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CHAPTER 25.

 PRACTICE OF SPECIALIZING IN HEARING AIDS ACT

**SECTION 40‑25‑10.** Citation of Act.

 This chapter may be cited as the "Practice of Specializing in Hearing Aids Act".

HISTORY: 1962 Code Section 56‑745; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑20.** Definitions.

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

 (1) "Department" means the Department of Health and Environmental Control.

 (2) "Commission" means the State Commission for Hearing Aid Specialists.

 (3) "License" means a license issued by the department under this chapter to hearing aid specialists.

 (4) "Temporary permit" means a permit issued while the applicant is in training to become a licensed hearing aid specialist.

 (5) "Hearing aid" means an acceptable wearable instrument or device designated or offered to aid or compensate for impaired human hearing and parts, attachments, or accessories, including earmold, but excluding batteries and cords.

 (6) "Practice of specializing in hearing aids" means the measurement of human hearing by an audiometer and by other established means solely for fitting, making selections, adaptations, or sale of hearing aids. It also includes the making of impressions for earmolds.

 (7) "Sell" or "sale" means the transfer of title or of the right to use by lease, bailment, or other contract, excluding wholesale transactions with distributors or specialists.

 (8) "Hearing aid specialist" means an individual licensed under this chapter to engage in the practice of specializing in hearing aids.

 (9) "Audiologist" means an individual licensed by the State Board of Examiners in Speech Pathology and Audiology as an audiologist.

 (10) "Otolaryngologist" means a licensed physician specializing in ear, nose, and throat.

HISTORY: 1962 Code Section 56‑745.1; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑30.** Powers and duties of Department of Health and Environmental Control.

 The powers and duties of the department are to:

 (1) authorize disbursements necessary to carry out this chapter;

 (2) supervise issuance of licenses "by experience" and administer qualifying examinations to test the knowledge and proficiency of applicants licensed by examination;

 (3) register persons who apply to the department and are qualified to engage in the practice of specializing in hearing aids;

 (4) purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants;

 (5) issue and renew licenses;

 (6) suspend or revoke licenses or require that refunds be made;

 (7) designate the time and place for examining applicants;

 (8) enforce this chapter;

 (9) promulgate and publish regulations not inconsistent with the laws of this State and necessary to carry out this chapter, including the establishment of licensing fees;

 (10) appoint or employ subordinate employees;

 (11) retain funds received for administration of the program;

 (12) require the periodic inspection of audiometric testing equipment and carry out the periodic inspection of facilities of persons who engage in the practice of specializing in hearing aids.

 (13) appoint members of the commission and other individuals who are not audiologists to conduct and supervise the written and practical examinations;

HISTORY: 1962 Code Section 56‑745.15; 1971 (57) 1012; 1992 Act No. 312, Section 1; 1994 Act No. 337, Sections 1, 5.

**SECTION 40‑25‑40.** Commission of Hearing Aid Specialists established; membership; terms; per diem and expenses.

 (A) A Commission of Hearing Aid Specialists is established to guide, advise, and make recommendations to the department.

 (B)(1) Members of the commission must be residents of the State. The commission consists of:

 (a) five licensed hearing aid specialists, and each must be a principal dealer of a different manufacturer's hearing aid who are not audiologists;

 (b) one otolaryngologist;

 (c) one representative of the general public who is a user of a hearing aid, is not associated with a hearing aid specialist or manufacturer, and is not a member of the other groups or professions required to be represented on the commission;

 (d) the State Health Officer or his designee.

 (2) Each hearing aid specialist on the commission must have no less than five years experience under this chapter.

 (C) Members of the commission in subsection (B)(1)(a) through (d) must be appointed by the Governor. Before appointing the member in subsection (B)(1)(d), the Governor shall invite recommendations from the South Carolina Hearing Aid Society, the Commission on Aging, the Department of Consumer Affairs, the Department of Education, the Department of Vocational Rehabilitation, the Board of Commissioners of the School for the Deaf and the Blind, and other agencies or organizations which might have knowledge of qualified citizens to serve on the commission. The term of each member is four years. Before a member's term expires the Governor shall appoint a successor to assume his duties at the expiration of the term. A vacancy must be filled in the manner of the original appointment. The members annually shall designate one member as chairman and another as secretary. No member of the commission who has served two or more full terms may be reappointed until at least one year after the expiration of his most recent full term of office.

 (D) Commission members may receive per diem and mileage provided by law for members of state boards, committees, and commissions for each day actually spent in the duties of the commission. No member may receive more than fifteen days per diem in one fiscal year.

HISTORY: 1962 Code Section 56‑745.16; 1971 (57) 1012; 1978 Act No. 460, Section 1; 1992 Act No. 312, Section 1; 1994 Act No. 337, Section 2; 2008 Act No. 273, Section 5.

**SECTION 40‑25‑50.** Duties of commission.

 The commission shall:

 (1) advise the department in all matters relating to this chapter;

 (2) prepare the examinations required by this chapter for the department;

 (3) assist the department in carrying out this chapter;

 (4) keep a record of its proceedings and a register of persons licensed under this chapter;

 (5) make a report each year to the Governor of all its official acts during the preceding year;

 (6) meet not less than once each year at a place, day, and hour determined by the commission and meet at other times and places requested by the department.

HISTORY: 1962 Code Section 56‑745.17; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑60.** License required; display of license; rights of licensees; application of chapter to corporations, partnerships and other organizations.

 (A) No person may engage in the practice of specializing in hearing aids or display a sign or in another way advertise or represent himself as a person who engages in the practice of specializing in hearing aids after January 1, 1972, unless he holds an unsuspended, unrevoked license issued by the department under this chapter. The license number must be listed in an advertisement or a representation. The license must be posted conspicuously in his office or place of business. Duplicate licenses must be issued by the department to valid license holders operating more than one office without additional payment. A license under this chapter confers upon the holder the right to perform only those hearing tests necessary to select, fit, and sell hearing aids.

 (B) Nothing in this chapter prohibits a corporation, partnership, trust, association, or like 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 properly licensed natural persons in the direct sale and fitting of the products.

HISTORY: 1962 Code Section 56‑745.2; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑70.** Duties of licensees to purchasers of hearing aids.

 (A) A person who engages in the practice of specializing in hearing aids shall deliver to a person supplied with a hearing aid a receipt which contains the licensee's signature and business address, the number of his license, specifications as to the make and model of the hearing aid furnished, and full terms of the sale clearly stated. If an aid which is not new is sold, the receipt and its container must be marked clearly as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

 (B) The purchaser must be advised at the outset of his relationship with the hearing aid specialist that an examination or a representation is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this State.

 (C) A person engaged in the practice of specializing in hearing aids shall comply with federal regulations, 21 CFR 801, or related amendments to the regulations. He may not sell a hearing aid to a prospective user under eighteen years of age unless he presents to the dealer a written statement signed by a licensed physician stating that the patient's hearing loss has been evaluated medically, and the patient may be considered a candidate for a hearing aid. This evaluation must have taken place within the preceding six months.

HISTORY: 1962 Code Section 56‑745.3; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑80.** Persons to whom chapter inapplicable; selling and fitting of hearing aids incorporated in eyeglasses.

 (A) This chapter does not:

 (1) prevent a person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids if the person or organization employing him does not sell hearing aids or their accessories except for earmolds used only for audiologic evaluation;

 (2) apply to a physician or audiologist licensed to practice in South Carolina;

 (3) apply to an audiologist or another person while he is engaged in the practice of recommending hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public, charitable institution or nonprofit organization which primarily is supported by voluntary contributions, if this organization does not sell hearing aids or accessories.

 (B) On the selling and fitting of hearing aids located in the temples of glasses, licensees may not make facial measurements or adapt, fit, or adjust lenses or frames under this chapter, except for the replacement of temples by those incorporating hearing aid components, unless legally qualified to do so under other South Carolina statutes.

HISTORY: 1962 Code Section 56‑745.4; 1971 (57) 1012; 1992 Act No. 312, Section 1; 1994 Act No. 337, Section 3.

**SECTION 40‑25‑90.** Applicants for whom examinations are not required.

 For six months after January 1, 1972, an applicant for a license must be issued one without examination if the applicant:

 (1) principally has been engaged as a hearing aid specialist for at least two years within a period of five years immediately before January 1, 1972;

 (2) is a resident of South Carolina and is of good moral character;

 (3) is twenty‑one years of age or older;

 (4) is free of contagious or infectious disease.

HISTORY: 1962 Code Section 56‑745.5; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑100.** Issuance of licenses; fees; issuance of certificates to persons licensed in other states.

 (A) The department shall register each applicant without discrimination or examination who satisfactorily passes the experience requirement in Section 40‑25‑90 or passes an examination in Section 40‑25‑110 and upon the applicant's payment of a fee set by the department through regulation shall issue to the applicant a license signed by the department. The license is effective for one year and expires one year after it is issued.

 (B) When the commission determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this chapter and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this chapter are qualified to dispense and fit hearing aids, the department may issue certificates of endorsement to applicants who hold current unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in the other state or jurisdiction if the applicant is twenty‑one years of age. Applicants for certificate of endorsement are not required to submit to or undergo a qualifying examination, other than the payment of fees pursuant to this chapter. The holder of a certificate of endorsement must be registered in the same manner as licensees. The fee for issuance of a license based upon an initial certificate of endorsement is the same as the fee for an initial license. Fees, grounds for renewal, and procedures for the suspension and revocation of certificates of endorsement and licenses are the same.

HISTORY: 1962 Code Section 56‑745.6; 1971 (57) 1012; 1972 (57) 2333; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑110.** Qualifications of applicants for examinations; conduct of examinations.

 (A) An applicant may obtain a license by successfully passing a qualifying examination if he:

 (1) is at least twenty‑one years of age;

 (2) has an education equivalent to a four‑year course in an accredited high school.

 (B) [Reserved]

 (C) An applicant for license by examination shall appear at a time, place, and before persons the department may designate to be examined by means of written and practical tests in order to demonstrate that he is qualified to engage in the practice of specializing in hearing aids. The examination administered as directed by the department constituting standards for licensing must not be conducted so that college training is required to pass the examination. Nothing in this examination may imply that the applicant possess the degree of medical competence normally expected of physicians. If an applicant fails the practical portion of the examination, he may appeal to the commission.

 (D) The department shall give examinations at least once a year.

HISTORY: 1962 Code Section 56‑745.7; 1971 (57) 1012; 1992 Act No. 312, Section 1; 1994 Act No. 337, Section 4.

**SECTION 40‑25‑120.** Temporary permits.

 (A) A person who fulfills the requirements regarding age and education in Section 40‑25‑110 may obtain a temporary permit upon application to the department. Previous experience or a waiting period is not required to obtain a temporary permit.

 (B) Upon receiving an application under this section accompanied by a fee set by the department through regulation, the department shall issue a temporary permit which entitles the applicant to engage in the fitting and sale of hearing aids for one year. A person holding a valid hearing aid specialist license shall supervise and train the applicant, maintain adequate personal contact, and make quarterly reports to the department about the performance of the person holding the temporary permit.

 (C) If a person who holds a temporary permit under this section has not passed successfully the licensing examination within one year from the date of issuance, the temporary permit, may be renewed or the applicant may be permitted to reapply at a later date.

HISTORY: 1962 Code Section 56‑745.8; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑130.** Content of examination.

 The qualifying examination in Section 40‑25‑110 must be designated to demonstrate the applicant's adequate technical qualifications by:

 (1) tests of knowledge in the following areas as they pertain to the practice of specializing in hearing aids:

 (a) basic physics of sound;

 (b) anatomy and physiology of the ear;

 (c) function of hearing aids;

 (2) practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

 (a) pure tone audiometry, including air conduction testing and bone conduction testing;

 (b) live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

 (c) masking when indicated;

 (d) recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid;

 (e) taking earmold impressions.

HISTORY: 1962 Code Section 56‑745.9; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑140.** Business addresses of licensees; notices mailed by department.

 (A) A person who holds a license shall notify the department in writing of the regular address of the place where he engages or intends to engage in the practice of specializing in hearing aids.

 (B) The department shall keep a record of the place of business of licensees.

 (C) Notice required to be given by the department to a person who holds a license must be mailed to him by certified mail at the address of the last place of business of which he has notified the department.

HISTORY: 1962 Code Section 56‑745.10; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑150.** Renewal of licenses; display at place of business; continuing education requirements; approval of continuation education training programs.

 (A) A person who engages in the practice of specializing in hearing aids before the license expiration date shall pay to the department a fee set by the department through regulation for issuance or a renewal of his license. The license must be posted conspicuously in his office or place of business. Where more than one office is operated by the licensee, duplicate licenses must be issued by the department for posting in each location. A thirty‑day grace period is allowed after the license expiration date during which licenses may be renewed on payment of a fee set by the department through regulation. After expiration of the grace period, the department may renew the certificates upon payment of a fee set by the department through regulation. No person who applies for renewal whose license has expired is required to submit to examination as a condition to renewal, if the renewal application is made within two years from the date of the expiration.

 (B) A licensee or temporary permit holder shall maintain a progressing level of professional competence by participation during the previous year of licensing in educational programs designed to keep the licensee informed of changes, current practices, and developments pertaining to the fitting of hearing aids and rehabilitation as appropriate to hearing aid use.

 (C) The licensee annually shall submit to the commission proof of having participated in a minimum of eight hours of continuing education during the previous year of licensing. The requirement may be fulfilled by attending and participating in training activities approved by the commission and those accredited by the International Hearing Society, unless disapproved by the commission.

 (D) A person or organization desiring to conduct continuing education training programs shall submit the programs to the commission for approval before presentation. The commission shall develop procedures for submitting these requests and for approving or disapproving them.

 (E) Failure to complete the minimum educational requirements results in a license suspension until the requirements are met. The commission, upon sufficient cause shown by the licensee, may allow the licensee to make up the necessary hours during the next year of licensing. The make‑up allowance does not waive the full annual requirements for continued education.

HISTORY: 1962 Code Section 56‑745.11; 1971 (57) 1012; 1982 Act No. 448, Section 1; 1986 Act No. 441; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑160.** Complaints against licensees; hearing; suspension or revocation of license; grounds; refunds.

 (A) A person wishing to make a complaint against a licensee under this chapter shall file a written complaint with the department within one year from the date of the action upon which the complaint is based. If the department determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this chapter must be suspended or revoked, it shall make an order fixing a time and place for hearing and require the licensee complained against to appear and defend against the complaint. The order and copy of the complaint must be served upon the licensee at least thirty days before the date set for hearing, personally or by registered mail sent to the licensee's last known address. Continuances or adjournment of hearing date must be made if for good cause. At the hearing the licensee complained against may be represented by counsel. The licensee complained against and the department may compel the attendance of witnesses by subpoenas issued by the department under its seal.

 (B) A person registered under this chapter may have his license revoked or suspended for a fixed period or be required to make a refund by the department for:

 (1) conviction of a felony or misdemeanor involving moral turpitude. The record of conviction or a certified copy, certified by the clerk of court or by the judge in whose court the conviction is had, is conclusive evidence of the conviction;

 (2) procuring of license by fraud or deceit practiced upon the department;

 (3) unethical conduct, including, but not limited to:

 (a) obtaining a fee or making a sale by fraud or misrepresentation;

 (b) knowingly employing directly or indirectly a suspended or unregistered person to perform work covered by this chapter;

 (c) using or causing or promoting the use of advertising matter, promotional literature, or testimonial, guarantee, warranty, label, brand, insignia, or 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, 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;

 (e) 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" or "clinic" or similar words, abbreviations, or symbols which tend to connote the medical profession when the use is not the case. No hearing aid specialist who is not a licensed audiologist may represent himself as a licensed audiologist in the practice of selling hearing aids;

 (f) habitual intemperance;

 (g) gross immorality;

 (h) permitting another's use of a license;

 (i) advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist;

 (j) 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 him or have him influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid specialist;

 (k) stating or implying that the use of a hearing aid will restore or preserve hearing or prevent or retard progression of hearing impairment;

 (4) conducting business while suffering from a contagious or infectious disease;

 (5) engaging in the practice of specializing in hearing aids under a false name or alias with fraudulent intent;

 (6) selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids or where it is medically impossible to conduct routine testing;

 (7) gross incompetence or negligence in fitting and selling hearing aids; or

 (8) violating this chapter.

 (C) If a refund must be made under this section, the department may suspend the license of the person required to make the refund until it is made.

HISTORY: 1962 Code Section 56‑745.12; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑170.** Appeal.

 (A) The final order of the department in proceedings for the suspension or revocation of certificates of registration are subject to review by the circuit court of Richland County, the county in which the registrant has his principal place of business, or the county in which the books and records of the department are kept. Other final orders of the department under this chapter are subject to review in the same courts.

 (B) Appeals to the circuit court must be upon the original records before the department, and the court in its discretion may affirm, reverse, or modify an order made by the department.

HISTORY: 1962 Code Section 56‑745.13; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑180.** Prohibited acts.

 No person may:

 (1) sell, barter, or offer to sell or barter a license;

 (2) purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to engage in the practice of specializing in hearing aids;

 (3) alter a license with fraudulent intent;

 (4) use or attempt to use as a valid license a license which has been purchased, fraudulently obtained, counterfeited, or materially altered;

 (5) wilfully make a false statement in an application for license or application for renewal of license.

HISTORY: 1962 Code Section 56‑745.14; 1971 (57) 1012; 1992 Act No. 312, Section 1.

**SECTION 40‑25‑190.** Penalties.

 A person violating this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

HISTORY: 1962 Code Section 56‑745.18; 1971 (57) 1012; 1992 Act No. 312, Section 1.