

2 **ESHB 1500** - S COMM AMD

3 By Committee on Health & Human Services

4 ADOPTED 4/7/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 18.35.010 and 1991 c 3 s 80 are each amended to read
8 as follows:

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

10 (1) "Department" means the department of health.

11 (2) "~~((Council))~~ Board" means the ~~((council))~~ board on fitting and
12 dispensing of hearing aids.

13 (3) "Hearing aid" means any wearable prosthetic instrument or
14 device designed for or represented as aiding, improving, compensating
15 for, or correcting defective human hearing and any parts, attachments,
16 or accessories of such an instrument or device, excluding batteries and
17 cords and ear molds.

18 (4) "Fitting and dispensing of hearing aids" means the sale, lease,
19 or rental or attempted sale, lease, or rental of hearing aids together
20 with the selection and adaptation of hearing aids and the use of those
21 tests and procedures essential to the performance of these functions.
22 It includes the taking of impressions for ear molds for these purposes.

23 (5) "Secretary" means the secretary of health.

24 (6) "Establishment" means any facility engaged in the fitting and
25 dispensing of hearing aids.

26 "**Sec. 2.** RCW 18.35.050 and 1989 c 198 s 3 are each amended to read
27 as follows:

28 Except as otherwise provided in this chapter an applicant for
29 license shall appear at a time and place and before such persons as the
30 department may designate to be examined by written and practical tests.
31 The department shall give an examination in May and November of each
32 year. The examination shall be reviewed annually by the ~~((council))~~
33 board and the department, and revised as necessary. No examination of
34 any established association may be used as the exclusive replacement

1 for the examination unless approved (~~and developed~~) by the
2 (~~council~~) board.

3 **Sec. 3.** RCW 18.35.060 and 1991 c 3 s 82 are each amended to read
4 as follows:

5 (1) The department shall issue a trainee license to any applicant
6 who has shown to the satisfaction of the department that:

7 (a) The applicant is at least eighteen years of age;

8 (b) If issued a trainee license, would be employed and directly
9 supervised in the fitting and dispensing of hearing aids by a person
10 licensed in good standing as a fitter-dispenser for at least one year
11 unless otherwise approved by the (~~council~~) board; and

12 (c) Has paid an application fee determined by the secretary as
13 provided in RCW 43.70.250, to the department.

14 The provisions of RCW 18.35.030, 18.35.110, and 18.35.120 shall
15 apply to any person issued a trainee license. Pursuant to the
16 provisions of this section, a person issued a trainee license may
17 engage in the fitting and dispensing of hearing aids without having
18 first passed the examination provided under this chapter.

19 (2) The trainee license shall contain the name of the person
20 licensed under this chapter who is employing and supervising the
21 trainee and that person shall execute an acknowledgment of
22 responsibility for all acts of the trainee in connection with the
23 fitting and dispensing of hearing aids.

24 (3) A trainee may fit and dispense hearing aids, but only if the
25 trainee is under the direct supervision of a person licensed under this
26 chapter in a capacity other than as a trainee. Direct supervision by
27 a licensed fitter-dispenser shall be required whenever the trainee is
28 engaged in the fitting or dispensing of hearing aids during the
29 trainee's first three months of full-time employment. The (~~council~~)
30 board shall develop and adopt guidelines on any additional supervision
31 or training it deems necessary.

32 (4) The trainee license shall expire one year from the date of its
33 issuance except that on recommendation of the (~~council~~) board the
34 license may be reissued for one additional year only.

35 (5) No person licensed under this chapter may assume the
36 responsibility for more than two trainees at any one time, except that
37 the department may approve one additional trainee if none of the
38 trainees is within the initial ninety-day period of direct supervision

1 and the licensee demonstrates to the department's satisfaction that
2 adequate supervision will be provided for all trainees.

3 **Sec. 4.** RCW 18.35.110 and 1987 c 150 s 22 are each amended to read
4 as follows:

5 In addition to causes specified under RCW 18.130.170 and
6 18.130.180, any person licensed under this chapter may be subject to
7 disciplinary action by the (~~ecouncil~~) board for any of the following
8 causes:

9 (1) For unethical conduct in dealing in hearing aids. Unethical
10 conduct shall include, but not be limited to:

11 (a) Using or causing or promoting the use of, in any advertising
12 matter, promotional literature, testimonial, guarantee, warranty,
13 label, brand, insignia, or any other representation, however
14 disseminated or published, which is false, misleading or deceptive;

15 (b) Failing or refusing to honor or to perform as represented any
16 representation, promise, agreement, or warranty in connection with the
17 promotion, sale, dispensing, or fitting of the hearing aid;

18 (c) Advertising a particular model, type, or kind of hearing aid
19 for sale which purchasers or prospective purchasers responding to the
20 advertisement cannot purchase or are dissuaded from purchasing and
21 where it is established that the purpose of the advertisement is to
22 obtain prospects for the sale of a different model, type, or kind than
23 that advertised;

24 (d) Falsifying hearing test or evaluation results;

25 (e)(i) Whenever any of the following conditions are found or should
26 have been found to exist either from observations by the licensee or on
27 the basis of information furnished by the prospective hearing aid user
28 prior to fitting and dispensing a hearing aid to any such prospective
29 hearing aid user, failing to advise that prospective hearing aid user
30 in writing that the user should first consult a licensed physician
31 specializing in diseases of the ear or if no such licensed physician is
32 available in the community then to any duly licensed physician:

33 (A) Visible congenital or traumatic deformity of the ear, including
34 perforation of the eardrum;

35 (B) History of, or active drainage from the ear within the previous
36 ninety days;

37 (C) History of sudden or rapidly progressive hearing loss within
38 the previous ninety days;

1 (D) Acute or chronic dizziness;

2 (E) Any unilateral hearing loss;

3 (F) Significant air-bone gap when generally acceptable standards

4 have been established as defined by the food and drug administration;

5 (G) Visible evidence of significant cerumen accumulation or a

6 foreign body in the ear canal;

7 (H) Pain or discomfort in the ear; or

8 (I) Any other conditions that the ((department)) board may by rule

9 establish. It is a violation of this subsection for any licensee or

10 that licensee's employees and putative agents upon making such required

11 referral for medical opinion to in any manner whatsoever disparage or

12 discourage a prospective hearing aid user from seeking such medical

13 opinion prior to the fitting and dispensing of a hearing aid. No such

14 referral for medical opinion need be made by any licensee in the

15 instance of replacement only of a hearing aid which has been lost or

16 damaged beyond repair within six months of the date of purchase. The

17 licensee or the licensee's employees or putative agents shall obtain a

18 signed statement from the hearing aid user documenting the waiver of

19 medical clearance and the waiver shall inform the prospective user that

20 signing the waiver is not in the user's best health interest:

21 PROVIDED, That the licensee shall maintain a copy of either the

22 physician's statement showing that the prospective hearing aid user has

23 had a medical evaluation or the statement waiving medical evaluation,

24 for a period of three years after the purchaser's receipt of a hearing

25 aid. Nothing in this section required to be performed by a licensee

26 shall mean that the licensee is engaged in the diagnosis of illness or

27 the practice of medicine or any other activity prohibited under the

28 laws of this state;

29 (ii) Fitting and dispensing a hearing aid to any person under

30 eighteen years of age who has not been examined and cleared for hearing

31 aid use within the previous six months by a physician specializing in

32 otolaryngology except in the case of replacement instruments or except

33 in the case of the parents or guardian of such person refusing, for

34 good cause, to seek medical opinion: PROVIDED, That should the parents

35 or guardian of such person refuse, for good cause, to seek medical

36 opinion, the licensee shall obtain from such parents or guardian a

37 certificate to that effect in a form as prescribed by the department;

38 (iii) Fitting and dispensing a hearing aid to any person under

39 eighteen years of age who has not been examined by an audiologist who

1 holds at least a master's degree in audiology for recommendations
2 during the previous six months, without first advising such person or
3 his or her parents or guardian in writing that he or she should first
4 consult an audiologist who holds at least a master's degree in
5 audiology, except in cases of hearing aids replaced within six months
6 of their purchase;

7 (f) Representing that the services or advice of a person licensed
8 to practice medicine and surgery under chapter 18.71 RCW or osteopathy
9 and surgery under chapter 18.57 RCW or of a clinical audiologist will
10 be used or made available in the selection, fitting, adjustment,
11 maintenance, or repair of hearing aids when that is not true, or using
12 the word "doctor," "clinic," or other like words, abbreviations, or
13 symbols which tend to connote a medical or osteopathic profession when
14 such use is not accurate;

15 (g) Permitting another to use his or her license;

16 (h) Stating or implying that the use of any hearing aid will
17 restore normal hearing, preserve hearing, prevent or retard progression
18 of a hearing impairment, or any other false, misleading, or medically
19 or audiologically unsupportable claim regarding the efficiency of a
20 hearing aid;

21 (i) Representing or implying that a hearing aid is or will be
22 "custom-made," "made to order," "prescription made," or in any other
23 sense specially fabricated for an individual when that is not the case;
24 or

25 (j) Directly or indirectly offering, giving, permitting, or causing
26 to be given, money or anything of value to any person who advised
27 another in a professional capacity as an inducement to influence that
28 person, or to have that person influence others to purchase or contract
29 to purchase any product sold or offered for sale by the licensee, or to
30 influence any person to refrain from dealing in the products of
31 competitors.

32 (2) Engaging in any unfair or deceptive practice or unfair method
33 of competition in trade within the meaning of RCW 19.86.020 (~~as now or~~
34 ~~hereafter amended~~)).

35 (3) Aiding or abetting any violation of the rebating laws as stated
36 in chapter 19.68 RCW.

37 **Sec. 5.** RCW 18.35.140 and 1983 c 39 s 11 are each amended to read
38 as follows:

1 The powers and duties of the department, in addition to the powers
2 and duties provided under other sections of this chapter, are as
3 follows:

4 ~~(1) ((To purchase and maintain or rent audiometric equipment and~~
5 ~~facilities necessary to carry out the examination of applicants for~~
6 ~~license.)) To provide facilities necessary to carry out the examination~~
7 ~~of applicants for license.~~

8 (2) To authorize all disbursements necessary to carry out the
9 provisions of this chapter.

10 (3) To require the periodic examination of the audiometric testing
11 equipment and to carry out the periodic inspection of facilities of
12 persons who deal in hearing aids, as reasonably required within the
13 discretion of the department.

14 **Sec. 6.** RCW 18.35.150 and 1989 c 198 s 7 are each amended to read
15 as follows:

16 (1) There is created hereby the ~~((council))~~ board on fitting and
17 dispensing of hearing aids. The ~~((council))~~ board shall consist of
18 ~~((nine))~~ seven members to be appointed by the governor.

19 (2) Members of the ~~((council))~~ board shall be residents of this
20 state. ~~((Five))~~ Two members shall represent the public. Two members
21 shall be persons experienced in the fitting of hearing aids who shall
22 hold valid licenses under this chapter and who do not have a masters
23 level college degree in audiology. One advisory nonvoting member shall
24 be a medical ~~((doctor))~~ or osteopathic physician specializing in
25 diseases of the ear. ~~((One member shall be a nondispensing~~
26 ~~audiologist. Two members shall represent the public.))~~ Two members
27 must be experienced in the fitting of hearing aids, must be licensed
28 under this chapter, and shall have received at a minimum a masters
29 level college degree in audiology.

30 (3) The term of office of a member is three years. No member shall
31 be appointed to serve more than two consecutive terms. A member shall
32 continue to serve until a successor has been appointed. The governor
33 shall either reappoint the member or appoint a successor to assume the
34 member's duties at the expiration of his or her predecessor's term. A
35 vacancy in the office of a member shall be filled by appointment for
36 the unexpired term.

37 (4) The ~~((chairman))~~ chair of the ~~((council))~~ board shall be
38 elected from the membership of the ~~((council))~~ board at the beginning

1 of each year. In event of a tie, the issue shall be brought to a
2 second vote and the chair shall refrain from voting.

3 (5) The ((~~council~~)) board shall meet at least once each year, at a
4 place, day and hour determined by the ((~~council~~)) board, unless
5 otherwise directed by a majority of ((~~council~~)) board members. The
6 ((~~council~~)) board shall also meet at such other times and places as are
7 requested by the department or by three members of the ((~~council~~))
8 board.

9 (6) Members of the ((~~council~~)) board shall be compensated in
10 accordance with RCW 43.03.240 and shall be reimbursed for their travel
11 expenses in accordance with RCW 43.03.050 and 43.03.060.

12 **Sec. 7.** RCW 18.35.161 and 1987 c 150 s 23 are each amended to read
13 as follows:

14 The ((~~council~~)) board shall have the following powers and duties:

15 (1) To establish by rule such minimum standards and procedures in
16 the fitting and dispensing of hearing aids as deemed appropriate and in
17 the public interest;

18 (2) To develop guidelines on the training and supervision of
19 trainees;

20 (3) To adopt any other rules ((~~or regulations~~)) necessary to
21 implement this chapter and which are not inconsistent with it;

22 (4) To develop, approve, and administer all licensing examinations
23 required by this chapter; and

24 (5) To require a licensee to make restitution to any individual
25 injured by a violation of this chapter or chapter 18.130 RCW, the
26 uniform disciplinary act. The authority to require restitution does
27 not limit the ((~~council's~~)) board's authority to take other action
28 deemed appropriate and provided for in this chapter or chapter 18.130
29 RCW.

30 **Sec. 8.** RCW 18.35.170 and 1973 1st ex.s. c 106 s 17 are each
31 amended to read as follows:

32 A member of the ((~~council~~)) board on fitting and dispensing of
33 hearing aids shall not be permitted to take the examination provided
34 under this chapter unless he or she has first satisfied the department
35 that adequate precautions have been taken to assure that he or she does
36 not and will not have any knowledge, not available to the members of
37 the public at large, as to the contents of the examination.

1 **Sec. 9.** RCW 18.35.185 and 1989 c 198 s 12 are each amended to read
2 as follows:

3 (1) In addition to any other rights and remedies a purchaser may
4 have, the purchaser of a hearing aid shall have the right to rescind
5 the transaction for other than the ~~((seller's))~~ licensee's breach if:

6 (a) The purchaser, for reasonable cause, returns the hearing aid or
7 holds it at the ~~((seller's))~~ licensee's disposal, if the hearing aid is
8 in its original condition less normal wear and tear. "Reasonable
9 cause" shall be defined by the ~~((council))~~ board but shall not include
10 a mere change of mind on the part of the purchaser or a change of mind
11 related to cosmetic concerns of the purchaser about wearing a hearing
12 aid; and

13 (b) The purchaser sends notice of the cancellation ~~((to the~~
14 ~~licensee at the licensee's place of business))~~ by certified mail,
15 return receipt requested, to the establishment employing the licensee
16 at the time the hearing aid was originally purchased, and the notice is
17 posted not later than thirty days following the date of delivery, but
18 the purchaser and the ~~((seller))~~ licensee may extend the deadline for
19 posting of the notice of rescission by mutual, written agreement. In
20 the event the hearing aid is in the possession of the ~~((seller))~~
21 licensee or the ~~((seller's))~~ licensee's representative during the
22 thirty days following the date of delivery, the deadline for posting
23 the notice of rescission shall be extended by an equal number of days
24 that the aid is in the possession of the ~~((seller))~~ licensee or the
25 ~~((seller's))~~ licensee's representative. Where the hearing aid is
26 returned to the ~~((seller))~~ licensee for any inspection for modification
27 or repair, and the ~~((seller))~~ licensee has notified the purchaser that
28 the hearing aid is available for redelivery, and where the purchaser
29 has not responded by either taking possession of the hearing aid or
30 instructing the ~~((seller))~~ licensee to forward it to the purchaser,
31 then the deadline for giving notice of the rescission shall begin seven
32 working days after this notice.

33 (2) If the transaction is rescinded under this section or as
34 otherwise provided by law and the hearing aid is returned to the
35 licensee, the licensee shall refund to the purchaser any payments or
36 deposits for that hearing aid. However, the licensee may retain, for
37 each hearing aid, fifteen percent of the total purchase price or one
38 hundred dollars, whichever is less. The licensee shall also return any
39 goods traded in contemplation of the sale, less any costs incurred by

1 the licensee in making those goods ready for resale. The refund shall
2 be made within ten days after the rescission. The buyer shall incur no
3 additional liability for such rescission.

4 (3) For the purposes of this section, the purchaser shall have
5 recourse against the bond held by the establishment entering into a
6 purchase agreement with the buyer, as provided by RCW 18.35.240.

7 **Sec. 10.** RCW 18.35.220 and 1987 c 150 s 25 are each amended to
8 read as follows:

9 (1) If the ((~~council~~)) board determines following notice and
10 hearing, or following notice if no hearing was timely requested, that
11 a person has:

12 (a) Violated any provisions of this chapter or chapter 18.130 RCW;
13 or

14 (b) Violated any lawful order, or rule of the ((~~council~~)) board
15 an order may be issued by the ((~~council~~)) board requiring the person to
16 cease and desist from the unlawful practice. The ((~~council~~)) board
17 shall then take affirmative action as is necessary to carry out the
18 purposes of this chapter.

19 (2) If the ((~~council~~)) board makes a written finding of fact that
20 the public interest will be irreparably harmed by delay in issuing an
21 order, a temporary cease and desist order may be issued. Prior to
22 issuing a temporary cease and desist order, the ((~~council~~)) board,
23 whenever possible, shall give notice by telephone or otherwise of the
24 proposal to issue a temporary cease and desist order to the person to
25 whom the order would be directed. Every temporary cease and desist
26 order shall include in its terms a provision that upon request a
27 hearing will be held to determine whether the order becomes permanent.

28 (3) The department, with or without prior administrative
29 proceedings, may bring an action in the superior court to enjoin the
30 acts or practices and to enforce compliance with this chapter, or rule
31 or order under this chapter. Upon proper showing, injunctive relief or
32 temporary restraining orders shall be granted and a receiver or
33 conservator may be appointed. The department shall not be required to
34 post a bond in any court proceedings.

35 **Sec. 11.** RCW 18.35.240 and 1991 c 3 s 85 are each amended to read
36 as follows:

1 (1) Every establishment engaged in the fitting and dispensing of
2 hearing aids shall file with the department a surety bond in the sum of
3 ten thousand dollars, running to the state of Washington, for the
4 benefit of any person injured or damaged as a result of any violation
5 by the establishment's employees or agents of any of the provisions of
6 this chapter or rules adopted by the secretary.

7 (2) In lieu of the surety bond required by this section, the
8 establishment may file with the department a cash deposit or other
9 negotiable security acceptable to the department. All obligations and
10 remedies relating to surety bonds shall apply to deposits and security
11 filed in lieu of surety bonds.

12 (3) If a cash deposit is filed, the department shall deposit the
13 funds with the state treasurer. The cash or other negotiable security
14 deposited with the department shall be returned to the depositor one
15 year after the establishment has discontinued the fitting and
16 dispensing of hearing aids if no legal action has been instituted
17 against the establishment, its agents or employees, or the cash deposit
18 or other security. The establishment owners shall notify the
19 department if the establishment is sold or has discontinued the fitting
20 and dispensing of hearing aids in order that the cash deposit or other
21 security may be released at the end of one year from that date.

22 (4) A surety may file with the department notice of withdrawal of
23 the bond of the establishment. Upon filing a new bond, or upon the
24 expiration of sixty days after the filing of notice of withdrawal by
25 the surety, the liability of the former surety for all future acts of
26 the establishment terminates.

27 (5) Upon the filing with the department notice by a surety of
28 withdrawal of the surety on the bond of an establishment or upon the
29 cancellation by the department of the bond of a surety under this
30 section, the department shall immediately give notice to the
31 establishment by certified or registered mail with return receipt
32 requested addressed to the establishment's last place of business as
33 filed with the department.

34 (6) The department shall immediately cancel the bond given by a
35 surety company upon being advised that the surety company's license to
36 transact business in this state has been revoked.

37 (7) Each invoice for the purchase of a hearing aid provided to a
38 customer must clearly display on the first page the bond number of the
39 establishment or the licensee selling the hearing aid.

1 18.35.220, and 18.35.240; and adding a new section to chapter 18.35
2 RCW."

--- END ---