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# COLORADO REVISED STATUTES

## Title 12 **Professions and Occupations**

### Article 5.5 **Audiologists and Hearing Aid Providers**

Effective July 1, 2010

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**PART 1**  
**AUDIOLOGISTS**

**12-5.5-101. Definitions.**

As used in this part 1, unless the context otherwise requires:

(1) "Audiologist" means a person who meets the following requirements:

(a) Has earned a doctoral degree in audiology from a program that is or, at the time the applicant was enrolled and graduated, was accredited by an accrediting agency recognized by the council for higher education accreditation or its successor or the United States department of education;

(b) Has earned a master's degree with a major emphasis in audiology that was conferred before July 1, 2007, from a program of higher learning that is or, at the time the applicant was enrolled and graduated, was accredited by an accrediting agency recognized by the council for higher education or its successor or the United States department of education, and has obtained a certificate of competency in audiology from a nationally recognized certification agency; or

(c) Has been licensed as a school audiologist by the Colorado department of education pursuant to section 22-60.5-210, C.R.S.

(2) "Director" means the director of registrations.

(3) "Division" means the division of registrations in the department of regulatory agencies.

(3.3) "Licensee" means an audiologist who holds a current license from the division of registrations pursuant to this part 1.

(3.5) "Practice of audiology" means:

(a) The application of principles, methods, and procedures related to the development, disorders, and conditions of the human auditory-vestibular system, whether such disorders or conditions are of organic or functional origin, including, but not limited to, disorders of hearing, balance, tinnitus, auditory processing, and other neural functions, as those principles, methods, and procedures are taught in accredited programs in audiology. The principles, methods, or procedures include diagnosis, assessment, measurement, testing, appraisal, evaluation, rehabilitation, treatment, prevention, conservation, identification, consultation, counseling, intervention, management, interpretation, instruction, or research related to hearing, vestibular function, balance and fall prevention, and associated neural systems, or any abnormal condition related to tinnitus, auditory sensitivity, acuity, function or processing, speech, language, or other aberrant behavior resulting from hearing loss, for the purpose of diagnosing, designing, and implementing audiological management and treatment or other programs for the amelioration of such disorders and conditions. Management and treatment shall include, but not be limited to, the activities described in paragraph (b) of this subsection (3.5).

(b) Engaging in the practice of prescribing, selecting, specifying, evaluating, assisting in the adjustment to, and dispensing of prosthetic devices for hearing loss, including, but not limited to,

hearing aids and hearing assistive devices by means of specialized audiometric equipment or by any other means accepted by the director;

(c) Determining work-related hearing loss or impairment, as defined by federal regulations;

(d) Consulting with and making referrals to a physician when appropriate.

(4) (Deleted by amendment, L. 2007, p. 810, § 5, effective July 1, 2007.)

**12-5.5-101.5. Scope of article.**

(1) This article shall not apply to persons who are licensed pursuant to section 22-60.5-210, C.R.S., and who are not licensed under this article for work undertaken as part of their employment by, or contractual agreement with, the public schools.

(2) Nothing in this part 1 shall be construed to authorize an audiologist to engage in the practice of medicine as defined in section 12-36-106.

**12-5.5-101.6. Title protection.**

It shall be unlawful for any person to use the following titles unless licensed pursuant to section 12-5.5-102: "Audiologist", "hearing and balance audiologist", "vestibular audiologist", or any other title or abbreviation that implies that such person is an audiologist.

**12-5.5-102. License required - application - bond.**

(1) An audiologist shall be licensed with the division of registrations before performing audiology services in this state. The audiologist shall be given a license bearing a unique license number. The audiologist shall include the license number on all written contracts and receipts, as required pursuant to section 12-5.5-302 (1) (e) (III) (B).

(2) An audiologist desiring to be licensed pursuant to this section shall submit to the director an application containing the information described in subsection (3) of this section and shall pay a fee to be determined and collected by the director pursuant to section 24-34-105, C.R.S. The director may deny an application for a license if the required information is not submitted. If an applicant or licensee does not notify the director of a change in the submitted information within thirty days after such change, such failure shall be cause for disciplinary action.

(3) The following information shall be included in every application for a license under this section:

(a) The audiologist's name, business address, and business telephone number;

(b) A listing of the audiologist's education, experience, and degrees or credentials, including all degrees or credentials awarded to such audiologist that are related to the practice of audiology;

(c) A statement indicating whether any license, certificate, or registration in audiology was issued to the audiologist by a local, state, or national health care agency, whether any such license, certificate, or registration was suspended or revoked, whether charges or complaints are

pending against such license, certificate, or registration, and whether disciplinary action was taken;

(d) The length of time and the locations where the applicant has been engaged in the practice of audiology;

(e) If the audiologist will provide services to patients, proof of having obtained malpractice coverage in an amount determined as appropriate by the director.

(4) A student enrolled in a course of study at an accredited institution and practicing audiology under the supervision of a licensed audiologist shall be exempt from the requirements of this section.

**12-5.5-102.5. Temporary license.**

The director shall grant a temporary license to any applicant who has obtained a master's or doctorate degree in audiology and is practicing audiology in a year of "clinical fellowship", as required for certification by a national accrediting organization. No temporary license issued pursuant to this section shall be valid for more than twelve months.

**12-5.5-103. Licensing procedure - renewal - reinstatement.**

(1) The director shall license all applicants who meet the requirements of this part 1 and shall provide each licensee with a certificate indicating that the person named in such certificate is licensed in the state of Colorado as an audiologist.

(2) All licenses shall expire pursuant to a schedule established by the director and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of registrations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(3) All fees collected under this part 1 shall be deposited in accordance with section 12-5.5-104.

**12-5.5-104. Division of registrations cash fund.**

It is the intent of the general assembly that all direct and indirect costs incurred in the implementation of this part 1 be funded by annual license and renewal fees. All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund, created by section 24-34-105, C.R.S.

**12-5.5-105. Grounds for discipline - disciplinary actions.**

(1) (a) If, after investigation, notice, and the opportunity for hearing in accordance with article 4 of title 24, C.R.S., the director determines that an applicant or licensee has committed any of the acts specified in paragraph (b) of this subsection (1), the director may:

(I) Impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense;

(II) Issue a letter of admonition;

(III) Place a licensee on probation, which shall entail close supervision on such terms and for such time as the director deems appropriate;

(IV) Deny, refuse to renew, revoke, or suspend the license of an applicant or licensee; or

(V) Issue a confidential letter of concern.

(b) The following acts shall constitute grounds for discipline:

(I) Using false or misleading advertising or making a false or misleading statement or omission in an application for licensure;

(II) Conviction or acceptance of a plea of guilty or nolo contendere or receipt of a deferred sentence in any court to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing;

(III) Failing to comply with a stipulation or agreement made with the director or a final agency order;

(IV) Violation of any provision of this part 1, including failure to comply with the license requirements of section 12-5.5-102, or violation of any rule promulgated by the director under this part 1;

(V) Violating the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(VI) Employing a sales agent or employee who violates any provision of this part 1;

(VII) Failing to notify the director of a change in the information filed pursuant to section 12-5.5-102;

(VIII) Causing physical harm to a customer;

(IX) Failing to practice according to commonly accepted professional standards;

(X) Failing to adequately supervise a licensed hearing aid provider trainee or associate;

(XI) Providing services beyond the scope of the educational preparation, experience, skills, or competence of the licensee.

(c) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(2) Any disciplinary action taken with respect to an audiologist by another state or local jurisdiction or the federal government shall be deemed prima facie evidence of grounds for disciplinary action, including denial of a license under this part 1; except that this subsection (2)

shall apply only to disciplinary actions that are substantially similar to those set out as grounds for disciplinary action under this part 1.

(3) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the director, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(4) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the general fund.

**12-5.5-106. Director - powers - duties - rules.**

(1) The director may make such investigations and inspections as are necessary to determine whether an applicant has violated this part 1 or any rule adopted by the director.

(2) The director may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this part 1, and, upon a showing that a person is engaging in or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by the court regardless of the existence of another remedy. All proceedings related to such injunction or restraining order shall be governed by the Colorado rules of civil procedure.

(3) (a) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this part 1. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) The director shall determine the amount of malpractice coverage that must be obtained by an audiologist who provides services to patients.

(5) The director shall adopt all rules necessary for the enforcement and administration of this part 1, including, but not limited to, a requirement that licensees maintain for at least seven years records identifying customers by name, the goods or services provided to each customer, and the date and price of each transaction.

**12-5.5-107. Cease-and-desist orders - unauthorized practice - penalties.**

(1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (2). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(3) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the director may enter into a stipulation with such person.

(4) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

(6) Any person who practices or offers or attempts to practice audiology services without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

**12-5.5-108. Immunity.**

The director, the director's staff, any person acting as a witness or consultant to the director, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 1 shall be immune from any civil or criminal liability that may result from such participation.

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## **PART 2 HEARING AID PROVIDERS**

### **12-5.5-201. Definitions.**

As used in this part 2, unless the context otherwise requires:

- (1) "Director" means the director of registrations.
- (2) "Division" means the division of registrations in the department of regulatory agencies.

(3) "Licensed hearing aid provider" means a person engaged in the practice of dispensing, fitting, or dealing in hearing aids, who has passed an examination conducted under the auspices of the national board for certification in hearing instrument sciences (NBC-HIS) or an equivalent examination as determined by the director; except that a licensed hearing aid provider who is engaged in the practice of dispensing, fitting, or dealing in hearing aids on or before July 1, 1995, shall demonstrate, not later than July 1, 1997, that he or she has passed such an examination.

(4) "Licensee" means a licensed hearing aid provider who holds a current license from the division of registrations pursuant to this part 2.

### **12-5.5-201.5. Title protection.**

It shall be unlawful for any person to use the title "hearing aid provider" or "hearing aid dispenser" unless licensed pursuant to this part 2.

### **12-5.5-202. License required - application - bond.**

(1) A hearing aid provider shall be licensed pursuant to this part 2 before selling or negotiating to sell, directly or indirectly, any hearing device for the hearing impaired unless such provider holds a current license pursuant to part 1 of this article. Upon licensing, the licensed hearing aid provider shall be given a license bearing a unique license number. The licensed hearing aid provider shall include the license number on all written contracts and receipts, as required pursuant to section 12-5.5-302 (1) (e) (III) (B). A licensed hearing aid provider who is also an audiologist and is licensed only under part 1 of this article shall include the license number issued pursuant to such part 1 on all written contracts and receipts.

(2) (a) A hearing aid provider desiring to be licensed pursuant to this section shall submit to the director an application containing the information described in this subsection (2) and shall pay a fee to be determined and collected pursuant to section 24-34-105, C.R.S. The director may deny an application for licensure if the required information is not submitted or if an applicant's trainee license, issued pursuant to section 12-5.5-202.5, has been revoked. If an applicant or licensee does not notify the director of a change in the submitted information within thirty days after such change, such failure shall be cause for disciplinary action.

(b) The following information shall be included in every application for licensure under this section:

(I) The name, business address, and business telephone number of the hearing aid provider;

(II) The location of each office from which sales of hearing devices for the hearing impaired are intended to be made;

(III) Proof of having obtained a surety bond or an alternative, as authorized in section 11-35-101, C.R.S., in an amount not to exceed ten thousand dollars. Such surety bond shall require the surety to provide notice to the director within thirty days after receipt of a claim or payment made from such surety bond or if the bond is cancelled for any reason.

(IV) A statement indicating whether any hearing aid provider license, certificate, or registration was issued to the hearing aid provider by a local, state, or national health care agency, whether any such license, certificate, or registration was suspended or revoked, whether charges or complaints are pending against such license, certificate, or registration, and whether disciplinary action was taken.

**12-5.5-202.5. License - trainees and associates - rules.**

(1) A person training to be a licensed hearing aid provider shall submit to the director an application containing the information described in subsection (2) of this section and shall pay a trainee or associate license fee to be determined and collected pursuant to section 24-34-105, C.R.S.

(2) The director shall issue a trainee license to any applicant who provides the following to the director's satisfaction:

(a) The information required in section 12-5.5-202 (2) (b) (I) and (2) (b) (IV); and

(b) Verification of training to become a licensed hearing aid provider, which training is under the direct and personal supervision of an audiologist or a licensed hearing aid provider whose license is in good standing. For the purposes of this section, "audiologist" has the same meaning as set forth in section 12-5.5-101 (1).

(3) During the training period:

(a) A trainee or associate shall not sell hearing aids independently of the supervising licensed hearing aid provider or audiologist;

(b) A trainee shall inform all consumers of his or her status as a trainee; and

(c) A supervising registered hearing aid provider or audiologist shall retain ultimate responsibility for the care provided by the trainee or associate and shall be subject to disciplinary action by the director for failure to provide adequate supervision.

(4) The director shall promulgate all rules necessary for the enforcement and administration of this section, including rules that:

(a) Establish the time period during which a trainee license issued under this section shall be valid;

(b) Specify the components of the training required to be completed by trainees and associates.

(5) Any person issued a trainee license, including an associate, under this section is subject to the disciplinary provisions of section 12-5.5-205.

**12-5.5-203. Licensing procedure - renewal - reinstatement.**

(1) The director shall license all applicants who meet the requirements of this part 2 and shall provide each licensee with a license indicating that the person named in such license is licensed in the state of Colorado as a hearing aid provider.

(2) All licenses shall expire pursuant to a schedule established by the director and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director of the division of registrations, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(3) The director shall issue or deny a license within sixty days after the date of receipt of the application.

(4) All fees collected under this part 2 shall be deposited in accordance with section 12-5.5-204.

**12-5.5-204. Division of registrations cash fund.**

It is the intent of the general assembly that all direct and indirect costs incurred in the implementation of this part 2 be funded by annual license and renewal fees. All fees collected by the director shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund, created by section 24-34-105, C.R.S.

**12-5.5-205. Grounds for discipline - disciplinary actions.**

(1) (a) If, after investigation, notice, and the opportunity for hearing in accordance with article 4 of title 24, C.R.S., the director determines that an applicant, licensee, trainee, or associate has committed any of the acts specified in paragraph (b) of this subsection (1), the director may:

(I) Impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense;

(II) Issue a letter of admonition;

(III) Place a licensee on probation, which shall entail close supervision on such terms and for such time as the director deems appropriate;

(IV) Deny, refuse to renew, revoke, or suspend the license of an applicant or registrant;

(V) Deny, revoke, or suspend the license of a hearing aid provider trainee or associate; or

(VI) Issue a confidential letter of concern.

(b) The following acts shall constitute grounds for discipline:

(I) Misrepresenting or concealing a material fact from a purchaser of a hearing device for the hearing impaired;

(II) Employing a device, scheme, or artifice with the intent to defraud a purchaser of a hearing device for the hearing impaired;

(III) Disposing of, concealing, diverting, converting, or otherwise failing to account for any funds or assets of a purchaser of a hearing device for the hearing impaired that is under the control of such person;

(IV) Violating the "Colorado Consumer Protection Act", article 1 of title 6, C.R.S.;

(V) Refusing to honor a buyer's request to cancel a contract for the purchase of a hearing device for the hearing impaired, if such request was made during the rescission period set forth in section 12-5.5-302 (1) (e);

(VI) Failing to notify the director of any change in the information filed pursuant to section 12-5.5-202;

(VII) Conviction or acceptance of a plea of guilty or nolo contendere or receipt of a deferred sentence in any court to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing;

(VIII) Failing to comply with a stipulation or agreement made with the director or a final agency order;

(IX) Causing physical harm to a customer;

(X) Failing to practice according to commonly accepted professional standards;

(XI) Failing to adequately supervise a registered hearing aid provider trainee or associate;

(XII) Conviction or acceptance of a plea of guilty or nolo contendere or receipt of a deferred sentence in any court to a felony.

(c) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the director, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(2) Any disciplinary action taken with respect to a hearing aid provider by another state or local jurisdiction or the federal government shall be deemed prima facie evidence of grounds for disciplinary action, including denial of licensure under this part 2; except that this subsection (2) shall apply only to disciplinary actions that are substantially similar to those set out as grounds for disciplinary action under this part 2.

(3) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be

dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the licensee.

(b) When a letter of admonition is sent by the director, by certified mail, to a licensee, such licensee shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition shall be deemed vacated and the matter shall be processed by means of formal disciplinary proceedings.

(4) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit them to the general fund.

**12-5.5-205.5. Cease-and-desist orders - unauthorized practice - penalties.**

(1) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the director may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this part 2 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the director, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 2, then, in addition to any specific powers granted pursuant to this part 2, the director may issue to such person an order to show cause as to why the director should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) shall be promptly notified by the director of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the director for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (2) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the director as provided in paragraph (b) of this subsection (2). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the director may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (2) and such other evidence related to the matter as the director deems appropriate. The director shall issue the order within ten days after the director's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the director reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 2, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The director shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(3) If it appears to the director, based upon credible evidence presented to the director, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 2, any rule promulgated pursuant to this part 2, any order issued pursuant to this part 2, or any act or practice constituting grounds for administrative sanction pursuant to this part 2, the director may enter into a stipulation with such person.

(4) If any person fails to comply with a final cease-and-desist order or a stipulation, the director may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the director's determination or of the director's final order in a court of competent jurisdiction.

(6) Any person who sells or directly or indirectly negotiates to sell any hearing device for the hearing impaired without an active registration issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

**12-5.5-206. Director - powers - duties - rules.**

(1) The director may make such investigations and inspections as are necessary to determine whether an applicant has violated this part 2 or any rule promulgated by the director.

(2) The director may apply to a court of competent jurisdiction for an order enjoining any act or practice which constitutes a violation of this part 2, and, upon a showing that a person is engaging in or intends to engage in any such act or practice, an injunction, restraining order, or

other appropriate order shall be granted by the court regardless of the existence of another remedy. All proceedings related to such injunction or restraining order shall be governed by the Colorado rules of civil procedure.

(3) (a) The director or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director pursuant to this part 2. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or registrant resides or conducts business, upon application by the board or director with notice to the subpoenaed person or registrant, may issue to the person or registrant an order requiring that person or registrant to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(4) The director shall adopt all rules necessary for the enforcement or administration of this part 2, including, but not limited to, rules that require:

(a) Written disclosures to purchasers, as may be needed to protect such purchasers; and

(b) That supervising licensees or licensees designated by such licensees' employers maintain for at least seven years records identifying customers by name; the goods or services, except batteries and minor accessories, provided to each customer; and the date and price of each transaction.

(5) The director may require licensed hearing aid providers to make disclosures to purchasers in their written contracts of sale or in separate written documents if the director finds that such disclosures are necessary for the protection of purchasers.

#### **12-5.5-206.5. Immunity.**

The director, the director's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 2, and any person who lodges a complaint pursuant to this part 2 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as director, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 2 shall be immune from any civil or criminal liability that may result from such participation.

**12-5.5-206.7. Application of part.**

The provisions of this part 2 shall not apply to the dispensing of hearing aids outside of this state, except as provided in section 12-5.5-205 (2).

**12-5.5-207. Repeal of article.**

(1) This article is repealed, effective July 1, 2012.

(2) Prior to such repeal, the licensing and supervisory functions of the director shall be reviewed as provided in section 24-34-104, C.R.S.

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**PART 3**  
**LICENSED HEARING AID PROVIDERS -**  
**DECEPTIVE TRADE PRACTICES**

**12-5.5-301. Definitions.**

As used in this part 3, unless the context otherwise requires:

(1) "Audiologist" means an individual who is licensed as an audiologist pursuant to part 1 of this article or who has been licensed as a school audiologist by the Colorado department of education pursuant to section 22-60.5-210, C.R.S.

(2) "Cochlear implant" or "cochlear prosthesis" means an electrode or electrodes surgically implanted in the cochlea that are attached to an induction coil buried under the skin near the ear, and the associated unit which is worn on the body.

(3) "Dispense" means to transfer title, possession, or the right to use by lease, bailment, or any other method, but excludes transactions with distributors or dealers.

(4) "Hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories thereto, including ear molds but excluding batteries and cords; except that "hearing aid" does not include a cochlear implant or cochlear prosthesis.

(5) "Licensed hearing aid provider" means an individual who is licensed as a hearing aid provider pursuant to part 2 of this article.

(6) "Practice of dispensing, fitting, or dealing in hearing aids" includes the selection and adaptation for the sale of hearing aids and includes the testing of hearing for these purposes. The practice also includes the making of impressions for ear molds and counseling and instruction pertaining to the selection, fitting, adaptation, or sale of hearing aids.

(7) "Trial period" means the first thirty days a buyer has a hearing aid in the buyer's possession. Any such trial period may be extended by mutual agreement of the buyer and the licensed hearing aid provider who dispensed the hearing aid.

**12-5.5-302. Licensed hearing aid providers - deceptive trade practices.**

(1) In addition to any other deceptive trade practices under section 6-1-105, C.R.S., or this part 3, a licensed hearing aid provider or, with respect to only paragraph (a) of this subsection (1), an audiologist, engages in a deceptive trade practice when such provider:

(a) Fails to deliver to each person supplied with a hearing aid a receipt that:

(I) Bears the business address of the hearing aid provider or audiologist together with specifications as to the make and serial number of the hearing aid furnished and the full terms of the sale clearly stated. If a hearing aid that is not new is sold, the container thereof and the

receipt shall be clearly marked as "used" or "reconditioned", whichever is applicable, within the terms of the guarantee, if any.

(II) Bears, in no smaller type than the largest used in the body of the receipt, in substance, a provision that the purchaser has been advised at the outset of the purchaser's relationship with the hearing aid provider or audiologist that any examination or representation made by a hearing aid provider or audiologist in connection with the practice of dispensing, fitting, or dealing in hearing aids 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;

(III) Bears, in no smaller type than the largest used in the body of the receipt, a provision indicating that hearing aid providers and audiologists are regulated by the division of registrations within the department of regulatory agencies;

(IV) Bears a provision labeled "warranty" in which the exact warranty terms and periods available from the manufacturer are documented, or includes an original or photocopy of the original manufacturer's warranty with the receipt;

(b) Sells a hearing aid to a child under eighteen years of age without receiving documentation that the child has been examined by a licensed physician and an audiologist within six months prior to the fitting;

(c) (I) Fails to receive from a licensed physician, prior to dispensing, fitting, or dealing in a hearing aid to any person, a written prescription or recommendation that specifies that the person is in fact in need of a hearing aid; except that any person eighteen years of age or older who objects to medical evaluation on the basis of religious or personal beliefs may waive the requirement by delivering to the registered hearing aid provider a written waiver;

(II) Sells, provides, dispenses, adjusts, provides training or teaching in regard to, or otherwise services cochlear implants unless such licensed hearing aid provider is an audiologist or a physician;

(d) Fails to recommend in writing prior to fitting or dispensing a hearing aid that the best interests of the prospective user would be served by consulting a licensed physician specializing in diseases of the ear, or any licensed physician, if any of the following conditions exists:

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

(II) History of or active drainage of the ear within the previous ninety days;

(III) History of sudden or rapidly progressive hearing loss;

(IV) Acute or chronic dizziness;

(V) Unilateral hearing loss of sudden onset within the previous ninety days;

(VI) Audiometric air-bone gap equal to or greater than fifteen decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;

(VII) Visible evidence of significant cerumen accumulation on or a foreign body in the ear canal;

(VIII) Pain or discomfort in the ear;

(e) Fails to provide a thirty-day rescission period with the following terms:

(I) The buyer shall have the right to cancel the purchase for any reason before the expiration of the rescission period by giving or mailing written notice of cancellation to the seller and presenting the hearing aid to the dealer, unless the hearing aid has been lost or significantly damaged beyond repair while in the buyer's possession and control. The thirty-day rescission period shall be tolled for any period during which a licensed hearing aid provider takes possession or control of a hearing aid after its original delivery.

(II) The buyer, upon cancellation, is entitled to receive a full refund of any payment made for the hearing aid within thirty days after return of the hearing aid to the seller, unless the hearing aid was significantly damaged beyond repair while the hearing aid was in the buyer's possession and control; except that, if the hearing aid is returned for any reason other than a defect in such hearing aid, the seller may retain an itemized amount to cover the minimum costs of materials used by the licensed hearing aid provider or audiologist and a manufacturer's return fee, but such amount may not be greater than five percent of the total charge for the hearing aid.

(III) (A) The seller shall provide a written receipt or contract to the buyer that includes, in immediate proximity to the space reserved for the signature of the buyer, the following specific statement in all capital letters of no less than ten-point, bold-faced type:

**THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT OF THE 30TH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE SELLER WRITTEN NOTICE OF CANCELLATION AND BY RETURNING THE HEARING AID, UNLESS THE HEARING AID HAS BEEN SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE THE HEARING AID WAS IN THE BUYER'S CONTROL. BY LAW, THE SELLER IS ALLOWED TO RETAIN AN ITEMIZED AMOUNT, NOT TO EXCEED FIVE PERCENT OF THE TOTAL CHARGE FOR THE HEARING AID, TO COVER THE COSTS OF A MANUFACTURER'S RETURN FEE AND THE MINIMUM COSTS OF MATERIALS USED BY THE REGISTERED HEARING AID PROVIDER, UNLESS THE HEARING AID IS RETURNED BECAUSE IT IS DEFECTIVE.**

(B) The written contract or receipt provided to the buyer shall also contain a statement, in print size no smaller than ten-point type, that the sale is void and unenforceable if the hearing aid being purchased is not delivered to the consumer within thirty days after the date the written contract is signed or the receipt is issued, whichever occurs later. The written contract or receipt shall also include the licensed hearing aid provider's license number and a statement that the licensed hearing aid provider shall promptly refund all moneys paid for the purchase of a hearing aid if it is not delivered to the consumer within such thirty-day period. Such statement is not subject to waiver by the buyer.

(IV) A refund request form shall be attached to each receipt and shall contain the information in subparagraph (I) of paragraph (a) of this subsection (1) and the statement, in all capital letters of no less than ten-point, bold-faced type: "Refund request - this form must be postmarked by \_\_\_\_\_ (Date to be filled in). No refund will be given until the hearing aid or hearing aids are returned to the seller." A space for the buyer's address, telephone number, and signature shall be provided. The buyer shall only be required to sign, list the buyer's current address and telephone number, and mail the refund request form to the seller. If the hearing aid is sold in the buyer's

home, at the buyer's option, the seller shall be responsible for arranging the return of the hearing aid.

(f) Represents 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 terms "doctor", "clinic", "state-licensed clinic", "state-registered", "state-certified", or "state-approved" or any other term, abbreviation, or symbol when it would falsely give the impression that service is being provided by persons trained in medicine or that the hearing aid dealer's service has been recommended by the state when such is not the case; or when that would be false or misleading;

(g) Directly or indirectly gives or offers to give or permits or causes to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence such person or have such person influence others to purchase or contract to purchase products sold or offered for sale by a licensed hearing aid provider or influences persons to refrain from dealing in the products of competitors;

(h) Dispenses a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in the fitting of hearing aids, except in cases of selling replacement hearing aids within one year after the date of the original purchase;

(i) Makes a false or misleading statement of fact concerning goods or services or the buyer's right to cancel with the intention or effect of deterring or preventing the buyer from exercising the buyer's right to cancel;

(j) Charges, collects, or recovers any cost or fee for any good or service that has been represented by the licensed hearing aid provider as free.

**12-5.5-303. Fines.**

Fines collected pursuant to this article shall be transferred to the state treasurer who shall credit the same to the general fund.

**12-5.5-304. Application of part.**

The provisions of this part 3 shall not apply to the dispensing of hearing aids outside of this state so long as the transaction is either in conformance with this part 3 or in conformance with the applicable laws and rules of the jurisdiction in which the transaction takes place.

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