

## HEARING AIDS

### Footnotes

Enforcement, §147.87, 147.90, 147.92

#### **154A.1 Definitions.**

As used in this chapter, unless the context requires otherwise:

1. "*Board*" means the board of examiners for the licensing and regulation of hearing aid dispensers.
2. "*Department*" means the Iowa department of public health.
3. "*Dispense*" or "*sell*" means a transfer of title or of the right to use by lease, bailment, or any other means, but excludes a wholesale transaction with a distributor or dispenser, and excludes the temporary, charitable loan or educational loan of a hearing aid without remuneration.
4. "*Hearing aid*" means a wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing, and any parts, attachments, or accessories, including earmold, but excluding batteries and cords.
5. "*Hearing aid dispenser*" means any person engaged in the fitting, dispensing, and the sale of hearing aids and providing hearing aid services or maintenance, by means of procedures stipulated by this chapter or the board.
6. "*Hearing aid fitting*" means the measurement of human hearing by any means for the purpose of selections, adaptations, and sales of hearing aids, and the instruction and counseling pertaining thereto, and demonstration of techniques in the use of hearing aids, and the making of earmold impressions as part of the fitting of hearing aids.
7. "*License*" means a license issued by the state under this chapter to hearing aid dispensers.
8. "*Person*" means a natural person.
9. "*Temporary permit*" means a permit issued while the applicant is in training to become a licensed hearing aid dispenser.

[C75, 77, 79, 81, § 154A.1]

2001 Acts, ch 58, §18

#### **154A.2 Establishment of board.**

A board for the licensing and regulation of hearing aid dispensers is established. The board shall consist of three licensed hearing aid dispensers and two members who are not licensed hearing aid dispensers who shall represent the general public. Members, who shall be residents of the state of Iowa, shall be appointed by the governor, subject to confirmation by the senate. A licensed member shall be actively employed as a hearing aid dispenser and shall have been so engaged for five years preceding appointment, the last two of which shall have been in Iowa. Hearing aid dispensers appointed to the initial board shall have not less than five years' experience and shall fulfill the qualifications relating to experience for licensure as provided in this chapter.

No more than two members of the board shall be employees of, or dispensers principally, for the same hearing aid manufacturer.

Professional associations or societies composed of licensed hearing aid dispensers may recommend the names of potential board members to the governor, but the governor shall not be bound by the recommendations. A board member shall not be required to be a member of any professional association or society composed of licensed hearing aid dispensers.

[C75, 77, 79, 81, § 154A.2]

2001 Acts, ch 58, §18

### **Footnotes**

Confirmation, see § 2.32

### **154A.3 Term of office.**

Appointments shall be for three-year staggered terms and shall commence and end as provided by section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor subject to senate confirmation. Members shall serve a maximum of three terms or nine years, whichever is least.

[C75, 77, 79, 81, § 154A.3]

### **Footnotes**

Confirmation, see §2.32

### **154A.4 Duties of the board.**

Members of the board shall annually elect a chairperson and a secretary-treasurer from their membership. The board shall prepare examinations drawn from comparable examinations given in other states which license hearing aid dispensers, direct the department in administering the provisions of this chapter, determine who is eligible for licensure, suspend or revoke licenses or temporary permits for cause, and promulgate rules for the administration of the provisions of this chapter pursuant to chapter 17A within the limits of funds appropriated to the board.

[C75, 77, 79, 81, § 154A.4]

2001 Acts, ch 58, §18

### **154A.5 Public members.**

The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examination, but shall not determine the content of the examination or determine the correctness of the answers.

[C75, 77, 79, 81, § 154A.5]

### **154A.6 Disclosure of confidential information.**

A member of the board shall not disclose information relating to the following:

1. Criminal history or prior misconduct of the applicant.
2. Information relating to the contents of the examination.
3. Information relating to the examination results other than final score except for information about the results of an examination which is given to the person who took the examination.

A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

[C75, 77, 79, 81, § 154A.6]

#### **154A.7 Meetings and expenses.**

The members of the board shall receive actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The board shall meet at least one time per year at the seat of government and may hold additional meetings as deemed necessary. Additional meetings shall be held at the call of the chairperson or a majority of the members of the board. At any meeting of the board, a majority of the members shall constitute a quorum.

[C75, 77, 79, 81, § 154A.7]

86 Acts, ch 1245, § 1146

#### **154A.8 Duties of department.**

The department, with the advice and assistance of the board shall:

1. Employ personnel, and authorize disbursements necessary to carry out the provisions of this chapter.
2. Register and issue licenses to persons whom the board deems qualified to engage in the fitting or selection and sale of hearing aids.
3. Purchase, maintain, or rent equipment and other facilities necessary to carry out the examination of applicants.
4. Designate the time and place for examining applicants, and conduct and supervise the examinations as directed by the board.

[C75, 77, 79, 81, § 154A.8]

#### **154A.9 Applications.**

Applications for licensure or for a temporary permit shall be on forms prescribed and furnished by the board and shall not require that a photograph of the applicant be attached to the application form. An applicant shall not be ineligible for certification because of age, citizenship, sex, race, religion, marital status or national origin although the application may require citizenship information. The board may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of fitting or selection and sale of hearing aids. Character references may be required, but shall not be obtained from licensed hearing aid dispensers.

[C75, 77, 79, 81, § 154A.9]

2001 Acts, ch 58, §18; 2002 Acts, ch 1119, §16

#### **154A.10 Issuance of licenses.**

After January 1, 1975, an applicant may obtain a license, if the applicant:

1. Successfully passes the qualifying examination prescribed in section 154A.12.
2. Is free of contagious or infectious disease.
3. Pays the necessary fees set by the board pursuant to section 154A.17.

[C75, 77, 79, 81, § 154A.10]

#### **154A.11 Examinations.**

Examinations for licensing shall be given as often as deemed necessary by the board, but no less than one time per year. The scope of the examination and methods of procedure shall be prescribed by the board. Any written examination may be given by representatives of the board.

All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded.

As soon as practicable after the close of each examination, a report shall be filed by the board. The report shall show the action of the board upon each application, and the department shall notify each applicant of the result of the applicant's examination. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board.

An applicant who has failed the examination may request in writing information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

[C75, 77, 79, 81, § 154A.11]

2000 Acts, ch 1140, §38

#### **154A.12 Scope of examination.**

The examination required by this chapter shall be designed to demonstrate the applicant's adequate technical qualifications including, but not limited to, the following:

1. Written tests of knowledge in areas such as physics of sound, anatomy and physiology of hearing, and the function of hearing aids, as these areas pertain to the fitting or selection and sale of hearing aids.
2. Evidence of knowledge of the medical and rehabilitation facilities that are available in the area served, for children and adults who have hearing problems.
3. Evidence of knowledge of situations in which it is commonly believed that a hearing aid is inappropriate.

The board shall not require the applicant to possess the degree of professional competence normally expected of physicians.

[C75, 77, 79, 81, § 154A.12]

2000 Acts, ch 1140, §39

#### **154A.13 Temporary permit.**

A person who has not been employed as a hearing aid dispenser prior to January 1, 1975, may obtain a temporary permit from the department upon completion of the application accompanied by the written verification of employment from a licensed hearing aid dispenser. The department shall issue a temporary permit for one year which shall not be renewed or reissued. The fee for issuance of the temporary permit shall be set by the board pursuant to section 154A.17. The temporary permit entitles an applicant to engage in the fitting or selection and sale of hearing aids under the supervision of a person holding a valid license.

[C75, 77, 79, 81, § 154A.13]

2001 Acts, ch 58, §18

#### **154A.14 Reciprocity.**

If the board determines that another state or jurisdiction has requirements equivalent to or higher than those provided in this chapter, the department may issue a license by reciprocity to applicants who hold valid certificates or licenses to dispense and fit hearing aids in the other state or jurisdiction. An applicant for a license by reciprocity is not required to take a qualifying examination, but is required to pay the license fee as provided in section 154A.17. The holder of a license of reciprocity is registered in the same manner as the holder of a regular license. Fees, grounds for renewal, and procedures for the suspension and revocation of license by reciprocity are the same as for a regular license.

[C75, 77, 79, 81, § 154A.14]

2001 Acts, ch 58, §13

#### **154A.15 License renewal.**

Licenses shall be renewed in multiyear intervals in a manner determined by the board. The renewal fee shall be determined by the board pursuant to section 154A.17. The department shall notify every person licensed under this chapter of the date of expiration of the license and the amount of fee required for its renewal. The notice shall be mailed at least one month in advance of the expiration date. A person who fails to renew a license by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

[C75, 77, 79, 81, § 154A.15]

**154A.16** Repealed by 77 Acts, ch 95, § 25.

#### **154A.17 Fees.**

The fees for the examination shall be set by the board on the basis of the annual cost of administration. The fees for the temporary permit, license, renewal of a license, and issuance of a duplicate license, shall be set by the board on the basis of the cost of sustaining the board and the administrative costs of the department. The fees for licensure and permit shall be based upon, but not limited to:

1. Actual expenses and compensation of members of the board.
2. Supplies and other expenses.
3. Costs submitted by the department.

[C75, 77, 79, 81, § 154A.17]

86 Acts, ch 1245, § 1147

#### **154A.18 Display of license.**

A person shall not engage in business as a hearing aid dispenser, or display a sign, or in any other way advertise or claim to be a hearing aid dispenser after January 1, 1975, unless the person holds a valid license issued by the department as provided in this chapter. The license shall be conspicuously posted in the person's primary location of practice. A license confers upon the holder the right to practice as a hearing aid dispenser.

[C75, 77, 79, 81, § 154A.18]

2001 Acts, ch 58, §18; 2004 Acts, ch 1168, §9

#### **154A.19 Exceptions.**

This chapter shall not prohibit a corporation, partnership, trust, association, or other organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license if it employs only licensed hearing aid dispensers in the direct fitting or selection and sale of hearing aids. Such an organization shall file annually with the board a list of all licensed hearing aid dispensers and persons holding temporary permits directly or indirectly employed by it. Such an organization shall also file with the board a statement on a form approved by the board that the organization submits itself to the rules and regulations of the board and the provisions of this chapter which the department deems applicable.

This chapter shall not apply to a person who engages in the practices covered by this chapter if this activity is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public or charitable institution, or nonprofit organization, unless the institution or organization also dispenses or sells hearing aids.

This chapter shall not prevent any person from engaging in practices covered by this chapter, provided the person, or organization employing the person, does not dispense or sell hearing aids.

[C75, 77, 79, 81, § 154A.19]

2001 Acts, ch 58, §18

#### **154A.20 Rights of purchaser.**

1. A hearing aid dispenser shall deliver, to each person supplied with a hearing aid, a receipt which contains the licensee's signature and shows the licensee's business address and the number of the license, together with specifications as to the make, model, and serial number of the hearing aid furnished, and full terms of sale

clearly stated, including the date of consummation of the sale of the hearing aid. If a hearing aid is sold which is not new, the receipt and the container must be clearly marked "used" or "reconditioned", with the terms of guarantee, if any.

2. The receipt shall bear the following statement in type no smaller than the largest used in the body copy portion of the receipt:

"The purchaser has been advised that any examination or representation made by a licensed hearing aid dispenser in connection with the fitting or selection and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice."

3. Whenever any of the following conditions are found to exist either from observations by the licensed hearing aid dispenser or person holding a temporary permit or on the basis of information furnished by a prospective hearing aid user, the hearing aid dispenser or person holding a temporary permit shall, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that the individual's best interests would be served if the individual would consult a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician:

- a. Visible congenital or traumatic deformity of the ear.
- b. History of, or active drainage from the ear within the previous ninety days.
- c. History of sudden or rapidly progressive hearing loss within the previous ninety days.
- d. Acute or chronic dizziness.
- e. Unilateral hearing loss of sudden or recent onset within the previous ninety days.
- f. Significant air-bone gap (greater than or equal to 15dB ANSI 500, 1000 and 2000 Hz. average).
- g. Obstruction of the ear canal, by structures of undetermined origin, such as foreign bodies, impacted cerumen, redness, swelling, or tenderness from localized infections of the otherwise normal ear canal.

4. A copy of the written recommendation shall be retained by the licensed hearing aid dispenser for the period of seven years. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensed hearing aid dispenser for the period of seven years. Nothing in this section required to be performed by a licensed hearing aid dispenser shall mean that the hearing aid dispenser is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by this chapter.

5. No hearing aid shall be sold by any individual licensed under this chapter to a person twelve years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by a physician specializing in otolaryngology. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

6. A licensed hearing aid dispenser shall, upon the consummation of a sale of a hearing aid, keep and maintain records in the dispenser's office or place of business at all times and each such record shall be kept and maintained for a seven-year period. These records shall include:

- a. Results of test techniques as they pertain to fitting of the hearing aids.
- b. A copy of the written receipt and the written recommendation.

[C75, 77, 79, 81, § 154A.20]

2001 Acts, ch 58, §18; 2002 Acts, ch 1119, §17, 18

#### **154A.21 Notice of address.**

A licensee or person holding a temporary permit shall notify the department in writing of the address of the place where the licensee or permittee engages or intends to engage in business as a hearing aid dispenser. The department shall keep a record of the place of business of licensees and persons holding temporary permits.

Any notice required to be given by the department to a licensee shall be adequately served if sent by certified mail to the address of the last place of business recorded.

[C75, 77, 79, 81, § 154A.21]

2001 Acts, ch 58, §18

#### **154A.22 Deposit of fees.**

The department shall deposit all fees collected under the provisions of this chapter in the general fund of the state. Compensation and travel expenses of members and employees of the board, and other expenses necessary for the board to administer and carry out the provisions of this chapter shall be paid from funds appropriated from the general fund of the state.

[C75, 77, 79, 81, § 154A.22]

#### **154A.23 Complaints.**

Any person wishing to make a complaint against a licensee or holder of a temporary permit shall file a written statement with the board within twelve months from the date of the action upon which the complaint is based. If the board determines that the complaint alleges facts which, if proven, would be cause for the suspension or revocation of the license of the licensee or the permit of the holder of a temporary permit, it shall make an order fixing a time and place for a hearing and requiring the licensee or holder of a temporary permit complained against to appear and defend. The order shall contain a copy of the complaint, and the order and copy of the complaint shall be served upon the licensee or holder of a temporary permit at least twenty days before the date set for hearing, either personally or as provided in section 154A.21. Continuance or adjournment of a hearing date may be made for good cause. At the hearing the licensee or holder of a temporary permit may be represented by counsel. The licensee or holder of a temporary permit and the board may take depositions in advance of hearing and after service of the complaint, and either may compel the attendance of witnesses by subpoenas issued by the board. The board shall issue such subpoenas at the request of a licensee or holder of a temporary permit. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party may attend, with counsel, if desired, and cross-examine.

If the board determines from the evidence and proofs submitted that the licensee or holder of a temporary permit is guilty of violating any of the provisions of this chapter, or any of the regulations promulgated by the board pursuant to this chapter, the department shall, within thirty days after the hearing, issue an order refusing to issue or renew, or revoking or suspending, as the case may be, the hearing aid dispenser's license or temporary permit. The order shall include the findings of fact and the conclusions of law made by the board and counsel. A copy of the order shall be sent to the licensee or holder of a temporary permit by registered mail. The records of the department shall reflect the action taken by the board on the charges, and the department shall preserve a record of the proceedings in a manner similar to that used by courts of record in this state.

The final order of the board in the proceedings may be appealed to the district court of the county where the licensee or holder of a temporary permit resides, or in which the licensed hearing aid dispenser's principal place of business is located.

The department shall send a copy of the complaint and a copy of the board's final order to the attorney general for purposes of information in the event the licensee or holder of a temporary permit pursues a court appeal and for consideration as to whether the violations are flagrant enough to justify prosecution. The attorney general and all county attorneys shall assist the department in the enforcement of the provisions of this chapter.

[C75, 77, 79, 81, § 154A.23]

2001 Acts, ch 58, §18; 2002 Acts, ch 1119, §19

### **154A.24 Suspension or revocation.**

The board may revoke or suspend a license or temporary permit permanently or for a fixed period for any of the following causes:

1. Conviction of a felony. The record of conviction, or a certified copy, shall be conclusive evidence of conviction.
2. Procuring a license or temporary permit by fraud or deceit.
3. Unethical conduct in any of the following forms:
  - a. Obtaining a fee or making a sale by fraud or misrepresentation.
  - b. Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.
  - c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.
  - d. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
  - e. Representing that the service or advice of a person licensed to practice medicine, or one who is certificated as a clinical audiologist by the board of examiners of speech pathology and audiology or its equivalent, will be used or made available in the fitting or selection, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words "doctor", "clinic", "clinical audiologist", "state approved", or similar words, abbreviations or symbols which tend to connote the medical or other professions, except where the title "certified hearing aid audiologist" has been granted by the national hearing aid society, or that the hearing aid dispenser has been recommended by this state or the board when such is not accurate.
  - f. Habitual intemperance.
  - g. Permitting another person to use the license or temporary permit.
  - h. Advertising a manufacturer's product or using a manufacturer's name or trademark to imply a relationship

with the manufacturer that does not exist.

*i.* Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to a person who advises another in a professional capacity, as an inducement to influence the person or cause the person to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence others to refrain from dealing in the products of competitors.

*j.* Conducting business while suffering from a contagious or infectious disease.

*k.* Engaging in the fitting or selection and sale of hearing aids under a false name or alias, with fraudulent intent.

*l.* Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting or selection of hearing aids, except in cases of selling replacement hearing aids of the same make or model within one year of the original sale.

*m.* Gross incompetence or negligence in fitting or selection and selling of hearing aids.

*n.* Using an advertisement or other representation which has the effect of misleading or deceiving purchasers or prospective purchasers into the belief that any hearing aid or device, or part or accessory thereof, is a new invention or involves a new mechanical or scientific principle when such is not the fact.

*o.* Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle, and that in many cases of hearing loss, this type of instrument may not be suitable.

*p.* Stating or implying that the use of a hearing aid will restore normal hearing or preserve hearing or prevent or retard progressions of hearing impairment or any other false or misleading claim regarding the use or benefit of a hearing aid.

*q.* Representing or implying that a hearing aid is or will be "custom-made", "made to order", "prescription made", or in any other sense especially fabricated for an individual person when such is not the case.

*r.* Violating any of the provisions of section 714.16.

*s.* Failure to place in an advertisement, if an advertisement does not include the words "hearing aid" in the title of the business which is advertising, the qualifying words in the same size type, "for the purpose of fitting, selection, adaption, and sale of hearing aids". However, the qualifying words are not required if the advertisement includes the words, "hearing test", "hearing evaluation", "free hearing test", "free hearing evaluation", "hearing measurement", or "free hearing measurement", and the title of the business which is advertising appears in the advertisement and includes the words "hearing aid".

*t.* Such other acts or omissions as the board may determine to be unethical conduct.

[C75, 77, 79, 81, § 154A.24]

90 Acts, ch 1073, §1; 2001 Acts, ch 58, §18

### **154A.25 Prohibitions.**

A person shall not:

1. Sell, barter, or offer to sell or barter a license or temporary permit.
2. Purchase or procure by barter a license or temporary permit with intent to use it as evidence of the holder's qualifications to engage in business as a hearing aid dispenser.
3. Alter a license or temporary permit with fraudulent intent.
4. Use or attempt to use as a valid license a license or temporary permit which has been purchased, fraudulently obtained, counterfeited, or materially altered.
5. Willfully make a false statement in an application for a license or temporary permit or for renewal of a license or temporary permit.

[C75, 77, 79, 81, § 154A.25]

2001 Acts, ch 58, §18

#### **154A.26 Consumer protection.**

Nothing in this chapter shall be construed to limit the right of a person who desires to file a complaint against a licensee or holder of a temporary permit from filing a complaint with the attorney general pursuant to the provisions of section 714.16.

[C75, 77, 79, 81, § 154A.26]

#### **154A.27 Penalties.**

A violation of any provisions of this chapter is a simple misdemeanor.

[C75, 77, 79, 81, § 154A.27]