

HEARING AID DISPENSERS BOARD LAWS AS OF THE 2019 LEGISLATIVE SESSION

TITLE 37, CHAPTER 16 HEARING AID DISPENSERS

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CHAPTER 16

HEARING AID DISPENSERS

Chapter Administrative Rules

Title 24, chapter 150, ARM Board of Hearing Aid Dispensers.

Part 1

General

37-16-101. Declaration of policy. The selling, dispensing, and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This chapter shall be liberally construed to carry out the objectives and purposes hereinafter described in accordance with this declaration of policy.

History: En. Sec. 1, Ch. 204, L. 1969; R.C.M. 1947, 66-3001; amd. Sec. 1, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: Near beginning, after "selling", inserted "dispensing".

37-16-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Board" means the board of hearing aid dispensers provided for in 2-15-1740.
- (2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.
- (3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.
- (4) "License" means a regular or trainee license.
- (5) "Permanent place of business" means the primary site in this state at which a person licensed under this chapter conducts testing and fitting of hearing aids and related devices and that is open to the public at least 5 days a week.
- (6) "Place of practice" means either a permanent place of business or a location on record with the department at which a person licensed under this chapter makes occasional visits. A place of practice must be affiliated with a permanent place of business.
- (7) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories.

History: En. Sec. 3, Ch. 204, L. 1969; amd. Sec. 292, Ch. 350, L. 1974; R.C.M. 1947, 66-3003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 444, L. 1981; amd. Sec. 2, Ch. 404, L. 1985; amd. Sec. 125, Ch. 483, L. 2001; amd. Sec. 1, Ch. 34, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 34 inserted definitions of permanent place of business and place of practice; and made minor changes in style. Amendment effective October 1, 2009.

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18". Amendment effective July 1, 2001.

1985 Amendment: In (5) at beginning, after "Practice of", inserted "selling", and near middle after "sale", inserted "dispensing, or fitting".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Chapter 444 substituted "'License' means a regular or trainee license" for "'License' means a regular or temporary license" in (3); and inserted "and the subsequent selection of a proper ear mold" after "the making of an impression of the ear" near the end of (5).

Administrative Rules

ARM 24.150.301 Definitions.

37-16-103. Exemptions. This chapter does not apply to a person who is:

- (1) a physician licensed to practice by the state board of medical examiners;
- (2) engaged in the practice of fitting hearing aids if the person's practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency; or
- (3) licensed as an audiologist under the provisions of Title 37, chapter 15, except that the provisions of 37-16-304 apply to licensed audiologists.

History: En. Sec. 9, Ch. 204, L. 1969; amd. Sec. 297, Ch. 350, L. 1974; R.C.M. 1947, 66-3009; amd. Sec. 3, Ch. 404, L. 1985; amd. Sec. 1378, Ch. 56, L. 2009; amd. Sec. 3, Ch. 342, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 342 inserted (3) concerning licensed audiologists; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1985 Amendment: In (2) after "public agency", deleted "or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids".

Attorney General's Opinions

Audiologist as Agent for Hearing Aid Dispenser: There is nothing in the law to prohibit a licensed audiologist from acting as an "agent" for a hearing aid dispenser if he chooses to do so. Since an audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions is entitled to fit and dispense hearing aids, either the audiologist or the hearing aid dispenser may complete the final fitting and delivery. 38 A.G. Op. 42 (1979). (See 1985 amendment.)

When Hearing Aid Dispenser's License Not Required: A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit a hearing aid, whether permanently or for a trial period, without a dispenser's license. 38 A.G. Op. 42 (1979). (See 1985 amendment.)

When Audiologist May Fit Hearing Aids: A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may make an impression of the ear (which is expressly part of the practice of fitting and dispensing hearing aids) without being licensed as a hearing aid dispenser. This exemption may be enjoyed only if the hearing aids are not sold. A "sale" includes a sale at a profit, at cost, or even at a loss. 38 A.G. Op. 42 (1979). (See 1985 amendment.)

Selling Hearing Aids — License Required: A charitable or nonprofit organization primarily supported by voluntary contributions or any audiologist or other employee of the organization may dispense free hearing aids without a license, but neither the organization nor its employees may sell hearing aids without a license, regardless of the dispensing program. 37 A.G. Op. 60 (1977). (See 1985 amendment.)

Part 2

Board of Hearing Aid Dispensers

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1740.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Department to administer and grade examinations, 37-1-101.
Disciplinary authority of boards — injunctions, 37-1-136.
Disrupting meeting as disorderly conduct, 45-8-101.

Part Administrative Rules

Title 24, chapter 150, subchapter 1, ARM Organizational rule.
Title 24, chapter 150, subchapter 2, ARM Procedural rules.

37-16-201. Meetings — organization. (1) The board shall meet at least once each year at a place and time determined by the presiding officer and at other times and places specified by the presiding officer to carry out the provisions of this chapter.

(2) Members of the board shall annually designate one member to serve as presiding officer and another member to serve as secretary-treasurer.

History: En. Sec. 6, Ch. 204, L. 1969; amd. Sec. 295, Ch. 350, L. 1974; R.C.M. 1947, 66-3006; amd. Sec. 5, Ch. 444, L. 1981; amd. Sec. 22, Ch. 492, L. 2001.

Compiler's Comments

2001 Amendment: Chapter 492 in (1) deleted former last sentence that read: "Three members constitute a quorum"; and made minor changes in style. Amendment effective October 1, 2001.

1981 Amendment: Deleted the requirement in the last sentence of subsection (1) that the otolaryngologist or the audiologist must be present to constitute a quorum.

37-16-202. Powers and duties. (1) The powers and duties of the board are to:

- (a) license persons who apply and are qualified to practice the fitting of hearing aids;
- (b) establish a procedure to initiate or receive, investigate, and process complaints from any source concerning the activities of persons licensed under this chapter;
- (c) adopt rules necessary to carry out this chapter;
- (d) require the periodic inspection and calibration of audiometric testing equipment;
- (e) initiate legal action to enjoin from operation a person engaged in the sale, dispensing, or fitting of hearing aids in this state that is not licensed under this chapter;
- (f) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411; and
- (g) establish and adopt minimum requirements for the form of bills of sale and receipts.

(2) Rules adopted by the board pursuant to subsection (1)(f) may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411.

History: En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974; R.C.M. 1947, 66-3005; amd. Sec. 6, Ch. 444, L. 1981; amd. Sec. 4, Ch. 404, L. 1985; (9)En. Sec. 11, Ch. 155, L. 1991; amd. Sec. 1, Ch. 72, L. 1995; amd. Sec. 18, Ch. 481, L. 1997; amd. Sec. 55, Ch. 467, L. 2005; amd. Sec. 29, Ch. 109, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 109 in (1)(b) after "procedure" deleted "to act as a grievance board", before "complaints" substituted "process" for "mediate", and at end after "chapter" deleted "or their agents, whether licensed or not"; in (1)(d) at end after "equipment" deleted "and carry out periodic inspections of facilities of persons who practice or engage in the business of fitting or selling hearing aids"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2005 Amendment: Chapter 467 deleted former (3) and (4) that read: "(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license and supervise and administer the examination"; deleted former (7) that read: "(7) prepare examinations required by the chapter"; in (6) in first and second sentences in lists of statutes deleted references to 37-16-403 and 37-16-407; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 481 in (6), after "practice", inserted "or engage in the business of"; in (8), after "person", deleted "or corporation"; inserted (10) requiring Board to adopt minimum requirements for form of bills of sale and receipts; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment — Coordination: Chapter 72 in (2), before "receive", inserted "initiate or".

Section 130, Ch. 429, L. 1995, a coordination section, rendered the amendments made to this section by Ch. 429, L. 1995, void.

Code Commissioner Correction: In (9), in two places, the Code Commissioner deleted references to 37-16-414 pursuant to the authority contained in sec. 73, Ch. 18, L. 1995.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Codification: Enacted (9) requiring adoption of consistent rules regarding related devices.

1991 Statement of Intent: The statement of intent attached to Ch. 155, L. 1991, provided: "A statement of intent is required for this bill because [section 11] [37-16-202(9)] grants the board of hearing aid dispensers authority to adopt rules consistent with the provisions of [sections 1 through 10] [37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, now repealed, 37-16-405, 37-16-407, now repealed, 37-16-408, 37-16-411, and 37-16-414, now repealed].

It is the intent of the legislature that rules adopted by the board include rules defining "related devices" and other rules necessary to implement [sections 1 through 10] [37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, now repealed, 37-16-405, 37-16-407, now repealed, 37-16-408, 37-16-411, and 37-16-414, now repealed].

It is specifically intended that, in adopting rules, the board define "related devices" to mean those parts, attachments, or accessories, as provided in 37-16-102, that are sold for use with a hearing aid by a licensed hearing aid dispenser. "Related devices" should include assistive listening devices and cordless infrared systems if sold by a hearing aid dispenser. However, the term "related device" should not include general merchandise items, such as hearing aid cleaners, cords, or batteries, that are commonly available at most drugstores, discount stores, or by mail order."

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In (8) substituted "sale, dispensing, or fitting" for "sale and fitting".

1981 Amendment: Added "and supervise and administer the examination" at the end of subsection (4).

Administrative Rules

Title 24, chapter 150, ARM Board of Hearing Aid Dispensers.

37-16-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(2); amd. Sec. 12, Ch. 22, L. 1979; amd. Sec. 20, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: After "receive" substituted language providing that Board members receive compensation and travel expenses as provided in 37-1-133 for "\$20 a day compensation when actually engaged in the discharge of his official duty and in addition shall be reimbursed for travel expense, as provided for in 2-18-501 through 2-18-503, in attending a meeting of the board in the state".

Board Compensation and Travel Expenses — Preamble: The preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for Board members, is located in the compiler's comments under 37-1-133.

Part 3 Regulatory Provisions

Part Law Review Articles

Who Will Hear? An Examination of the Regulation of Hearing Aids, Adams, 11 J. Contemp. Health L. & Pol'y 505 (1995).

37-16-301. Permanent place of business in state necessary — records — notice — designation of licensee in charge. (1) A person who is actively engaged in dispensing hearing aids and related devices as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids and related devices. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one hearing aid dispenser licensee may work from a permanent place of business.

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to the person at the address last given to the department.

(3) All licensed hearing aid dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

(4) (a) When licensed hearing aid dispensers and trainees work at the same permanent place of business, the licensed hearing aid dispenser shall designate one licensed dispenser as the person in charge. There must be one licensed dispenser in charge at a permanent place of business.

(b) The licensed hearing aid dispenser in charge of a permanent place of business:

(i) is responsible and accountable under the disciplinary authority of the board for the conduct of trainees using that permanent place of business; and

(ii) has custody and control of the business records of that permanent place of business and is responsible for producing the records during an investigation conducted by the department.

History: En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974; R.C.M. 1947, 66-3015; amd. Sec. 7, Ch. 444, L. 1981; amd. Sec. 5, Ch. 404, L. 1985; amd. Sec. 1, Ch. 155, L. 1991; amd. Sec. 60, Ch. 429, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 429 at end of (4)(b)(ii) substituted "department" for "board"; and made minor changes in style.

Severability: Section 131, Ch. 429, L. 1995, was a severability clause.

Saving Clause: Section 132, Ch. 429, L. 1995, was a saving clause.

Applicability: Section 133, Ch. 429, L. 1995, provided: "[This act] applies to licenses applied for, complaints submitted, and proceedings begun after [the effective date of this section]." Effective October 1, 1995.

1991 Amendment: In (1), in two places in first sentence after "hearing aids", inserted "and related devices" and in last sentence, before "licensee", inserted "hearing aid dispenser"; near beginning of (3), after "licensed", inserted "hearing aid"; and inserted (4) requiring designation of a person in charge and establishing applicable duties.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In (1) changed "A person who obtains a license to dispense" to "A person who is actively engaged in dispensing", and inserted last two sentences requiring dispensers to identify permanent place of business and allowing more than one licensee to work from one permanent place of business; and deleted former (2) that read: "Subsection (1) of this section does not apply to persons who obtain a license as salespeople representing a licensed hearing aid dispenser."

1981 Amendment: Substituted "trainee licenses" for "temporary license" at the end of the first sentence of (3) and in the middle of the second sentence in (3); and added (4) requiring notice of change of address.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

Administrative Rules

ARM 24.150.503 Traineeship requirements and standards.

37-16-302. Sale of dispensing business. A business selling, dispensing, or fitting hearing aids may be sold provided the new owners comply with all the provisions of this chapter.

History: En. Sec. 18, Ch. 204, L. 1969; R.C.M. 1947, 66-3018; amd. Sec. 6, Ch. 404, L. 1985.

Compiler's Comments

1985 Amendment: At beginning after "A business", inserted "selling" and after "dispensing", inserted "or fitting".

37-16-303. Bill of sale — medical evaluation requirements — waiver. (1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall, upon the sale of a hearing aid or related device, deliver to the customer a bill of sale that must contain:

(a) the seller's signature and license number, the name and address of the seller's permanent place of business, and if different from the permanent place of business, the address of the place of practice at which the sale was concluded;

(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, as well as the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned;

(e) a provision that maintenance service for the hearing aid or related device is available; and

(f) the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, contact the state Board of Hearing Aid Dispensers." The statement must also list the current telephone number and address of the board's office.

(2) (a) Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that there are no medical factors or conditions that render hearing aid use inadvisable as a treatment or remedy for hearing loss.

(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration regulations found at 21 CFR 801.420 and 21 CFR 801.421.

History: En. Sec. 8, Ch. 204, L. 1969; R.C.M. 1947, 66-3008; amd. Sec. 7, Ch. 404, L. 1985; amd. Sec. 2, Ch. 155, L. 1991; amd. Sec. 19, Ch. 481, L. 1997; amd. Sec. 23, Ch. 492, L. 2001; amd. Sec. 2, Ch. 34, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 34 in (1)(a) at end inserted "and if different from the permanent place of business, the address of the place of practice at which the sale was concluded"; in (2)(b) at end substituted "21 CFR 801.420 and 21 CFR 801.421" for "42 CFR 801.420 and 42 CFR 801.421"; and made minor changes in style. Amendment effective October 1, 2009.

2001 Amendment: Chapter 492 in (2)(a) at end after "medically evaluated and that" substituted "there are no medical factors or conditions that render hearing aid use inadvisable as a treatment or remedy for hearing loss" for "the person may benefit from a hearing aid". Amendment effective October 1, 2001.

1997 Amendment: Chapter 481 in (1), after "shall", inserted "upon the sale of a hearing aid or related device" and after "deliver to" substituted "the customer" for "each person supplied with a hearing aid or related device, by him or at his order or direction"; inserted (1)(f) requiring seller to include in bill of sale statement informing customer of right to contact state Board with questions regarding hearing aids and providing Board telephone number and address; substituted language in (2)(a) and (2)(b) prohibiting sale of hearing aid without physician's statement regarding medical evaluation of hearing loss and waiver of physician's statement for person 18 years of age or older for former (2)(a) and (2)(b) that read: "Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, if dealing with

a person under 19 years of age, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain the otolaryngologist's recommendations. If the person has not been examined, the licensed hearing aid dispenser shall recommend to the parent or guardian or to the person if emancipated that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation.

(b) Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, if the aid or device is to be purchased with state funds, ascertain if the person has been examined by a licensed physician within 90 days prior to the fitting and shall obtain the licensed physician's recommendations. If the person has not been examined, the licensed hearing aid dispenser shall recommend to the person being fitted that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation"; deleted (3) through (5) that read: "(3) A separate receipt issued under subsection (2) must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dispenser in connection with the dispensing, fitting, and selling of this hearing aid(s) or device 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."

(4) The board may establish and adopt minimum requirements for the form of bills of sale and receipts.

(5) All purchase agreements or bills of sale must prominently display the following statement: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, please contact the Department of Commerce — Board of Hearing Aid Dispensers"; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1991 Amendment: Throughout section inserted reference to related devices; substituted (1)(c) requiring inclusion of warranty or guaranty and the right to cancel and those terms in the bill of sale for former language relating to terms of guaranty; inserted (1)(e) requiring a provision regarding availability of maintenance in the bill of sale; substituted second and third sentences of (2)(a) regarding recommendation for a medical examination for a person under 19 years of age for former second sentence that read: "If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt"; substituted second and third sentences of (2)(b) regarding recommendation for a medical examination for a person being fitted with a device being purchased with state funds for former second sentence that read: "If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt"; inserted (4) allowing the Board to adopt minimum form requirements; inserted (5) requiring display of a consumer rights statement; and made minor changes in style.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In (1) near beginning of first sentence, after "practices the", inserted "selling", and after "address of his", changed "regular" to "permanent"; in (2)(a) near beginning, after "practicing the", inserted "selling, dispensing, or", after "fitting", deleted "and sale", after "a person", changed "18" to "under 19", and after "age", deleted "and under or when the aid is to be purchased with state funds"; inserted (2)(b) relating to purchase of hearing aid with state funds; and in (3) near middle, changed "hearing aid dealer and fitter" to "hearing aid dispenser" and after "with the", inserted "dispensing".

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Administrative Rules

ARM 24.150.602 Transactional document requirements — form and content.

37-16-304. Right to cancel — return of hearing aid or related device — notice — refund — dispensing fee rules. (1) (a) Except as provided in subsection (1)(b), a purchaser of a hearing aid or related device may, for any reason, cancel the sale within 30 days of the date of delivery at a permanent place of business.

(b) (i) If a licensed hearing aid dispenser has provided a hearing test or a fitting consultation to a purchaser at a place of practice other than the dispenser's permanent place of business prior to or at the time the purchaser takes delivery of a hearing aid or related device, the purchaser may, for any reason, cancel the sale within 30 days from the date of the first postdelivery followup consultation conducted in person at the place of practice.

(ii) A purchaser subject to the provisions of subsection (1)(b)(i) may waive the extended trial period if, at the date of delivery, the purchaser was offered and declined in writing the followup consultation, in which case the 30-day period in subsection (1)(a) applies.

(c) The trial period in subsection (1)(a) or (1)(b) applies notwithstanding the provisions of Title 30, chapter 14, part 5.

(2) (a) A purchaser canceling a sale under subsection (1) shall provide written notice indicating the purchaser's intention not to be bound by the sales contract. The notice must be sent to the address of the licensed hearing aid dispenser's permanent place of business at the time the hearing aid was purchased.

(b) The purchaser shall return or hold for the licensed hearing aid dispenser's disposal the hearing aid or related device in substantially the same condition as it was received by the purchaser.

(3) (a) For the purpose of determining whether cancellation has occurred within the time specified in subsection (1), written notice:

(i) given by mail is considered given on the date mailed; and

(ii) delivered in person is considered given when delivered to the hearing aid dispenser's permanent place of business or place of practice.

(b) If the purchaser and the licensed hearing aid dispenser dispute the timing of a cancellation under the terms of subsection (1)(b), the dispenser shall provide documentation to the board that the dispenser provided written notice of the purchaser's entitlement to a postdelivery followup consultation at the place of practice and that the consultation either occurred or was waived by the purchaser in writing.

(4) A licensed hearing aid dispenser shall refund to the purchaser the amount paid for a hearing aid or related device minus any authorized dispensing fee within 10 days of receipt of written notice of cancellation.

(5) If the board decides to authorize a dispensing fee, the form and manner of calculating a dispensing fee must be established by the board by rule. Dispensing fee rules adopted by the board may include but are not limited to consideration of business overhead and costs associated with initial hearing evaluations, consultations, fittings, and followup visits.

(6) A licensed hearing aid dispenser may not sell a hearing aid in this state unless the dispenser provides the purchaser with written notice of the trial period, as provided in subsection (1), and a money-back guarantee.

(7) If the hearing aid must be repaired, remade, or adjusted during the trial period, the running of the trial period must be suspended for each day that the hearing aid is not in the purchaser's possession. The provisions of this subsection may not be waived.

History: En. Sec. 10, Ch. 155, L. 1991; amd. Sec. 20, Ch. 481, L. 1997; amd. Sec. 11, Ch. 230, L. 1999; amd. Sec. 3, Ch. 34, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 34 in (1)(a) at beginning inserted exception clause and at end after "delivery" substituted "at a permanent place of business" for "of the hearing aid or related device by providing written notice to the establishment that employed the licensed hearing aid dispenser at the time the hearing aid was purchased indicating the purchaser's intention not to be bound by the sale contract"; inserted (1)(b)(i) allowing cancellation of a sale within 30 days from the date of the first postdelivery followup consultation; inserted (1)(b)(ii) allowing the purchaser to waive the extended trial period; inserted (1)(c) providing that the trial period applies notwithstanding the provisions of Title 30, chapter 14, part 5; inserted (2)(a) requiring written notice when a sale is canceled; in (3)(a) in introductory clause after "within" substituted "the time specified in subsection (1)" for "30 days of the date of delivery"; in (3)(a)(ii) at end after "business" inserted "or place of practice"; inserted (3)(b) requiring documentation of written notice if the timing of a cancellation is disputed; in (6) substituted "dispenser provides the purchaser with

written notice of the trial period, as provided in subsection (1)" for "seller provides the buyer with written notice of the 30-day trial period"; in (7) after "during the" deleted "30-day" and after "running of the" substituted "trial period" for "30-day period"; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Chapter 230 in first sentence in (3) after "minus" inserted "any authorized" and substituted second and third sentences regarding form and manner of calculating dispensing fee and board rulemaking authority for former second, third, and fourth sentences that read: "For the purposes of this section, the dispensing fee may not exceed the actual cost of dispensing the hearing aid or related device to the purchaser. This cost must be substantiated by the dispenser, and regardless of the length of the trial period, the dispensing fee may not exceed 15% of the total cost of the hearing aid or related device. The licensed hearing aid dispenser shall also return any goods traded in contemplation of the sale, less any costs incurred by the licensee in making the goods ready for resale"; and made minor changes in style. Amendment effective April 2, 1999.

1997 Amendment: Chapter 481 in (1), after "may", inserted "for any reason" and after "related device" substituted "by providing written notice to the establishment that employed the licensed hearing aid dispenser at the time the hearing aid was purchased" for former text that read: "(a) the hearing aid or related device is defective in fit or function; or

(b) a licensed hearing aid dispenser has failed to correct a problem in fit or function.

(2) (a) If a purchaser cancels the sale of a hearing aid or related device for a reason provided in subsection (1), he shall provide written notice to the seller" and in second sentence, after "return", inserted "or hold for the licensed hearing aid dispenser's disposal"; in (2)(b), before "given", inserted "considered"; in (3), in first sentence after "fee", substituted "within 10 days" for "within 30 days", in second sentence after "may not exceed", substituted "the actual cost of dispensing the hearing aid or related device to the purchaser" for "20% of the total cost of the hearing aid or related device", inserted third sentence requiring dispenser to substantiate cost and prohibiting fee exceeding 15% of total cost, and inserted fourth sentence requiring dispenser to return goods traded less resale costs incurred; in (4) substituted language prohibiting dispenser from selling hearing aid without written notice of 30-day trial period and guarantee for former text that read: "All sales receipts for refunds issued by the seller of a hearing aid or related device must contain a statement of the reason for the cancellation"; inserted (5) regarding suspension of running of 30-day trial period if hearing aid needs repair and prohibiting waiving of suspension; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

Part 4 Licensing

Part Cross-References

- Contested case as including licensing, 2-4-102.
- Contested case procedure, Title 2, ch. 4, part 6.
- Licensing to follow contested case procedure, 2-4-631.
- Unfair trade practices and consumer protection, Title 30, ch. 14.
- Duty of Department to investigate unethical conduct, 37-1-101.
- Standardized forms, 37-1-104.
- Reporting disciplinary actions against licensees, 37-1-105.
- Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
- Licensing boards to establish fees commensurate with costs, 37-1-134.
- Licensing investigation and review — record access, 37-1-135.
- Disciplinary authority of boards — injunctions, 37-1-136.
- Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
- Licensure of criminal offenders, Title 37, ch. 1, part 2.
- Nondiscrimination in licensing, 49-3-204.

37-16-401. License required — exception. Except as provided in 37-16-103, a person may not engage in selling, dispensing, or fitting hearing aids or display a sign or in any other way advertise the selling, dispensing, or fitting of hearing aids in Montana unless the person holds a current license issued by the department.

History: En. Sec. 7, Ch. 304, L. 1969; amd. Sec. 296, Ch. 350, L. 1974; R.C.M. 1947, 66-3007; amd. Sec. 8, Ch. 404, L. 1985; amd. Sec. 2, Ch. 72, L. 1995; amd. Sec. 4, Ch. 342, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 342 at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2011.

1995 Amendment: Chapter 72 after "advertise" deleted "or hold himself out as a person who practices" and after "current" deleted "regular or temporary"; and made minor changes in style.

1985 Amendment: Near beginning, after "engage in", changed "the sale or practice of dispensing and" to "selling, dispensing, or"; near middle, after "practices the", changed "dispensing and fitting" to "selling, dispensing, or fitting"; and near end, after "hearing aids", inserted "in Montana".

Attorney General's Opinions

When Hearing Aid Dispenser's License Not Required: A licensed audiologist who is an employee of a charitable or nonprofit organization primarily supported by voluntary contributions may fit a hearing aid, whether permanently or for a trial period, without a dispenser's license. 38 A.G. Op. 42 (1979). (See 1985 amendment.)

Selling Hearing Aids — License Required: A charitable or nonprofit organization primarily supported by voluntary contributions or any audiologist or other employee of the organization may dispense free hearing aids without a license, but neither the organization nor its employees may sell hearing aids without a license, regardless of the dispensing program. 37 A.G. Op. 60 (1977). (See 1985 amendment.)

37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering the application and related functions of the board and shall show to the satisfaction of the board that the applicant:

- (1) is a person of good moral character;
- (2) has an education equivalent to a 4-year course in an accredited high school or holds a current license as an audiologist under Title 37, chapter 15; and
- (3) is free of contagious or infectious disease.

History: En. Sec. 10, Ch. 204, L. 1969; R.C.M. 1947, 66-3010; amd. Sec. 40, Ch. 345, L. 1981; amd. Sec. 8, Ch. 444, L. 1981; amd. Sec. 9, Ch. 404, L. 1985; amd. Sec. 3, Ch. 155, L. 1991; amd. Sec. 1379, Ch. 56, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1991 Amendment: In (2), after "high school", deleted "has continuously engaged in the practice of selling, fitting, or dispensing hearing aids in Montana during the 3 years preceding the date of application"; and made minor change in style.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In (2) near middle, after "practice of", substituted "selling, fitting, or dispensing hearing aids in Montana" for "fitting and dispensing hearing aids".

1981 Amendments: Chapter 345 substituted "shall pay a fee prescribed by the board" for "shall pay a fee of \$50" in the middle of the first sentence of the section.

Chapter 444 substituted "a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board" for "a fee of \$50" near the beginning of the section; deleted "or" after "an accredited high school" near the beginning of subsection (2); and added "or that he holds a current license as an audiologist under Title 37, chapter 15" to the end of subsection (2).

Composite Section: The amendment to the fee provision contained in Ch. 444 was codified rather than the language in the Ch. 345 amendment because Ch. 444 contained broader language that included the Ch. 345 amendment.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.150.401 Fees.

37-16-403. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 11, Ch. 204, L. 1969; amd. Sec. 298, Ch. 350, L. 1974; R.C.M. 1947, 66-3011; amd. Sec. 10, Ch. 404, L. 1985; amd. Sec. 4, Ch. 155, L. 1991; amd. Sec. 3, Ch. 72, L. 1995; amd. Sec. 21, Ch. 224, L. 2003.

37-16-404. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 12, Ch. 204, L. 1969; R.C.M. 1947, 66-3012; amd. Sec. 90, Ch. 370, L. 1987; amd. Sec. 4, Ch. 72, L. 1995.

37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a training period during which the applicant shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing a written notice by certified mail to the board and the trainee.

(4) The trainee license terminates 1 year after issuance or after the trainee passes the practical examination, whichever occurs first.

(5) Upon completion of 1,000 hours of supervised training, the trainee is eligible to take the practical examination.

(6) A trainee who does not complete 1,000 hours of supervised training before the trainee license terminates may be issued a second trainee license upon making application and paying the appropriate fee. The hours of training obtained under the first trainee license must be carried forward.

(7) A trainee who fails the practical examination may continue to practice under direct supervision until the trainee license terminates. A second trainee license may not be issued. Termination of the trainee license and cessation of the authority to practice do not preclude a person from retaking the practical examination upon payment of the appropriate fees.

(8) Upon passing the practical examination, a trainee may submit an application for a hearing aid dispenser license with the appropriate fee and a hearing aid dispenser license must be issued.

(9) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(10) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment.

History: En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974; R.C.M. 1947, 66-3014; amd. Sec. 41, Ch. 345, L. 1981; amd. Sec. 9, Ch. 444, L. 1981; amd. Sec. 11, Ch. 404, L. 1985; amd. Sec. 5, Ch. 155, L. 1991; amd. Sec. 5, Ch. 72, L. 1995; amd. Sec. 21, Ch. 481, L. 1997; amd. Sec. 56, Ch. 467, L. 2005; amd. Sec. 17, Ch. 502, L. 2007; amd. Sec. 30, Ch. 109, L. 2009; amd. Sec. 5, Ch. 342, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 342 deleted former (4) that read: "(4) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the training period but is required to pass the examinations prescribed in this chapter"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 109 in (2) near end of first sentence before "training period" deleted "180-day"; deleted former (2)(a) that read: "(a) is required to pass the practical examination administered by the board before being issued a hearing aid dispenser's license"; deleted former (3) that read: "(3) The training period must consist of a continuous 180-day term. Any break in training requires application for another trainee license under rules that the board may prescribe"; deleted former (5) that read: "(5) If a person who holds a trainee license takes and fails to pass the practical examination, the trainee license expires, and the person may not practice as a trainee"; in (4) near middle before "training period" deleted "180-day"; inserted (5) providing for termination of a trainee license; inserted (6) providing when a trainee is eligible to take the practical examination; inserted (7) providing for issuance of a second trainee license under certain circumstances; inserted (8) concerning practice by a trainee who fails the practical examination; inserted (9) providing for license issuance when a trainee passes the practical examination; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

2007 Amendment: Chapter 502 in (5) after "examination" substituted "the trainee license expires, and the person may not practice as a trainee" for "during the training period, the board may authorize the department to renew the trainee license for a period of 180 days during which the provisions of subsection (2)(b) apply" and deleted former second sentence that read: "More than one renewal is not permitted"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

2005 Amendment: Chapter 467 in (1) after "examination" deleted "under 37-16-403"; in (2) near middle after "board and" deleted "commensurate with the cost of administering the license and related functions of the board and"; deleted former (5)(b) that read: "(b) The fee for renewal must be set by the board commensurate with the cost of administering the license and related functions of the board"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 481 in (2), after "examination", substituted "with a passing score as determined by board rule" for "with a score of at least 70%"; and made minor changes in style.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment: Chapter 72 in (2) and (3) substituted "180-day" for "12-month"; near beginning of (2)(b), after "work", deleted "for the first 90 days"; deleted (2)(c) that read: "(c) work for the balance of the training period during which he may engage in all activities allowed a licensed hearing aid dispenser, under the general supervision of a licensed hearing aid dispenser"; in second sentence of (4) substituted "report every 90 days" for "quarterly report"; in (5)(a), in first sentence, substituted "a period of 180 days, during which the provisions of subsection (2)(b) apply" for "a period ending 30 days after the next examination" and in second sentence substituted "one renewal" for "two renewals"; in (6), after "chapter 15", inserted "or a person practicing pursuant to 37-15-305" (now repealed) and substituted "180-day" for "12-month"; in (8) substituted "at the same location" for "in the same place of business"; deleted (8)(b) defining general supervision; and made minor changes in style.

Code Commissioner Correction: In (6), the Code Commissioner substituted 37-1-305 for 37-15-305 pursuant to the authority contained in sec. 73, Ch. 18, L. 1995.

1991 Amendment: In (2)(a), after "board", inserted "before he may be issued a hearing aid dispenser's license"; near beginning of (2)(b) substituted "the first 90 days under the direct supervision of the sponsoring licensed hearing aid dispenser during which time" for "a period of 60 days during which", in first and second sentences inserted reference to related devices, and in second sentence, after "made by", inserted "the trainee and"; in (2)(c), before "supervision", inserted "the general"; in (4), in first sentence before "licensed", inserted "qualified", after "aid" substituted "dispenser" for "dealer", and at beginning of second sentence substituted "licensed hearing aid dispenser" for "licensee"; inserted (7) specifying responsibility for conduct of a trainee; inserted (8) defining direct supervision and general supervision; and made minor changes in style.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In (1) near middle, before "examination", inserted "practical"; in introductory clause of (2) near middle, after "functions of the board", inserted "and verification that the applicant has

passed the written portion of the examination with a score of at least 70%" and increased training period from 6 months to 12 months; in (2)(a) substituted language requiring passage of practical exam for "work for a period of 30 days under the direct control of a hearing aid dispenser during which the trainee may not in any way fit a hearing aid or test a customer"; in (2)(b) at beginning deleted "after the completion of the period provided for in subsection (2)(a)"; in (3) increased training period from 6 months to 12 months; inserted (4) requiring supervision of trainee by licensee; deleted former (4) and (5) that read: "(4) No trainee license may be issued by the board unless the applicant shows to the satisfaction of the board that he is or will be supervised and trained by a person who holds a valid license issued under this chapter.

(5) If a person who holds a trainee license does not take the next examination given after the completion of his training period, the trainee license may not be renewed except for a good cause shown to the satisfaction of the board"; in (5), near beginning after "pass the" substituted "practical examination given within his training period" for "next examination given after the completion of his training period", and near middle after "after the" substituted "next examination" for "results of the next examination given after the dates of renewal are announced"; in (6) near end, after "exempt from the", substituted "12-month training period but is required to pass the examinations prescribed in this chapter" for "trainee license and examination requirements of this chapter".

1981 Amendments: Chapter 345 substituted "accompanied by a fee prescribed by the board" for "accompanied by a fee of \$25" in the middle of (2); and substituted "The fee for renewal shall be prescribed by the board" for "The fee for renewal is \$30" at the end of (6) (now (5)).

Chapter 444 substituted "trainee license" for "temporary license" wherever it appeared; substituted "board" for "department" wherever it appeared; substituted "a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board" for "a fee of \$25" in the middle of (2); substituted the restrictions on the holder of a trainee license in (2) for "a temporary license which entitles the applicant to practice the fitting and dispensing of hearing aids for a period ending 30 days after the conclusion of the next examination after the date of issue"; inserted (3) establishing training period term; substituted "after the completion of his training period" for "after the date of issue" in the middle of (5) and near the beginning of (6); substituted the last sentence of (6) providing that the renewal fee must be set by the Board commensurate with costs for "The fee of renewal is \$30"; and added subsection (7) exempting a person licensed as an audiologist under Title 37, chapter 15, from trainee license and examination requirements.

Composite Section: The amendments to the fee provisions in subsections (2) and (6) incorporated by Ch. 444 were codified rather than the language in the Ch. 345 amendments because Ch. 444 contained broader language that included the Ch. 345 amendments.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), which amended this section relating to the Board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Administrative Rules

ARM 24.150.401 Fees.

ARM 24.150.503 Traineeship requirements and standards.

37-16-406. Admission of licensees from other states. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids in the other state or jurisdiction. An applicant for a license under this section is not required to take the practical or written examination but is required to:

(1) pay the fee provided for in 37-16-402;

(2) take a test of the applicant's knowledge of the provisions of Title 37, chapter 16, and applicable rules; and

(3) comply with all other requirements of this chapter.

History: En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974; R.C.M. 1947, 66-3019; amd. Sec. 12, Ch. 404, L. 1985; amd. Sec. 6, Ch. 72, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 72 in second sentence, before "examination", substituted "the practical or written" for "a qualifying"; inserted (1) requiring payment of the fee provided for in 37-16-402; inserted (2) requiring an applicant to take a test of the applicant's knowledge of the provisions of Title 37, chapter 16, and applicable rules; at beginning of (3) inserted "comply"; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1985 Amendment: In first sentence, near beginning after "practice of", inserted "dispensing", near middle after "qualified to", inserted "sell", and near end after "to fit", inserted "dispense".

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-16-407. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974; amd. Sec. 14, Ch. 215, L. 1975; R.C.M. 1947, 66-3016; amd. Sec. 42, Ch. 345, L. 1981; amd. Sec. 10, Ch. 444, L. 1981; amd. Sec. 13, Ch. 404, L. 1985; amd. Sec. 6, Ch. 155, L. 1991; amd. Sec. 7, Ch. 72, L. 1995; amd. Sec. 22, Ch. 481, L. 1997; amd. Sec. 22, Ch. 492, L. 1997; amd. Sec. 23, Ch. 271, L. 2003.

37-16-408. Deposit of fees, fines, and costs. Fees, fines, and costs collected under this chapter, except those collected by a justice's court, must be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6).

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(1); amd. Sec. 11, Ch. 444, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 404, L. 1985; amd. Sec. 26, Ch. 557, L. 1987; amd. Sec. 7, Ch. 155, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning, after "fines", inserted "and costs"; and made minor change in style.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1987 Amendment: Near beginning, after "chapter", inserted "except those collected by a justice's court".

1985 Amendment: Near beginning after "Fees", inserted "and fines".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment: Deleted "by the department" after "Fees collected" at the beginning of the section; inserted "appropriations and" after "subject to" near the end of the section.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-16-409 and 37-16-410 reserved.

37-16-411. Revocation or suspension of license — investigations — fines. (1) The board may, at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this chapter or board rules, the board may institute a proceeding pursuant to the provisions of 37-1-136 and 37-1-137.

(2) A licensee or license applicant may be sanctioned as provided in 37-1-312 for any of the following causes:

(a) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court for the district where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for imposing sanctions.

(b) securing a license under this chapter through fraud, deceit, or false statements;

- (c) the personal use of a false name or alias in professional practice;
- (d) violating any of the provisions of this chapter;
- (e) obtaining a fee or making any sale by fraud or misrepresentation;
- (f) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;
- (g) 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, that is improbable, misleading, deceptive, or untruthful;
- (h) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids and related devices if that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other similar words, abbreviations, or symbols that tend to connote the medical profession when that use is not accurate;
- (i) permitting another to use a license or certificate;
- (j) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;
- (k) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;
- (l) unethical conduct or gross incompetence or negligence in the performance of professional duties, including repeated failure to make indicated medical referrals of customers;
- (m) selling a hearing aid or related device to a person who has not been given tests using appropriate established procedures and instrumentation in fitting hearing aids or related devices, except for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale;
- (n) falsifying hearing test or evaluation results or any associated client records;
- (o) refusing to cooperate with an investigation by the board by:
 - (i) failing to furnish requested records or documents;
 - (ii) failing to furnish a complete explanation of matters referred to in the complaint;
 - (iii) failing to respond to a subpoena issued by the board;
 - (iv) willfully misrepresenting any relevant fact to a board investigator; or
 - (v) attempting to discourage a potential witness from cooperating with a board investigator or from testifying by using threats, harassment, extortion, or bribery.

History: En. Sec. 17, Ch. 204, L. 1969; amd. Sec. 27, Ch. 101, L. 1977; R.C.M. 1947, 66-3017; amd. Sec. 15, Ch. 404, L. 1985; amd. Sec. 8, Ch. 155, L. 1991; amd. Sec. 8, Ch. 72, L. 1995; amd. Sec. 31, Ch. 109, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 109 in (1) in second sentence after "chapter" inserted "or board rules", after "board may" inserted "institute a proceeding", and at end after "37-1-136" substituted "and 37-1-137" for "suspend or revoke the accused person's license or suspend or deny the person's application for a fixed period to be determined by the board"; in (2) at beginning of introductory clause substituted "licensee or license applicant may be sanctioned as provided in 37-1-312" for "person licensed under this chapter may have the license revoked or suspended for a fixed period to be determined by the board or be fined not to exceed \$500 per incident"; in (2)(a) at end of second sentence after "grounds for" substituted "imposing sanctions" for "revocation or suspension"; deleted former (2)(j) that read: "(j) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, or questionable credit standing or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services"; deleted former (2)(l) that read: "(l) obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1995 Amendment: Chapter 72 inserted (1) concerning Board investigation of an alleged violation of this chapter by a licensee or applicant for licensure; and made minor changes in style.

Purported Repeal — Coordination: Section 128, Ch. 429, L. 1995, repealed this section, but sec. 130, Ch. 429, L. 1995, a coordination section, voided the repeal.

1991 Amendment: Near beginning, after "person", substituted "licensed" for "registered"; near middle of (8) inserted reference to related devices; in (15), near beginning and near middle, inserted reference to related devices and at end substituted "for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale" for "in cases of selling replacement hearing aids"; inserted (16) regarding falsifying test results and records; and inserted (17) regarding refusal to cooperate with a Board investigation.

Severability: Section 12, Ch. 155, L. 1991, was a severability clause.

1985 Amendment: In lead-in, after "by the board", inserted "or be fined not to exceed \$500 per incident"; in (3), after "profession", deleted "with fraudulent intent"; in (8), near middle after "clinic", inserted "hearing clinic" and at end, deleted "The term "hearing center" shall be discontinued in accordance with the code of ethics of the national hearing aid society"; and inserted (11) referring to use of method of prohibited advertising.

Administrative Rules

ARM 24.150.402 Record retention.

ARM 24.150.601 Minimum testing.

ARM 24.150.2301 Unprofessional conduct.

37-16-412. Revocation, suspension, or denial — notice and hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing as provided under the Montana Administrative Procedure Act.

History: En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974; amd. Sec. 28, Ch. 101, L. 1977; R.C.M. 1947, 66-3022; amd. Sec. 12, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendment: Added "as provided under the Montana Administrative Procedure Act" at the end of the section.

37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the selling, fitting, or dispensing of hearing aids without a valid license is guilty of a misdemeanor and upon conviction shall be fined not less than \$250 or more than \$1,000, be imprisoned in the county jail for not less than 90 days or more than 1 year, or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding.

History: En. Sec. 21, Ch. 204, L. 1969; R.C.M. 1947, 66-3021; amd. Sec. 16, Ch. 404, L. 1985; amd. Sec. 32, Ch. 109, L. 2009.

Compiler's Comments

2009 Amendment: Chapter 109 in (1) near middle after "fined not" substituted "less than \$250 or more than \$1,000" for "more than \$500" and after "imprisoned" substituted "in the county jail for not less than 90 days or more than 1 year" for "for not more than 90 days"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 53, Ch. 109, L. 2009, was a saving clause.

Severability: Section 54, Ch. 109, L. 2009, was a severability clause.

1985 Amendment: In (1) near beginning, after "practices the" inserted "selling".

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Affidavits, Title 26, ch. 1, part 10.

Injunctions, Title 27, ch. 19.

37-16-414. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 9, Ch. 155, L. 1991.