relationship, shall only be used when:

- (1) The ad lists the items or services for which the candidate for a hearing aid may be charged and the items or services for which there will be no charge; and
- (2) The print size of the items or services for which there may be a charge or for which there will be no charge shall be of equal or larger print size as the largest sized letter used in the word "free," "no charge," and other similar terms which convey a gratis relationship. [Eff 11/22/82; comp 8/8/86; am and comp 7/18/94] (Auth: HRS §451A-5(1)) (Imp: HRS §451A-13)

SUBCHAPTER 7

ORAL TESTIMONY

§16-83-41 Oral testimony. (a) The board shall accept oral testimony on any item which is on the board's agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours prior to the meeting, and at that time shall state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and
- (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.

(b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief, or rule relief of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 8/8/86; comp 7/18/94] (Auth: HRS §451A-5) (Imp: HRS §92-3)

SUBCHAPTER 8

PRACTICE AND PROCEDURE

§16-83-46 Administrative practice and procedure. The rules of practice and procedure for hearing aid dealers and fitters shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs as adopted, and as may subsequently be amended which are incorporated by reference and made a part of this chapter. [Eff and comp 8/8/86; am and comp 7/18/94] (Auth: HRS §§91-2, 451A-5) (Imp: HRS §§91-2, 451A-5)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-83
Hawaii Administrative Rules

May 12, 1994

SUMMARY

1. §§16-83-2 through 16-83-8 are amended.
2. §§16-83-12 through 16-83-14 are amended.
3. §16-83-20 is amended.
4. §16-83-27 is amended.
5. §16-83-28 is repealed.
6. §16-83-29 is repealed.
7. §§16-83-30 through 16-83-32 are amended.
8. §16-83-36 is repealed.
9. §16-83-37 is amended.
10. §16-83-46 is amended.
11. Chapter 83 is compiled.