

WV Code §30-26

§30-26-1. Definitions.

Unless the context clearly requires otherwise, as used in this article:

(1) "Advertise," and any of its variants, means and includes the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio, television announcement or any other means or methods now or hereinafter employed to bring to the attention of the public the practice of fitting or dealing in hearing aids.

(2) "Board" means the West Virginia board of hearing-aid dealers.

(3) "Department" means the state department of health and when appropriate shall include the state director of health.

(4) "Hearing aid" means any wearable device or instrument or any combination thereof, designed for, represented as or offered for sale for the purpose of aiding, improving or compensating for defective or impaired human hearing and shall include earmolds, parts, attachments or other accessories thereto, but excluding batteries and cords.

(5) "Hearing-aid dealer" and "hearing-aid fitter" means any person engaged in the practice of dealing in or fitting of hearing aids.

(6) "License" means any license issued under the provisions of this article and shall include a temporary license. "Licensee" means any person holding any such license.

(7) "Person" means and includes any individual, partnership, trust, association, corporation or other like organization, or any combination thereof.

(8) "Practice of dealing in or fitting of hearing aids" means and includes:

(a) The measurement or other testing of human hearing by means of an audiometer, or by any other means;

(b) The selection, adaptation, fitting or sale of hearing aids by a person for the use of another person; or

(c) The making of impressions for earmolds.

(9) "Sell" or "sale" or any variant thereof, means any transfer of title or of the right of use by lease, bailment or any other contract, but shall not include transactions between distributors, dealers or licensees where the item transferred is intended for sale.

(10) "Trainee" means any person training to become a licensed hearing-aid dealer or fitter.

§30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

(a) Except as provided in subsections (b), (c) and (d) hereof no person shall, on or after the effective date of this article, engage in the practice of dealing in or fitting of hearing aids, either as a hearing-aid dealer, fitter or as a trainee, nor shall any person advertise or assume any such practice, without first being licensed or otherwise qualified under the provisions of this article.

(b) If the applicant is a partnership, trust, association, corporation or other like organization, the application, in addition to such other information as the board may require, shall be accompanied by an application for a license for each person, whether owner or employee, of such applicant who serves in the capacity of a hearing-aid dealer or fitter, or shall contain a statement that such applications for all such persons are submitted separately. No partnership, trust, association, corporation or other like organization shall permit any unlicensed person to sell hearing aids or to engage in the practice of dealing in or fitting of hearing aids.

(c) This article is not intended to prevent any person who is not licensed under this article from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids, provided such person or organization employing such person does not sell hearing aids or accessories thereto, except in the case of earmolds to be used only for the purpose of audiologic evaluation.

State or local governmental organizations or agencies and organizations chartered as not-for-profit shall not be eligible for licensure to fit and dispense hearing aids.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

(a) There is continued the West Virginia board of hearing-aid dealers, which is composed of five members to be appointed by the Governor, with the advice and consent of the Senate. The members of the board shall be residents of this state. One member shall be a person licensed to practice medicine in this state and one member shall hold a degree in audiology from an accredited college or university. The remaining three members shall be persons having no less than five years' experience as hearing-aid dealers or fitters and shall hold a valid license under the provisions of this article.

(b) The terms of office of each member of the board shall be four years, staggered in accordance with initial appointments under prior enactments of this act. A board member shall serve until his or her successor has been appointed and qualified and any vacancy in the office of a member shall be filled by appointment for the unexpired term of such member. Any member of the board shall be eligible for reappointment.

(c) The board shall annually at its meeting first succeeding May 1 elect from its own members a chairman and vice chairman.

(d) Each member of the board is entitled to receive for each day actually engaged in the duties of his or her office, an amount not to exceed the amount paid to legislators for their interim duties, and is entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a member of such board.

(e) All fees and other moneys collected by the board, pursuant to the provisions of this article, shall be kept in a separate fund and shall be expended solely for the purposes of this article. The compensation for the members of the board and all expenses incurred under this article shall be paid from this special fund and no such compensation or expenses shall be paid from the General Revenue Fund of this state. All disbursements of funds necessary to carry out the provisions of this article shall be so disbursed only upon the authority of the board.

(f) The board shall regulate and control the practice of dealing in or fitting of hearing aids in this state, and shall administer qualifying examinations in accordance with the provisions of this article to test the knowledge and proficiency of all prospective licensees or trainees.

(g) The board may purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants as provided in this article and may purchase such other equipment and supplies and employ such persons as it deems appropriate to carry out the provisions of this article.

(h) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code:

(1) For the proper performance of its duties;

(2) To define and prescribe the ethical practice of dealing in or fitting of hearing aids for the safety, protection and welfare of the public;

(3) To govern the time, place and manner of conducting the examinations required by this article and the standard, scope and subject of such examinations, which examinations shall, as a minimum, conform with the standards, scope and subjects set forth in section six of this article and manner, and the form in which applications for such examinations shall be filed;

(4) To establish procedures for determining whether persons holding similar valid licenses from other states or jurisdictions shall be required to take and successfully pass the appropriate qualifying examination as a condition for such licensing in this state; and

(5) To establish such fees for such examinations, permits, licenses and renewals as may be necessary to cover the costs of administration.

§30-26-4. Administrative duties; examinations; register; use of fees.

(a) Effective July 1, 2012, the administrative work of the board shall be performed by the board. The board shall keep full and complete records of all of their proceedings and accounts, which said records and accounts shall be open to public inspection at all reasonable times.

(b) The board may conduct, supervise and administer the qualifying examinations authorized and required by this article, to maintain for a register or record of persons who apply for a license or a temporary trainee permit as well as a register or record of the name and last-known business address of all persons to whom a license or trainee permit is issued pursuant to this article.

(c) Effective July 1, 2012, the board shall bear the costs of carrying out the powers and duties granted to it by this article from the fees collected by it for these purposes.

§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.

Each person desiring to obtain a license from the board to engage in the practice of dealing in or fitting of hearing aids shall make application to the board. The application shall be made in such manner and form as prescribed by the board and shall be accompanied by the prescribed fee. The application shall state under oath that the applicant:

(1) Intends to maintain a permanent office or place of business in this state or that the applicant has at the time of application a permanent office or place of business in another state within a reasonable commuting distance from this state. The board shall determine and prescribe by regulation the term "reasonable distance" as used herein;

(2) Is a person of good moral character and that he has never been convicted of nor is presently under indictment for a crime involving moral turpitude;

(3) Is eighteen years of age or older;

(4) Has an education equivalent to a four-year course in an accredited high school; and

(5) Is free of chronic infectious or contagious diseases.

Any person who fails to meet any of the standards set forth in the next preceding paragraph shall not be eligible or qualified to take the examination nor shall any such person be eligible or qualified to engage in the practice of dealing in or fitting of hearing aids.

The board, after first determining that the applicant is qualified and eligible in every respect to take the examination, shall notify the applicant that he has fulfilled all of the qualifications and eligibility requirements as required by this section and shall advise him of the date, time and place for him to appear to be examined as required by the provisions of this article and the regulations promulgated by the board pursuant to this article.

The board, with the aid and assistance of the department, shall give at least one annual examination of the type required by this article and may give such additional examinations, at such times and places, as the board and the department may deem proper, giving consideration to the number of applications.

§30-26-6. Standards, scope and subject of examination.

(a) Before obtaining a license to engage in the practice of dealing in or fitting of hearing- aids, an applicant must meet the following requirements:

(1) The applicant must pass the International Licensing Examination for Hearing Healthcare Professionals, prepared by the International Hearing Society, or an equivalent examination selected by the board.

(2) The applicant must pass a practical examination, which shall be a nationally recognized test selected by the board, or a test designed by the board to test the applicant's proficiency in the following techniques as they pertain to the fitting of hearing aids: (A) Pure tone audiometry, including air conduction testing;

(B) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing; and

(C) Masking when indicated and effective masking.

(3) The applicant must pass an examination, which shall be developed by the board, to test an applicant's competency in the following subjects: (A) Ability to counsel the person or family who will receive the hearing aid relative to the care and use of the instrument;

(B) Knowledge regarding the medical and rehabilitative facilities for hearing-handicapped children and adults in the area being served;

(C) Knowledge and understanding of the grounds for revocation, suspension, or probation of a license as outlined in this article; and

(D) Knowledge and understanding of criminal offenses as outlined in this article.

(b) The board may promulgate rules to implement the requirements of this section, including emergency rules promulgated pursuant to the provisions of article three, chapter twenty-nine-a of this code.

(c) The examinations required by this section shall be collectively referred to in this article as "the examination."

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

(a) Any person who has taken the examination shall be notified by the board within thirty days following such examination as to whether he or she has satisfactorily passed the examination. Such person shall also be advised of his or her right to take the examination in the future.

If such applicant has satisfactorily passed the examination, he or she shall be advised of that fact by the board and, upon payment of the prescribed fee, the board shall register the applicant as a

licensee and shall issue a license to such applicant. Such license shall remain in effect until the next succeeding June 30.

(b) Within six months following the effective date of this article, any applicant for a license who has been engaged in the practice of dealing in or fitting of hearing aids in this state for a period of three years immediately prior to such effective date, shall be so registered and issued a license without being required to undergo or take the examination required by this article: Provided, That such person meets all other requirements of this article and the rules and regulations promulgated pursuant thereto. All of the fees which such prospective licensee would be otherwise required to pay shall be paid by such prospective licensee in the same manner and to the same extent as if such prospective licensee had not so engaged in such practice in this state for such three-year period.

(c) The issuance of a license by the board must have the concurrence of a majority of its members.

§30-26-8. Posting of license required; duplicate copies.

Each person who holds a hearing-aid dealer's or fitter's license and engages in the practice of dealing in the fitting of hearing aids shall display such license in a conspicuous place in his office or place of business at all times. Each person who maintains more than one office or place of business shall post a duplicate copy of the license at each location. The board shall issue duplicate copies of a license upon receipt of a properly completed application and payment of \$1 for each copy requested.

§30-26-9. Renewal of license.

(a) A person who is engaged in the practice of dealing in or fitting of hearing aids shall renew his license annually upon payment of the prescribed renewal fee. A thirty-day period shall be allowed after expiration of a license during which any such license may be renewed upon payment of the renewal fee plus a penalty for late filing. After the expiration of such thirty-day period, the board may renew such license upon payment of twice the prescribed renewal fee. No person who applies for renewal, whose license was suspended for failure to renew, may be required to submit to any examination as a condition of renewal if application is made within two years following the date such license was so suspended.

(b) In each even numbered year beginning with the year one thousand nine hundred eighty-eight, each applicant for renewal of license shall present to the board evidence of continuing study and education of not less than twenty hours in a course of study approved by the board. Such twenty hours of instruction must have been gained during the immediately preceding two years.

§30-26-10. Notification of change of address of licensee required.

Every licensee under the provisions of this article shall notify the board in writing of the address of each place where he is, or intends to be, engaged in the practice of dealing in or fitting of hearing aids. The board shall cause to be kept a record of each place of business of every such

licensee. Any notice required to be given by the board or the department to any such licensee shall be given by mailing the same to him at the address shown upon such records.

§30-26-11. Reciprocity.

Whenever the board determines that another state or jurisdiction has requirements for the licensing of persons to engage in the practice of dealing in or fitting of hearing aids, which requirements meet the minimum requirements and standards set forth in this article and the rules and regulations promulgated pursuant to this article, the board may, in the manner prescribed by its rules and regulations, issue a license without the examination required by this article, to any person holding a license in such other state or jurisdiction, upon application, providing such prospective licensee meets all of the requirements set forth in this article and the rules and regulations of the board with respect thereto. All of the fees which such prospective licensee would be otherwise required to pay, shall be paid by such prospective licensee in the same manner and to the same extent as if such prospective licensee were not qualified to engage in such other state or jurisdiction.

§30-26-12. Temporary trainee permits.

A person who meets all of the qualifications and requirements set forth in subdivision (2), section five of this article may obtain a temporary trainee permit upon application to the board. All such applications for a temporary trainee permit shall be made in the manner and form prescribed in the rules and regulations of the board.

Upon receiving an application for a temporary trainee permit as prescribed in this section, accompanied by the prescribed fee, the board shall issue such permit which shall entitle the applicant trainee to engage in the practice of dealing in or fitting of hearing aids for a period of one year under the supervision and control of a licensee, such licensee to be responsible for the supervision, training and control of such trainee.

If a person holding a temporary trainee permit under this section has not successfully passed the licensing examination within one year from the date of issuance of such permit, the permit may be renewed or reissued under such conditions as the board may require in its rules and regulations for an additional one-year period upon payment of the prescribed fee. No such temporary trainee permit shall be reissued, renewed or extended more than once.

§30-26-13. Refusal to issue, suspension or revocation of license or trainee permit; false and deceptive advertising.

(a) The board may refuse to issue or renew, or may suspend or revoke any license or trainee permit for any one, or any combination of the following causes: Violation of a rule or regulation governing the ethical practice of dealing in or fitting of hearing aids promulgated by the board under the authority granted by this article; conviction of a felony, as shown by a certified copy of the record of the court wherein such conviction was had after such conviction has become final; the obtaining of or the attempt to obtain a license, money or any other thing of value, by fraudulent misrepresentation; malpractice; continued practice of dealing in or fitting of hearing

aids by a person knowingly having a chronic infectious or contagious disease; habitual drunkenness or addiction to the use of a controlled substance as defined in chapter sixty-a of this code; advertising, practicing or attempting to practice under a name other than one's own; advertising by means of or selling by the use of knowingly false or deceptive statements.

(b) False and deceptive advertisement shall constitute unethical practice and the board, by rules and regulations may regulate and proscribe acts considered by it to be false and deceptive advertisement.

The rules and regulations promulgated pursuant to this subsection shall include prohibitions against (1) 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, where 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, (2) representing 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 using the words "doctor," "clinic" or similar words, abbreviations or symbols which tend to connote the medical profession when such use is not accurate, and (3) advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist or using the words "audiologist," "state licensed clinic," "state registered," "state certified," or "state approved" or any other term, abbreviation or symbol when it would falsely give the impression that service is being provided by persons holding a degree in audiology or trained in clinical audiology, or that licensee's service has been recommended by the state when such is not the case.

(c) The refusal to issue or renew a license or trainee permit or the suspension or revocation of a license or trainee permit by the board must have the concurrence of a majority of the members of the board.

§30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

(a) Every licensee engaged in the practice of dealing in or fitting of hearing aids shall, prior to the sale or the fitting of a hearing aid intended to be worn or used by any person under eighteen years of age, first ascertain whether such person has within the next preceding six months been examined for the defective or impaired hearing condition sought to be relieved by an otolaryngologist or other duly licensed physician. If such person has been so examined, the licensee shall, prior to the sale or fitting of such hearing aid, obtain from such otolaryngologist or physician written authority to fit a hearing aid. If such person has not been so examined, the licensee shall not proceed to the sale or fitting of a hearing aid until after such person has been so examined. If the prospective user is eighteen years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement provided that the hearing aid dispenser:

(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 such a medical evaluation;

(3) Affords the prospective user the opportunity to sign the following statement: I have been advised by (hearing aid dispenser's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician, preferably one who specializes in diseases of the ear, before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

(b) Prior to the sale of a hearing aid, every licensee shall be required to advise in writing, in the manner and form prescribed by the board, the person to whom he intends to sell or fit with such hearing aid that such person's best interest would be served by consulting an otolaryngologist or other physician specializing in diseases of the ear, or any other physician duly licensed to practice medicine in this state, if any of the following conditions are found upon examination of such person:

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

(2) History of active ear discharge within the previous ninety days;

(3) History of a sudden or rapidly progressive hearing loss within the previous ninety days;

(4) Acute or chronic dizziness;

(5) Unilateral hearing loss of sudden or recent onset within the previous ninety days; or

(6) Significant air-bone gap.

(c) A copy of any writing or form required to be given to a prospective purchaser or other person by the terms of this section shall be retained in the records of the licensee for a period of seven years following the issuance of each writing.

§30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required; right to rescind purchase agreement.

(a) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain his signature, his business address and the number of his license; the specifications as to the make and model of the hearing aid furnished; the full terms of the sale, including the date upon which the hearing aid was supplied to the person; and the following statement: "Any person supplied with a hearing aid by a hearing-aid dealer licensed in this state has the right to return the hearing aid to the dealer from whom the aid was purchased within thirty days after receipt of the aid and rescind the purchase agreement except for reasonable fitting and examination charges if the person is dissatisfied with the hearing aid." If a hearing aid which has been previously sold at retail is sold, the receipt shall be clearly marked as "used" or "reconditioned," whichever is applicable, with terms of guarantee, if any.

Such receipt shall be in the manner and form as prescribed by the board in its rules and regulations. Such rules and regulations shall prescribe the type and size of print to be used in such receipt and the receipt shall set forth such additional information as the board may prescribe. A copy of such receipt shall be retained in the records of the licensee for a period of seven years following the issuance of such receipt.

(b) Each person supplied with a hearing aid by a hearing-aid dealer licensed pursuant to the provisions of this article shall have the right to return the hearing aid to the dealer within thirty calendar days of receipt and rescind the purchase agreement if the hearing aid does not function properly, cannot be adjusted to satisfactorily correct the deficiency in the person's hearing or the person is otherwise dissatisfied with the hearing aid. If a hearing-aid dealer, pursuant to being notified by a person to whom he has supplied a hearing aid that the hearing aid does not function properly, does not satisfactorily correct the deficiency in the person's hearing or that the person is otherwise dissatisfied with the hearing aid, makes an adjustment to the hearing aid or advises the person to continue use of the hearing aid for the purpose of becoming more accustomed thereto or any other reason, the right of the person to whom the hearing aid was supplied shall be extended for thirty calendar days following the date upon which such adjustment was made or advisement was given.

(c) An exercise of the right to rescind the purchase agreement by a person to whom a hearing aid has been supplied may not preclude the dealer from charging reasonable fees for examination and fitting. The maximum fees which may be charged by a hearing-aid dealer for examination and fitting shall be fixed by the West Virginia board of hearing-aid dealers by rule and regulation lawfully promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

§30-26-16. Hearing procedures; judicial review.

Any person, including a person who brings a complaint against a licensee or trainee before the board, adversely affected by any decision, ruling or order of the board shall be entitled to a hearing before the board. The hearing may be held by the board or a majority thereof either in the county wherein the licensee, trainee, prospective licensee or prospective trainee resides or may be held in the county wherein the person adversely affected resides or may be so held in some other county as the board may direct. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to any hearing held by the board and the administrative procedures in connection with and following such hearing shall apply with like effect as if the provisions of said article five were set forth in extenso in this section. For the purpose of conducting such hearing the board shall have the power and authority to issue subpoenas and subpoenas duces tecum in accordance with the provisions of section one, article five, chapter twenty-nine-a. Any such hearing shall be held within thirty days after the date upon which a request therefor was made. All requests for hearings shall be made in writing to the board by certified or registered mail, return receipt requested. The board may postpone or continue any hearing on its own motion or upon application for good cause shown.

Any person, including a person who brings a complaint against a licensee or trainee before the board, who may be adversely affected by any ruling or order made or entered by the board following a hearing, shall be entitled to judicial review of such order, in accordance with the

provisions of section four, article five, chapter twenty-nine-a of this code and the provisions of said section four shall apply to and govern such appeal with like effect as if the provisions of said section four were set forth in extenso in this section and the provisions of article six of said chapter twenty-nine-a shall apply with respect to appeals to the Supreme Court of Appeals in the same manner.

§30-26-17. Prohibited acts and practices.

Any of the following acts are hereby prohibited and shall be punishable under section eighteen of this article and shall also constitute unethical practice and no person shall:

- (1) Sell, barter or offer to sell or barter a license issued pursuant to this article.
- (2) Purchase or procure by barter any such license with intent to use it as evidence of the holder's qualifications to engage in the practice of dealing in or fitting of hearing aids.
- (3) Alter materially a license issued pursuant to this article.
- (4) Use or attempt to use as a valid license any license which has been purchased, fraudulently obtained, counterfeited or materially altered.
- (5) Willfully make any false statement in an application for license or for renewal thereof.
- (6) Advertise for the mail-order sale of hearing aids in any advertising medium or sell hearing aids by mail to any person other than distributors, dealers or those excluded from the provisions of this article.

§30-26-18. Offenses and penalties.

Any person who shall engage in the practice of dealing in or fitting of hearing aids without qualifying to do so under the provisions of this article or any person who commits any of the acts prohibited under the provisions of section seventeen of this article shall be guilty of a misdemeanor, and, upon conviction for the first offense, shall be fined not less than \$100 nor more than \$500 or imprisoned in the county jail for not more than six months, or be subject to both such fine and imprisonment, and for the second or any subsequent offense, shall be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail for not less than thirty days nor more than one year or be subject to both such fine and imprisonment. Each sale made in violation of this article shall constitute a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for the enforcement of this article.

§30-26-19. Injunction.

Notwithstanding the existence of any other remedy, the board may, in the manner provided by law, maintain an action for an injunction against any person to restrain or prevent the practice of dealing in or fitting of hearing aids when such person repeatedly refuses to obtain a license therefor and continues such practice without first obtaining a license therefor in the manner

hereinbefore provided, and an action for an injunction may be maintained for any continued and repeated violation of any of the provisions of this article and the rules and regulations promulgated pursuant thereto.

§30-26-20. Construction and severability.

The provisions of this article and the regulations promulgated thereunder shall be liberally construed so as to carry into effect its purposes and to protect the health, safety and welfare of the public.

If any provision of this article or the application thereof to any person or circumstance shall be held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.