

INTERNATIONAL HEARING SOCIETY



MODEL LICENSURE ACT

DISPENSING OF HEARING INSTRUMENTS

TABLE OF CONTENTS

Section	Page
100. Purpose.....	1
101. Definitions.....	1
102. License Required	2
103. Board of Hearing Aid Specialists; Membership; Appointment Terms.....	3
104. Nominations for Board Appointments.....	3
105. Board Officers; Quorum; Meetings	4
106. Powers and Duties of the Board.....	4
107. Hearing Aid Specialist Licensure Examination	4
108. Eligibility to Sit for Hearing Aid Specialist Licensure Examination	5
109. Hearing Aid Specialist Trainee Program	6
110. Renewal of License.....	7
111. Fees	8
112. Hearing Assessment.....	8
113. Cerumen Management	8
114. Equipment and Quality Control	9
115. Consumer Protection.....	10
116. Retention of Records.....	11
117. Grounds for Disciplinary Action By Board	11
118. Investigations By Board.....	12
119. Board Disciplinary Actions; Penalties	12
120. Appeals and Judicial Review	13
121. Unlawful Practice; Criminal Penalties.....	13
122. Severability	14

MODEL LICENSURE ACT
DISPENSING OF HEARING INSTRUMENTS

100. Purpose.--The Legislature recognizes that the dispensing of hearing instruments requires specific knowledge and skill to ensure that the interests of the hearing impaired public will be adequately served and safely protected. It also recognizes that an appropriately selected and fitted hearing instrument will give great satisfaction, improve quality of life, and protect the public health. Therefore, the Legislature deems it necessary in the interest of the public health, safety, and welfare to regulate the dispensing of hearing instruments in this state. Restrictions on the dispensing of hearing instruments shall be imposed only to the extent necessary to protect the public from physical and economic harm, and restrictions shall not be imposed in a manner which will unreasonably affect the competitive market or impede accessibility by the hearing impaired public to all qualified providers.

101. Definitions.

The terms used in this Act mean:

- (1) "Applicant," any individual who applies to take the licensure examination to become licensed as a hearing aid specialist.
- (2) "Board," the Board of Hearing Aid Specialists.
- (3) "Cerumen Management" is the removal of cerumen in the cartilaginous portion of the external ear in otherwise healthy ears.
- (4) "Department," the [insert governing body responsible for professional licensure].
- (5) "Direct supervision," on-site personal oversight and responsibility for all conduct performed.
- (6) "Indirect supervision," oversight and responsibility for all conduct performed or the failure to perform conduct consistent with professional standards and this Act.
- (7) "Dispensing of hearing instruments," includes but is not limited to the following activities, which constitute the scope of practice of a hearing aid specialist:
 - (a) Eliciting patient case histories, including medical, otological, pharmacological, previous amplification history and patient attitudes and expectations;
 - (b) Administering otoscopy for the purpose of identifying possible otological conditions, including but not limited to the Food and Drug Administration (FDA) red flag conditions that may indicate the need for medical referral or which may have a bearing on needed rehabilitative measures, outcomes and/or recommendations;
 - (c) Administering cerumen management in the course of examining ears, taking ear impressions and/or fitting of hearing instruments except that if the hearing aid specialist, while engaged in routine cerumen removal, discovers any trauma, including, but not limited to, continuous uncontrolled bleeding, lacerations, or other traumatic injuries, he or she shall, as soon as practically possible, refer the patient to an otolaryngologist or a licensed physician if no otolaryngologist is available;
 - (d) Administering and interpreting tests of human hearing, including appropriate objective and subjective methodology and measures;
 - (e) Determining candidacy for hearing instruments, hearing assistive devices or referral for cochlear implant evaluation or other clinical, rehabilitative, or medical interventions;

(f) Selecting, and fitting appropriate hearing instruments and assistive devices, including appropriate technology, electroacoustic targets, programming parameters and special applications, as indicated;

(g) Assessing hearing instrument efficacy utilizing appropriate fitting verification methodology, including available fitting validation methods;

(h) Taking ear impressions and preparing earmolds for hearing instruments, assistive devices, telecommunications applications, ear protection, and other related applications;

(i) Designing and modifying earmolds and auditory equipment requisite to meet individual patient needs;

(j) Providing counseling and aural rehabilitative services in the use and care of hearing instruments and assistive devices and for effectively utilizing communication coping strategies and other approaches to foster optimal patient rehabilitation;

(k) Providing supervision and in-service training of those entering the dispensing profession; and

(l) All other acts of hearing assessment pertaining to hearing testing and/or the selling, renting, leasing, and delivery of hearing instruments.

(7) "Hearing aid specialist," a person duly licensed by the governing body to engage in the practice of dispensing of hearing instruments. A person represents oneself to be a hearing aid specialist if the person holds out to the public that the person engages in the practice of dispensing hearing instruments, by any means, or by any service or function performed, directly or indirectly, or by using the terms hearing aid specialist, hearing instrument specialist, audioprosthologist, hearing center, hearing office, hearing aid center, hearing aid office, or any variation or synonym which expresses, employs, or implies these terms or functions.

(8) "Hearing instrument," any electro-acoustic system scientifically designed to be head or body worn in order to improve hearing. Each component of the hearing instrument shall be adapted to the needs of the individual consumer.

(9) "Trainee," a person studying the dispensing of hearing instruments under the supervision of a Sponsor for the purpose of becoming eligible to sit for the hearing aid specialist licensure examination.

(10) Medical Liaison means a cooperative arrangement for consultation with an otolaryngologist or a licensed physician if no otolaryngologist is available.

(11) "Sponsor," a currently licensed hearing aid specialist that is certified by the National Board for Certification in Hearing Instrument Sciences under whose direct supervision a Trainee(s) is studying the dispensing of hearing instruments for the purpose of becoming eligible to sit for the hearing aid specialist licensure examination.

102. License Required.

(1) It shall be unlawful for any person to engage in the practice of dispensing hearing instruments unless such person is duly licensed in accordance with this Act.

(2) A license issued pursuant to this Act shall be conspicuously displayed in the licensee's place(s) of business or carried upon the person, and shall be presented as proof of licensure upon demand.

(3) All licensed hearing aid specialists shall report to the Board any name change or changes in business and home addresses within thirty (30) days after the change becomes final.

(4) Nothing in this chapter shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail, provided that it employ only properly licensed hearing aid specialists in the direct sale and fitting of such instruments. Each corporation, partnership, trust association or other like organization shall file annually with the Board on a form provided by the Board, a list of all licensed hearing aid specialists employed by it. Each organization shall also file with the division a statement, on a form provided by the division, that it agrees to comply with the rules and regulations of the **[insert Department name]** and the provisions thereof.

(5) Nothing in this chapter shall impact the permissible scope of practice of a licensed audiologist or physician as defined by state and federal law and regulations.

103. Board of Hearing Aid Specialists; Membership; Appointment Terms.

(1) The Board of Hearing Aid Specialists is created within the **[governing body responsible for professional licensure]** and shall consist of seven (7) members to be appointed by the Governor.

(a) Four (4) members of the Board shall be hearing aid specialists who have been licensed under this chapter and practicing for at least the preceding four (4) years of which one may also be an audiologist who has been licensed and practicing audiology for at least the preceding four (4) years.

(b) One (1) member of the Board shall be a Board Certified otolaryngologist who is not engaged in the practice of dispensing of hearing instruments and who has been licensed and practicing medicine for at least the preceding four (4) years.

(c) Two (2) members of the Board shall be citizen members who have been residents for not less than one (1) year immediately preceding the Board appointment. One of the citizen members shall be a hearing aid user and the other a person who has a family member who is or has been a hearing aid user. Such members may neither be nor have been a licensed hearing aid specialist or a licensee of a closely related profession. Further, such member shall not be associated with or financially interested in the practice or business of audiology, speech-language pathology or the practice of dispensing of hearing instruments.

(2) Each member shall be appointed for a term of four (4) years. In the event of a vacancy other than by expiration of the term, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

(3) Members shall disqualify themselves and, upon the motion of any interested party, may, upon proper showing, be disqualified in any proceeding concerning which they have an actual conflict of interest or bias that interferes with their fair and impartial service.

104. Nominations for Board Appointments.

The appointment of the hearing aid specialist members may be made from a list of names for each vacancy submitted to the Governor by the **[insert IHS chapter name]**. The appointment of the otolaryngologist member may be made from a list of at least three names submitted to the Governor by the **[insert appropriate otolaryngic society, or if no otolaryngic society exists, insert appropriate medical society]**. In no case shall the Governor be bound to make any appointment from among the nominees.

105. Board Officers; Quorum; Meetings.

(1) The Board, within sixty (60) days after the effective date of this Act and annually thereafter, shall hold a meeting and elect one (1) of its members as chairperson, who shall preside at meetings of the Board, and one (1) of its members as vice-chairperson.

(2) The vice-chairperson shall serve as temporary chairperson in the event of the absence of the chairperson or a vacancy in the position.

(3) Five (5) members of the Board shall constitute a quorum.

(4) The Board shall meet at least two (2) times per year at a place, day and hour determined by the Board. Other meetings may be convened at the call of the chairperson or upon the written request of any two (2) Board members. All such other meetings shall be held provided upon thirty (30) days of notification to all Board members.

106. Powers and Duties of the Board.

The Board shall have the authority to administer, coordinate and enforce the provisions of this Act including, but not limited to, the following activities:

(1) Evaluating the qualifications of Applicants for hearing aid specialist licensure, approving and administering licensure examinations to test the knowledge and proficiency of Applicants for hearing aid specialist licensure, and approving or denying the registration and issuance and renewal of licenses and permits;

(2) Authorizing all disbursements necessary to carry out the provisions of this Act;

(3) Promulgating rules not inconsistent with the laws of this state which are necessary to carry out the provisions of this Act including, but not limited to, ethical standards of practice;

(4) Adopting rules allowing for continuing education;

(5) Obtaining restraining orders and injunctions prohibiting conduct in violation of the provisions of this Act; conducting investigations, issuing subpoenas, examining witnesses and administering oaths, concerning practices which are alleged to violate the provisions of this Act;

(6) Suspending or revoking or otherwise sanctioning licensees in the manner provided in this Act; or placing a person holding a license under this Act on probation;

(7) Requiring the inspection of testing equipment and facilities of persons engaging in any practice pursuant to this Act.

107. Hearing Aid Specialist Licensure Examination.

(1) The Board shall establish a procedure through which the Board deems an Applicant to have satisfied all applicable requirements set forth in Sections 108 and 109 to sit for the hearing aid specialist licensure examination.

(2) The hearing aid specialist licensure examination to be approved by the Board shall have three components as follows:

(a) A practical examination that requires the Applicant to demonstrate competence in dispensing of hearing instruments;

(b) A written examination that tests the Applicant for knowledge of applicable laws and regulations; and

(c) A written, psychometrically valid, examination that tests the Applicant for knowledge fundamental to the competent assessment, testing, fitting and dispensing of hearing instruments such as the International Hearing Society's International Licensing Examination.

(3) Certain Applicants, as described in Section 108(3), are waived from taking the practical examination and written examination pertaining to the competent dispensing of hearing instruments.

(4) The Board shall arrange for the practical and written components of the licensure examination to be offered at least twice a year.

(5) Failure and retaking of examination.

(a) Any Applicant who fails the one (1) or more portions of the practical examination, the applicant shall retake the entire practical portion of the examination upon payment of the proper examination fee.

(b) Any Applicant who fails the written portions of the examination, the applicant shall retake the entire written portion of the examination upon payment of the proper examination fee.

(c) A passing score on the written portions of the examination or the practical portion of the examination shall be valid for a maximum of eighteen (18) months.

(d) Any Applicant who fails either the written or practical portions of the examination and two (2) subsequent re-examinations shall be disqualified from retaking the examination a fourth time, until meeting with the board, presenting an acceptable written training plan for passing the examination, and successfully completing that plan. In the case of an Trainee with a Sponsor, both the Trainee and the Sponsor are to appear before the board.

(6) The Board shall issue a license to practice the dispensing of hearing instruments to any Applicant who successfully completes the required components of the licensure examination in accordance with Sections 107, 108 and 109 of this Act.

108. Eligibility to Sit for Hearing Aid Specialist Licensure Examination.

(1) To be eligible to sit for the hearing aid specialist licensure examination, the Applicant must:

(a) Provide educational documentation satisfactory to the Board that the Applicant has successfully graduated from a minimum two-year accredited post-secondary program, preferably one that focuses on hearing health sciences, or equivalent as determined by the Board;

(b) Provide verification acceptable to the Board that the Applicant has not had a hearing aid specialist license (or equivalent) revoked or otherwise sanctioned as part of a disciplinary action from this or any other state; and

(c) Provide appropriate documentation from the Applicant's Sponsor that the applicant has completed at least 160 hours of documented directly supervised practicum as specified in Section 109 (6); and

(d) Pay all applicable fees as set forth in Section 111.

(2) An Applicant shall be immediately eligible to take the practical and written examinations if the Applicant provides verification acceptable to the Board that the Applicant possesses:

(a) proof of successful completion of the American Conference of Audioprosthology program;

(b) a two year degree in hearing health sciences from an accredited institution; or

(c) a master's or doctoral degree in audiology from an accredited institution.

(3) An Applicant shall be immediately eligible to take the written examination of applicable laws and regulations if the Applicant provides verification acceptable to the Board that the Applicant has been actively practicing as a hearing aid specialist, an audiologist, or as another licensed professional recognized by the Board for at least twelve (12) of the last fifteen (15) months; and holds a current, valid Certification from the National Board for Certification in Hearing Instrument Sciences.

(4) The Board has the authority to establish procedures for recognizing licensure programs outside of the United States for purposes of eligibility to sit for the licensure examination in this state.

(5) Any individual who holds a license as a hearing aid specialist or its equivalent in this state as of the date of enactment of this Act shall be grandfathered as licensed under this Act.¹

109. Hearing Aid Specialist Trainee Program.

(1) The training period begins on the date of the issuance of the Trainee license and will expire eighteen (18) months thereafter.

(2) The Board shall issue a Trainee license to an applicant who:

(a) has filed a completed application form and paid the Trainee license fee; and

(b) has met all academic qualifications for licensure; and

(c) has a signed and notarized statement from the Applicant's Sponsor.

(3) A Trainee license holder shall maintain a valid training license during his or her supervised training experience.

(4) The training must be done under the supervision of an individual who has held a valid license, from this Board, for a minimum of three (3) years, to test hearing and fit and dispense hearing instruments.

(5) Required Coursework

(a) The Board shall promulgate a list of approved courses for purposes of the training program

(b) The Board shall establish a minimum number of hours of coursework.

(6) A Trainee license holder shall be required to have at least 160 contact hours of inpatient care under directly supervised practicum in order to sit for the written and practical examinations that shall include the following:

(a) 25 contact hours of pure-tone air-conduction, bone conduction, and speech audiometry with both recorded and live speech.

(b) 10 contact hours of masking.

(c) 20 contact hours of hearing instrument fittings with actual consumers.

(d) 20 contact hours of hearing instrument evaluation including acceptable hearing instrument verification procedures.

(e) 10 contact hours of earmold orientation types, uses and terminology.

(f) 15 contact hours of earmold impressions and otoscopic examinations of the ear.

¹ How to accommodate the grandfather of individuals dispensing hearing instruments at the time of enactment of this Act is a particularly local issue depending on the nature and extent of laws in effect at the time.

- (g) 15 contact hours of troubleshooting of defective hearing instruments.
 - (h) 15 contact hours of case history with actual consumers.
 - (i) 10 contact hours of the laws governing the licensing of persons fitting and dispensing hearing instruments and Federal Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments.
 - (j) 20 hours of supplemental work in one or more of the areas described in subparagraphs (A – H) of this paragraph.
- (7) On completion of the 160 hours of directly supervised training under paragraph (6) of this subsection a Trainee shall complete the training under the indirect supervision of the Trainee’s supervisor.
- (8) The Trainee license shall entitle the Trainee to engage in the practice of dispensing of hearing instruments under the supervision of a Sponsor.
- (9) The Board shall establish a process for validation that the 160 hours direct supervision period has been completed and that the Trainee is eligible to sit for the written and practical licensure examinations.
- (10) The Sponsor shall be responsible for the day-to-day supervision of the Trainee. The Sponsor shall also be ultimately responsible for services provided to a client by the Trainee permit holder. A Sponsor shall not delegate the responsibility of supervision.
- (11) The training period shall be for a period of at least 12 months duration.
- (12) A Sponsor may not supervise more than two Trainees at one time.
- (13) The sponsoring hearing aid specialist must submit a written notification of termination of sponsorship to the Board and the Trainee license holder within 10 working days of cessation of sponsorship.
- (14) The Trainee license holder shall give written notice to the Board of the transfer of sponsorship within 10 days working days of change in sponsorship.

110. Renewal of License.

- (1) The Board shall establish a process for the annual renewal of a license.
- (2) At a minimum, the licensee shall attest to the following:
 - (a) The licensee has not been convicted of a felony or been convicted of any crime which would have a bearing on any practice pursuant to this Act. Conviction shall include a verdict of guilt, an admission of guilt, or a plea of nolo contendere or its equivalent;
 - (b) The licensee has not had a hearing aid specialist license (or equivalent) revoked or otherwise sanctioned as part of a disciplinary action from this or any other state;
 - (c) The licensee has completed at least ten (10) hours of continuing education approved by the Board for the prior annual period; and
 - (d) The licensee possesses Board-approved certifications that the equipment meets the quality control requirements set forth in Section 114.
- (3) Any active license which is not renewed shall automatically expire and, unless reinstated within twelve (12) months, become null and void without any further action by the Board or the Department. Any such license may be reinstated within twelve (12) months thereafter upon payment of the current renewal fee, payment of a late fee set by rule of the Board, and compliance with all other requirements for license renewal.

(4) Sixty (60) days prior to the time to renew a license, the Board shall send notice by mail to the last known address of the licensee.

(5) A hearing aid specialist licensed under this Act and not actively practicing may be placed on inactive status by the Board at the written request of the licensee. The Board shall define by rule the conditions for inactive licensure status. The Board shall establish procedures through which a licensee can reactivate an inactive license.

111. Fees.

The Board may establish fees for the following:

- (1) Registration of Trainees, including the issuance and renewal of Trainee licenses;
- (2) Registration of Sponsors;
- (3) Validation of completion of a hearing aid specialist training program;
- (4) Examination application;
- (5) Examination and reexamination for practical examination;
- (6) Examination and reexamination for written examinations;
- (7) Initial licensure;
- (8) Renewal of licensure, including late fees as applicable;
- (9) Issuance of duplicate license.
- (10) Administrative cost for information requests.

112. Hearing Assessment.

(1) No hearing impaired consumer shall be fitted for a hearing instrument without first having received a hearing assessment which shall include at least the following procedures, and any additional or modified procedures appropriate to technological developments as determined by the Board:

- (a) Completion of a standardized patient history questionnaire as approved by the Board;
 - (b) Otoscopic examination;
 - (c) Pure tone audiometric testing by air and bone to determine the type and degree of hearing deficiency;
 - (d) Effective masking when indicated;
 - (e) Appropriate testing to determine speech reception thresholds, speech discrimination scores, the most comfortable listening levels, and uncomfortable loudness levels, and the selection of the best fitting arrangement for maximum hearing instrument benefit;
 - (f) Tympanometry.
- (2) A hearing assessment as described in Section 112(1) shall be valid for six months.

113. Cerumen Management

(1) The licensee shall follow federal regulations, and those state regulations established by the Board, regarding Cerumen Management and referral of patients to a Medical Liaison.

(2) Referral: At the minimum, the licensee may perform Cerumen Management by simply referring the patient to their family physician or Medical Liaison for treatment.

(3) Limitations. Before the removal of cerumen, the licensee shall obtain the informed consent of the patient, or legally responsible adult, and maintain documentation with the patient records.

(4) Training, Knowledge, and Skills.

(a) The licensee shall be responsible for obtaining the training, knowledge, and skills necessary to perform cerumen management.

(b) The licensee shall obtain training that includes:

(i) Principles of cerumen management including the anatomy of the ear canal and the ear drum and classification of cerumen;

(ii) Use of instruments;

(iii) Techniques for cerumen removal;

(iv) Recognition of complications;

(v) Recognition of contraindications including but not limited to:

(A) Only hearing ear,

(B) Perforated tympanic membrane,

(C) Inflammation, tenderness, or drainage from the ear canal or middle ear,

(D) Ear surgery within the past 6 months or tympanostomy tubes,

(E) Diabetes mellitus, HIV infection, bleeding disorder, or other medical contraindications,

(F) Actual or suspected foreign body,

(G) Stenosis or bony exostosis of the ear canal,

(H) Dizziness occurring during cerumen removal,

(I) Cerumen impaction that totally occludes the ear canal; and

(vi) Clinical experience gained under the direct supervision of a qualified professional.

(c) The licensee shall maintain documentation evidencing the satisfactory completion of the required training.

(5) Precautions.

(a) The licensee shall have established a Medical Liaison before performing cerumen removal.

(b) The licensee shall refer patients to or consult with as needed the medical liaison for patients requiring cerumen removal who exhibit contraindications.

(c) The licensee shall carry appropriate malpractice insurance before performing cerumen removal.

114. Equipment and Quality Control.

(1) All equipment, utilized for hearing assessment (112) or to perform any other function under this Act, shall conform to all current standards of the American National Standards Institute or such other quality control standards established by the Board. Licensees shall ensure that audiometric equipment has been evaluated electrically and acoustically annually, adjusted or repaired if necessary, and that conformity with such standards was determined at that time. Licensees must maintain calibration records permanently and licensees shall make the records available for inspection by the Board at any time. In addition, all licensees

must use routine procedures for the daily inspection of audiometric equipment, or prior to use if used less often than on a daily basis, to generally determine that it is in normal working order.

(2) Hearing instruments, assistive listening devices, and electronic equipment must be maintained according to manufacturer's specifications.

(3) All instrumental technology shall be maintained in proper working order and be properly calibrated according to accepted standards.

115. Consumer Protection.

(1) A hearing aid specialist shall advise a prospective hearing aid user to consult promptly with an otolaryngologist or a licensed physician if no otolaryngologist is available before dispensing a hearing aid if the hearing aid dispenser 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:

- (a) Visible congenital or traumatic deformity of the ear.
- (b) History of active drainage from the ear within the previous 90 days.
- (c) History of sudden or rapidly progressive hearing loss within the previous 90 days.
- (d) Acute or chronic dizziness.
- (e) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- (f) Audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz.
- (g) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal.
- (h) Pain or discomfort in the ear.

(2) The sale of hearing aids is restricted to those individuals who have obtained a medical evaluation from a licensed physician. A fully informed adult may sign a waiver statement declining the medical evaluation for religious or personal beliefs that preclude consultation with an otolaryngologist or a licensed physician if no otolaryngologist is available. The exercise of such a waiver is not in the best health interest of the patient and its use is strongly discouraged. A waiver is not acceptable for children under the age of 18.

(3) In addition, a consumer shall not be required to obtain a medical evaluation for the repurchase of a hearing instrument once a medical evaluation has been obtained for certain otologic conditions that are permanent and will be reidentified at each hearing assessment. At a minimum, such conditions shall include the following:

- (a) Visible congenital or traumatic deformity of the ear;
- (b) Unilateral or asymmetric hearing loss, assuming no change in thresholds;
- (c) Audiometric air-bone gap equal to or greater than 15 decibels (dB) at 500 Hertz (Hz), 1000Hz, and 2000Hz;
- (d) Bilateral hearing loss of greater than 90dB.

(4) Each hearing instrument delivered shall be sold pursuant to a written contract which shall state the terms of sale.

(5) Any licensee shall, at the time of delivery, provide the consumer with a receipt containing the licensee's signature, the address of his/her regular place of business, and his/her license or Trainee registration number, if applicable, together with the brand, model, manufacturer or manufacturer's identification code, and serial number of the hearing instrument

furnished and the amount charged for the hearing instrument. The receipt also shall specify whether the hearing instrument is new, used, or rebuilt; the length of time and other terms of the guarantee; and by whom the hearing instrument is guaranteed.

(6) No hearing instrument may be sold to any person unless both the packaging containing the hearing instrument and the itemized receipt are in compliance with all applicable laws and regulations.

(7) Upon delivery, the hearing aid specialist shall verify the physical and operational performance of the hearing instrument.

116. Retention of Records.

(1) A licensee shall keep and maintain in his office or place of business the following records:

(a) Results of tests and other records as they pertain to hearing assessments conducted by the licensee and the dispensing of hearing instruments by the licensee;

(b) A copy of the written contract and receipt required by Section 115 (2); and

(c) Copies of such other records as the Board or the Department shall reasonably require.

(2) All such records shall be kept and maintained by the licensee for a period of seven (7) years or as required by applicable laws and regulations.

117. Grounds for Disciplinary Action By Board.

Any conduct or attempted conduct which endangers or is likely to endanger the health, welfare, or safety of the public in the practice of hearing aid dispensing is grounds for disciplinary action and includes without limitation the following:

(1) Violating any provision of this chapter, any order given by the Board, or rule adopted by the Board, including, without limitation, rules setting forth specific grounds for disciplinary action in addition to those set forth in this section.

(2) Engaging in illegal or negligent practice.

(3) Committing any act of unethical or unprofessional conduct.

(4) Making a material misstatement in an application for a license or permit or for renewal of a license.

(5) Providing or attempting to provide any license, by sale or otherwise, or obtaining or attempting to obtain a license, by purchase or otherwise, with fraudulent intent.

(6) Altering a license with fraudulent intent, or knowingly using or attempting to use a license that has been purchased, fraudulently obtained, counterfeited, or altered.

(7) Conviction of a felony under any circumstances, or of any offense the circumstances of which substantially relate to the practice of hearing aid dispensing.

(8) Violation of any applicable statute, rule or regulation that relates to the practice of hearing aid dispensing.

(9) False, deceptive or misleading conduct, through advertising or otherwise.

(10) Aiding or abetting any conduct that is grounds for disciplinary action.

(11) Misrepresenting professional services available in the fitting, sale, adjustment, service, or repair of a hearing instrument, or using the terms "doctor," "clinic," "clinical," "medical" or any other term or title which might connote the availability of professional services when such use is not accurate.

(12) Providing professional services while mentally incompetent, under the influence of alcohol, using any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication or while having a serious infectious or contagious disease and failing to take proper precautions for the protection of patients or others.

(13) Providing services or promoting the sale of devices, instruments, or products to a person who cannot reasonably be expected to benefit from such services, devices, or products.

(14) Being disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section.

(15) Violation of any trade practice rules for the hearing aid industry or other applicable laws and rules.

(16) Violating any provisions of this Act, Board rules, adopted codes of ethics or other applicable laws or rules including, but not limited to, the **[consumer protection act]**, relating directly or indirectly to any practice pursuant to this Act.

118. Investigations By Board.

(1) The Board is authorized to institute any investigation, hearing or other legal proceeding necessary to effect compliance with this Act.

(2) The Board or its hearing officer, upon a finding that action is necessary, shall have the authority pursuant to this Act and any subsequent rules promulgated by the Board to administer oaths, take depositions of witnesses, and shall have power to require the attendance of such witnesses and the production of such books, records and papers as the Board may desire at any hearing. For this purpose, the Board may issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers.

(3) When it is brought to the attention of the Board by the written statement of any person that a licensee under this Act has done any act or thing in violation of any provision of this Act, the Board shall make an investigation of such licensee and, if it is determined there is probable cause to institute proceedings against such licensee, the Board shall commence a formal proceeding against the licensee in accordance with this Act and with rules adopted by the Board pursuant to this section.

(4) The Board may, in the name of the people, apply for injunctive relief in any court of competent jurisdiction to enjoin any person from committing any act in violation of this Act. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided for in this Act.

119. Board Disciplinary Action; Penalties.

(1) The Board may take the following disciplinary actions singly or in combination when the Board finds any hearing aid specialist to be guilty of any of the grounds set forth above in Section 117:

- (a) Issue a formal reprimand;
- (b) Require additional education as a requirement for continued practice;
- (c) Impose restrictions and/or conditions as to scope of practice, place of practice, supervision of practice, duration of license status, or type or condition of consumer served. The Board may require a licensee to report regularly to the Board on matters regarding the restricted license;
- (d) Deny an application for licensure;

- (e) Suspend a license, the duration of which shall be determined by the Board;
- (f) Revoke a license;
- (g) Refuse to issue or renew a license;
- (h) Impose an administrative fine not to exceed one thousand dollars (\$1,000) for each count or separate offense under this Act; or
- (i) Assess costs and attorney's fees against a licensee for any investigation and/or administrative proceeding.

(2) If a person licensed under this Act allows the dispensing of a hearing instrument by an unlicensed person not registered as an Trainee or fails to comply with the requirements of Section 109 relating to direct supervision of Trainees, the Board shall, upon determination of that violation, order the full refund to the consumer upon return of the hearing instrument to the licensee's place of business.

120. Appeals and Judicial Review.

(1) The Board shall establish an appeals process through which an Applicant can challenge denial of either initial or renewed licensure or the imposition of disciplinary actions. Such process shall include, at a minimum, written notice of appeal rights and an opportunity to challenge in writing and/or orally a denial.

(2) Any person who is aggrieved by any action of the Board in denying, refusing to renew, suspending or revoking a license, issuing a censure, imposing any restriction upon a license, or imposing any fine, may seek judicial review thereof in accordance with the provisions of [applicable statute].

121. Unlawful Practice; Criminal Penalties.

(1) No person shall:

- (a) Practice the dispensing of hearing instruments unless the person is a licensed hearing aid specialist, licensed audiologist (if the legal scope of practice of audiology includes hearing aid dispensing), or a licensed physician;
- (b) Use the name or title "hearing aid specialist" or any equivalent designation when the person has not been licensed pursuant to this Act;
- (c) Present as his/her own the license of another;
- (d) Give false, incomplete, or forged evidence to the Board or a member thereof for the purposes of obtaining a license;
- (e) Use or attempt to use a hearing aid specialist license which has expired, been suspended, revoked, or placed on inactive status;
- (f) Knowingly employ unlicensed persons in the practice of dispensing of hearing instruments;
- (g) Dispense hearing instruments through the mail or over the Internet to the ultimate consumer;
- (h) Knowingly conceal information relative to violations of this Act;
- (i) Discriminate against consumers on the basis of race, national origin, religion, gender, sexual orientation, disability, income or health status; or
- (j) Violate any provision of this Act.

(2) Any person who violates any of the provisions of Section 121 (1) is guilty of a misdemeanor of the second degree, punishable as provided in [applicable section of local law on criminal acts].

(3) The Board shall report any criminal violation of this Act to the proper prosecuting authority for prompt prosecution.

122. Severability.

The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.