

PROPOSED – BOARD FOR HEARING AID SPECIALISTS RULES AND REGULATIONS

CHAPTER 20

BOARD FOR HEARING AID SPECIALISTS REGULATIONS.

PART I.

DEFINITIONS.

18 VAC 80-20-10. Definitions.

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

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Audiologist" means any person who ~~accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting hearing and related communicative disorders or who assists persons in the perception of sound and is not authorized by another regulatory or health regulatory board to perform any such services~~ engages in the practice of audiology as defined by § 54.1-2600 of the Code of Virginia.

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"Board" means ~~the~~ Board for Hearing Aid Specialists.

"Department" means ~~the~~ Department of Professional and Occupational Regulation.

"Hearing aid specialist" means a person who engages in the practice of fitting and dealing in hearing aids or who advertises or displays a sign or represents himself as a person who practices the fitting and dealing of hearing aids.

"Licensed sponsor" means a licensed hearing aid specialist who is responsible for training one or more individuals holding a temporary permit.

"Licensee" means any person holding a valid license issued by the Board for Hearing Aid Specialists for the practice of fitting and dealing in hearing aids, as defined in § 54.1-1500 of the Code of Virginia.

"Otolaryngologist" means a licensed physician specializing in ear, nose and throat disorders.

~~"Otologist" means a licensed physician specializing in diseases of the ear.~~

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"Reciprocity" means an agreement between two or more states ~~that will~~ to recognize and accept one another's regulations and laws ~~for privileges for mutual benefit~~.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Temporary permit holder" means any person who holds a valid temporary permit under this chapter.

18 VAC 80-20-20. Explanation of terms.

Each reference in this chapter to a person shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural, and to the natural persons and organizations.

PART II.

ENTRY REQUIREMENTS.

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18 VAC 80-20-30. Basic qualifications for licensure.

- A. Every applicant ~~to the board~~ for a license shall provide information on his application establishing that:
1. The applicant is at least 18 years of age.
 2. The applicant has ~~a good reputation for honesty, truthfulness, and fair dealing, and is competent to transact the business of a hearing aid specialist in such a manner as to safeguard the interests of the public~~ successfully completed high school or a high school equivalency course.
 3. The applicant is ~~in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist.~~ has

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training and experience which covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:

- a. Basic physics of sound;

- b. Basic maintenance and repair of hearing aids;

- c. The anatomy and physiology of the ear;

- d. Introduction to psychological aspects of hearing loss;

- e. The function of hearing aids and amplification;

- f. Visible disorders of the ear requiring medical referrals;

- g. Practical tests utilized for selection or modification of hearing aids;

- h. Pure tone audiometry, including air conduction, bone conduction, and related tests;

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- i. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

- j. Masking when indicated;

- k. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;

- l. Taking earmold impressions;

- m. Proper earmold selection;

- n. Adequate instruction in proper hearing aid orientation;

- o. Necessity of proper procedures in after-fitting checkup; and

- p. Availability of social service resources and other special resources for the hearing impaired.

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4. The applicant has ~~successfully completed high school or a high school equivalency course,~~ provided one of the following as verification of completion of training and experience as described in subdivision 3 of this subsection:
 - a. An affidavit on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or
 - b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.

5. ~~The applicant is fit and suited to engage in the practice of fitting and dealing in hearing aids. The applicant must disclose if he has been convicted in any jurisdiction of a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession or of any felony.~~ shall not have been convicted or found guilty of any crime directly related to the practice of fitting and dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each

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- applicant. The applicant Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.
6. ~~The applicant has training and experience which covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:~~
- ~~a. Basic physics of sound;~~
 - ~~b. Basic maintenance and repair of hearing aids;~~
 - ~~c. The anatomy and physiology of the ear;~~
 - ~~d. Introduction to psychological aspects of hearing loss;~~
 - ~~e. The function of hearing aids and amplification;~~

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- ~~f. Visible disorders of the ear requiring medical referrals;~~

- ~~g. Practical tests of proficiency in the required techniques as they pertain to the fitting of hearing aids;~~

- ~~h. Pure tone audiometry, including air conduction, bone conduction, and related tests;~~

- ~~i. Live voice or recorded voice speech audiometry, including speech reception, threshold testing and speech discrimination testing.~~

- ~~j. Masking when indicated;~~

- ~~k. Recording and evaluating audiograms and speech audiology to determine the proper selection and adaptation of hearing aids;~~

- ~~l. Taking earmold impressions;~~

- ~~m. Proper earmold selection;~~

- ~~n. Adequate instruction in proper hearing aid orientation;~~

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~~o. Necessity of proper procedures in after fitting checkup; and~~

~~p. Availability of social service resources and other special resources for the hearing~~

The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist.

~~7. The applicant has provided one of the following as verification of completion of training and experience as described in subdivision 6 of this subsection:~~

~~a. An affidavit on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or~~

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- ~~b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.~~
- ~~8. 7.~~ The applicant has disclosed his physical address. A post office box is not acceptable.
- ~~9. 8.~~ The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in ~~the Commonwealth~~ Virginia.
- ~~10. 9.~~ The applicant has ~~signed as part of the application, an affidavit certifying~~ submitted the required application with the proper fee as referenced in 18 VAC 80-20-70 and signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.
- B. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview, ~~with the applicant~~ or both. ~~Failure of an applicant to comply with a written request from the board for additional information within~~

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~~60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.~~ The board may refuse initial licensure due to the applicant's failure to comply with entry requirements. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, Chapter 40 of Title 2.2 of the Code of Virginia.

18 VAC 80-20-40. Qualifications for a temporary permit.

- A. ~~An~~ Any individual seeking may apply for a temporary permit shall submit an application and the proper fees as listed in 18 VAC 80-20-70 which is to be used solely for the purpose of gaining the training and experience required to become a licensed hearing aid specialist in Virginia. ~~On the application for a temporary permit, the~~ The licensed sponsor shall certify that he assumes full responsibility for the competence and proper conduct of the temporary permit holder and will not assign the permit holder to carry out independent field work without on-site direct supervision until he is adequately trained for such independent activity be identified on the application for a temporary permit and the licensed sponsor shall comply strictly with the provisions of subsection 2 of this section.

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1. A temporary permit shall be issued for a period of 12 months and may be extended once for not longer than six months. After a period of 18 months an extension is no longer possible and the former temporary permit holder shall sit for the examination in accordance with this section. The Board may, at its discretion, extend the temporary permit for a temporary permit holder who suffers serious personal illness or injury, or death in their immediate family, or obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board.
Documentation of these circumstances must be received by the board no later than 12 months after date of the expiration of the temporary permit or within 6 months of the completion of military or Peace Corps service, whichever is later.

2. ~~The temporary permit holder's licensed sponsor shall return the temporary permit to the board should the training program be discontinued for any reason.~~ Every applicant for a temporary permit shall provide information on application establishing that:
 - a. The applicant for a temporary permit is at least 18 years of age.

 - b. The applicant for a temporary permit has successfully completed high school or a high school equivalency course.

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3. The applicant shall not have been convicted or found guilty of any crime directly related to the practice of fitting and dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

4. The applicant for a temporary permit is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant for a temporary permit must disclose if he has had a license as a hearing aid specialist which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application, the applicant for a temporary permit must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's

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practice as a hearing aid specialist. The applicant for a temporary permit must also disclose whether he has been licensed previously in Virginia as a hearing aid specialist.

5. The applicant for a temporary permit has disclosed his physical address. A post office box is not acceptable.

6. The applicant for a temporary permit has submitted the required application with the proper fee referenced in 18 VAC 80-20-70 and has signed, as part of the application a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.

B. The licensed hearing aid specialist who agrees to sponsor the applicant for a temporary permit shall certify on the application that as sponsor, he:

1. Assumes full responsibility for the competence and proper conduct of the temporary permit holder with regard to all acts performed pursuant to the acquisition of training and experience in the fitting and dealing of hearing aids;

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2. Will not assign the temporary permit holder to carry out independent field work without on-site direct supervision by the sponsor until the temporary permit holder is adequately trained for such activity;

3. Will personally provide and make available documentation, upon request by the board or its representative, showing the number of hours that direct supervision has occurred throughout the period of the temporary permit; and

4. Will return the temporary permit to the department should the training program be discontinued for any reason.

C. The licensed sponsor shall provide training and shall ensure that the temporary permit holder under his supervision gains experience which covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:

1. Basic physics of sound;

2. Basic maintenance and repair of hearing aids;

3. The anatomy and physiology of the ear;

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4. Introduction to psychological aspects of hearing loss;

5. The function of hearing aids and amplification;

6. Visible disorders of the ear requiring medical referrals;

7. Practical tests utilized for selection or modification of hearing aids;

8. Pure tone audiometry, including air conduction, bone conduction, and related tests;

9. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

10. Masking when indicated;

11. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;

12. Taking earmold impressions;

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13. Proper earmold selection;

14. Adequate instruction in proper hearing aid orientation;

15. Necessity of proper procedures in after-fitting checkup; and

16. Availability of social service resources and other special resources for the hearing
impaired.

D. The board may make further inquiries and investigations with respect to the qualifications of
the applicant for a temporary permit or require a personal interview, or both.

E. All correspondence from the board to the temporary permit holder shall be addressed to
both the temporary permit holder and the licensed sponsor and shall be sent to the business
address of the licensed sponsor.

18 VAC 80-20-50. Qualifications for licensure by reciprocity.

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~~An individual~~ Every applicant for Virginia licensure through reciprocity, who is currently licensed as a hearing aid specialist in good standing in another jurisdiction, ~~may be granted a Virginia license provided~~ shall provide information upon application establishing that the requirements and standards under which the license was issued are substantially equivalent to, and not conflicting with, the provisions of this chapter. Upon receipt of the application for reciprocity and fee, and after a review of the application, the board may grant a license upon successful completion of The applicant shall file the application for reciprocity with, and pay a fee to, the board, and must successfully complete the specified sections of the examination.

18 VAC 80-20-60. License for physicians. (Repeal)

~~An individual who is a p~~ Physicians ~~licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification may apply for a hearing aid specialist license. The licensed physician shall not be required to pass an examination as a prerequisite to obtaining a license as a hearing aid specialist under this chapter. The physician shall submit an application with either verification of certification by the American Board of Otolaryngology or verification of successful completion of residency or training program, and submit the proper fee referenced in 18 VAC 80-20-70.~~

18 VAC 80-20-70. Fees.

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A. All fees are nonrefundable and shall not be prorated. The date of receipt by the board or its agent is the date that will be used to determine whether or not it is on time.

B. Application and examination fees must be submitted with the application for licensure.

C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus the additional processing charge ~~shown below~~ established by the Department.

The following fees apply:

Fee Type	Amount Due	When Due
Application Fee	\$130	With application (to be paid by all applicants for initial licensure except reciprocal applicants)
Examination Fee	\$110	With application
Licensure Fee for Reciprocity	\$190	With application (includes exam fee)

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Temporary Permit Fee	\$130	With application
Reexamination Fee	\$95	With application (per written or practical part) (Written or practical)
Renewal	\$175	Up to the expiration date on the license plus 30-day grace period
Reinstatement	\$350	30 days – 12 months after the expiration date on the license
Duplicate Wall Certificate	\$25	With written request
Dishonored Check	\$25	Upon notification from the financial institution

18 VAC 80-20-80. Examinations.

- A. All examinations required for licensure shall be approved by the board and administered by the board, a testing service acting on behalf of the board, or another governmental agency or organization.
- B. The candidate for examination shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the

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board ~~and testing service~~ with regard to conduct at the examination shall be grounds for denial of the application.

- C. Applicants for licensure shall pass a two part examination, of which Part I is a written examination and Part II is a practical examination.
1. The applicant shall pass each section of the written and practical examination administered by the board. ~~Candidates failing one section of the written examination will be required to retake both sections.~~ Candidates failing one or more sections of the written or practical examination will be required to retake only those sections failed.
 2. Any candidate failing to achieve a passing score on all sections in three successive scheduled examinations must reapply as a new applicant for licensure and repeat all sections of the written and practical examination.
 3. If the temporary permit holder fails to achieve a passing score on any section of the examination in three successive scheduled examinations, the temporary permit shall expire upon receipt of the examination failure letter resulting from the third attempt.

PART III.

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RENEWAL.

18 VAC 80-20-90. License renewal required.

Licenses issued under this chapter shall expire on December 31 of each even-numbered year as indicated on the license.

18 VAC 80-20-100. Procedures for renewal.

The board will mail a renewal application form to the licensee at the last known address.

Failure to receive this notice shall not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return to the board all required forms and the appropriate fee as outlined in 18 VAC 80-20-70 of this chapter.

18 VAC 80-20-110. Fees for renewal.

Licenseses shall be required to renew their license by submitting the proper fee made payable to the Treasurer of Virginia. Any licensee who fails to renew within 30 days after the license expires shall be required to apply for reinstatement.

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18 VAC 80-20-120. Board discretion to deny renewal.

The board may deny renewal of a license for the same reasons as it may refuse initial licensure as set forth in Part II or discipline a licensee as set forth in Part V of these regulations. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, (~~§ 9-6.14:1 et seq.~~ Chapter 40 of Title 2.2 of the Code of Virginia).

~~Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding service provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.~~

18 VAC 80-20-130. Qualifications for renewal.

Applicants for renewal of a license shall continue to meet the standards of entry as set forth in 18 VAC 80-20-30 A 2, 18 VAC 80-20-30 A 3, 18 VAC 80-20-30 A 5, 18 VAC 80-20-30 A 6, 18 VAC 80-20-30 A 7, 18 VAC 80-20-30 A 8 and 18 VAC 80-20-30 A 9 of this chapter.

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PART IV.

REINSTATEMENT.

18 VAC 80-20-140. Reinstatement required.

If a licensee fails to meet the requirements for renewal and submit the renewal fee within 30 days after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.

1. Applicants for reinstatement shall continue to meet the standards of entry in 18 VAC 80-20-30 A 2, 18 VAC 80-20-30 A 3, 18 VAC 80-20-30 A 5, 18 VAC 80-20-30 A 6, 18 VAC 80-20-30 A 7, 18 VAC 80-20-30 A 8 and 18 VAC 80-20-30 A 9 of this chapter.
2. Applicants for reinstatement shall submit the required fee referenced in 18 VAC 80-20-70 of this chapter.
3. ~~Twelve months~~ Three years after the expiration date on the license, reinstatement is no longer possible. To resume practice as a hearing aid specialist, the former licensee must

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apply as a new applicant for licensure, meeting all educational, examination, and experience requirements as listed in the regulations current at the time of reapplication.

4. Any hearing aid specialist activity conducted subsequent to the expiration date of the license may constitute unlicensed activity and may be subject to prosecution by the Commonwealth under §§ 54.1-111 and 54.1-202 of the Code of Virginia.

18 VAC 80-20-150. Board discretion to deny reinstatement.

The board may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, (~~§ 9-6.14:1 et seq.~~ Chapter 40 of Title 2.2 of the Code of Virginia).

~~Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding service provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.~~

18 VAC 80-20-160. Status of license during the period prior to reinstatement.

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- A. When a licensee is reinstated, the license shall continue to have the same license number and shall be assigned the expiration date two years from the previous expiration date of the license which is the expiration date assigned to all licenses at the time the license is reinstated.
- B. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the board during the entire period and may be held accountable for his activities during this period. Nothing in this chapter shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

PART V.

STANDARDS OF PRACTICE AND CONDUCT.

18 VAC 80-20-170. ~~Fines; revocation or suspension of license.~~ (Repeal)

~~The board may fine a licensee, or revoke or suspend a license, or both, when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 15 (§54.1-1500 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.~~

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18 VAC 80-20-180. Maintenance of licenses.

- A. Notice in writing shall be given to the board in the event of any change of business or individual name or address. Such notice shall be mailed to the board within 30 days of the change of the name or location. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address.

- B. All licensees shall operate under the name in which the license is issued.

- C. All licenses issued by the board must be visibly displayed at each physical site of employment in such a manner that the public can easily read the name of the licensee. If the individual practices at more than one site, a photocopy of the license is acceptable.

18 VAC 80-20-190. Business records and practice.

- A. This section shall apply with reference to the licensee's official records and public access.

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- B. The licensee shall keep on record with the board the location of the licensee's records, which shall be accessible to the board, with or without notice, during reasonable business hours. The licensee must promptly produce to the board or any of its agents, upon request or demand, any document, book, record, copy thereof in the licensee's possession or control concerning a transaction covered by this chapter or for which the licensee is required to maintain records.
- C. The licensee shall be accessible to the public for expedient, reliable and dependable services, and repairs.

18 VAC 80-20-200. Documentation provided to each purchaser.

The licensee shall deliver to each purchaser at the time of a ~~sale~~, repair or service:

1. A ~~receipt~~ signed receipt by the licensee or designee and showing ~~licensee's business address, license number and business telephone number; and~~ :
 - a. Licensee's business address, license number and business telephone number;

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- a ~~b~~. The make and model of the hearing aid or equipment to be ~~furnished~~, repaired or serviced and, in addition, serial numbers on models to be repaired and serviced; and

 - ~~b~~ c. The full terms of the ~~sale~~ transaction clearly stated.
- ~~2. If an aid which is not new is sold or rented, the purchase agreement and the hearing aid container shall be clearly marked "used" or "reconditioned," whichever is applicable, with terms of warranty, if any.~~

18 VAC 80-20-210. Measures to take when first contact is established with any purchaser or ~~potential~~ prospective purchaser.

- A. When first contact is established with any purchaser or prospective purchaser outside the hearing aid specialist's ~~office~~ principal place of business, the licensee shall provide a disclosure form prescribed by the board containing information that the ~~person~~ purchaser or prospective purchaser will need to obtain service/maintenance. The disclosure form shall include:
 - 1. Address and telephone number where the hearing aid specialist can be reached:

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2. Days and hours contact can be made;
3. Whether service/maintenance will be provided in the office or in the person's home of the purchaser or prospective purchaser; and
- ~~4. If the hearing aid specialist has an office, name and address of the office as listed with the board; and~~
- ~~5~~ 4. If the hearing aid specialist has no ~~office~~ principal place of business in Virginia, a clear statement that there is no ~~office~~ principal place of business in Virginia.

B. When first contact is established with any purchaser or prospective purchaser the licensee shall:

1. Advise ~~that person~~ the purchaser or prospective purchaser that hearing aid specialists are not licensed to practice medicine; and

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2. Advise ~~that person~~ the purchaser or prospective purchaser that no examination or representation made by the specialist should be regarded as a medical examination, opinion, or advice.
 - a. A statement that this initial advice was given to the purchaser or prospective purchaser shall be entered on the purchase agreement in print as large as the other printed matter on the receipt.
 - b. Exemption: Hearing aid specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of this subsection.

18 VAC 80-20-220. Purchase agreement terminology.

~~The following terminology shall be used on all purchase agreements in accordance with the Model Purchase Agreement provided by the board:~~

- ~~1. The undersigned seller agrees to sell and the undersigned purchaser agrees to purchase hearing aid(s) and accessories, according to terms set forth below:~~

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- ~~a. The purchaser was advised that the seller is not a physician licensed to practice medicine; and~~
- ~~b. No examination or representation made by the seller should be regarded as a medical examination, opinion, or advice.~~
- ~~2. Exemption: Hearing aid specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of subdivisions 1 a and b of this section.~~

A. Each hearing aid shall be sold through a purchase agreement which shall:

- 1. Show the licensee’s business address, license number and business telephone number and signature;
- 2. Comply with federal and Virginia laws and regulations, United States Food and Drug Administration (FDA) regulations, the Virginia Home Solicitation Sales Act (Chapter 2.1 of Title 59.1 of the Code of Virginia), and the Virginia Consumer Protection Act (Chapter 17 of Title 59.1 of the Code of Virginia);

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3. Clearly state, if the hearing aid is not new and is sold or rented that it is "used" or "reconditioned," whichever is applicable, including the terms of warranty, if any. The hearing aid container shall be clearly marked with the same information contained in the purchase agreement.

4. Identify the brand name(s) and model of the hearing aid being sold, and the serial number of the hearing aid shall be provided, in writing, to the purchaser or prospective purchaser at the time of delivery of the hearing aid;

5. Disclose the full purchase price;

6. Disclose the down payment and periodic payment terms in cases where the purchase price is not paid in full at delivery;

7. Disclose any non-refundable fees;

8. Disclose any warranty;

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9. Explain the provisions of Section 54.1–1505 of the Code, which entitles the purchaser to return the hearing aid, in the ten point bold face type that is bolder than the type in the remainder of the purchase agreement; and

10. Disclose that the licensee or temporary permit holder is not a physician licensed to practice medicine in Virginia and that no examination or representation made shall be regarded as a medical examination, opinion or advice;

B. Subdivision 10 of this section shall not apply to sales made by a licensed hearing aid specialist who is a physician licensed to practice medicine in Virginia.

18 VAC 80-20-230. Fitting and sale of hearing aids for children.

Any person engaging in the fitting and sale of hearing aids for a child under 18 years of age shall:

1. Ascertain whether such child has been examined by a ~~otolaryngologist~~ licensed physician for recommendation within six months prior to fitting; and
2. No child shall be fitted ~~without such recommendation~~ with a hearing aid unless the licensed hearing aid specialist has been presented with a written statement signed by the

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licensed physician stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding 6 months.

18 VAC 80-20-240. Physician statement regarding adult client's medical evaluation of hearing loss.

A. Each licensee or holder of a temporary permit, in counseling and instructing adult clients and prospective adult clients related to the testing, fitting, and sale of hearing aids, shall be required to recommend that the client obtain a written statement signed by a licensed physician stating that the patient's hearing loss has been medically evaluated within the preceding six months and that the patient may be a candidate for a hearing aid. ~~Should the client decline the recommendation:~~

~~1. A statement of such declination shall be obtained from the client over his signature.~~

B. Should the client decline the recommendation: A statement of such declination shall be obtained from the client over his signature. Medical waivers that are a part of purchase agreements shall be in a separate section, which shall be signed by the client indicating his understanding of the medical waiver. A separate, additional client signature space shall be

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provided in all purchase agreements for the client to sign acknowledging his understanding of the purchase terms and conditions established by 18 VAC 80-20-200.

~~2-1.~~ Fully informed adult patients (18 years of age or older) may waive the medical evaluation ~~because of personal or religious beliefs.~~

~~3-2.~~ The hearing aid specialist is prohibited from actively encouraging a prospective user to waive a medical examination.

~~B C.~~ The information provided in ~~subdivisions 1 and 2~~ of subsection A of this section must be made a part of the client's record kept by the hearing aid specialist.

18 VAC 80-20-250. Testing procedures.

It shall be the duty of each licensee and holder of a temporary permit engaged in the fitting and sale of hearing aids to use appropriate testing procedures for each hearing aid fitting. All tests and case history information must be retained in the records of the specialist. The established requirements shall be:

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1. Air Conduction Tests A.N.S.I. standard frequencies of 500-1000-2000 4000 Hertz.
Intermediate frequencies shall be tested if threshold difference between octaves exceeds 15dB. Appropriate masking must be used if the difference between the two ears is 40 dB or more at any one frequency.
2. Bone Conduction Tests are to be made on every client A.N.S.I. standards at 500-1000-2000-4000 Hertz. Proper masking is to be applied if the air conduction and bone conduction readings for the test ear at any one frequency differ by 15 dB or if lateralization occurs.
3. Speech testings shall be made before ~~and after~~ fittings, ~~and the type of test(s), method of presentation, and results noted.~~ Tests used to evaluate the fitting shall be recorded with type of test, method of presentation and the test results.
4. The specialist shall check for the following conditions and, if they are found to exist, shall refer the client to a licensed physician unless the client can show that his present condition is under treatment or has been treated:
 - a. Visible congenital or traumatic deformity of the ear.

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- b. History of active drainage from the ear within the previous 90 days.
 - c. History of sudden or rapidly progressive hearing loss within the previous 90 days.
 - d. Acute or chronic dizziness.
 - e. Unilateral hearing loss.
 - f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 1000 Hertz, and 2000 Hertz.
 - g. Visible evidence of significant cerumen accumulation or a foreign body in the ear canal.
 - ~~h. Tinnitus as a primary symptom.~~
 - i h. Pain or discomfort in the ear.
5. All tests shall have been conducted no more than six months prior to the fitting.

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18 VAC 80-20-260. Calibration statement required.

- A. Audiometers used in testing the hearing impaired must be in calibration.
- B. Calibration must be done once a year or more often, if needed.
- C. A certified copy of an electronic audiometer calibration ~~made within the past 12 months~~ must be submitted to the board annually no later than November 1 of each year shall be maintained for three years and shall be made available to the Department upon request.

18 VAC 80-20-270. Grounds for discipline.

The board may fine any licensee or suspend ~~or~~ , revoke, or deny any license issued under the provisions of Chapter 15 of Title 54.1 of the Code of Virginia and the regulations of the board ; ~~or both pursuant to the provisions of.~~ Disciplinary procedures are governed by the Administrative Process Act, Chapter 40 of Title 9 2.2 of the Code of Virginia when the licensee has been found in violation of. In exercising its disciplinary function, the board will consider the totality of the circumstances of each case. Any licensee is subject to board discipline for any of the following:

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1. Improper conduct, including but not limited to:
 - a. Obtaining or renewing a license by false or fraudulent representation;
 - b. Obtaining any fee or making any sale by fraud or misrepresentation;
 - c. Employing to fit and sell hearing aids a person who does not hold a valid license or a temporary permit, or whose license or temporary permit is suspended;
 - d. Using, causing, or promoting the use of any misleading, deceptive, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other misrepresentation, whether disseminated orally or published;
 - e. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;
 - f. Representing that the service or advice of a person licensed to practice medicine or audiology will be used in the selection, fitting, adjustment, maintenance, or repair of

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hearing aids when that is not true; or using the words "physician," "audiologist," "clinic," "hearing service," "hearing center," or similar description of the services and products provided when such use is not accurate;

- g. Directly or indirectly giving, or offering to give, favors, paid referrals, or anything of value to any person who in his professional capacity uses his position to influence third parties to purchase products offered for sale by a hearing aid specialist; or
 - h. Failing to provide expedient, reliable and dependable services when requested by a client or client's guardian.
2. Failure to include on the ~~sales contract~~ purchase agreement a statement regarding home solicitation, as when required by federal and state law.
 3. Incompetence or negligence, as those terms are generally understood in the profession, in fitting or selling hearing aids.
 4. Failure to provide required or appropriate training resulting in incompetence or negligence, as those terms are generally understood in the profession, by a temporary permit holder under the licensee's sponsorship.

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- ~~5. Violation of any other requirement or prohibition of Part IV of these rules.~~
- 6 5. Violating or cooperating with others in violating any provisions of Chapters 1, 2, 3, and 15 of Title 54.1 of the Code of Virginia or any regulation of the board.
- 7 6. ~~Having~~ The applicant shall not have been convicted or found guilty of any crime directly related to the practice of fitting and dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States of any felony or of a misdemeanor involving moral turpitude there being no appeal pending therefrom or the time for appeal having elapsed. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any pleas of nolo contendere shall be considered a conviction for purposes of this paragraph subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

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18 VAC 80-20-280. Accountability of licensee.

A licensee shall be responsible for the acts or omissions of his staff in the performance of the fitting and dispensing of hearing aid services.