

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

REGULATION OF AUDIOLOGISTS AND HEARING AID DEALERS IN COLORADO

1999 SUNSET REVIEW



October 15, 1999

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the regulation of audiologists and hearing aid dealers. I am pleased to submit this written report which will be the basis for my office's oral testimony before the 2000 legislative committees of reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination

The report discusses the question of whether there is a need for the regulation provided under Article 5.5 of Title 22, C.R.S. The report also discusses the effectiveness of the Division of Registrations' staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

M. Michael Cooke
Executive Director

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Executive Summary

The Department of Regulatory Agencies (DORA) has concluded its 1999 Sunset Review of the regulation of hearing aid dealers and audiologists by the Director of the Division of Registrations in DORA as required by Article 5.5 of Title 12 of the Colorado Revised Statutes (C.R.S.). This is the first sunset review of the program since it was established by the General Assembly during the 1995 legislative session.

From 1975 to 1985, the Hearing Aid Dealer Board (Board) licensed hearing aid dealers in Colorado. At that time the Board and program were allowed to sunset based on findings contained in the sunset review conducted in 1985. In 1994, the General Assembly received an application for sunrise filed jointly by organizations representing hearing aid dealers and audiologists. Following the sunrise review, the General Assembly passed legislation that created a registration program in DORA for hearing aid dealers and audiologists.

This sunset review found that there is significant actual public harm by the unregulated practice of hearing aid sales. The report recommends the continuation of the current regulatory program with some modification until the year 2007. The report makes five statutory recommendations, listed on the following page, which will enhance the ability of the Director of the Division of Registrations to protect the public.

This 1999 review found no actual harm to the public by the unregulated practice of audiology. Since the regulation of audiologists began in 1995 there have been no complaints or disciplinary actions taken against a registered audiologist. The American Speech-Language-Hearing Association is a nationally recognized private credentialing organization that certifies the competency of audiologists. Practitioners and medical professionals making referrals to or employing audiologists recognize certification by this organization. State regulation of this profession is not necessary to protect the public. Therefore, the report recommends repealing the regulation of audiologists.

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Background

The General Assembly originally established regulation for hearing aid dealers in 1975 through the creation of the Hearing Aid Dealer Board (Board) in the Division of Registrations (Division) in the Department of Regulatory Agencies (DORA). The Board was subject to the sunset review process and the 1985 review of the program found that although the Board received numerous complaints, no license had been denied, suspended, or revoked. The report concluded, and the General Assembly agreed, that the Board was ineffective in protecting the public.

The General Assembly sunset the Board and placed provisions in the Colorado Consumer Protection Act (CPA) contained in §6-1-105, Colorado Revised Statutes (C.R.S.), included as Appendix B of this report. These provisions required hearing aid dealers to comply with standards specific to dealers as well as the general provisions of the CPA governing deceptive trade practices. From 1986 through 1995, the CPA governed the regulation of hearing aid sales.

Enforcement of the CPA is within the jurisdiction of both the Attorney General and local district attorneys. Both the Attorney General and local district attorneys reported increases in complaints and enforcement actions for violations of the CPA by hearing aid dealers during the late 1980s and early 1990s. In 1990 alone, the Attorney General's office investigated 100 complaints. Local district attorneys reported 123 complaint investigations from 1989 through 1993.

The majority of the complaints investigated by both the Attorney General and district attorneys involved failure of dealers to comply with refund provisions of the CPA. There were also complaints of failure to deliver hearing devices after the order was placed, and complaints about lack of service. Elderly persons were particularly susceptible to fraudulent practices by dealers regulated under the CPA.

In 1994, an application for the regulation of audiologists and hearing aid dealers was filed jointly by the Colorado Hearing Aid Society (CHAS) and the Colorado Academy of Audiology (CAA). The sunrise review conducted at that time found sufficient evidence of harm to the public to recommend a regulatory program for hearing aid dealers. The General Assembly agreed and subsequent legislation (HB 95-1011) was introduced in the 1995 legislative session to require a registration program in the Division. The legislation requires registration for all individuals selling hearing aids.

Background

The 1994 sunrise report did not find actual harm to the public by the unregulated practice of audiology. However, advocates for licensure presented arguments in the sunrise hearing that the unregulated practice presented significant potential harm to the public. Based on this information, the General Assembly included registration of audiologists in HB 95-1011. Individuals practicing the profession of audiology were required to demonstrate minimum qualifications for registration as an audiologist by July 1, 1997.

Forty-seven states currently regulate audiologists, 41 of which require a license to practice. Colorado and Minnesota require registration of audiologists, while Washington requires audiologists to be certified. Idaho, Michigan and Vermont do not regulate the practice of audiology.

Thirteen states license hearing aid dealers, and three states, including Colorado, Massachusetts and New York have a registration program. Minnesota requires hearing aid dealers to be certified by a nationally recognized organization.

REGULATION

Hearing aids are considered medical devices, and as such, are subject to regulation by the Federal Food and Drug Administration (FDA). The FDA has promulgated regulations regarding the manufacture and labeling of hearing aids. The FDA also has regulations requiring an examination by a physician before a hearing aid can be sold. However, consumers have the right to waive that examination. The FDA regulations require hearing aid dealers to refer patients with the following conditions to a physician before dispensing a hearing device:

- Visible congenital or traumatic deformity of the ear;
- History of active drainage from the ear within the previous 90 days;
- Acute or chronic dizziness;
- Unilateral hearing loss of sudden or recent onset within the previous 90 days;
- Audiometric air-bone gap equal to or greater than 15dB at 500Hz, 1000Hz, 2,000Hz;
- Visible evidence of cerumen or a foreign body in the ear canal; or
- Pain or discomfort in the ear.

Summary of Statute and Regulation

The statutory authority for the regulation of audiologists and hearing aid dealers is contained in Article 5.5 of Title 12 of the C.R.S. (Act). The Act is divided into two parts. Part 1 contains the statutory requirements for the regulation of audiologists. Part 2 contains the requirements for hearing aid dealers. The Director is required to promulgate regulations to administer the Act.

AUDIOLOGIST REGULATION

In order to practice audiology in Colorado, an individual must first meet the registration requirements contained in the statute. To be qualified for registration, a registrant must demonstrate to the Director of the Division of Registrations (Director) in DORA that the applicant holds a masters or doctorate degree in audiology or an equivalent degree approved by the Director. The applicant must also obtain a certificate of competency in audiology from a nationally recognized certification agency. Audiologists must maintain malpractice insurance in an amount determined by the Director through regulations.

Audiologists are required to register with the Division before providing services in Colorado. All registrations expire on June 30 of the year of issue or renewal. The program is cash funded and the Director annually adjusts the fees to cover the direct and indirect costs of the program. Registration requirements do not apply to persons employed by or under contract to public schools while in the performance of duties related to the employment or contract, provided the individual meets the licensing and certification requirements for the State Board of Education (§22-60-104(1), C.R.S.).

Registered audiologists must notify the Director within 30 days of any changes to the registration information. The Director is required to grant a temporary registration for applicants with the required education who are engaged in a year of clinical fellowship. Temporary registrations are valid for no more than twelve months.

Summary of Statute and Regulation

Section 105 of part 1 contains the grounds for discipline and disciplinary actions. The Director, after conducting an investigation and holding a hearing in accordance with the State Administrative Procedure Act (APA), may impose disciplinary action for violation of the statute or regulations. The Director has several options for disciplinary actions including:

- A letter of admonition;
- Probation, including supervised practice;
- Suspension;
- Revocation;
- Refusal to renew; and/or
- Administrative fines not to exceed \$2,500 for each offense.

The Director may conduct investigations and inspections to ensure compliance with the statute and regulations. The Director may apply to a court for injunctive relief to prevent violations of statutory provisions, including failure of a practitioner to register with the Director. The Director may conduct disciplinary hearings or delegate hearings to an administrative law judge under the provisions of the APA. The Director is required to promulgate regulations to administer the Act.

HEARING AID DEALER REGULATION

Similar to the audiologist program, oversight of the regulation of hearing aid dealers is vested in the Director. Hearing aid dealer is defined in the Act as 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 or an equivalent examination as determined by the Director. Persons registered as audiologists under part 1 of the Act are not required to register as a hearing aid dealer if engaged in both occupations.

Summary of Statute and Regulation

Hearing aid dealers who are not registered as an audiologist must register with the Director. A requirement of the registration process is proof of a bond or approved alternative in an amount established in regulation, not to exceed five thousand dollars. Registration fees are evaluated annually and adjusted as necessary to fund the program.

Section 202.5 of the statute requires the registration of hearing aid dealer trainees. The Act requires trainees to inform consumers of their status as a trainee and prohibits trainees from selling hearing aids independently of the supervising dealer or audiologist. The Director is required to promulgate regulations regarding time periods and training requirements for trainees.

The statute establishes registration requirements and the cash fund for the program. All registrations expire on June 30 of the year following the date of issuance. The statute details the grounds for disciplinary action in section 205. Disciplinary actions include:

- A letter of admonition;
- Probation, including supervised practice;
- Suspension;
- Revocation;
- Refusal to renew; and/or,
- Administrative fines not to exceed \$2,500 for each offense.

As with the regulation of audiologists, the Director may conduct investigations and inspections to ensure compliance with the statute and regulations; apply to a court for injunctive relief to prevent violations of statutory provisions, including failure of a practitioner to register with the Director; and conduct disciplinary hearings or delegate hearings to an administrative law judge under the provisions of the APA.

The Director is required to promulgate regulations to administer the Act.

REGULATIONS

The Director promulgates regulations regarding the registration and practice of both audiologists and hearing aid dealers. Regulations are available from the Division by mail or via the Internet. The regulations are divided into two chapters. Chapter I contains the requirements for registration as an audiologist. The regulations also establish a clinical fellow registration for students enrolled in an accredited educational program. Chapter II contains the requirements for registration as a hearing aid dealer or trainee. Both chapters of the regulations are included in the report as Appendix D.

Chapter I: Audiologist Regulations

The first section of the audiologist regulations contains a provision for the registration of audiologists practicing on or before July 1, 1995. This provision is no longer relevant since the statute requires standard requirements for the practice of audiology effective July 1, 1997. To renew a registration, or apply for initial registration after July 1, 1997, audiologists must comply with the remaining provisions of the regulations. These requirements include:

- Submitting a complete application on a form provided by the Director;
- A non-refundable registration fee;
- Proof of a masters or doctoral degree in audiology; or a masters or doctoral degree in hearing science or communication science or other degree determined by the Director to be equivalent;
- A certificate of competency in audiology from the American Speech-Language-Hearing Association or a certificate or license from the Colorado Department of Education pursuant to §12-60-104 (1), C.R.S.; and
- Proof of \$100,000 of malpractice insurance valid through the expiration date of the registration or renewal.

Summary of Statute and Regulation

Temporary registrations for clinical fellows are valid for no more than 12 months. Applicants must submit proof of a masters or doctoral degree in audiology, pay the non-refundable fee and provide the dates of the fellowship.

The regulations require audiologists to maintain consumer records for seven years after the date of service. Audiologists must include their registration number on all contracts and receipts. Registrants must notify the Director of any changes to information contained in the original application within 30 days of the change.

Chapter II: Hearing Aid Dealer Regulations

The first section of the hearing aid dealer regulations contains a provision for the registration of hearing aid dealers practicing on or before July 1, 1995. This provision allowed dealers two years to obtain the qualifications currently in place. To renew a registration, or apply for initial registration after July 1, 1997, hearing aid dealers must comply with the remaining provisions of the regulations. These requirements include:

- Submitting a complete application on a form provided by the Director;
- A non-refundable registration fee;
- Location information for each business office from which sales of hearing devices are intended to be made;
- Proof of a surety bond or approved alternative in the amount of \$5,000; and
- Proof of a passing score on the examination conducted by the National Board for Certification in Hearing Instrument Sciences or an equivalent examination approved by the Director.

The regulations contain practice requirements for hearing aid dealers. Dealers must include their registration number on all contracts and receipts. In addition, dealers must inform all clients in writing that the Division regulates the dealer and provide the address and telephone number of the Division.

Summary of Statute and Regulation

As with audiologists, hearing aid dealers must maintain consumer records for seven years after each transaction. Dealers must make provisions for access to the records in the event the dealer goes out of business before the seven-year period expires. Registrants are required by the regulations to comply with the CPA.

The regulations detail the requirements for the registration and training of hearing aid dealer trainees. Trainees are issued temporary registrations that must be renewed annually. Registrants may not be classified as a trainee for more than three years.

The regulations designate two levels of trainees. Level 1 trainees are those individuals with less than 30 days of training who have not performed at least 15 tests on hearing impaired individuals under the immediate and direct supervision of the sponsoring registered hearing aid dealer. All services performed by a Level 1 trainee must be performed under the direct supervision of the sponsoring dealer.

Level 2 trainees are those individuals with more than 30 days of training who have performed at least 15 tests on hearing impaired individuals. The sponsoring dealer must notify the Director when a trainee has achieved the requirements for Level 2 designation. Level 2 trainees may perform hearing tests and all of the other functions of a dealer without the direct supervision of the sponsoring dealer. However, the sponsoring dealer retains responsibility for the performance of the trainee at all times and must monitor and sign all audiograms and approve orders for hearing aids until the trainee becomes a registered dealer.

Program Description and Administration

Regulation of audiologists and hearing aid dealers is the statutory responsibility of the Director. The Director is a state classified employee appointed by the Executive Director of DORA. The Director supervises the administration of occupational and professional licensing programs in the Division, either directly, or by providing staff for autonomous regulatory boards. The Director has delegated administrative authority for audiologist and hearing aid dealer registration to a program administrator in the Division. The Director retains disciplinary authority.

The total full-time equivalent employees (FTE) involved in the program is approximately .55. A Program Administrator II devotes approximately 25 percent of her time supervising this program. An Administrative Assistant III and an Administrative Assistant II, each devote only part of their time to the program. Complaints are forwarded to the Complaints and Investigations section of the Division for investigation.

The program is cash funded from registration fees. Fees are evaluated annually to ensure that they are sufficient to recover expenses necessary to fund the program. The Act specifies four types of registrations. The number of registrations by type and fiscal year (FY) is detailed in Table 1.

TABLE 1

Audiologist/Hearing Aid Dealer Registrations

REGISTRATION TYPE	FY96	FY97	FY98	FY99	ACTIVE*
Audiologist	172	29	29	21	186
Clinical Fellow	1	0	25	3	11
Hearing Aid Dealer	56	37	18	10	92
Hearing Aid Dealer Trainee	0	6	22	20	35

* Active as of June 30, 1999

Program Description and Administration

All registrations must be renewed annually. If a registrant fails to renew a registration by the renewal deadline, a reinstatement fee of \$10 is assessed. Current fees are detailed in Table 2 below.

TABLE 2

Audiologist/Hearing Aid Dealer Fees

TYPE	FEE
Registration	\$175
Temporary Registration	25
HA Dealer Trainee Registration	25
Audiologist Renewal	299
HA Dealer Renewal	299
Reinstatement	309
Late Fee	10
Duplicate Registration Certificate	5
Non-Sufficient Funds Check Fee	17

Registration fees are sufficient to fund the direct and indirect costs of the program. In FY 1995-96, the program incurred normal start up expenses associated with a new program. However, since that time, routine expenses have decreased. In FY 1997-98, the program experienced significant legal expenses resulting from appeals to disciplinary actions. Table 3 details the expenses of the program since its inception in 1995.

TABLE 3

Audiologist/Hearing Aid Dealer Program Expenses

	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99
Actual Expenses	\$69,457	\$48,793	\$63,586	\$59,128

Source, DORA budget documents.

Program Description and Administration

REGISTRATION PROCEDURES

Hearing Aid Dealer

There are two registrations authorized in the hearing aid dealer provisions of the statute, hearing aid dealer in training and hearing aid dealer. A copy of each registration application is included as Appendix D to this report.

To be registered as a trainee, the applicant completes a registration application containing questions about the background, experience, disciplinary actions in other states, and criminal record of the applicant. A trainee registration is considered a temporary registration and may be renewed twice. A trainee may not be registered on a temporary registration for more than a total of 36 consecutive months.

There are two levels of trainee. Initially, all trainees are considered a Level 1 trainee. A registered dealer must complete a portion of the trainee registration application and sign a statement agreeing that the trainee will be under the direct supervision of the dealer at a specific location.

Level 1 trainees must perform all tests and case history interviews under the direct supervision of the dealer. Once a Level 1 trainee has successfully performed a minimum of 15 procedures, the dealer may submit an application for the trainee to be classified as a Level 2 trainee. A Level 2 trainee may perform all functions of a dealer without the direct supervision of the dealer, except that the registered dealer must review and sign all audiograms and hearing aid orders.

To be registered as a dealer, an applicant must submit an application documenting the background, experience, disciplinary actions in other states, and criminal record of the applicant. In addition, a dealer must have satisfactorily passed an examination approved by the National Board for Certification in Hearing Instrument Sciences (NBC-HIS) or an equivalent examination approved by the Director. Registered dealers must submit a bond in the amount of \$5,000 or an equivalent financial instrument in accordance with §11-35-101, C.R.S.

Program Description and Administration

Audiologist

Audiologists also have two registration levels, applications for which are included as Appendix E. The first level of registration is clinical fellow. As with the dealer trainee, the application is completed jointly by a registered audiologist and the applicant. In order to be eligible for registration, an applicant must provide personal information and have a degree from an accredited university in audiology. A registered audiologist must agree to supervise the clinical fellow during the registration period.

To register as an audiologist, an applicant must answer questions about their background, experience, disciplinary actions in other states, and criminal record. The applicant must submit proof of malpractice insurance in the amount of \$100,000, and submit official transcripts showing successful graduation from a masters or doctoral program in audiology at an accredited university. The Act does allow for equivalent degrees to be accepted by the Director.

The Director must also register audiologists who are certified by a nationally recognized agency or certified or licensed as a school audiologist by the Colorado Department of Education (DOE). Regulations promulgated by the Director currently recognize a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

COMPLAINTS AND DISCIPLINARY ACTIONS

The justification for the 1994 sunrise recommendation for the creation of a regulatory program for hearing aid dealers was the actual harm suffered by consumers from the practice of hearing aid sales regulated under the CPA. As previously mentioned, in 1990 alone, the Attorney General's Office investigated 100 complaints of violations of the CPA as it relates to hearing aid sales. The majority of these complaints involved failure to issue refunds in accordance with the CPA. In addition, there were cases of abuse of elderly clients, and outright fraud.

Program Description and Administration

The hearing aid dealer registration program works closely with the Consumer Protection Unit in the Department of Law as well as local district attorneys offices. Complaints filed with a local district attorney are forwarded to the Division for appropriate action. The Division forwards complaints that may have criminal implications to the appropriate district attorney for review.

Since the inception of the revised regulatory program in 1995, the Division has received 150 complaints. Forty-three of these complaints involved the unregistered practice of audiology or hearing aid sales. When contacted by the Division, 38 of the individuals in question either ceased operations or registered. The remaining six cases were referred to the Attorney General. Five injunctions were obtained against unregistered hearing aid dealers; one case remains pending.

Excluding the unregistered practice complaints, the Division has investigated 107 complaints made by consumers. The majority of these (45%) involve monetary disputes. The Division cannot order restitution for consumers. However, the Division can revoke a registration for failure to comply with the CPA, which requires issuing refunds when appropriate. In addition, the Division refers these cases to local district attorneys who may be able to obtain a court order for restitution. However, it is seldom that a case needs to go that far. Other than a few unregistered practice complaints, the Division has not received any complaints regarding audiologists. Table 4 details the complaints received by the Division since the creation of the program in July of 1995.

Program Description and Administration

TABLE 4

Audiologist /Hearing Aid Dealer Complaints

COMPLAINT	FY 1996	FY 1997	FY1998	FY 1999	TOTAL
Action in another state	0	1	0	0	1
Aid and abet	0	0	0	0	0
Action in another jurisdiction	0	0	0	0	0
CPA violation – Advertising	0	4	1	0	5
CPA violation – Contract	0	4	3	11	18
CPA violation – refunds	0	1	4	7	12
False information	0	0	1	1	2
Fee dispute	1	6	19	10	36
Felony conviction	0	0	0	1	1
Insurance fraud	0	0	0	0	0
Improper supervision	0	0	1	2	3
No malpractice insurance	0	0	0	0	0
Physical harm	0	0	3	1	4
Practice beyond scope	0	0	0	0	0
Questionable jurisdiction	0	1	0	0	1
Substance abuse	0	0	1	0	1
Substantial care	0	5	6	11	22
Sexual misconduct	1	0	0	0	1
Stipulation or order violation	0	0	0	0	0
Unregistered practice	0	24	12	7	43
TOTAL	2	46	51	51	150

Local district attorney offices contacted for this review strongly believe that the registration of hearing aid dealers by the state provides significant public protection. They indicate that although the CPA allows consumers to seek civil remedies, many victims of unscrupulous dealers do not have the financial ability, sophistication, or mental alertness to utilize this avenue. The use of the CPA combined with the registration requirement provides additional leverage for local district attorneys to protect consumers.

Program Description and Administration

This is not to say the registration program and related protections in the CPA are infallible. As with any regulatory program, outright fraud is still possible. For example, in 1996, a registered hearing aid dealer pleaded guilty to defrauding senior citizens by selling inferior hearing aids and refusing to give refunds. The dealer's registration was revoked and as part of his sentence he agreed not to sell hearing aids during his three-year probation. In September of 1998, it was discovered he was again selling hearing aids without a registration. The Attorney General successfully obtained a permanent injunction prohibiting this individual from selling hearing aids in Colorado.

There have been at least three other similar incidents reported to the Division which are currently pending action by the Attorney General. Local district attorneys maintain it would be more difficult to obtain an injunction without a statewide regulatory program. They also point out that a statewide program prevents individuals banned in other states from establishing a practice in Colorado.

Although the regulatory program for hearing aid dealers and audiologists is termed a registration program in the Act, it is actually a licensing program. Registration implies that there are no qualifications for individuals entering the practice. The state does require all registrants to meet education and/or experience requirements prior to registration. Licensing programs typically have a range of disciplinary options available to them such as letters of admonition, suspensions, fines, or revocation. The options available to the hearing aid and audiologist program and their use are detailed in Table 5.

TABLE 5
Disciplinary Actions

TYPE	FY 1996	FY 1997	FY 1998	FY 1999
Dismissed	1	15	36	31
Fine	0	0	0	0
Injunction	0	0	1	2
Letter of Admonition (LOA)	0	1	1	0
LOA and Fine	0	0	2	2
Stipulation – LOA	0	0	0	0
Stipulation – Fine	0	0	0	0
Stipulation – Probation	0	2	1	2
Stipulation – Suspension	0	2	0	1
Stipulation - Relinquishment	0	0	0	2
Summary Suspension	0	0	0	0

External Issues

Advocates for the hearing aid industry have indicated a strong desire to continue regulation of hearing aid dealers. They maintain that the federal government, through the FDA, has added credibility to the occupation by recognizing hearing aid dealers as a specific health care profession.¹ However, it should be noted that the FDA is also considering eliminating the provision in federal regulations that allows a consumer to waive a medical evaluation prior to purchasing a hearing aid because of suspected abuses of the waiver provision by dealers.²

Hearing aid dealer advocates assert that some specific modifications should be made to both the Deceptive Trade Practices provision of the CPA and the Act in order to fairly and effectively regulate hearing aid dealers. These changes and a brief explanation are summarized in the following section.

HEARING AID DEALER ISSUES

Deceptive Trade Practices Provision Changes (§6-1-105.5 et seq., C.R.S.):

Amend title to “Certified Hearing Aid Providers – deceptive trade practices”, and make conforming amendments throughout the article. Dealers believe this is necessary because of recent changes by the FDA to recognize hearing aid dealers as a distinct health care provider. However, the FDA regulations refer to “Hearing Aid Specialists”, not “Certified Hearing Aid Providers”. In addition, the state does not certify hearing aid dealers. Colorado registers dealers who meet specific standards.

¹ Federal Register/Vol. 63, No. 150/Wednesday, August 5, 1998 P. 41899

² Federal Register/Vol. 63, No. 80/Monday, April 27, 1998 P. 945

External Issues

Section 6-1-105.5(2)(c)(I), C.R.S. – Strike the requirement that a waiver of examination by a physician be in the consumer's handwriting. Many dealers use standardized forms with boilerplate language needing only the signature of the consumer. They also assert that many of their clients have physical disabilities which may prevent them from writing a complete waiver. The intent of this provision was to ensure that the consumer was aware a medical evaluation is recommended.

It may be unnecessarily burdensome to require the waiver to be handwritten. However, the FDA is concerned that the waiver provision is being abused by dealers and has considered removing the provision. Some audiologists believe that if all hearing tests were conducted by an audiologist, the potential for abuse would decline.

Section 6-1-105.5(2)(e)(III), C.R.S. – Change the mandatory contract language that allows the dealer to retain “...an itemized amount not to exceed five percent...to cover the costs of a manufacturer’s return fee” to read “...a return fee not to exceed five percent...”. And add a sentence to the paragraph to read “Failure by the buyer to keep the hearing aid clean, or any other misuse by the buyer, shall not constitute a defect.” Technological advances in hearing aids have increased the average cost of the units over the years. According to dealers, many consumers have unrealistic expectations regarding the improvement that a hearing device will achieve. Because the statute requires a refund if the device is returned within 30 days, a dealer could spend time and resources on a consumer with no compensation. Dealer advocates believe that by specifically allowing a five percent return fee, some of the financial investment hearing aid dealers have in each transaction would be offset. The current statute allows dealers to itemize only the manufacturer’s return fee, providing no compensation for the dealer.

External Issues

There are other occupations, particularly in sales related activities where practitioners can expend resources without compensation. Real estate sales are a classic example. Some buyer brokers charge an hourly fee, while others only charge if a sale is made. Dealers could charge fees for office visits, hearing screenings, and other services traditionally provided for free. There is reluctance in the industry to do this for fear of being placed at a competitive disadvantage. Most dealers advertise free hearing screenings and follow up service. If some dealers started charging for these services, there is concern that the market may reduce their clientele. Consumers make a choice which compensation formula they are comfortable with. Hearing aid dealers have other options for receiving compensation for services performed without a statutory change to allow for a return charge.

Registration Act Changes (§12-5.5-101 et seq., C.R.S.)

Change the title of the Act and part 2 to read “Audiologists and Certified Hearing Aid Providers” and make conforming amendments throughout the statute. – Again, this is related to the recent FDA title recognition. However, as previously mentioned, Colorado does not certify hearing aid dealers.

Section 12-5.5-201(3), C.R.S. - Capitalize the first letter of each word in “national board for certification in hearing instrument sciences” and change the abbreviation to “NBC-HIS”. – This is the way the organization that develops and administers the examination required by the statute is referred to in literature distributed nationally.

Section 12-5.5-202(2)(b)(III), C.R.S. - Increase the amount of the surety bond to \$10,000. Some dealers maintain that because of the increasing cost of hearing devices (the average cost is approximately \$1,600 for a standard device) a \$5,000 bond does not adequately protect consumers. Since the bond requirement went into effect, the insurance company that writes the majority of the bonds has paid claims on one dealer bond for \$4,500 and has another claim for \$3,000 against the same dealer pending. Another dealer has claims totaling approximately \$8,000 pending.

In both of these situations consumers will suffer financial losses because of actions of a registered dealer. It is likely the bond company will revoke the bond, however, only the first \$5,000 in claims will be paid. The consumers do have recourse in civil court, however, it is not likely civil action will result in restitution being paid in the near future.

External Issues

Consideration must be given to the availability of bonds. The insurance company writing the majority of the bonds has indicated the premium for a \$10,000 bond will probably be \$200 as compared to a \$100 premium for a \$5,000 bond. Also, the financial requirements for a \$10,000 bond will increase, eliminating the ability of some applicants to qualify. This could create a barrier to entry to the occupation, resulting in a decrease in competition. However, this potential barrier must be balanced against the harm consumers face when dealers are not able or willing to compensate them.

Section 12-5.5-206(4)(b), C.R.S. - Change “registrants” to “owners”. This provision requires registrants to maintain records for seven years. However, the registrant is not always the owner of the facility selling the hearing device. Advocates for a change to this provision assert two arguments for the change. The first is that if a registrant who is not the owner leaves the business for any reason, taking records with him or her, the owner may not have records to adequately serve the consumer. The second argument is based on unfair competition. If the registrant who is not an owner leaves to start his/her own business, he or she could solicit clients of a former employer with a distinct advantage.

As with other medical records, the consumer should be able to access information in the files if they switch providers. Since the businesses selling hearing aids are not registered, there is no mechanism for enforcing a provision that the owner/dealer maintain possession of records. Other health care related statutes have provisions requiring the release of records to a patient upon written request. There are other requirements in various professional acts requiring clients or patient record retention. Except in situations where the business entity is also regulated as the custodian of the records, the individual registrant or licensee is responsible for record retention.

Reporting Complaints to Local District Attorneys

At least two local district attorneys offices have requested a statutory change. They have indicated that §12-5.5-206, C.R.S., should be amended to require the Director to inform the district attorney in the appropriate jurisdiction whenever the Director is investigating a complaint. Currently the Division voluntarily reports complaints and investigations when there is reason to believe there may be a criminal violation. Frequently complaint investigations by the Division reveal no violation of the statute or regulations. The district attorneys have not documented a situation where a complaint reported to the Division that has not been forwarded to a district attorney has resulted in criminal prosecution.

Reporting Bond Claims

In many of the professions and occupations regulated by the state that require malpractice insurance or a bond, the bond company is required to report claims against the insurance policy or bond to the regulating authority. This requirement is not included in the hearing aid dealer provisions of the Act. If a consumer has a claim but does not file a complaint with the Division, it is possible for the dealer to continue practicing without being subject to disciplinary action. It may provide greater consumer protection to require bond companies to report all claims to the Division.

Prohibited Acts

All hearing aid dealers are required to register with the Director. The Act lists activities that could result in disciplinary action by the Director, including revocation of a registration. However, acting as a hearing aid dealer with a revoked, suspended, or lapsed registration is not included on the list of prohibited activities. The General Assembly should consider making the prohibited activity list consistent with other practice acts.

External Issues

The Act allows the Director to deny, suspend or revoke a registration for “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” (§12- 5.5-205(1)(b)(VII), C.R.S.). Most professional licensing statutes also contain provisions allowing the consideration of any felony conviction as grounds for disciplinary action. It would be appropriate to include a provision against felony convictions in the grounds for disciplinary action section of the Act.

Cease and Desist

Currently the Director may seek a court injunction against individuals who are engaged in prohibited activities. This is a time consuming and expensive activity. It is more cost effective and provides a more immediate consumer protection to allow the Director to issue a cease and desist order. If the individual ignores the cease and desist order, local district attorneys and the Attorney General have greater leverage in criminal proceedings, again providing greater consumer protection without additional expense by the Division.

Trainees

Dealers are required to register trainees immediately upon beginning employment with the dealer. Dealers must then submit additional documentation when a trainee has completed the first phase of the training program and begins to perform screenings and sales without the direct supervision of the registered hearing aid dealer. The regulations define two levels of trainee, Level 1 and Level 2. However, the Act only authorizes a single trainee registration.

It is common practice for dealers to submit all the required paperwork for a trainee after the trainee has obtained the required experience to work independently. This places the dealer in technical violation of the regulations. The reasons for this practice vary. Some dealers report that high turnover of trainees results in leaving before their paperwork is completed. Others report using probationary trainee employment periods and not filing trainee registrations until the probationary period is over.

External Issues

Common practice in the industry technically places some hearing aid dealers in violation of the regulation. The intent of the regulation is to require dealers to supervise and train inexperienced technicians. If the reasons for requiring registration prior to obtaining 30 days of experience and performing 15 screening examinations are valid, the requirement should be enforced vigorously.

AUDIOLOGIST ISSUES

As previously mentioned, the 1994 sunrise review did not recommend the creation of a regulatory program for audiologists. The review did not find actual harm to the public by the unregulated practice of audiology. Representatives of the industry convinced the General Assembly that there was sufficient potential harm to the public by the unregulated practice to justify a regulatory program.

Information provided by the Division and by the Colorado Academy of Audiology does not indicate any changes in either actual or potential harm to the public. The only complaints received by the Division were in the early stages of the program for unregistered practice. Other complaints have been related to hearing aid sales.

Advocates for the continued regulation of audiologists have provided information on the benefits of hearing testing by qualified individuals, such as improved language skills when hearing loss is detected in developing children. There has been recent legislation concerning hearing screening for newborn infants to address this issue.³ The legislation established an advisory committee to develop screening procedures for hearing in newborn infants and a goal of screening 85 percent of all infants born in Colorado by July 1, 1999.

The advisory committee has developed protocols for screening, many of which mandate screening by registered audiologists. Advocates for audiologist registration present convincing evidence that early detection and treatment of hearing impairment can improve an infant's ability to develop language and cognitive skills. Audiologists maintain that their training and education make them the most qualified individuals to perform these types of screening procedures in a cost effective manner.

³ HB 97-1095; Sponsors: Representative K. Alexander and Senator D. Wham

External Issues

Audiologists are eligible for direct Medicaid and Medicare payments. They operate independently, and physician referral is not required for examination or testing by an audiologist. It is possible that if the current regulatory program were eliminated, audiologists would no longer be eligible for direct Medicaid and Medicare payments.

Audiology Support Professionals

The Colorado Academy of Audiology (CAA) provided information regarding the regulation of audiology support personnel in other states. In some states, individuals with bachelor degrees in audiology or speech language pathology are regulated. These individuals are permitted, under the supervision of a regulated audiologist, to perform some testing and procedures defined as the practice of audiology.

This has given rise to questions regarding the scope of practice for audiologists in Colorado. In one situation on the Western Slope of Colorado, a registered audiologist questioned which procedures could be delegated to an assistant with a bachelor degree. The Act does not provide for audiologist assistants or delegation by an audiologist.

Cease and Desist

As with hearing aid dealers, the practice act for audiology does not contain a prohibition against practicing with a revoked, lapsed or suspended registration. If a registrant practices with a revoked, lapsed or suspended registration, the Director is empowered to seek an injunction in a court of competent jurisdiction. It would provide better public protection, and be more efficient to include the standard prohibitions in the Act and authorize the Director to issue cease and desist orders.

The Act allows the Director to deny, suspend or revoke a registration for “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” (12- 5.5-105(1)(b)(II), C.R.S.). Most professional licensing statutes also contain provisions allowing the consideration of any felony conviction as grounds for disciplinary action. It would be appropriate to include a provision against felony convictions in the grounds for disciplinary action section of the Act.

Analysis and Recommendations

Recommendation 1 - Repeal the regulation of audiologists.

There are benefits to early childhood screening and other services provided by highly skilled and trained audiologists. However, individuals responsible for obtaining those services such as schools, hospitals, and clinics are capable of determining the qualifications of practitioners.

The fact that a practitioner with specific credentials is able to provide higher quality service is not sufficient cause for a regulatory program according to the sunrise criteria. The sunrise review considered by the General Assembly in 1995 did not find justification to recommend regulation of audiologists. Members of the profession maintain there is significant potential for harm to the public. However, documentation of potential harm is highly subjective and largely anecdotal.

Recommendation 2 - Continue the registration of hearing aid dealers by the Director of the Division of Registrations in the Department of Regulatory Agencies until July 1, 2007.

The unregulated practice of hearing aid sales has been demonstrated to present harm to the public. Consumers have difficulty compelling dealers to comply with the provisions of the Consumer Protection Act (CPA) without using the police powers of the state in the form of a registration program.

The Attorney General now refers all consumer complaints regarding hearing aid dealers to the Division. The combination of registration and the provisions of the CPA has provided local district attorneys and the state with an effective means to protect the public. While complaints and disciplinary actions still occur, they have been reduced substantially from the peak of 100 investigations by the Attorney General's Office in 1990.

This review concludes that the current registration requirements are not overly burdensome. This review did not find any indication that the registration program improperly excluded anyone with the proper qualifications from registering and establishing a hearing aid dealer practice.

Analysis and Recommendations

Thirteen states currently license as opposed to certify or register hearing aid dealers. Licensing is a more restrictive level of regulation, usually involving state administered testing and increased qualifications for licensure. There was no evidence presented to indicate that a higher level of regulation is necessary.

Recommendation 3 – Increase the required bond for hearing aid dealers to \$10,000 and require bond companies to report all claims and payments made on bonds.

The \$5,000 surety bond required by §12-5.5-202 (2)(b)(III), C.R.S., is not adequate to protect consumers. In recent months bond claims against dealers have been filed by consumers in amounts that will exceed the liability of the surety company to pay claims. This will result in one of two possibilities. First, if a claim is filed after the available balance of the bond has been depleted, the claimant will receive no compensation from the surety. The second possibility is if multiple claims are received in an amount that exceeds the available balance of the bond, the claims may be prorated to pay a percentage of the total claims as they relate to the available balance of the bond. In either circumstance, consumers will suffer financial losses as a result.

Most occupations regulated by the state that require a surety bond as a condition for licensure also require the surety company to notify the regulatory authority when payments are made against the bond or when the bond is canceled. This allows the regulatory authority to investigate the need to take disciplinary action against the registrant or licensee to prevent additional consumer harm.

Representatives of the surety bond company that underwrites 75 percent of the hearing aid dealer bonds have been contacted about the impact of this proposed change. Since the requirement exists for the majority of similar bonds in other regulated occupations, reporting procedures already exist. Therefore, this change is not viewed as burdensome and would be supported by the industry.

Analysis and Recommendations

Recommendation 4 - Increase the ability of the Director to protect consumers by prohibiting a registrant from practicing with a lapsed, revoked or suspended registration and authorizing the Director to issue cease and desist orders.

The original legislation allows a registrant to continue to sell hearing aids if a registration is revoked, lapsed, or suspended. Most professional practice acts specifically prohibit this type of activity. The hearing aid dealer prohibitions should be consistent with other practice acts.

The Act allows the Director to obtain an injunction through the judicial process to order individuals violating the statute or regulations to comply with the requirements. Obtaining a court order can be time consuming and expensive for the Division. Excess costs are passed on to registrants in the form of higher fees. It would be both cost effective and consistent with other professional practice acts to also authorize the Director to issue cease and desist orders.

Recommendation 5 – Include conviction of a felony in the Prohibited Acts section of the statute.

Most professional licensing statutes contain provisions allowing the consideration of any felony conviction or a plea of nolo contendere as grounds for disciplinary action. Inclusion of such a provision in the hearing aid dealer practice act would increase public protection, as well as making the statute consistent with other practice acts in the health care field. Section 12-5.5-205 (1)(b) should be amended to include conviction of or a plea of nolo contendere to any felony in the grounds for disciplinary actions.

Recommendation 6 - Change the reference in the statute to “national board for certification in hearing instrument sciences” to reflect the proper name of the organization.

The General Assembly refers to a national organization in the statute that is responsible for developing and administering an examination for prospective registrants. In its literature, the organization uses a different acronym than is used in the statute. To eliminate confusion, the statute should reflect the terminology commonly used in the occupation from which is NCB-HIS not ncbhis.

Analysis and Recommendations

Recommendation 7 - Modify the provision that a waiver of medical examination be in writing.

The intent of the General Assembly in requiring a written waiver of medical examination is to document that the consumer was informed that a medical examination may be recommended. However, this provision has been interpreted to mean a complete handwritten document must be prepared by the consumer. This places a burden on the consumer, as well as the registrant. Requiring a signed waiver is sufficient to document the consumer's understanding that a medical examination is an option that should be considered.

Recommendation 8 - The Director should enforce or amend hearing aid dealer trainee registration requirements.

Dealers are required to register trainees immediately upon beginning employment with the dealer. Dealers must then submit additional documentation when a trainee has completed the first phase of the training program and begins to perform screenings and sales without the direct supervision of the registered hearing aid dealer. The regulations define two levels of trainee, Level 1 and Level 2.

The registration requirements for Level 1 and Level 2 trainees are not being uniformly followed. The Division has not imposed disciplinary action on any registrants for not complying with the regulations. This indicates that the requirement may not be necessary, as written, to protect the public. If the requirement is not necessary, the Director should modify the regulation.

The intent of the trainee regulation is to require dealers to supervise and train inexperienced technicians. If the reasons for requiring registration prior to obtaining 30 days of experience and performing 15 screening examinations are valid, the requirement should be vigorously enforced.

Appendices

Appendix A - Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Appendix B - Statute

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; except that an audiologist who is engaged in the practice of audiology on or before July 1, 1995, shall demonstrate compliance with such requirements not later than July 1, 1997:

(a) Holds a master's or doctorate degree in audiology or an equivalent degree, as determined by the director; and

(b) Has obtained a certificate of competency in audiology from a nationally recognized certification agency or has been certified or licensed as a school audiologist by the Colorado department of education pursuant to section 22-60-104, C.R.S.

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

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

(4) "Registrant" means an audiologist who holds a current certificate of registration from the division of registrations pursuant to this part 1.

12-5.5-101.5 - Scope of article.

This article shall not apply to persons who are certified or licensed pursuant to section 22-60-104 (1), C.R.S., and who are not registered under this article for work undertaken as part of their employment by, or contractual agreement with, the public schools.

12-5.5-102 - Registration required - application - bond.

(1) An audiologist shall register with the division of registrations before performing audiology services in this state. Upon registering, the audiologist shall be given a certificate of registration bearing a unique registration number. The audiologist shall include the registration number on all written contracts and receipts, as required pursuant to section 6-1-105.5 (2) (a), C.R.S.

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(2) An audiologist desiring to register 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 registration if the required information is not submitted. If an applicant or registrant 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 registration 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 registered audiologist shall be exempt from the requirements of this section.

12-5.5-102.5 - Temporary registration.

The director shall grant a temporary registration certificate 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 registration certificate issued pursuant to this section shall be valid for more than twelve months.

12-5.5-103 - Registration procedure.

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

(2) All certificates issued under this section shall expire on December 31 following the date of issuance, but may be renewed by payment of the renewal fee established by the director pursuant to section 24-34-105, C.R.S., and continued compliance with the provisions of this part 1. A registration that has expired may be reinstated within two years after such expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of this part 1.

(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 registration 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 registrant has committed any of the acts specified in paragraph (b) of this subsection (1), the director may:

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(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 registrant on probation, which shall entail close supervision on such terms and for such time as the director deems appropriate; or

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

(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 registration;

(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 registration 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 hearing aid dealer trainee.

(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 registration 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) When a complaint or investigation discloses an instance of misconduct that in the opinion of the director does not warrant formal action but should not be dismissed as being without merit, the director may send a letter of admonition by certified mail, return receipt requested, to the registrant who is the subject of the complaint or investigation and a copy thereof to any person making such complaint. Such letter shall advise the registrant of his or her right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request 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.

(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) The director or the administrative law judge appointed for a hearing under this part 1 may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records. The director may also issue a subpoena compelling the testimony of witnesses and the production of books, papers, or records for investigation purposes. Any such subpoena shall be served in the same manner as subpoenas issued by district courts.

(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 registrants 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.

12-5.5-201 - 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) "Hearing aid dealer" 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 (NBCHIS) or an equivalent examination as determined by the director; except that a hearing aid dealer 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) "Registrant" means a hearing aid dealer who holds a current certificate of registration from the division of registrations pursuant to this part 2.

12-5.5-202 - Registration required - application - bond.

(1) A hearing aid dealer shall register pursuant to this part 2 before selling or negotiating to sell, directly or indirectly, any hearing device for the hearing impaired, unless such dealer holds a current registration pursuant to part 1 of this article. Upon registering, the hearing aid dealer shall be given a certificate of registration bearing a unique registration number. The hearing aid dealer shall include the registration number on all written contracts and receipts, as required pursuant to section 6-1-105.5 (2) (a), C.R.S. A hearing aid dealer who is also an audiologist and is registered only under part 1 of this article shall include the registration number issued pursuant to such part 1 on all written contracts and receipts.

(2) (a) A hearing aid dealer desiring to register 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 registration if the required information is not submitted or if an applicant's trainee registration certificate, issued pursuant to section 12-5.5-202.5, has been revoked. If an applicant or registrant 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 registration under this section:

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

(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 five thousand dollars;

(IV) A statement indicating whether any hearing aid dealer license, certificate, or registration was issued to the hearing aid dealer 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 - Registration - trainees.

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

(2) The director shall issue a trainee registration certificate 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 hearing aid dealer, which training is under the direct and personal supervision of an audiologist or a hearing aid dealer whose registration 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 shall not sell hearing aids independently of the supervising hearing aid dealer or audiologist;

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

(c) A supervising hearing aid dealer or audiologist shall retain ultimate responsibility for the care provided by the trainee 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 registration certificate issued under this section shall be valid;

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

(5) Any person issued a trainee registration certificate under this section is subject to the disciplinary provisions of section 12-5.5-205.

12-5.5-203 - Registration procedure.

(1) The director shall register all applicants who meet the requirements of this part 2 and shall provide each registrant with a certificate indicating that the person named in such certificate is registered in the state of Colorado as a hearing aid dealer.

(2) All certificates issued under this section shall expire on December 31 following the date of issuance, but may be renewed by payment of a renewal fee established by the director pursuant to section 24-34-105, C.R.S., and continued compliance with the provisions of this part 2. A registration that has expired may be reinstated within two years after such expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of this part 2.

(3) The director shall issue or deny a certificate of registration 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 registration 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 action.

(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, registrant, or trainee 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 registrant 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 registration of an applicant or registrant; or

(V) Deny, revoke, or suspend the certificate of a hearing aid dealer trainee.

(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 6-1-105.5 (2) (e), C.R.S.;

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(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 hearing aid dealer trainee.

(2) Any disciplinary action taken with respect to a hearing aid dealer by another state or local jurisdiction or the federal government shall be deemed prima facie evidence of grounds for disciplinary action, including denial of registration 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) When a complaint or investigation discloses an instance of misconduct that in the opinion of the director does not warrant formal action but should not be dismissed as being without merit, the director may send a letter of admonition by certified mail, return receipt requested, to the registrant who is the subject of the complaint or investigation and a copy thereof to any person making such complaint. Such letter shall advise the registrant of his or her right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request 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.

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

(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) The director or the administrative law judge appointed for a hearing under this part 2 may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records. The director may also issue a subpoena compelling the testimony of witnesses and the production of books, papers, or records for investigation purposes. Any such subpoena shall be served in the same manner as subpoenas issued by district courts.

(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 registrants 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.

(5) The director may require hearing aid dealers 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.

12-5.5-207 - Repeal of article.

(1) This article is repealed, effective July 1, 2000.

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