HEARING INSTRUMENT FITTERS AND DISPENSERS

Administrative Rules of the Texas Department of Licensing and Regulation
16 Texas Administrative Code, Chapter 112
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SUBCHAPTER A. GENERAL PROVISIONS.

112.1. Authority. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

This chapter is promulgated under the authority of the Texas Occupations Code, Chapters 51 and 402, and Chapter 401 as applicable.

112.2. Definitions. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564)*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Texas Occupations Code, Chapter 402, concerning the licensing of persons authorized to fit and dispense hearing instruments.

(2) Advisory board--The Hearing Instrument Fitters and Dispensers Advisory Board.

(3) Applicant--An individual who applies for a license or permit under the Act.

(4) Apprentice permit--A permit issued by the department to an individual who meets the qualifications established by Texas Occupations Code, §402.207 and this chapter, and which authorizes the permit holder to fit and dispense hearing instruments under appropriate supervision from an individual who holds a license to fit and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(5) Certification, proof of--A certificate of calibration, compliance, conformance, or performance.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Contact hour--A period of time equal to 55 minutes.

(8) Continuing education hour--A period of time equal to 50 minutes.

(9) Contract--See definition for "written contract for services."

(10) Continuing education--Education intended to maintain and improve the quality of professional services in the fitting and dispensing of hearing instruments, to keep licensees knowledgeable of current research, techniques, and practices, and provide other resources which will improve skills and competence in the fitting and dispensing of hearing instruments.

(11) Continuing education provider--A provider of a continuing education activity.

(12) Department--The Texas Department of Licensing and Regulation.

(13) Direct supervision--The physical presence with prompt evaluation, review and consultation of a supervisor any time a temporary training permit holder is engaged in the act of fitting and dispensing of hearing instruments.

(14) Executive director--The executive director of the department.

(15) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instruments and any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.

(16) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving, or correcting defective human hearing. The term includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(17) Indirect supervision--The daily evaluation, review, and prompt consultation of a supervisor any time a permit holder is engaged in the act of fitting and dispensing hearing instruments.

(18) License--A license issued by the department under the Act and this chapter to a person authorized to fit and dispense hearing instruments.

(19) Licensee--Any person licensed or permitted by the department under Texas Occupations Code Chapter 401 or 402.

(20) Manufacturer--The term includes a person who applies to be a continuing education provider who is employed by, compensated by, or represents an entity, business, or corporation engaged in any of the activities described in this paragraph. An entity, business, or corporation that:

(A) is engaged in manufacturing, producing, or assembling hearing instruments for wholesale to a licensee or other hearing instrument provider;

(B) is engaged in manufacturing, producing, or assembling hearing instruments for sale to the public;

(C) is a subsidiary of, or held by, an entity that is engaged in manufacturing, producing, or assembling hearing instruments as described in this definition;

(D) holds an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described in this definition; or

(E) serves as a buying group for an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described in this definition.

(21) Non-Manufacturer--Any person, entity, buyer group, or corporation that does not meet the definition of a manufacturer.

(22) Person--An individual, corporation, partnership, or other legal entity.

(23) Sale or sell--A transfer of title or of the right to use by lease, bailment, or other contract. The term does not include a sale at wholesale by a manufacturer to a person licensed under the Act or to a distributor for distribution and sale to a person licensed under the Act.

(24) Specific Product Information--Specific product information shall include, but not be limited to, brand name, model number, shell type, and circuit type.

(25) Supervisor--A supervisor is an individual who holds a valid license to fit and dispense hearing instruments under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312, and who meets the qualifications established by Texas Occupations Code, §402.255 and this chapter.

(26) Temporary training permit--A permit issued by the department to an individual who meets the qualifications established by Texas Occupations Code, Chapter 402, Subchapter F, and this chapter, to authorize the permit holder to fit and dispense hearing instruments only under the direct or indirect supervision, as required and as appropriate, of an individual who holds a license to fit

and dispense hearing instruments without supervision under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(27) Working days--Working days are Monday through Friday, 8:00 a.m. to 5:00 p.m.

(28) Written contract for services--A written contract between the license holder and purchaser of a hearing instrument as set out in §112.140 (relating to Joint Rule Regarding the Sale of Hearing Instruments).

(29) 30-day trial period--The period in which a person may cancel the purchase of a hearing instrument.

SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD.

112.10. Membership. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564)*

The advisory board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission as follows:

(1) six members licensed under this chapter who have been engaged in fitting and dispensing hearing instruments for at least five years preceding appointment, not more than one of whom may be licensed under Chapter 401;

(2) one member who is actively practicing as a physician licensed by the Texas Medical Board and who:

(A) is a citizen of the United States; and

(B) specializes in the practice of otolaryngology; and

(3) two members of the public.

112.11. Duties. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

112.12. Terms; Vacancies. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) Members of the advisory board serve staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

112.13. Officers. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective September 1, 2020, 45 TexReg 6096)*

(a) The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(b) The presiding officer shall preside at all meetings at which the presiding officer is in attendance.

112.14. Meetings. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(b) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(d) Advisory board action shall require a majority vote of those members present and voting.

SUBCHAPTER C. EXAMINATIONS.

112.20. Examination Requirements--General. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) Except as provided under subsection (b), an individual must pass an examination required by the department to qualify for a hearing instrument fitter and dispenser license or an apprentice permit under this chapter.

(b) An individual licensed under Chapter 401, as an audiologist or an audiology intern who is applying for a license under this chapter, is exempt from the examination required under this chapter but must comply with all other requirements under this chapter.

112.21. Examination Contents and Test Administration. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) The examination required under the Act shall consist of a written test, a practical test (all portions), and a jurisprudence test.

(b) The department shall administer or arrange for the administration of the examination.

(1) The written test is the International Licensing Examination for Hearing Instrument Dispenser, administered by the department's designee.

(2) The practical test is developed by the department and administered by the department's designee.

(3) The jurisprudence test is developed by the department and administered by the department's designee.

(c) The examination under subsection (a) will test the following areas as they relate to the fitting and dispensing of hearing instruments:

(1) basic physics of sound;

(2) structure and function of hearing instruments;

(3) fitting of hearing instruments;

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

(5) live voice and recorded voice speech audiometry;

(6) masking when indicated for air conduction, bone conduction, and speech;

(7) recording and evaluation of audiograms and speech audiometry to determine the candidacy for a hearing instrument;

(8) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(9) taking of earmold impressions;

(10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(11) anatomy and physiology of the ear;

(12) counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(13) use of an otoscope for the visual observation of the entire ear canal; and

(14) laws, rules, and regulations of this state and the United States.

(d) The examination may not test knowledge of the diagnosis or treatment of any disease of or injury to the human body.

112.22. Examination Qualification Process. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) An applicant must qualify to take the written test and the practical test. The applicant must also take the jurisprudence test as described under §112.26, but the applicant does not need to qualify to take the jurisprudence test.

(b) The department will review a temporary training permit holder's documentation as prescribed under §112.53 to determine whether the applicant qualifies to take the written and practical tests.

(c) The department will review an out of state license holder's application and other submitted documentation as prescribed under §112.33 to determine whether the applicant qualifies to take the practical test.

(d) The department or department's designee will notify the applicant who qualifies to take the examination.

112.23. Examination and Test Results. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) The applicant must pass the required examination consisting of the written, practical (all portions), and jurisprudence tests.

(b) The department or the department's designee will notify the applicant in writing regarding the applicant's test results for the written and practical tests.

(c) The department's designee will provide a certificate of completion to the applicant upon passage of the jurisprudence test.

112.24. Failure of Examination or Test. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) An applicant who failed an examination or test may retake the examination or test.

(b) An applicant who failed a practical test may be retested only on those portions of the practical test that the applicant failed.

(c) An applicant must pay a new fee to retake the examination or test.

(d) An applicant must hold a current temporary training permit or an out-of-state license under §112.33 in order to retake the examination or test.

112.25. Practical Test Proctors. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective November 1, 2019, 44 TexReg 6366; amended effective September 1, 2020, 45 TexReg 6096)*

(a) The practical test must be administered by one or more qualified proctors selected and assigned by the department.

(b) Qualifications for Test Proctor.

(1) A proctor must be licensed in good standing as a hearing instrument fitter and dispenser under the Act.

(2) A proctor must have held the license for at least two years prior to the practical test date.

(3) A proctor must have observed at least three full practical tests and meet any other proctor training requirements as prescribed by the department or its designee prior to serving as a proctor.

(4) Disciplinary actions or other actions that may disqualify a license holder from serving as a proctor are:

(A) suspension or probated suspension under this chapter;

(B) any action requiring supervision by another person licensed under this chapter; or

(C) an administrative penalty or reprimand under this chapter within three years prior to the test date.

112.26. Jurisprudence Test. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) To fulfill the requirements under Texas Occupations Code §402.204(b)(14), an applicant must complete the jurisprudence test prescribed by the department.

(b) The jurisprudence test is separate from the written and practical tests. The jurisprudence test covers the laws, rules, and regulations of Texas and of the United States relating to the fitting and dispensing of hearing instruments.

(c) The applicant must register online and pay the jurisprudence test fee to the department's designee. The applicant does not need to qualify through the department to take the jurisprudence test.

(d) The applicant must successfully complete the jurisprudence test and submit a certificate of completion prior to receiving a hearing instrument fitter and dispenser license or an apprentice permit.

SUBCHAPTER D. HEARING INSTRUMENT FITTER AND DISPENSER LICENSE.

112.30. Hearing Instrument Fitter and Dispenser License--Application and Eligibility Requirements. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of

credentials on department-approved forms.

(b) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) the supervisor's agreement form that has been completed by the apprentice permit holder and the supervisor(s), unless previously submitted to the department; and

(3) the initial application fee required under §112.110.

(d) An applicant for a hearing instrument fitter and dispenser license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety or its designee, in a manner prescribed by the Department of Public Safety, for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(e) Surety Bond or Other Acceptable Form of Financial Security.

(1) The applicant's employer, who is subject to §112.60, must provide the applicant with a surety bond or other acceptable form of financial security. The applicant must submit the surety bond or other financial security to the department with the license application.

(2) As an alternative to subsection (e)(1), the applicant's employer, who is subject to §112.60, may submit the surety bond or other acceptable form of financial security directly to the department on behalf of itself and the applicant. The employer must submit the prescribed form that identifies the applicant who is covered under the surety bond or other financial security.

(3) The surety bond or other acceptable form of financial security must be received on or before the date of issuance of the applicant's license.

(f) The commission or executive director may deny an application based on the grounds for denial under Texas Occupations Code §402.501.

(g) The commission or department shall deny an application pursuant to Texas Occupations Code §108.052.

112.31. Hearing Instrument Fitter and Dispenser License--Issuance of License. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) The department will issue each applicant, whose application has been approved, a license certificate containing the license holder's name, license number, and expiration date.

(b) Any license certificate or renewal card issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed license certificate or renewal card upon a written request from the license holder using a department-approved form and payment of the duplicate/replacement fee under §112.110.

(d) Upon the written request from the license holder using a department-approved form and payment of the duplicate/replacement fee under §112.110, the department will provide a license holder with a duplicate certificate for a second place of practice which is designated in a license holder's file.

112.32. Hearing Instrument Fitter and Dispenser License--License Term; Renewals. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) A hearing instrument fitter and dispenser license is valid for two years from the date of issuance and may be renewed every two years.

(b) Each license holder is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a hearing instrument fitter and dispenser license, a license holder must:

(1) submit a completed renewal application on a department-approved form;

(2) except for the first renewal, complete twenty (20) hours of continuing education as required under §112.70;

(3) comply with the continuing education audit process described under §112.71, if selected for an audit;

(4) provide proof that all equipment that is used by the license holder to produce a measurement in the testing of hearing acuity has been properly calibrated or certified by a qualified technician in accordance with §112.97, within one year prior to the renewal date; and

(5) submit the renewal application fee required under §112.110.

(d) A license holder must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines in order to renew the license. The department will notify the license holder if the person needs to submit new fingerprints.

(e) Surety Bond or Other Acceptable Form of Financial Security.

(1) For the first renewal on or after September 1, 2020, the license holder's employer, who is subject to §112.60, must provide the license holder with a surety bond or other acceptable form of financial security. The license holder must submit the surety bond or other financial security to the department with the license renewal application.

(2) As an alternative to subsection (e)(1), for the first renewal on or after September 1, 2020, the license holder's employer, who is subject to §112.60, may submit the surety bond or other acceptable form of financial security directly to the department on behalf of the employer and the license holder. The employer must submit the prescribed form that identifies the license holder who is covered under the surety bond or other financial security.

(3) The surety bond or other acceptable form of financial security must be received on or before the date of renewal of the license holder's license.

(f) For each license renewal on or after September 1, 2020, the license holder must complete the human trafficking prevention training required under Occupations Code, Chapter 116, and provide proof of completion as prescribed by the department.

(g) The commission or department shall renew the license of a license holder who has met all the requirements for renewal, except as provided under Texas Occupations Code §402.301 and §402.501.

(h) A person whose license has expired may renew the license in accordance with §60.31 and §60.83 of this title.

(i) A person whose license has expired shall not practice the fitting and dispensing of hearing instruments.

(j) The department shall issue a renewal card to a license holder who has met all the requirements for renewal. The license holder must display the renewal card in association with the license.

112.33. Application by License Holder From Another State. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) A person licensed to fit and dispense hearing instruments in another state may apply for a hearing instrument fitter and dispenser license under this chapter by meeting the requirements under this section.

(b) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(c) An applicant must complete all licensing requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(d) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) written verification that the applicant is licensed in good standing as a fitter and dispenser of hearing instruments in another state;

(3) written verification that:

(A) the requirements to obtain a license to fit and dispense hearing instruments in the state in which the applicant is licensed include passing the International Licensing Examination for Hearing Instrument Dispenser (ILE) written test; or

(B) the applicant holds a certification issued by the Board of Certification for Hearing Instrument Sciences (BC-HIS);

(4) a written statement from the licensing entity in the state in which the applicant is licensed that details any disciplinary action taken by the entity against the applicant;

(5) a statement of the applicant's criminal history acceptable to the department; and

(6) the initial application fee required under §112.110.

(e) An applicant for a hearing instrument fitter and dispenser license must submit a completed legible set of fingerprints, on a form prescribed by the department, to the Department of Public Safety or its designee, in a manner prescribed by the Department of Public Safety, for the purpose of obtaining criminal history record information. An applicant must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(f) The department may deny an application under this section based on the applicant's criminal history or an applicant's history of disciplinary action.

(g) The commission or department shall deny an application pursuant to Texas Occupations Code §108.052.

(h) Surety Bond or Other Acceptable Form of Financial Security.

(1) The applicant's employer, who is subject to §112.60, must provide the applicant with a surety bond or other acceptable form of financial security. The applicant must submit the surety bond or other financial security to the department with the license application.

(2) As an alternative to subsection (h)(1), the applicant's employer, who is subject to §112.60, may submit the surety bond or other acceptable form of financial security directly to the department on behalf of the employer and the applicant. The employer must include the prescribed form that identifies the applicant who is covered under the surety bond or other financial security.

(3) The surety bond or other acceptable form of financial security must be received on or before the date of issuance of the applicant's license.

(i) If the department approves an application, the applicant must take the practical test and the jurisprudence test. If the applicant meets the examination requirements, the department shall issue to the applicant a hearing instrument fitter and dispenser license under this chapter.

(j) The department may allow an applicant under this section who satisfies all application requirements other than the requirement under subsection (d)(3), to take all three tests that comprise the examination required under Texas Occupations Code §402.202. If the applicant meets the examination requirements, the department shall issue to the applicant a hearing instrument fitter and dispenser license under this chapter.

(k) The department may not issue a license under this section to an applicant who is a licensed audiologist in another state. The department shall inform the applicant of the licensing requirements of Chapter 401.

SUBCHAPTER E. APPRENTICE PERMIT.

112.40. Apprentice Permit--Application and Eligibility Requirements. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all permit requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant for an apprentice permit must:

(1) hold a current temporary training permit;

(2) submit a completed application on a department-approved form;

(3) submit the supervisor's agreement form that has been completed by the applicant and the supervisor(s);

(4) pass the written and practical tests;

(5) submit a certificate of completion of the jurisprudence test; and

(6) pay the apprentice permit fee required under §112.110.

(d) An applicant for an apprentice permit must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

112.41. Apprentice Permit--Issuance of Permit. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) The department will issue a permit containing the permit holder's name, permit number, and expiration date to an applicant who meets all of the requirements for obtaining an apprentice permit under the Act and this chapter.

(b) Any permit issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed permit upon a written request from the permit holder using a department-approved form and payment of the duplicate/replacement fee under §112.110.

112.42. Apprentice Permit--Permit Term; Extension. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) An apprentice permit is valid for one year. The department may extend the apprentice permit for an additional period not to exceed one year. An apprentice permit may not be extended more than once.

(b) To extend an apprentice permit, the apprentice permit holder must:

(1) submit an extension request on a department-approved form not later than 90 days after the expiration of the permit;

(2) submit a new or renewed supervision agreement for the extension period; and

(3) pay the permit extension fee required under §112.110.

(c) An apprentice permit holder must successfully pass a criminal history background check_pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines to extend the permit.

(d) A person whose permit has expired shall not practice the fitting and dispensing of hearing instruments.

(e) A person whose apprentice permit has expired has 90 days after the expiration date to request an extension from the department. After that date, the person must apply for a temporary training_permit and must start over at the beginning of the temporary training permit process. The person must repeat and complete the temporary training permit requirements and the apprentice permit requirements under Occupations Code Chapter 402 and this chapter.

112.43. Apprentice Permit--Supervision Requirements. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) An apprentice permit holder shall work under the direct or indirect supervision of a license holder for at least one year.

(b) The supervisor shall periodically conduct a formal evaluation of the applicant's progress in the development of professional skills.

(c) A supervisor of an apprentice permit holder is responsible for services to the client that may be performed by the apprentice permit holder. The supervisor must ensure that all services provided are in compliance with the Act and this chapter.

(d) The apprenticeship must be done under the direct or indirect supervision of an individual authorized to supervise permit holders who holds a valid license to fit and dispense hearing instruments in the State of Texas under Texas Occupations Code, Chapter 401 or 402, other than a person licensed under §401.311 or §401.312.

(e) The supervisor must submit written notification of cessation of supervision to the department and the apprentice permit holder within ten (10) days of cessation of supervision on a department-approved form or

in a manner prescribed by the department.

(f) The apprentice permit holder shall give written notice to the department of the transfer of supervision within ten (10) working days of change in supervisor on a department-approved form or in a manner prescribed by the department.

(g) The supervisor's agreement form must be completed by the apprentice permit holder and the supervisor or supervisors on a department-approved form or in a manner prescribed by the department.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

112.44. Apprentice Permit--Continuing Education. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) Pursuant to Texas Occupations Code §402.207, the apprentice permit holder must complete twenty (20) hours of classroom continuing education during the apprentice year.

(b) The apprentice permit holder must complete the continuing education in one or more of the following approved subjects relating to the fitting and dispensing of hearing instruments:

(1) basic physics of sound;

(2) structure and function of hearing instruments;

(3) fitting of hearing instruments;

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

(5) live voice and recorded voice speech audiometry;

(6) masking when indicated for air conduction, bone conduction, and speech;

(7) recording and evaluation of audiogram and speech audiometry to determine the candidacy for hearing instruments;

(8) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(9) taking of earmold impressions;

(10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(11) anatomy and physiology of the ear;

(12) counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(13) use of an otoscope for the visual observation of the entire ear canal;

(14) laws, rules, and regulations of this state and the United States; and

(15) the proper procedures for sound level measurements.

(c) The apprentice must provide written proof of attendance or completion of an approved course on a department-approved form or in a manner prescribed by the department.

SUBCHAPTER F. TEMPORARY TRAINING PERMIT.

112.50. Temporary Training Permit--Application and Eligibility Requirements. *(New Section adopted effective October 1, 2018, amended effective May 1, 2019, 44 TexReg 2155)*

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on department-approved forms.

(b) An applicant must complete all permit requirements within one year from the date the application was submitted. After that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) An applicant for a temporary training permit must:

(1) provide documentation that the applicant is at least 18 years of age;

(2) submit a completed application on a department-approved form;

(3) submit one of the following education records:

(A) an official diploma or official transcript indicating graduation from an accredited high school;

(B) a certificate of high school equivalency issued by the appropriate education agency; or

(C) an official diploma or official transcripts from an accredited college or university indicating a college degree was obtained;

(4) submit the supervisor statement required under Texas Occupations Code §402.252, on a department-approved form; and

(5) pay the temporary training permit fee required under §112.110

(d) An applicant for a temporary training permit must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(e) Pursuant to Occupations Code §402.251(b), a person, who has previously held a temporary training permit and whose first temporary training permit has expired, may apply for a second temporary training permit under this section.

(1) The second temporary training permit shall be a new permit as required under §402.251(b).

(2) A person who is issued a second temporary training permit must start over at the beginning of the temporary training permit process. A temporary training permit holder must comply with the supervision and temporary training requirements under Occupations Code §402.252 and §§402.254 – 402.257 and §112.53.

(3) A person who is issued a second temporary training permit may extend the second temporary training permit once in accordance with Occupations Code §402.253 and §112.52.

(4) A person may not be issued more than two temporary training permits**.**

112.51. Temporary Training Permit--Issuance of Permit. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) The department will issue a permit containing the permit holder's name, permit number, and expiration

date to an applicant who meets all of the requirements for obtaining a temporary training permit under the Act and this chapter.

(b) Any permit issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed permit upon a written request from the permit holder using a department-approved form and payment of the duplicate/replacement fee under §112.110.

112.52. Temporary Training Permit--Permit Term; Extension. *(New Section adopted effective October 1, 2018, amended effective May 1, 2019, 44 TexReg 2155; amended effective September 1, 2020, 45 TexReg 6096)*

(a) A temporary training permit is valid for one year. The department may extend the temporary training permit for an additional period not to exceed one year. A temporary training permit may not be extended more than once.

(b) To extend a temporary training permit, the temporary training permit holder must:

(1) submit an extension request on a department-approved form no later than 90 days after the expiration of the permit;

(2) submit a new or renewed supervision agreement for the extension period; and

(3) pay the permit extension fee required under §112.110.

(c) To extend the permit, a temporary training permit holder must successfully pass a criminal history background check pursuant to Occupations Code, Chapters 51 and 53, and the department's criminal conviction guidelines.

(d) A person whose permit has expired shall not practice the fitting and dispensing of hearing instruments.

(e) A person whose permit has expired has 90 days after the expiration date to request an extension from the department. After that date, the person must apply for a new permit and must start over at the beginning of the temporary training permit process as prescribed under §112.50(e). This new permit will count as the person's second permit under §112.50(e).

(f) A person who has been issued a second temporary training permit under §112.50 may extend the second temporary training permit once in accordance with this section.

112.53. Temporary Training Permit--Supervision and Temporary Training Requirements. *(New Section adopted effective October 1, 2016, 41 TexReg 4458, amended effective May 1, 2019, 44 TexReg 2155; amended effective September 1, 2020, 45 TexReg 6096)*

(a) The training of a temporary training permit holder must be done under the supervision of an individual who holds a valid license to fit and dispense hearing instruments under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312.

(b) A supervisor licensed under Texas Occupations Code, Chapter 401, shall comply with all provisions of Texas Occupations Code, Chapter 402, and this chapter that relate to the supervision and training of a temporary permit holder. A supervisor licensed under Texas Occupations Code, Chapter 402, shall comply with all provisions of the Act and this chapter.

(c) A person must obtain a temporary training permit prior to beginning the supervision and must maintain a valid temporary training permit during the person's supervised practicum experience.

(d) A temporary training permit holder only has the authority prescribed under Texas Occupations Code

§402.256.

(e) The supervisor must submit a written notification of termination of supervision to the department and the temporary training permit holder within ten (10) days of cessation of supervision on a department-approved form or in a manner prescribed by the department.

(f) Pursuant to Texas Occupations Code §402.257, the temporary training permit holder shall give written notice to the department of the transfer of supervision within ten (10) working days of change in supervisor using a department-approved form or in a manner prescribed by the department.

(g) A temporary training permit holder shall have at least 150 hours of directly supervised practicum that shall include the following:

(1) 25 contact hours of pure tone air conduction, bone conduction, and speech audiometry, recorded and live voice, with 15 of the required hours being with actual clients;

(2) 25 client contact hours of hearing instrument evaluations, including sound-field measurements with recorded and live voice;

(3) 20 contact hours of instrument fittings with actual clients;

(4) 10 contact hours of earmold orientation types, uses, and terminology;

(5) five contact hours of earmold impressions and otoscopic examinations of the ear;

(6) 15 contact hours of troubleshooting of defective hearing instruments;

(7) 20 contact hours of case history with actual clients;

(8) 10 contact hours regarding the laws governing the licensing of persons fitting and dispensing hearing instruments and federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments; and

(9) 20 contact hours of supplemental work in one or more of the areas described by paragraphs (1) through (8).

(h) Pursuant to Texas Occupations Code §402.254, in addition to the contact hours under subsection (g), a temporary training permit holder shall complete at least 10 contact hours of masking under the direct supervision of the supervisor.

(i) Pursuant to Texas Occupations Code §402.255(d), the supervisor shall maintain a log of the contact hours by practicum category on a form and in a manner prescribed by the department. After the temporary training permit holder has completed the 150 contact hours under subsection

(g) the supervisor and the permit holder shall submit verification of compliance to the department, in a manner prescribed by the department.

(j) Pursuant to Texas Occupations Code §402.255(e), a supervisor may not supervise more than two temporary training permit holders at one time.

(k) A supervisor may delegate training activities of a temporary training permit holder to another license holder. The supervisor shall be responsible for the day-to-day supervision of a temporary training permit holder. The supervisor shall also be ultimately responsible for services provided to a client by the temporary training permit holder. A supervisor shall not delegate the responsibility of supervision.

(l) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

SUBCHAPTER G. FINANCIAL SECURITY REQUIREMENTS.

112.60. Filing Surety Bond or Other Form of Financial Security. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective September 1, 2020, 45 TexReg 6096)*

(a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments must file with the department financial security in a form provided by subsection (c), in the amount of $10,000 and conditioned on the promise to pay all:

(1) taxes and contributions due to the state and political subdivisions of the state by the sole proprietor, partnership, corporation, or other legal entity; and

(2) judgments that the sole proprietor, partnership, corporation, or other legal entity may be required to pay for negligently or improperly dispensed hearing instruments or for breaching a contract relating to the dispensing of hearing instruments.

(b) The financial security covers the actions, conduct, or liability of the sole proprietor, partnership, corporation, or other legal entity and the license holders employed by that entity as prescribed under Occupations Code §402.405 and §112.61.

(c) A sole proprietor, partnership, corporation, or other legal entity must file with the department one of the following acceptable forms of financial security in the amount required in subsection (a):

(1) a surety bond issued by an authorized entity;

(2) a deposit of cash;

(3) a certificate of deposit that is issued by a qualified financial institution, assigned to the executive director, and for the benefit of the department; or

(4) an original letter of credit acceptable to the department that:

(A) is irrevocable;

(B) is issued by a qualified financial institution which is financially responsible in the amount of the letter of credit;

(C) does not require examination of the performance of the underlying transaction between the department and the license holder;

(D) is payable to the department on demand or within a reasonably brief period of time after presentation of all required documents; and

(E) does not include any condition that makes payment to the department contingent upon the consent of or other action by the license holder or other party.

(d) A sole proprietor, partnership, corporation, or other legal entity must file the financial security with the department at the following times and in the manner prescribed in the following sections:

(1) for an employee's initial license application as prescribed under §112.30 or §112.33;

(2) for an employee's first license renewal on or after September 1, 2020, as prescribed under §112.32; and

(3) for a new employee who provides notice of change in employment as prescribed under §112.91.

(e) The financial security must be received on or before the date of issuance of the employee's license.

(f) A person to whom the Act does not apply pursuant to Texas Occupations Code §402.003 is not required to file financial security under this section.

(g) Financial security required under this section remains in effect until canceled by action of the surety, the principal, or the department. Notice of cancellation must be provided to the department no later than thirty (30) days prior to cancellation.

112.61. Recovery on Surety Bond or Other Form of Financial Security. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective September 1, 2020, 45 TexReg 6096)*

(a) The purchaser of a hearing instrument may rescind the purchase and recover funds as provided by Texas Occupations Code §402.404 and §112.60 for:

(1) a material misstatement of fact or misrepresentation by a license holder employed by an entity regarding the instrument or services to be provided by the license holder that was relied on by the purchaser or that induced the purchaser to purchase the instrument;

(2) the failure by the entity to provide the purchaser with an instrument or with fitting and dispensing services that conform to the specifications of the purchase agreement;

(3) the diagnosis of a medical condition unknown to the purchaser at the time of the purchase that precludes the purchaser's use of the instrument;

(4) the failure by the entity to remedy a significant material defect of the instrument within a reasonable time;

(5) the provision by the entity of fitting and dispensing services that are not in accordance with accepted industry practices; or

(6) the failure by a license holder employed by the entity to meet the standards of conduct prescribed by Occupations Code Chapter 402 or this chapter that adversely affects the transactions between the purchaser and the license holder or the entity.

(b) The purchaser of a hearing instrument must file a claim with the department to recover funds from the financial security submitted to the department under §112.60.

SUBCHAPTER H. CONTINUING EDUCATION REQUIREMENTS.

112.70. Continuing Education--Hours and Courses. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564)*

(a) This section applies to a hearing instrument fitter and dispenser license holder.

(b) Except as provided under subsection (j), a license holder must complete 20 continuing education hours during each license term.

(c) Pursuant to 16 Texas Administrative Code (TAC), Chapter 59, a continuing education hour shall be 50 minutes of attendance in an approved continuing education course.

(d) No more than 10 continuing education hours per license term may be earned from an approved online continuing education course offered by an approved continuing education provider.

(e) No more than 5 continuing education hours per license term may be earned from an approved continuing education course offered by an approved manufacturer continuing education provider.

(f) A license holder may be credited with continuing education hours for a published book or article written by the license holder that contributes to the license holder's professional competence. The department may approve credit hours based on the degree that the published book or article advanced knowledge regarding the fitting and dispensing of hearing instruments. No more than 5 contact hours per license term may be approved for preparation of a publication.

(g) Continuing education shall be acceptable if the education is described in subsection (f) or falls in one or more of the following categories:

(1) participation in approved continuing education courses offered by approved continuing education providers;

(2) completion of academic courses at an accredited college or university in areas directly supporting development of skills and competence in the fitting and dispensing of hearing instruments; and/or

(3) participation or teaching in programs directly related to the fitting and dispensing of hearing instruments (e.g., institutes, seminars, workshops, or conferences), which are approved or offered by an accredited college or university.

(h) To receive credit for completion of academic work the license holder must submit an official transcript(s) from accredited school(s) showing completion of hours in appropriate areas for which the license holder received a passing grade.

(i) The department will not approve continuing education credit for any license holder for:

(1) education incidental to the regular professional activities of a license holder such as knowledge gained through experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization; and

(3) any program which is not described in, or in compliance with, this section.

(j) Pursuant to Texas Occupations Code §402.305, the department may renew the license of a license holder who has not complied with the continuing education requirements if the license holder:

(1) submits proof from an attending physician that the license holder suffered a serious disabling illness or physical disability that prevented compliance with the continuing education requirements during the twenty-four (24) months before the end of the license term; or

(2) was licensed for the first time during the twenty-four (24) months before the end of the license term.

112.71. Continuing Education--Records and Audits. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective September 1, 2020, 45 TexReg 6096)*

(a) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of the license holder's continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(b) The audit process shall be as follows.

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the license holder shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license holder's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A license holder who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(5) Licenses will not be renewed until the continuing education requirements have been met.

(c) The license holder shall be responsible for maintaining a record of the license holder's continuing education experiences until the next renewal is completed.

112.72. Continuing Education--Providers. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) In accordance with the Act, continuing education courses must be provided by a department-approved continuing education provider. An individual or organization may request approval as a continuing education provider by submitting an application to the department. The department may consult as needed with an advisory board member.

(b) After review of the continuing education provider application, the applicant may be approved by the department as either a manufacturer continuing education provider or a non-manufacturer continuing education provider.

(c) Upon approval, the continuing education provider applicant shall pay the continuing education provider fee prescribed under §112.110. The approved provider status shall be effective for one year from the date of issuance of provider approval.

(d) Continuing education providers must renew their approved provider status annually by completing and returning to the department the provider renewal form and the continuing education provider fee. If not renewed on or before the expiration date, the continuing education provider must reapply for approved sponsor status.

(e) Each continuing education course offered by an approved provider must be submitted to the department on the required course approval form.

(f) The department is responsible for the review and approval of all continuing education courses submitted by approved providers. The department may consult as needed with an advisory board member.

(g) Each continuing education course will be evaluated by the department on the basis of the following criteria:

(1) relevance of the subject matter to increase or support the development of skills and competence in the fitting and dispensing of hearing instruments or in studies or disciplines related to fitting and dispensing of hearing instruments;

(2) objectives of specific information and skills to be learned; and

(3) subject matter, educational methods, materials, qualifications of instructors and presenters, and facilities utilized, including the frequency and duration of sessions, and the adequacy to implement learner objectives.

(h) Approved providers who offer online continuing education must submit each course for approval.

(i) Approved continuing education courses and providers will be listed on the department's website.

(j) An organization or individual who meets the required criteria and is approved by the department may advertise as an approved provider of continuing education for licensed fitters and dispensers of hearing instruments.

(k) Each continuing education provider shall provide each participant with a certificate of completion that documents the participant's name, the continuing education course number, the number of approved continuing education hours, the title and date(s) of the program as approved by the department, and the name of the approved continuing education provider.

SUBCHAPTER I. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT.

112.80. Rules. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564)*

(a) Pursuant to the authority under Texas Occupations Code §51.203, the commission shall adopt rules necessary to implement the Hearing Instrument Fitters and Dispensers program. Pursuant to §60.22 of this title, the department is authorized to propose rules.

(b) The commission has adopted rules governing changes to the standard of practice rules pursuant to §51.2031. These rules are located at 16 TAC Chapter 100.

SUBCHAPTER J. RESPONSIBILITIES OF THE LICENSEE.

112.90. General Responsibilities of the Licensee. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) All licensees are bound by the provisions of the Act and this chapter.

(b) A licensee shall report alleged violations of the Act or this chapter to the department.

(c) A licensee shall cooperate with the department by furnishing required documents or information and by responding to a request for information from a subpoena issued by the executive director or the department.

(d) A licensee shall comply with any order issued by the commission or the department relating to the licensee.

(e) A licensee shall not interfere with an investigation by the willful misrepresentation of facts to the department or its authorized representative or by the use of threats or harassment against any person.

112.91. Change of Name, Address or Other Information. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective September 1, 2020, 45 TexReg 6096)*

(a) A license holder or permit holder must notify the department in writing within thirty (30) days of any changes of name, address, telephone number, or employment.

(b) If a license holder changes employment, the financial security on file with the department must be updated within thirty (30) days of the license holder's change in employment. The updated financial security may be filed as follows:

(1) The license holder's new employer, who is subject to §112.60, must provide the license holder with a surety bond or other acceptable form of financial security. The license holder must submit the surety bond or other financial security to the department with the change in employment notice.

(2) As an alternative to subsection (b)(1), the license holder's new employer, who is subject to §112.60, may submit the surety bond or other acceptable form of financial security directly to the department on behalf of itself and the license holder. The new employer must submit the prescribed form that identifies the license holder who is covered under the surety bond or other financial security.

112.92. Consumer Information and Client Records. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564)*

(a) A licensee shall inform each client of the name, address, email address, and telephone number of the department for the purpose of filing a complaint or reporting violations of the Act or this chapter on:

(1) each written contract for services; and

(2) a sign prominently displayed in the primary place of business.

(b) A licensee or a hearing instrument fitting and dispensing practice shall provide to a client, who provides a signed, written request, a copy of the client's records that pertain to the testing for, and fitting and dispensing of, hearing instruments.

112.93. Display of License. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) A licensee shall:

(1) prominently display the current license issued by the department in the primary place of business;

(2) not display a license issued by the department which has been reproduced or is expired, suspended, or revoked; and

(3) not make any alterations on a license issued by the department.

(b) The department shall issue a renewal card to a licensee who has met all the requirements for renewal. The licensee must display the renewal card in association with the license.

112.94. False, Misleading or Deceptive Advertising. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

A licensee may not engage in false, misleading or deceptive advertising in accordance with Texas Occupations Code §402.103.

112.95. Information on Prospective Amplification Candidates. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564)*

A license holder shall try to obtain information on each prospective candidate for amplification in accordance with Texas Occupations Code §402.352.

112.96. Conditions of Sale. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

A license holder or permit holder shall comply with the federal regulations adopted by the U.S. Food and Drug Administration at Title 21 Code of Federal Regulations §801.420 and §801.421. A link to the federal regulations will be available online through the department's website.

112.97. Sound-Level Measurements - Audiometers and Audiometric Testing. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) Audiometers and audiometric testing devices shall meet the current standards of the American National Standards Institute (ANSI) or the International Electrotechnical Commission.

(b) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was not done in a stationary acoustical enclosure. Sound-level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most current ANSI "ear covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing, or the test environment shall have a maximum allowable ambient noise level of 42 dBA.

(2) Ambient noise level of the location of the audiometric testing, if not done in a stationary acoustical enclosure, shall include a notation on the hearing test of the following items:

(A) type(s) of equipment used to determine ambient noise level;

(B) model and serial number of equipment used to determine ambient noise level;

(C) date of last calibration of equipment used to determine ambient noise level; and

(D) the ambient noise level of the test environment.

(c) Audiometric testing conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was done in a stationary acoustical enclosure.

(2) A stationary acoustical enclosure includes, but is not limited to, an audiometric test room.

(A) An audiometric test room is any enclosed space in which a listener is located for the purpose of testing hearing. An audiometric test room may also be known as:

(i) an audiometric test area;

(ii) a hearing test space; or

(iii) a hearing test room.

(B) An example of an audiometric test room would be a prefabricated room known as:

(i) an audiometric test booth;

(ii) a suite; or

(iii) a sound treated room.

112.98. Code of Ethics. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective September 1, 2020, 45 TexReg 6096)*

(a) The purpose of this section is to establish the standards of professional and ethical conduct required of a license holder or permit holder and constitutes a code of ethics. It is the responsibility of all license holders and permit holders to uphold the highest standards of integrity and ethical principles.

(b) A license holder or permit holder of hearing instruments must observe and comply with the code of ethics

and standards of practice set forth in this chapter. Any violation of the code of ethics or standards of practice will constitute unethical conduct or conduct that discredits the profession of the dispensing and fitting of hearing instruments and is grounds for disciplinary action.

(c) A license holder or permit holder shall:

(1) offer only those services that are within the person's professional competency;

(2) comply with client confidentiality rights within the limits established by the law;

(3) refer a client for those services that the license holder or permit holder is unable to provide;

(4) comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

(5) ensure that all equipment used is in proper working order and is properly calibrated; and

(6) comply with any order relating to the license holder or permit holder which is issued by the commission or executive director.

(d) A license holder or permit holder shall not:

(1) falsify records;

(2) refuse to provide services solely on the basis of a client's age, gender, race, color, religion, national origin, or disability;

(3) misrepresent the person's professional credentials or qualifications;

(4) engage in sexual contact or sexual exploitation with a client. Sexual contact means the behaviors and activities described in the Texas Penal Code, §21.01 (relating to Sexual Offenses; Definitions). Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal, sexual gratification, or sexual abuse;

(5) provide services while impaired due to the use of medication, drugs, or alcohol, or a physical or mental health condition; or

(6) interfere with an investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the department or the department's designee or by the use of threats or harassment against any person.

SUBCHAPTER L. FEES.

112.110. Fees. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) Fees paid to the department are nonrefundable.

(b) Hearing Instrument Fitter and Dispenser License:

(1) Initial application fee (includes two-year initial license)--$205;

(2) Renewal application fee (for two-year license)--$205;

(c) Apprentice Permit:

(1) Initial application fee (includes one-year permit)--$205;

(2) Extension fee (one-year term, may only be extended once)--$25;

(d) Temporary Training Permit:

(1) Initial application fee (includes one-year permit)--$205;

(2) Extension fee (one-year term, may only be extended once)--$25;

(e) The fees for the written test, the practical test, and the jurisprudence test are set by and payable to the department's designees.

(f) Continuing education provider fee--$200 annually.

(g) A duplicate/replacement fee for a license or permit issued under this chapter is $25.

(h) Late renewal fees for licenses and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(i) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(j) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

SUBCHAPTER M. COMPLAINTS AND ENFORCEMENT PROVISIONS.

112.120. Complaints. *(New Section adopted effective October 1, 2016, 41 TexReg 4458; amended effective May 1, 2018, 43 TexReg 2564; amended effective September 1, 2020, 45 TexReg 6096)*

(a) The commission has adopted rules related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031. These rules are located at 16 Texas Administrative Code Chapter 100.

(b) A qualified person may assist the department in the review and investigation of complaints and will be immune from liability related to these activities pursuant to Texas Occupations Code §51.252.

(c) The provisions regarding the confidentiality of complaint and disciplinary information are provided under Texas Occupations Code §51.254.

112.121. Administrative Penalties and Sanctions. *(New Section adopted effective September 1, 2020, 45 TexReg 6096)*

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 402, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 402, as applicable, and any associated rules.

112.122. Enforcement Authority. *(New Section adopted effective September 1, 2020, 45 TexReg 6096)*

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 402 and any associated rules may be used to enforce Texas Occupations Code, Chapter 402 and this chapter.

112.123. Refund for Hearing Instrument. *(New Section adopted effective September 1, 2020, 45 TexReg 6096)*

The commission or executive director may order a license holder to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period described in the Act and in this chapter.

112.124. Surrender of a License or Permit. *(New Section adopted effective September 1, 2020, 45 TexReg 6096)*

(a) Surrender by license holder or permit holder.

(1) A license holder or permit holder may at any time voluntarily offer to surrender the person's license or permit for any reason.

(2) If no complaint is pending, the executive director shall accept and void the surrendered license or permit immediately.

(b) Formal disciplinary action.

(1) When a license holder or permit holder has offered the surrender of the person's license or permit after a complaint has been filed, the executive director shall accept and void the surrendered license or permit immediately.

(2) When the executive director has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and an order accepting the surrender may be prepared.

(c) Reinstatement. A license or permit which has been surrendered may not be reinstated; however, a person may apply for a new license or permit in accordance with the Act and this chapter.

(d) This section does not apply to a license or permit that is subject to §112.125.

112.125. Automatic Denials and Revocations. *(New Section adopted effective September 1, 2020, 45 TexReg 6096)*

(a) The department shall deny an application for a license or permit, and shall revoke a license or permit issued under Chapter 402, under the circumstances set forth in Texas Occupations Code, Chapter 108, Subchapter B.

(b) A person whose application for a license or permit has been denied, or whose license or permit has been revoked, pursuant to Texas Occupations Code, Chapter 108, Subchapter B, may reapply or seek reinstatement as provided by that subchapter.

SUBCHAPTER O. JOINT RULE REGARDING THE SALE OF HEARING INSTRUMENTS.

112.140. Requirements Regarding the Sale of Hearing Instruments. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) This subchapter constitutes the rules required by Texas Occupations Code §401.2021 and §402.1021 to be adopted by the commission with the assistance of the Speech-Language Pathology and Audiology Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board. The requirements of this subchapter shall be repealed or amended only through consultation with, and mutual action by, both advisory boards.

(b) Guidelines for a 30 consecutive day trial period.

(1) All clients shall be informed of a 30 consecutive day trial period by written contract for services. All charges associated with such trial period shall be included in this written contract for services, which shall include the name, address, and telephone number of the department.

(2) Any client purchasing one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the client for the hearing instrument(s), less the agreed-upon amount associated

with the trial period, upon return of the instrument(s), in good condition to the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder within the trial period ending 30 consecutive days from the date of delivery. Should the order be canceled by the client prior to the delivery of the hearing instrument(s), the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder may retain the agreed-upon charges and fees as specified in the written contract for services. The client shall receive the refund due no later than the 30th day after the date on which the client cancels the order or returns the hearing instrument(s), in good condition, to the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder.

(3) Should the hearing instrument(s) have to be returned to the manufacturer for repair or remake during the trial period, the 30 consecutive day trial period begins anew. The trial period begins on the day the client reclaims the repaired/remade hearing instrument(s). The expiration date of the new 30 consecutive day trial period shall be made available to the client in writing, through an amendment to the original written contract. The amendment shall be signed by both the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder and the client.

(4) On delivery of a new replacement hearing instrument(s) during the trial period, the serial number of the new instrument(s), the delivery date of the hearing instrument(s), and the date of the expiration of the 30 consecutive day trial period must be stated in writing.

(5) If the date of the expiration of the 30 consecutive day trial period falls on a holiday, weekend, or a day the business is not open, the expiration date shall be the first day the business reopens.

(c) Upon the sale of any hearing instrument(s) or change of model or serial number of the hearing instrument(s), the owner shall ensure that each client receives a written contract that contains:

(1) the date of sale;

(2) the make, model, and serial number of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the license or permit holder who dispensed the hearing instrument;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the length of time and other terms of the guarantee and by whom the hearing instrument is guaranteed;

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The client has been advised that any examination or representation made by a licensed hearing instrument dispenser or apprentice permit holder or temporary training permit holder in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice;"

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: “If you have a complaint against a licensed hearing instrument dispenser or apprentice permit holder or temporary training permit holder, you may contact the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, Telephone (512) 463-6599, Toll-Free (in Texas): (800) 803-9202, www.tdlr.texas.gov”;

(9) the printed name, license type, signature and license or permit number of the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder who dispensed the hearing instrument;

(10) the supervisor's name, license type, and license number, if applicable;

(11) a recommendation for a follow-up appointment within thirty (30) days after the hearing instrument fitting;

(12) the expiration date of the 30 consecutive day trial period under subsection (b); and

(13) the dollar amount charged for the hearing instrument and the dollar amount charged for the return or restocking fee, if applicable.

(d) Record keeping. The owner of the dispensing practice shall ensure that records are maintained on every client who receives services in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the date of the last visit. All of the business's records and contracts are solely the property of the person who owns the business. Client access to records is governed by the Health Insurance Portability and Accountability Act (HIPAA). The records must be available for the department's inspection and shall include, but are not limited to, the following:

(1) pertinent case history;

(2) source of referral and appropriate documents;

(3) medical evaluation or waiver of evaluation;

(4) copies of written contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(5) a complete record of hearing tests, and services provided; and

(6) all correspondence specifically related to services provided to the client or the hearing instrument(s) fitted and dispensed to the client.

(e) The written contract and trial period information provided to a client in accordance with this subchapter, orally and in writing, shall be in plain language designed to be easily understood by the average consumer.

SUBCHAPTER P. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE.

112.150. Requirements Regarding the Fitting and Dispensing of Hearing Instruments by Telepractice. *(New Section adopted effective October 1, 2016, 41 TexReg 4458)*

(a) Pursuant to Texas Occupations Code §401.2022 and §402.1023, the commission, with the assistance of the Speech-Language Pathologists and Audiologists Advisory Board and the Hearing Instrument Fitters and Dispensers Advisory Board, shall adopt rules to establish requirements for the fitting and dispensing of hearing instruments through the use of telepractice. This subchapter contains rules that set forth the requirements for the fitting and dispensing of hearing instruments through the use of telepractice.

(b) Definitions. Unless the context clearly indicates otherwise, the following words and terms, when used in this subchapter, shall have the following meanings:

(1) Acts--Texas Occupations Code, Chapter 401, relating to Speech-Language Pathologists and Audiologists, and Chapter 402, relating to Hearing Instrument Fitters and Dispensers.

(2) Client--A consumer or proposed consumer of services.

(3) Client site--The site at which the client is physically located.

(4) Facilitator--The individual at the client site who assists with the delivery of telehealth services.

(5) Hearing instrument--Any wearable instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(6) Provider--An individual who holds a current, renewable, unrestricted license under Texas Occupations Code, Chapter 402, that authorizes the individual to fit and dispense hearing instruments without supervision; an individual who holds a current, renewable, unrestricted license under Texas Occupations Code, §401.302; or an individual who holds an audiology intern license under Texas Occupations Code, §401.311.

(7) Provider site--The physical location of the provider of telehealth services which is distant or remote from the client site.

(8) Telecommunications--Interactive communication at a distance by concurrent two-way transmission, using telecommunications technology, of information, including, without limitation, sound, visual images, and/or computer data, between the client site and the provider site, and required to occur without a change in the form or content of the information, as sent and received, other than through encoding or encryption of the transmission itself for purposes of and to protect the transmission.

(9) Telecommunications technology--Computers and equipment, other than telephone, email or facsimile technology and equipment, used or capable of use for purposes of telecommunications. For purposes of this subchapter, the term includes, without limitation:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and storage and forward; and

(C) other technology that facilitates the delivery of telehealth services.

(10) Telehealth services--The fitting and dispensing of hearing instruments through telepractice to a client who is physically located at a site other than the site where the provider is located.

(11) Telepractice--The use of telecommunications technology for the fitting and dispensing of hearing instruments.

(c) Unless otherwise legally authorized to do so, an individual shall not render telehealth services from the State of Texas or to a client in the state of Texas, unless the individual qualifies as a provider as that term is defined in this section and renders only those telehealth services that are within the course and scope of the provider's licensure and competence, and delivered in accordance with the requirements of that licensure and pursuant to the terms and conditions set forth in this subchapter.

(d) The provider shall use only telecommunications technology that meets the definition of that term, as defined in this subchapter, to render telehealth services. Modes of communication that do not utilize such telecommunications technology, including telephone, facsimile, and email, may be used only as adjuncts.

(e) Subject to the requirements and limitations of this subchapter, a provider may utilize a facilitator at the client site to assist the provider in rendering telehealth services.

(f) The provider shall be present at the provider site and shall be visible and audible to, and able to see and hear the client and the facilitator via telecommunications technology in synchronous, real-time interactions, even when receiving or sending data and other telecommunication transmissions in carrying out the telehealth services. The provider is responsible for the actions of the facilitator and shall monitor the client and oversee and direct the facilitator at all times during the telehealth session.

(g) The provider of telehealth services, prior to allowing a facilitator to assist the provider in rendering telehealth services, shall verify and document the facilitator's qualifications, training, and competence in each task the provider directs the facilitator to perform at the client site, and in the methodology and equipment the facilitator is to use at the client site.

(h) The facilitator may perform at the client site only the following tasks:

(1) those physical, administrative, and other tasks for which the provider has trained the facilitator in connection with the fitting or dispensing of hearing instruments for which no form of license, permit, authorization or exemption is required by law; and

(2) those tasks for which the individual who is acting as a facilitator otherwise holds and acts in accordance with any license, permit, or other form of authorization or exemption required by law to perform the tasks.

(i) A provider shall not render telehealth services to a client in those situations in which the presence of a facilitator is required for safe and effective service to the client and no qualified facilitator is available to the client during the telepractice session.

(j) The scope, nature, and quality of the telehealth services provided, including the assistance provided by the facilitator, shall be commensurate with the services the provider renders in person at the same physical location as the client.

(k) The provider shall not render telehealth services unless the telecommunications technology and equipment located at the client site and at the provider site are appropriate to the telehealth services to be rendered; are properly calibrated and in good working order; and are of sufficient quality to allow the provider to deliver equivalent fitting and dispensing service and quality to the client as if those services were provided in person at the same physical location. The provider shall only utilize telecommunications technology and other equipment for the provider's telepractice which the provider is competent to use.

(l) A client's initial professional contact with a provider shall be in person at the same physical location.

(m) Providers and facilitators involved in the provider's delivery of telehealth services shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements. Documentation of telehealth services shall include documentation of the date and nature of services performed by the provider by telepractice and of the assistive tasks of the facilitator.

(n) Except to the extent it imposes additional or more stringent requirements, this section does not affect the applicability of any other requirement or provision of law to which an individual is otherwise subject under this chapter or other law.