

HEARING INSTRUMENT FITTERS AND DISPENSERS
Occupations Code
Title 3. Health Professions
Chapter 402
Administered by the Texas Department of Licensing and Regulation
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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. Definitions.

In this chapter:

- (1) “Advisory board” means the Hearing Instrument Fitters and Dispensers Advisory Board.
- (2) “Commission” means the Texas Commission of Licensing and Regulation.
- (3) “Department” means the Texas Department of Licensing and Regulation.
- (3-a) “Executive director” means the executive director of the department.
- (4) “Fitting and dispensing hearing instruments” means 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 postfitting counseling for the purpose of fitting and dispensing hearing instruments.
- (5) “Hearing instrument” means 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.
- (6) “License” means a license issued by the department under this chapter to a person authorized to fit and dispense hearing instruments.
- (7) “Sale” includes 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 this chapter or to a distributor for distribution and sale to a person licensed under this chapter.

Sec. 402.003. Applicability of Chapter.

- (a) This chapter does not apply to:
 - (1) a person engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning if the person or the person's employees do not sell hearing instruments;
 - (2) a physician licensed by the Texas Medical Board;
 - (3) a person with a master's degree or doctorate in audiology from an accredited college or university who does not sell hearing instruments, to the extent the person engages in the measurement of human hearing by the use of an audiometer or by any other means to make selections and adaptations of or recommendations for a hearing instrument and to make impressions for earmolds to be used as part of a hearing instrument;
 - (4) an audiologist or an audiology intern licensed under Chapter 401, except as may otherwise be provided by the following provisions, which refer to Chapter 401:
 - (A) Section 402.051(a)(1);

- (B) Section 402.202(b);
 - (C) Section 402.252;
 - (D) Section 402.255(a);
 - (E) Section 402.406(a); and
 - (F) Section 402.451(a)(6); and
- (5) a student of audiology in an accredited college or university program, if the student's activities and services are part of the student's supervised course of study or practicum experience.
- (b) A student described by Subsection (a)(5) is subject to Chapter 401.

SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD

Sec. 402.051. Advisory Board Membership.

- (a) 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 residents of this state actually 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) has been a resident of this state for at least two years preceding appointment;
 - (B) is a citizen of the United States; and
 - (C) specializes in the practice of otolaryngology; and
 - (3) two members of the public.
- (b) Appointments to the advisory board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Sec. 402.0511. Duties of Advisory Board.

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

Sec. 402.055. Terms; Vacancies.

- (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.

Sec. 402.057. Presiding Officer.

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.

Sec. 402.058. Meetings.

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

SUBCHAPTER C. POWERS AND DUTIES

Sec. 402.101. General Powers and Duties.

- (a) The executive director shall administer and enforce this chapter.
- (b) The department shall:
 - (1) evaluate the qualifications of applicants;
 - (2) examine applicants; and
 - (3) in connection with a hearing under this chapter, issue subpoenas, examine witnesses, and administer oaths under the laws of this state.

Sec. 402.1021. Rules for Hearing Instruments.

With the assistance of the advisory board and the Speech-Language Pathologists and Audiologists Advisory Board, the commission shall adopt rules to establish requirements for each sale of a hearing instrument for purposes of this chapter and Chapter 401. The rules must:

- (1) address:
 - (A) the information and other provisions required in each written contract for the purchase of a hearing instrument;
 - (B) records that must be retained under this chapter or Chapter 401; and
 - (C) guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument; and
- (2) require that the written contract and 30-day trial period information provided to a purchaser of a hearing instrument be in plain language designed to be easily understood by the average consumer.

Sec. 402.1023. Rules for Fitting and Dispensing of Hearing Instruments by Telepractice.

- (a) In this section, “telepractice” means the use of telecommunications technology by a license holder for the fitting and dispensing of hearing instruments.
- (b) With the assistance of the advisory board and the Speech-Language Pathologists and Audiologists Advisory Board, the commission shall adopt rules to establish requirements for the fitting and dispensing of

hearing instruments by the use of telepractice for purposes of this chapter and Chapter 401, including rules that establish the qualifications and duties of license holders who use telepractice.

Sec. 402.103. False, Misleading, or Deceptive Advertising.

- (c) For purposes of Section 51.204, an advertisement is false, misleading, or deceptive if the advertisement:
 - (1) contains a misrepresentation of fact;
 - (2) contains a false statement as to the license holder's professional achievements, education, skills, or qualifications in the hearing instrument dispensing profession;
 - (3) makes a partial disclosure of relevant fact, including the advertisement of:
 - (A) a discounted price of an item without identifying in the advertisement or at the location of the item:
 - (i) the specific product being offered at the discounted price; or
 - (ii) the usual price of the item; and
 - (B) the price of a specifically identified hearing instrument, if more than one hearing instrument appears in the same advertisement without an accompanying price;
 - (4) contains a representation that a product innovation is new, if the product was first offered by the manufacturer to the general public in this state not less than 12 months before the date of the advertisement;
 - (5) states that the license holder manufactures hearing instruments at the license holder's office location unless the next statement discloses that the instruments are manufactured by a specified manufacturer and remanufactured by the license holder; or
 - (6) contains any other representation, statement, or claim that is inherently misleading or deceptive.

Sec. 402.104. Powers and Duties Regarding Examination.

- (a) The department shall develop and maintain an examination that may include written, oral, or practical tests. The department shall administer or arrange for the administration of the examination.
- (b) The examination shall be administered at least twice each year.
- (c) The examination must be validated by an independent testing professional.
- (d) The practical examination must be administered by one or more qualified proctors selected and assigned by the department.
- (e) The commission by rule shall establish the qualifications for a proctor. The rules must:
 - (1) require a proctor to be licensed in good standing as a hearing instrument fitter and dispenser;
 - (2) specify the number of years a proctor must be licensed as a hearing instrument fitter and dispenser; and
 - (3) specify the disciplinary actions or other actions that disqualify a person from serving as a proctor.

SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 402.152. Complaints.

- (a) Each license or permit holder under this chapter shall at all times prominently display in the person's place of business a sign containing:
 - (1) the name, mailing address, e-mail address, and telephone number of the department; and
 - (2) a statement informing consumers that a complaint against a license or permit holder may be directed to the department.
- (b) Each written contract for services in this state of a license holder must contain the department's name, mailing address, e-mail address, and telephone number.

Sec. 402.154. Confidentiality of Complaint and Disciplinary Information.

- (h) All information and materials subpoenaed or compiled by the department in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the department or its agents or employees who are involved in discipline of the holder of a license, except that this information may be disclosed to:
 - (1) persons involved with the department in a disciplinary action against the holder of a license;
 - (2) professional licensing or disciplinary boards for the fitting and dispensing of hearing instruments in other jurisdictions;
 - (3) peer assistance programs approved by the commission under Chapter 467, Health and Safety Code;
 - (4) law enforcement agencies; and
 - (5) persons engaged in bona fide research, if all individual-identifying information has been deleted.
- (i) The filing of formal charges by the department against a holder of a license, the nature of those charges, disciplinary proceedings of the department, commission, or executive director, and final disciplinary actions, including warnings and reprimands, by the department, commission, or executive director are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

SUBCHAPTER E. LICENSE AND PERMIT REQUIREMENTS

Sec. 402.201. License or Permit Required.

A person may not represent that the person is authorized to fit and dispense hearing instruments, or use in connection with the person's name any designation tending to imply that the person is authorized to engage in the fitting and dispensing of hearing instruments, unless the person holds a license or is otherwise authorized to do so under this chapter.

Sec. 402.202. Examination Required.

- (a) To engage in fitting and dispensing hearing instruments in this state a person must pass an examination required by the department.

- (b) A person 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.

Sec. 402.203. Application for Examination.

- (a) An applicant for examination must:
 - (1) apply to the department in the manner and on a form prescribed by the executive director;
 - (2) provide:
 - (A) documentation that the applicant is at least 18 years of age and has graduated from an accredited high school or equivalent; and
 - (B) other information determined necessary by the department; and
 - (3) pay any required fees for application and examination.
- (b) A permit holder may not take the examination until the satisfactory completion of the requirements of Subchapter F by the supervisor and permit holder is verified.
- (c) The department may refuse to examine an applicant who has been convicted of a misdemeanor that involves moral turpitude or a felony.

Sec. 402.204. Contents of Examination.

- (a) The examination must consist of written, oral, or practical tests that are objective in method and applied in a consistent manner.
- (b) The examination must cover the following subjects 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 hearing instrument candidacy;
 - (8) selection and adaptation 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 the hearing impaired 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.
- (c) The examination may not test knowledge of the diagnosis or treatment of any disease of or injury to the human body.

Sec. 402.205. Examination Procedures.

- (a) The department shall give each applicant due notice of the date and place of the examination and the subjects, areas, and skills that will be included in the examination. A change may not be made in those subjects, areas, and skills after the date of the examination has been announced and publicized.
- (b) An examination shall be conducted in writing and by other means the department determines adequate to ascertain the qualifications of applicants.
- (c) On reexamination, an applicant who previously failed an examination may be examined only on those portions of the examination that the applicant failed.

Sec. 402.207. Issuance of Apprentice Permit.

- (a) The department shall issue an apprentice permit to fit and dispense hearing instruments to a temporary training permit holder who has:
 - (1) passed all parts of the examination with a score of 70 percent or greater;
 - (2) paid the required fees; and
 - (3) met all requirements of this chapter.
- (b) An apprentice permit is valid for one year. The department may extend the apprentice permit for an additional period not to exceed one year.
- (c) An apprentice permit holder shall work under the supervision of a license holder for at least one year. During the apprentice year, the apprentice permit holder shall complete 20 hours of classroom continuing education as required by Section 402.303 for a license holder.

Sec. 402.208. Issuance of License.

The department shall issue a license to an apprentice permit holder when the department has received sufficient evidence that the apprentice permit holder has met all the licensing requirements of this chapter.

Sec. 402.209. Application by License Holder from Another State.

- (a) A person licensed to fit and dispense hearing instruments in another state may apply for a license under this chapter by submitting a completed application on a form prescribed by the department.

- (c) An applicant for a license under this section shall provide as part of the application:
 - (1) written verification that the applicant is licensed in good standing as a fitter and dispenser of hearing instruments in another state and has held the license for at least three years preceding the date of application;
 - (2) 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 an examination approved by the commission by rule; or
 - (B) the applicant holds a certification from a professional organization approved by the commission by rule;
 - (3) 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; and
 - (4) a statement of the applicant's criminal history acceptable to the department.
- (d) The department may deny an application under this section based on the applicant's criminal history or history of disciplinary action.
- (e) If the department approves an application, on the next regularly scheduled examination date the applicant may take the practical section of the examination required under Section 402.202 and a written examination of Texas law administered by the department. If the applicant passes the examinations required under this section, the department shall issue to the applicant a license under this chapter.
- (f) The department may allow an applicant under this section who satisfies all application requirements other than the requirement under Subsection (c)(2) to take all sections of the examination required under Section 402.202. If the applicant passes the examination, the department shall issue to the applicant a license under this chapter.
- (h) An applicant under this section who fails an examination may not retake the examination under this section. The person must comply with the requirements for an applicant for an original license under this chapter.
- (i) 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.

Sec. 402.210. Criminal History Record Information Requirement for License Issuance.

- (a) The department shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the department, to the department or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.
- (b) The department may not issue a license to a person who does not comply with the requirement of Subsection (a).
- (c) The department shall conduct a criminal history check of each applicant for a license using information:
 - (1) provided by the individual under this section; and

- (2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.
- (d) The department may:
 - (1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and
 - (2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

SUBCHAPTER F. TEMPORARY TRAINING PERMIT

Sec. 402.251. Temporary Training Permit Qualifications.

- (a) The department shall issue a temporary training permit to a person who:
 - (1) has never taken the examination administered under this chapter;
 - (2) possesses the qualifications required under Section 402.203(a);
 - (3) submits a written application on a form prescribed by the department furnishing documentation that the applicant satisfies the requirements of Subdivisions (1) and (2); and
 - (4) pays any required fee.
- (b) The department may issue a new temporary training permit under this section to a person on or after the 365th day after the person's previous temporary training permit expired.

Sec. 402.252. Supervision Statement.

- (a) An application for a temporary training permit must be accompanied by the statement of a person licensed to fit and dispense hearing instruments under this chapter or Chapter 401, other than a person licensed under Section 401.311 or 401.312.
- (b) The statement must be on a form prescribed by the department and state that:
 - (1) the person will supervise the applicant in all work done by the applicant under the temporary training permit;
 - (2) the person will notify the department not later than the 10th day after the date of the applicant's termination of supervision by the person; and
 - (3) if the person is licensed under Chapter 401, the person will comply with all provisions of this chapter and rules adopted under this chapter that relate to the supervision and training of a temporary training permit holder.

Sec. 402.253. Expiration of Temporary Training Permit.

- (a) A temporary training permit authorizes the permit holder to fit and dispense hearing instruments until the earlier of:
 - (1) the date the permit expires; or

- (2) the date the permit holder passes the examination required for a license under this chapter.
- (b) A temporary training permit automatically expires on the first anniversary of the date of issuance unless the department extends the permit for an additional period not to exceed one year.
- (c) The department may not extend a temporary training permit more than once.

Sec. 402.254. Guidelines for Training of Temporary Training Permit Holders.

- (a) The commission by rule shall establish formal and practical education guidelines for the training of temporary training permit holders.
- (b) The guidelines must include directions to the supervisor about:
 - (1) the subject matter to be taught;
 - (2) the length of the training;
 - (3) the extent of a temporary training permit holder's contact with the public; and
 - (4) the responsibility of the supervisor for direct and indirect supervision of all aspects of the training.
- (c) The training period begins on the date of issuance of the temporary permit. A temporary training permit holder must complete at least 150 hours of directly supervised practicum that includes:
 - (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 Subdivisions (1) through (8).
- (d) A contact hour consists of 55 minutes.
- (e) On completion of the directly supervised practicum required under Subsection (c), the temporary training permit holder shall complete the permit holder's training under the indirect supervision of the permit holder's supervisor.

Sec. 402.255. Supervisor Requirements.

- (a) A supervisor of a temporary training permit holder must:
 - (1) be licensed to fit and dispense hearing instruments under this chapter or Chapter 401, other than Section 401.311 or 401.312;
 - (2) currently practice in an established place of business; and
 - (3) be responsible for the direct supervision and education of a temporary training permit holder.
- (b) A supervisor as appropriate shall directly and indirectly supervise a temporary training permit holder. A supervisor shall provide direct supervision by being located on the premises and available to the temporary training permit holder for prompt consultation. A supervisor shall provide indirect supervision by reviewing daily a temporary training permit holder's patient contact and daily work.
- (c) A supervisor shall:
 - (1) be responsible for day-to-day supervision of the temporary training permit holder and be ultimately responsible for the service to a client treated by the permit holder;
 - (2) provide to the permit holder materials and equipment necessary for appropriate audiometric and hearing instrument evaluation and fitting procedures;
 - (3) supplement the permit holder's background information with reading lists and other references;
 - (4) conduct in-service training for the permit holder;
 - (5) act as a consultant to the permit holder by providing time for conferences for the permit holder and providing a variety of resource materials, approaches, and techniques that are based on sound theory, successful practice, or documented research;
 - (6) establish goals with the permit holder that are realistic, easily understandable, and directed toward the successful completion of the training requirements;
 - (7) observe the permit holder during the practicum, confer with the permit holder after the permit holder's contact with clients, and provide an opportunity for comment on the practicum experience in writing or through conferences, during and after the practicum experience;
 - (8) establish that the supervisor is solely responsible for the practicum and daily supervision of the permit holder;
 - (9) assist and encourage the permit holder's use of supportive professional sources;
 - (10) know and adhere to state and federal laws relating to hearing instrument fitting and dispensing; and
 - (11) assist the permit holder in fulfilling licensing requirements of this chapter.
- (d) The supervisor shall maintain a log of the contact hours by practicum category on a form prescribed by the department. After the temporary training permit holder has completed 150 contact hours, the supervisor and the permit holder shall sign the form, and the form shall be notarized and mailed to the department.
- (e) A supervisor may not supervise more than two temporary training permit holders at one time.

Sec. 402.256. Authority of Temporary Training Permit Holder.

- (a) A temporary training permit holder may provide routine fitting and dispensing of hearing instruments that have been ordered by the supervisor. The supervisor is the sole judge of whether the permit holder has the qualifications necessary to perform routine fitting and dispensing. A supervisor is accountable to the department for the actions and misdeeds of a temporary training permit holder acting at the supervisor's discretion.
- (b) A temporary training permit holder may not:
 - (1) own, manage, or independently operate a business that engages in the fitting or sale of hearing instruments; or
 - (2) advertise or otherwise represent that the permit holder holds a license under this chapter.

Sec. 402.257. Transfer to Another Supervisor.

- (a) On the request of a supervisor or temporary training permit holder, the department may approve a transfer of a permit holder from the permit holder's supervisor to another eligible supervisor before completion of the training.
- (c) The department may approve a second transfer request before completion of the training only under exceptional circumstances. The department may not approve more than two transfers.
- (d) If a transfer is approved, credit may be transferred at the discretion of the department.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 402.301. License Renewal.

- (a) A license under this chapter is valid for two years. The department shall renew the license every two years on payment of the renewal fee unless the license is suspended or revoked.
- (f) The department may not renew a license unless the license holder provides 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.

Sec. 402.302. Criminal History Record Information Requirement for License Renewal.

- (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 402.210.
- (b) The committee may not renew the license of a person who does not comply with the requirement of Subsection (a).
- (c) The requirements of this section do not apply to a license holder who has previously submitted fingerprints under this section or Section 402.210.
- (d) This section expires February 1, 2015.

Sec. 402.303. Continuing Education.

- (a) The commission by rule shall adopt requirements for the continuing education of a license holder, including online continuing education requirements and a requirement that a license holder complete 20 hours of continuing education every two years. The department may not renew a license unless the license holder demonstrates compliance with the continuing education requirements established by the commission by rule.
- (b) A license holder shall provide written proof of attendance or completion of an approved course on a form prescribed by the department.
- (c) The department may waive compliance with the continuing education requirement for license renewal for a license holder who provides evidence of hardship or inability to meet the requirement. The waiver may be granted after review by the department on an annual basis.
- (d) The commission shall adopt rules to establish reasonable requirements for continuing education sponsors and courses and to clearly define what constitutes a manufacturer or nonmanufacturer sponsor. The department shall review and approve continuing education sponsor and course applications. The department may request assistance from licensed members of the advisory board in approving a sponsor or course. The department must provide a list of approved continuing education sponsors and continuing education courses, including online courses. The list must be revised and updated periodically. Any continuing education activity must be provided by an approved sponsor. The department shall approve at least five hours of specific courses each year.
- (e) A license holder may not receive more than five continuing education credit hours for attendance at a course sponsored by a manufacturer.
- (e-1) The department must allow a license holder to report at least 10 hours of online continuing education credit hours in a single reporting period.

Sec. 402.304. Alternatives to Continuing Education Requirement.

- (a) On written request to the department, a license holder may take the state examination. A license holder who pays the examination fee and passes the examination is exempt from the continuing education requirement for the reporting period in which the test is taken.
- (b) A license holder may be credited with continuing education credit hours for a published book or article written by the license holder that contributes to the license holder's professional competence. The department may grant credit hours based on the degree to which the published book or article advances knowledge regarding the fitting and dispensing of hearing instruments. A license holder may claim in a reporting period not more than five credit hours for preparation of a publication.

Sec. 402.305. Continuing Education Exemptions.

The department may renew the license of a license holder who does not comply with the continuing education requirements of Section 402.303 or 402.304 if the license holder:

- (1) was licensed for the first time during the 24 months before the reporting date;
- (2) has served in the regular armed forces of the United States during part of the 24 months before the reporting date; or

- (3) submits proof from an attending physician that the license holder suffered a serious or disabling illness or physical disability that prevented compliance with the continuing education requirements during the 24 months before the reporting date.

Sec. 402.306. Duplicate License.

The department shall issue a duplicate license to a license holder whose license has been lost or destroyed. The department may prescribe the procedure and requirements for issuance of a duplicate license.

SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

Sec. 402.351. Display of License.

A person engaged in fitting and dispensing hearing instruments shall display the person's license in a conspicuous place in the person's principal office and, when required, shall exhibit the license to the department or its authorized representative.

Sec. 402.352. Information on Prospective Amplification Candidates.

A license holder shall try to obtain, personally or through a proper referral, at least the following information on each prospective candidate for amplification:

- (1) the candidate's pertinent case history;
- (2) otoscopic inspection of the outer ear, including canal and drumhead;
- (3) evaluation of hearing acuity using pure tone techniques through air and bone conduction pathways through a calibrated system;
- (4) an aided and unaided speech reception threshold and ability to differentiate between the phonemic elements of language through speech audiometry, using a calibrated system or other acceptable verification techniques; and
- (5) verification of satisfactory aided instrument performance by use of appropriate sound-field speech, noise, or tone testing, using a calibrated system.

Sec. 402.353. Sound-Level Measurements.

- (a) If audiometric testing is not conducted 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 American National Standards Institute "ears covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing.
- (b) A dBA equivalent level may be used to determine compliance.
- (c) The commission shall adopt rules necessary to enforce this section.

SUBCHAPTER I. GENERAL BUSINESS REGULATIONS

Sec. 402.401. Trial Period.

The commission by rule shall establish guidelines for a 30-day trial period during which a person may cancel the purchase of a hearing instrument.

Sec. 402.402. Sale to Minor.

- (a) A licensed hearing instrument fitter and dispenser may not sell a hearing instrument to a person under 18 years of age unless the prospective user or a parent or guardian of the prospective user has presented to the hearing instrument fitter and dispenser a written statement, signed by a licensed physician specializing in diseases of the ear, that states that the patient's hearing loss has been medically evaluated and that the patient may be considered a candidate for a hearing instrument.
- (b) The physician's evaluation must have taken place within the preceding six months.

Sec. 402.403. Written Contract.

The owner of a hearing instrument fitting and dispensing practice shall ensure that each client receives a written contract at the time of purchase of a hearing instrument that contains:

- (1) the signature of the license holder who dispensed the hearing instrument;
- (2) the printed name of the license holder who dispensed the hearing instrument;
- (3) the address of the principal office of the license holder who dispensed the hearing instrument;
- (4) the license number of the license holder who dispensed the hearing instrument;
- (5) a description of the make and model of the hearing instrument;
- (6) the amount charged for the hearing instrument;
- (7) a statement of whether the hearing instrument is new, used, or rebuilt;
- (8) notice of the 30-day trial period under Section 402.401; and
- (9) the name, mailing address, e-mail address, and telephone number of the department.

Sec. 402.404. Surety Bonding.

- (a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments shall file with the department security in a form provided by Subsection (b) in the amount of \$10,000 and conditioned on the promise to pay all:
 - (1) taxes and contributions owed to the state and political subdivisions of the state by the entity; and
 - (2) judgments that the entity may be required to pay for:
 - (A) negligently or improperly dispensing hearing instruments; or
 - (B) breaching a contract relating to the dispensing of hearing instruments.
- (b) The security may be a bond, a cash deposit, or another negotiable security acceptable to the department.
- (c) A bond required by this section remains in effect until canceled by action of the surety, the principal, or the department. A person must take action on the bond not later than the third anniversary of the date the bond is canceled.

Sec. 402.405. Recovery on Surety Bond.

The purchaser of a hearing instrument may rescind the purchase and recover as provided by Section 402.404 for:

- (1) a material misstatement of fact or misrepresentation by a license holder employed by an entity subject to Section 402.404 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 subject to Section 402.404 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 subject to Section 402.404 to remedy a significant material defect of the instrument within a reasonable time;
- (5) the provision by the entity subject to Section 402.404 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 subject to Section 402.404 to meet the standards of conduct prescribed by this chapter or under rules adopted under this chapter that adversely affects the transactions between the purchaser and the license holder or the entity subject to Section 402.404.

Sec. 402.406. Ownership of Dispensing Practice.

- (a) A person who owns, maintains, or operates an office or place of business in which the person employs or engages under contract a person who practices the fitting and dispensing of hearing instruments is considered to be practicing the fitting and dispensing of hearing instruments under this chapter and is required to be licensed under this chapter or licensed as an audiologist under Chapter 401.
- (b) If the person who owns, maintains, or operates an office or place of business under this section is a partnership, each partner must be licensed as provided by this section. If the person who owns, maintains, or operates an office or place of business under this section is a corporation or other legal entity, the chief executive officer of the corporation or entity must be licensed as provided by this section.
- (c) All of the business's records and contracts are solely the property of the person who owns the business.

SUBCHAPTER J. PROHIBITED PRACTICES

Sec. 402.451. Prohibited Acts.

- (a) A person may not:
 - (1) buy, sell, or fraudulently obtain a license or aid another person to do so;
 - (2) alter a license with the intent to defraud;
 - (3) wilfully make a false statement in an application to the department for a license, a temporary training permit, or the renewal of a license;
 - (4) falsely impersonate a license holder;

- (5) engage in the fitting and dispensing of hearing instruments when the person's license is suspended or revoked;
 - (6) dispense or fit a hearing instrument on a person who has ordered the hearing instrument or device by mail unless the person dispensing or fitting is a license holder under this chapter or under Chapter 401; or
 - (7) sell a hearing instrument by mail.
- (b) A license or permit holder may not:
- (1) solicit a potential customer by telephone unless the license or permit holder clearly discloses the holder's name and business address and the purpose of the communication;
 - (2) use or purchase for use a list of names of potential customers compiled by telephone by a person other than the license or permit holder, the license or permit holder's authorized agent, or another license or permit holder; or
 - (3) perform any act that requires a license from the Texas Optometry Board or the Texas Medical Board.

Sec. 402.453. Treatment of Ear Defects; Administration of Drugs.

- (a) A license holder may not treat the ear in any manner for any defect or administer any drug or physical treatment unless the license holder is a physician licensed to practice by the Texas Medical Board.
- (b) This chapter does not affect a law regulating the practice of medicine as defined by Subtitle B.

SUBCHAPTER K. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 402.501. Grounds for License Denial and Disciplinary Action.

The commission or executive director may refuse to issue or renew a license, revoke or suspend a license or permit, place on probation a person whose license or permit has been suspended, or reprimand a license or permit holder who:

- (1) makes a material misstatement in furnishing information to the department or to another state or federal agency;
- (2) violates this chapter or a rule adopted under this chapter;
- (3) is convicted of a felony or misdemeanor that includes dishonesty as an essential element or of a crime directly related to the practice of fitting and dispensing hearing instruments;
- (4) makes a misrepresentation for the purpose of obtaining or renewing a license, including falsifying the educational requirements under this chapter;
- (5) is professionally incompetent or engages in malpractice or dishonorable, unethical, or unprofessional conduct that is likely to deceive, defraud, or harm the public;
- (6) aids or assists another person in violating this chapter or a rule adopted under this chapter;

- (7) does not provide information in response to a written request made by the department within 60 days;
- (8) directly or indirectly knowingly employs, hires, procures, or induces a person not licensed under this chapter to fit and dispense hearing instruments unless the person is exempt under this chapter;
- (9) aids a person not licensed under this chapter in the fitting or dispensing of hearing instruments unless the person is exempt under this chapter;
- (10) is habitually intoxicated or addicted to a controlled substance;
- (11) directly or indirectly gives to or receives from a person a fee, commission, rebate, or other form of compensation for a service not actually provided;
- (12) violates a term of probation;
- (13) wilfully makes or files a false record or report;
- (14) has a physical illness that results in the inability to practice the profession with reasonable judgment, skill, or safety, including the deterioration or loss of motor skills through aging;
- (15) solicits a service by advertising that is false or misleading;
- (16) participates in subterfuge or misrepresentation in the fitting or dispensing of a hearing instrument;
- (17) knowingly advertises for sale a model or type of hearing instrument that cannot be purchased;
- (18) falsely represents that the service of a licensed physician or other health professional will be used or made available in the fitting, adjustment, maintenance, or repair of a hearing instrument;
- (19) falsely uses the term "doctor," "audiologist," "clinic," "clinical audiologist," "state licensed," "state certified," "licensed hearing instrument dispenser," "board certified hearing instrument specialist," "hearing instrument specialist," or "certified hearing aid audiologist," or uses any other term, abbreviation, or symbol that falsely gives the impression that:
 - (A) a service is being provided by a person who is licensed or has been awarded a degree or title; or
 - (B) the person providing a service has been recommended by a government agency or health provider;
- (20) advertises a manufacturer's product or uses a manufacturer's name or trademark in a way that implies a relationship between a license or permit holder and a manufacturer that does not exist;
- (21) directly or indirectly gives or offers to give, or permits or causes to be given, money or another thing of value to a person who advises others in a professional capacity as an inducement to influence the person to influence the others to:
 - (A) purchase or contract to purchase products sold or offered for sale by the license or permit holder; or
 - (B) refrain from purchasing or contracting to purchase products sold or offered for sale by another license or permit holder under this chapter;

- (22) with fraudulent intent fits and dispenses a hearing instrument under any name, including a false name or alias;
- (23) does not adequately provide for the service or repair of a hearing instrument fitted and sold by the license holder; or
- (24) violates a regulation of the federal Food and Drug Administration or the Federal Trade Commission relating to hearing instruments.

SUBCHAPTER L. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 402.551. Amount of Administrative Penalty.

- (b) The amount of an administrative penalty imposed for a violation of this chapter or a rule adopted or order issued under this chapter may not exceed \$250 plus costs for the first violation and \$1,000 plus costs for each subsequent violation.

Sec. 402.5521. Refund for Hearing Instrument.

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 required by rules adopted under Section 402.1021.

Sec. 402.553. Civil Penalty.

- (a) A person who violates this chapter or a rule adopted or order issued under this chapter is liable for a civil penalty not to exceed \$5,000 a day.