

CHAPTER 451A
HEARING AID DEALERS AND FITTERS

SECTION

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§451A-1 Definitions. As used in this chapter, unless the context otherwise requires:

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Hearing aid" means any wearable instrument or device and any parts, attachments, or accessories, including earmold, but excluding batteries and cords, designed or offered for the purpose of aiding or compensating impaired human hearing.

"Practice of dealing and fitting of hearing aids" means the measurement of human hearing by an audiometer or by any other means 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 administration of audiograms for use in consultation with the hard-of-hearing.

"Sale" means any transfer of title, interest, or possession except transactions with distributors or dealers.

§451A-2 License required. It shall be unlawful for any person not licensed under this chapter to engage in the sale or practice of dealing and fitting of hearing aids or to use any sign, card, or device to indicate that the person is licensed.

Any person wishing to obtain a license or a license by endorsement shall apply on a form prescribed by the director and shall furnish to the director:

- (1) Satisfactory proof that the person is a high school graduate; and
- (2) Satisfactory proof that the person has fulfilled all of the requirements for a license.

An applicant shall be required to pass a licensing examination.

§451A-3 REPEALED.

§451A-4 REPEALED.

§451A-5 Powers and duties of the director. In addition to any other powers and duties authorized by law, the powers and duties of the director are to:

- (1) Adopt rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) Develop standards for licensure;
- (3) Prepare and administer examinations;
- (4) Issue, renew, suspend, and revoke licenses;
- (5) Investigate and conduct hearings regarding any violation of this chapter and any rules adopted by the director;
- (6) Do all things necessary to carry out the functions, powers, and duties set forth in the chapter, which may include establishment of an advisory committee; and
- (7) Monitor medical authorizations and waiver records.

§451A-6 Examination. (a) Every applicant, except those who qualify for a license pursuant to section 451A-10, shall pass an examination to be eligible for licensure. The director shall provide by rules the scope of the examination and the passing score. The director may examine applicants or may contract with a professional testing agency to prepare, administer, and grade the examination.

(b) Every applicant shall pay an examination fee as provided in rules adopted by the director pursuant to chapter 91. Should the director contract with a professional testing agency to prepare, administer, and grade the examination, the examination fee may be paid directly to the testing agency by the examinee.

§451A-7 Issuance of license. The director shall license each applicant who satisfactorily meets the experience requirements and who passes an examination as provided in section 451A-2. Upon the payment of application, examination, and license fees, the director shall issue to the applicant a license.

§451A-8 Biennial renewal of license; fees; effect of failure to renew. Each person who engages in the fitting and sale of hearing aids, on or before December 31 of each odd-numbered year, shall pay to the department a biennial fee for renewal of the license and shall keep the certificate conspicuously posted in the licensee'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 at each location. A thirty-day grace period shall be allowed after December 31, during which time licenses may be renewed upon payment of a restoration fee to the department. After expiration of the grace period, the department may renew the certificates upon payment of a second restoration fee to the department. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal; provided that the renewal application is made within two years from the date of expiration.

§451A-8.5 REPEALED.

§451A-9 REPEALED.

§451A-10 License by endorsement. Whenever the director determines that another state or jurisdiction has a program with requirements equivalent to or higher than those in effect under this chapter to fit and sell hearing aids, the director may issue licenses by endorsement to applicants who hold current, unsuspended, and unrevoked certificates or licenses to fit and sell hearing aids in another state or jurisdiction. Applicants for licenses by endorsement shall not be required to pass an examination as provided in section 451A-2. The holder of a license by endorsement shall be subject to the same provisions applying to a licensee regarding registration, fees, and grounds for renewal, suspension, and revocation of a license.

§451A-11 Notice to director. (a) Any person who holds a license shall notify the director in writing of the person's current mailing and residence address. It shall be the licensee's duty to provide written notice of any change of address within thirty days of the change.

(b) Any notice required to be given by the director to the person shall be mailed to the last known address. Failure to provide the written notice of change of address shall absolve the director from any duty to provide notice of any matter required by law to be provided to the licensee.

§451A-12 Receipt required to be furnished to a person supplied with hearing aid. (a) Any person who practices the fitting and sale of hearing aids shall deliver to each purchaser a receipt containing the licensee's signature, the licensee's business address, and the number of the licensee's certificate, together with specifications as to the make and model of the hearing aid furnished and the terms of the sale. If hearing aid which is not new is sold, the receipt and the container thereof shall be clearly marked as "used" or "reconditioned", with the terms of guarantee, if any.

(b) The receipt shall bear, in type no smaller than the largest that is used in the body copy portion, the following: the purchaser has been advised at the outset of the purchaser's relationship with the hearing aid dealer and fitter that any examination or representation made by a 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 shall not be considered as medical opinion or advice.

§451A-13 Discipline; grounds; proceeding; hearings. (a) In addition to any other actions authorized by law, the director may deny, revoke, or suspend any license issued under this chapter and fine or otherwise discipline a licensee for any cause authorized by law, including but not limited to proof that the person has:

- (1) Obtained a license by fraud or deceit;
 - (2) Obtained a fee or the making of a sale by fraud or misrepresentation;
 - (3) Employed with knowledge, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;
 - (4) Applied, caused, or promoted for advertising, the use of any matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation which is misleading, deceptive, or untruthful;
 - (5) Advertised a particular model or type of hearing aid for sale which in fact is not immediately available and where it is established that the purpose was to obtain prospects for the sale of a different model or type;
 - (6) Represented 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 used the words "doctor", "clinic", or similar words, abbreviations, or symbols related to the medical profession when it is not accurate;
 - (7) Permitted the use of a license by another;
 - (8) Advertised a product or used a manufacturer's name or trademark which implies a relationship which in fact does not exist;
 - (9) Given or offered to give, directly or indirectly, money or anything of value to any person who advises another in a professional capacity as an inducement to influence the person or have the person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter, or influencing persons to refrain from dealing in the products of competitors;
 - (10) Engaged in the fitting and selling of hearing aids under a false name or alias with fraudulent intent;
 - (11) Sold a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids;
 - (12) Committed gross incompetence or negligence in fitting and selling hearing aids;
 - (13) Violated any provisions of this chapter and any rules;
 - (14) Submitted to or filed with the director any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement of fact;
- or

- (15) Failed to report to the director any disciplinary action taken against the licensee in another jurisdiction within thirty days after the disciplinary action becomes final.
- (b) Any fine imposed by the director after hearing in accordance with chapter 91 shall be no less than \$100 and no more than \$1,000 for each violation.

§451A-14 Prohibited acts and practices. No person shall:

- (1) Sell, barter, offer to sell, barter, or transfer or assign a license;
- (2) Purchase or procure by barter a license with intent to use it as evidence of qualification to practice the fitting and selling of hearing aids;
- (3) Alter a license with fraudulent intent;
- (4) Use or attempt to use a license which is invalid because it was purchased, fraudulently obtained, forged, or materially altered;
- (5) Make a false statement in an application for a license or in an application for renewal of a license; and
- (6) Sell hearing aids through "door-to-door sales" as defined in section 481C-1.

§451A-14.1 Requirement of authorization from physician or otorhinolaryngologist; authorization records. (a) No person engaged in the fitting and selling of hearing aids shall sell, barter, offer to sell or otherwise knowingly establish a commercial relationship with a potential purchaser without first obtaining and maintaining in the dealer's possession written authorization by a physician that the purchaser or potential purchaser has been examined by the physician and that the physician has prescribed or approved a hearing device; provided that in the case of a child ten years of age or under, the written authorization must be by an otorhinolaryngologist.

(b) For the purposes of subsection (a) the written authorization must be signed by the physician or otorhinolaryngologist within six months prior to the date of sale, barter, offer, or commencement of a commercial relationship; provided that the six-month limit shall not apply if the written authorization of the physician or otorhinolaryngologist states that a return visit of the patient is not necessary for subsequent purchases of a hearing device.

(c) For the purposes of subsection (a), the hearing aid dealer and fitter may offer persons eighteen years of age or older an opportunity to waive the requirement of a medical examination if the hearing aid dealer and fitter:

- (1) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;
- (2) Does not in any way actively encourage the prospective user to waive the medical examination; and
- (3) Affords the prospective user the opportunity to sign the following statement:
"I have been advised by _____ (hearing aid dealer and fitter's name) that the Director of Commerce and Consumer Affairs has determined that my best health interest would be served if I had a medical examination by a physician (preferably a physician who specializes in diseases of the ear) before

purchasing a hearing aid. I do not wish a medical examination before purchasing a hearing aid."

(d) Every hearing aid dealer and fitter licensed pursuant to this chapter shall keep a suitable book or file, or a microfilm of the book or file, in which shall be preserved, for a period of not less than five years, every authorization by physicians or otorhinolaryngologists received pursuant to this section and every statement executed in accordance with subsection (c) (3). The book, file, or microfilm of the authorizations and statements shall at all times be open to inspection by the director and other law enforcement agencies.

§451A-15 REPEALED.

§451A-16 REPEALED.

§451A-17 Injunctive relief. The director may apply for an injunction in any court of competent jurisdiction to enjoin any person who has not been issued a license or whose license has been suspended or revoked or has expired from practicing in the dealing and fitting of hearing aids; and, upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise, may issue a temporary injunction, without notice or bond, enjoining the defendant from further practicing in the dealing and fitting of hearing aids. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it is established that the defendant has been or is practicing dealing and fitting of hearing aids without having been issued a license or after the license has been suspended or revoked or has expired, the court or any judge thereof may enter a decree enjoining the defendant from further practicing in the dealing and fitting of hearing aids. In case of violation of any injunction issued under this section, the court may summarily try and punish the offender for contempt of court. The injunction proceeding shall be in addition to, and not in lieu of all penalties and other remedies provided in this chapter.

§451A-18 Persons and practices not affected. This chapter is not intended to:

- (1) Prohibit any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids; provided the person or the organization employing the person does not sell hearing aids or accessories;
- (2) Prohibit a person in maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license; provided that it employs persons licensed under this chapter responsible for the fitting and direct sale of such products; and
- (3) Apply to a person who is a physician licensed to practice in Hawaii.

[§451A-19] Penalties. Any person who violates this chapter shall be fined not more than \$500 or imprisoned not more than ninety days, or both.

[§451A-20] Remedies or penalties cumulative. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.