



State Committee of Examiners in the  
Fitting and Dispensing of Hearing Instruments

**TEXAS OCCUPATIONS CODE  
CHAPTER 402. HEARING INSTRUMENT FITTERS AND  
DISPENSERS**

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in the Fitting and Dispensing of Hearing Instruments  
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## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. DEFINITIONS. In this chapter:

- (1) "Board" means the executive commissioner of the Health and Human Services Commission.
- (2) "Committee" means the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.
- (3) "Department" means the Department of State Health Services.
- (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 committee 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 1, eff. September 1, 2011.

Sec. 402.002. APPLICATION OF SUNSET ACT. The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments is subject to Chapter 325, Government Code

(Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.05, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. [928](#), Sec. 4.04, eff. June 15, 2007. Acts 2009, 81st Leg., 1st C.S., Ch. [2](#), Sec. 1.10, eff. July 10, 2009. Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 2, eff. September 1, 2011.

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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. [315](#), Sec. 1, eff. September 1, 2009.

## SUBCHAPTER B. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS

### Sec. 402.051. COMMITTEE; MEMBERSHIP.

(a) The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments is part of the department and consists of nine members appointed by the governor with the advice and consent of the senate 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 State Board of Medical Examiners 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 committee shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the committee if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives money from the committee or department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives money from the committee or department; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the committee or department, other than compensation or reimbursement authorized by law for committee membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 3, eff. September 1, 2011.

### Sec. 402.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

(a) In this section, "trade association" means a cooperative and voluntarily joined national or statewide association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the committee if:

(1) the person is an officer, employee, or paid consultant of a trade association in the field of hearing instrument fitting and dispensing; or

(2) the person's spouse or another person related to the person within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, is an officer, manager, or paid consultant of a trade association in the field of hearing instrument fitting and dispensing.

(c) A person may not serve as a member of the committee or act as the general counsel to the committee if the person is required to register as a lobbyist under Chapter 305, Government Code.

(d) A committee member appointed under Section 402.051(a)(2) may not have a financial interest in a hearing instrument manufacturing company or in a wholesale or retail hearing instrument company.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 4, eff. September 1, 2011.

Sec. 402.054. OFFICIAL OATH. Each person appointed to the committee shall take the constitutional oath of office not later than the 15th day after the date of appointment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.055. TERMS; VACANCIES. (a) Members of the committee serve staggered six-year terms.

(b) A member who has served two full consecutive terms on the committee is not eligible for reappointment to the committee for the 12 months following the expiration of the second full term.

(c) In the event of the death, resignation, or removal of a member, the governor shall fill the vacancy of the unexpired term in the same manner as other appointments.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.056. GROUNDS FOR REMOVAL.

(a) It is a ground for removal from the committee that a member:

(1) does not have at the time of taking office the qualifications required by Sections 402.051, 402.052, and 402.053 for appointment to the committee;

(2) does not maintain during service on the committee the qualifications required by Sections 402.051, 402.052, and 402.053;

(3) is ineligible for membership under Section 402.052 or 402.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a

calendar year without an excuse approved by a majority vote of the committee.

(b) The validity of an action of the committee is not affected by the fact that the action is taken when a ground for removal of a committee member exists.

(c) If the commissioner of the department has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the commissioner shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 5, eff. September 1, 2011.

Sec. 402.057. OFFICERS. (a) The governor shall designate a member of the committee as the presiding officer of the committee to serve in that capacity at the will of the governor.

(b) The term of office as an officer of the committee is one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 6, eff. September 1, 2011.

Sec. 402.058. MEETINGS. (a) The committee shall hold regular meetings at least twice a year.

(b) A special meeting of the committee shall be held at the call of the presiding officer or a majority of the members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 7, eff. September 1, 2011.

Sec. 402.0581. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) this chapter;
- (2) the programs, functions, rules, and budget of the committee;
- (3) the results of the most recent formal audit of the committee;
- (4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(5) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.

(c) A person appointed to the committee is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 8, eff. September 1, 2011.

**Sec. 402.059. COMMITTEE EMPLOYEES.** The department shall provide administrative and clerical employees necessary to implement this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 402.060. SEAL OF COMMITTEE.** The committee shall adopt a seal and use the seal to authenticate its proceedings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 402.061. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.** The committee is subject to Chapters 2001 and 2002, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

### SUBCHAPTER C. COMMITTEE POWERS AND DUTIES

**Sec. 402.101. GENERAL POWERS AND DUTIES.** With the assistance of the department, the committee shall:

- (1) administer, coordinate, and enforce this chapter;
- (2) evaluate the qualifications of applicants;
- (3) examine applicants;
- (4) in connection with a hearing under Section 402.502, issue subpoenas, examine witnesses, and administer oaths under the laws of this state; and
- (5) conduct hearings and keep records and minutes necessary to the orderly administration of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.173(a), eff. Sept. 1, 2001.

**Sec. 402.102. RULES.** (a) Subject to the approval of the board, the committee may adopt procedural rules as necessary for the performance of the committee's duties.

(b) A license holder under this chapter is subject to the rules adopted by the committee and approved by the board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

**Sec. 402.1021. JOINT RULES FOR HEARING INSTRUMENTS.** With the assistance of the department, the committee and the State Board of Examiners for Speech-Language Pathology and Audiology shall jointly adopt rules to establish requirements for each sale of a hearing instrument. 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 9, eff. September 1, 2011.

Sec. 402.1022. DIVISION OF RESPONSIBILITIES. The committee shall develop and implement policies that clearly separate the policy-making responsibilities of the committee and the management responsibilities of the staff of the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 9, eff. September 1, 2011.

Sec. 402.103. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.

(a) The committee may not adopt rules restricting advertising or competitive bidding by a person regulated by the committee except to prohibit false, misleading, or deceptive practices by that person.

(b) The committee may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the committee a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement used by the person; or

(4) restricts the use of a trade name in advertising by the person.

(c) 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.104. POWERS AND DUTIES REGARDING EXAMINATION.

(a) The committee 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 committee 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 10, eff. September 1, 2011.

Sec. 402.105. SUBCOMMITTEES. (a) From its members the committee may appoint subcommittees to consider matters referred by the committee pertaining to the enforcement of this chapter. The subcommittees shall make recommendations to the committee.

(b) The committee shall appoint at least one public member to each subcommittee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 11, eff. September 1, 2011.

Sec. 402.106. FEES AND EXPENSES. (a) The committee by rule shall adopt fees in amounts reasonable and necessary so that the fees, in the aggregate, produce sufficient revenue to cover the costs of administering this chapter.

(b) The committee may adopt:

- (1) a license fee;
- (2) a license renewal fee;
- (3) an examination fee;
- (4) a temporary training permit fee;
- (5) an apprentice permit fee;
- (6) a duplicate document fee; and
- (7) other fees as necessary to administer

this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 402.151. PUBLIC INTEREST INFORMATION. (a) The committee shall prepare information of consumer interest describing the regulatory functions of the committee and the committee's procedures by which consumer complaints are filed with and resolved by the committee.

(b) The committee shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.1511. PUBLIC PARTICIPATION. The committee shall develop and implement policies that provide the public with a

reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 12, eff. September 1, 2011.

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, and telephone number of the committee; and
- (2) a statement informing consumers that a complaint against a license or permit holder may be directed to the committee.

(b) Each written contract for services in this state of a licensed hearing instrument dispenser must contain the committee's name, mailing address, and telephone number.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.153. RECORDS OF COMPLAINTS.

(a) The committee shall keep an information file about each complaint filed with the committee relating to a license or permit holder.

(b) If a written complaint is filed with the committee relating to a license or permit holder, the committee, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.154. COMPLAINT INVESTIGATION; SUBPOENA.

(a) In an investigation of a complaint filed with the committee, the committee may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the committee may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the committee, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the committee may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The committee may delegate the authority granted under Subsection (a) to the presiding officer of the committee.

(f) The committee shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the committee may charge for copies of its records.

(g) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(h) All information and materials subpoenaed or compiled by the committee 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 committee 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 committee 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 board 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 committee against a holder of a license, the nature of those charges, disciplinary proceedings of the committee, and final disciplinary actions, including warnings and reprimands, by the committee are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.174(a), eff. Sept. 1, 2001.

Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 13, eff. September 1, 2011.

## 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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 committee.

(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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. [315](#), Sec. 2, eff. September 1, 2009. Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 14, eff. September 1, 2011.

Sec. 402.203. APPLICATION FOR EXAMINATION. (a) An applicant for examination must:

- (1) apply to the committee on a form provided by the committee;
- (2) provide on the form:
  - (A) sworn evidence that the applicant has attained the age of majority and has graduated from an accredited high school or equivalent; and
  - (B) other information determined necessary by the committee; 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 committee may refuse to examine an applicant who has been convicted of a misdemeanor that involves moral turpitude or a felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

- 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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 committee 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.
- (d) If requested in writing by a person who fails the licensing examination administered under this chapter, the department shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 15, eff. September 1, 2011.

- Sec. 402.206. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 30th day after the examination date, the committee shall notify each examinee of the results of the examination. If an examination is graded or

reviewed by a national testing service, the committee shall notify each examinee of the results of the examination not later than the 14th day after the date the committee receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will not be given before the 91st day after the examination date, the committee shall notify each examinee of the reason for the delay before the 90th day.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.207. ISSUANCE OF APPRENTICE PERMIT. (a) The committee 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 committee may extend the apprentice permit for an additional period not to exceed six months.

(c) An apprentice permit holder shall work under the supervision of a licensed hearing instrument dispenser 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 315, Sec. 3, eff. September 1, 2009.

Sec. 402.208. ISSUANCE OF LICENSE. The committee shall issue a hearing instrument dispenser's license to an apprentice permit holder when the committee has received sufficient evidence that the apprentice permit holder has met all the licensing requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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 an application on a form prescribed by the committee.

(b) An applicant for a license under this section must complete the application form completely and accurately. The department may not consider an incomplete application. If an applicant fails to provide any information required on the application form, the department shall send the applicant a notice of deficiency that explains the additional information that must be submitted before the department may review the application.

(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 committee by rule; or

(B) the applicant holds a certification from a professional organization approved by the committee 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 committee.

(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 committee 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 committee shall issue to the applicant a license under this chapter.

(g) An applicant under this section who fails an examination may request in writing, not later than the 30th day after the date the department sends the applicant notice of the examination results, that the department furnish the applicant with an analysis of the applicant's performance on the examination.

(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 committee may not issue a license under this section to an applicant who is a licensed audiologist in another state. The committee shall refer the applicant to the State Board of Examiners for Speech-Language Pathology and Audiology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. [315](#), Sec. 4, eff. September 1, 2009. Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 16, eff. September 1, 2011.

Sec. 402.210. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The committee shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the committee, to the committee 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 committee may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The committee 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 committee 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 on behalf of the committee 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 17, eff. September 1, 2011.

## SUBCHAPTER F. TEMPORARY TRAINING PERMIT

Sec. 402.251. TEMPORARY TRAINING PERMIT QUALIFICATIONS. (a) The committee 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 provided by the committee furnishing sworn evidence that the applicant satisfies the requirements of Subdivisions (1) and (2); and

(4) pays the temporary training permit fee.

(b) The committee 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 315, Sec. 5, eff. September 1, 2009.

Sec. 402.252. SUPERVISION AFFIDAVIT. (a) An application for a temporary training permit must be accompanied by the affidavit 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 affidavit must state that:

(1) the applicant, if granted a temporary training permit, will be supervised by the affiant in all work done by the applicant under the temporary training permit;

(2) the affiant will notify the committee not later than the 10th day after the date of the applicant's termination of supervision by the affiant; and

(3) if the affiant is licensed under Chapter 401, the affiant 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 315, Sec. 6, eff. September 1, 2009.

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 committee extends the permit for an additional period not to exceed six months.

(c) The committee may not extend a temporary training permit more than once.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.254. GUIDELINES FOR TRAINING OF TEMPORARY TRAINING PERMIT HOLDERS. (a) The committee 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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 provided by the committee. 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 committee.

(e) A supervisor may not supervise more than two temporary training permit holders at one time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 315, Sec. 7, eff. September 1, 2009.

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 has 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 committee 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 as a hearing instrument dispenser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.257. TRANSFER TO ANOTHER SUPERVISOR. (a) On the request of a supervisor or temporary training permit holder, the committee may approve a transfer of a permit holder from the permit holder's supervisor to another eligible supervisor before completion of the training.

(b) The committee must act on a transfer request at the first committee meeting held after the date the request is made.

(c) The committee may approve a second transfer request before completion of the training only under exceptional circumstances. The committee may not approve more than two transfers.

(d) If a transfer is approved, credit may be transferred at the discretion of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER G. LICENSE RENEWAL

Sec. 402.301. LICENSE RENEWAL. (a) A license under this chapter is valid for two years. The committee shall renew the license every two years on payment of the renewal fee unless the license is suspended or revoked.

(b) The committee may adopt a system under which licenses expire on various dates during the year. For a year in which the expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only the portion of the license fee that is applicable to the number of months the license is valid.

(c) A person may renew an unexpired license by paying the required renewal fee to the committee before the expiration date of the license.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the committee the required renewal fee and a fee that is equal to half of the amount of the examination fee for the license. If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying to the committee all unpaid renewal fees and a fee that is equal to the amount of the examination fee for the license.

(e) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) The committee 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 315, Sec. 8, eff. September 1, 2009.

For expiration of this section, see Subsection (d).

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062, Sec. 18, eff. September 1, 2011.

Sec. 402.303. CONTINUING EDUCATION. (a)

The committee 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 committee may not renew a license unless the license holder demonstrates compliance with the continuing education requirements established by the committee.

(b) A license holder shall provide written proof of attendance or completion of an approved course on a form prescribed by the committee.

(c) The committee 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 committee on an annual basis.

(d) The committee 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 committee 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 committee must allow a license holder to report at least 10 hours of online continuing education credit hours in a single reporting period.

(f) A course summary and resume for each teacher of a course seeking approval from the department must be submitted at least 30 days before the date the course is scheduled to take place, unless the course is an online course. The committee shall establish criteria for the approval of submitted courses and reasonable requirements for the approval of online courses and sponsors.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 19, eff. September 1, 2011.

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 continuing education committee 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 20, eff. September 1, 2011.

Sec. 402.305. CONTINUING EDUCATION EXEMPTIONS. The committee may renew the license of a license holder who does not comply with the continuing education requirements of Sections 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 21, eff. September 1, 2011.

Sec. 402.306. **DUPLICATE LICENSE.** The committee shall issue a duplicate license to a license holder whose license has been lost or destroyed. The committee may prescribe the procedure and requirements for issuance of a duplicate license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### 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 committee or its authorized representative.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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 committee shall adopt rules necessary to enforce this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER I. GENERAL BUSINESS REGULATIONS

Sec. 402.401. **TRIAL PERIOD.** The committee shall establish guidelines for a 30-day trial period during which a person may cancel the purchase of a hearing instrument.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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, and telephone number of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 315, Sec. 9, eff. September 1, 2009.

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 committee 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 committee.

(c) A bond required by this section remains in effect until canceled by action of the surety, the principal, or the committee. A person must take action on the bond not later than the third anniversary of the date the bond is canceled.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 315, Sec. 10, eff. September 1, 2009.

#### 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 committee 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 State Board of Medical Examiners.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.452. INVESTIGATION BY BOARD. The board, with the aid of the department, shall investigate a person who violates this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

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 State Board of Medical Examiners.

(b) This chapter does not affect a law regulating the practice of medicine as defined by Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER K. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 402.501. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY ACTION. The committee 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 committee 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 board 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by: Acts 2009, 81st Leg., R.S., Ch. 315, Sec. 11, eff. September 1, 2009.

Sec. 402.502. ADMINISTRATIVE PROCEDURE. (a) If the committee proposes to refuse a person's application for examination, to suspend or revoke a person's license or permit, or to place on probation or reprimand a person, the person is entitled to a hearing before the committee.

(b) A proceeding is begun by filing written charges with the committee under oath. The charges may be made by any person.

(c) Proceedings under this subchapter are subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.503. REISSUANCE OF LICENSE. On application, the committee may reissue a license to a person whose license has been revoked. The application may not be made before the expiration of six months after the date the order of revocation becomes final. The application shall be made in the manner and form required by the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.504. EMERGENCY SUSPENSION.

(a) The committee or a three-member subcommittee of committee members designated by the committee shall temporarily suspend the license or permit of a license or permit holder if the committee or subcommittee determines from the evidence or information presented to it that continued practice by the license or permit holder would constitute a continuing and imminent threat to the public welfare.

(b) A license or permit may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of

Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 6, eff. Sept. 1, 2003.

Sec. 402.505. INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT CONFERENCE.

(a) The committee by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) The committee by rule shall establish procedures by which a panel appointed by the department may conduct an informal settlement conference to resolve a complaint against a person licensed under this chapter.

(c) Procedures established under Subsection (b) must:

(1) require the panel conducting the conference to use the schedule of sanctions adopted by the committee to determine the appropriate disciplinary action, if any, to recommend to the committee; and

(2) require the panel to:

(A) recommend a settlement of the complaint to the committee; or

(B) refer the complaint to the State Office of Administrative Hearings for a formal hearing and notify the committee of the referral.

(d) The committee may approve, modify, or reject the settlement recommendation of the panel.

- (e) Rules adopted under this section must:
- (1) provide the complainant and the license holder with an opportunity to be heard; and
  - (2) require the presence of an attorney to advise the panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 22, eff. September 1, 2011.

Sec. 402.506. RECUSAL OF COMMITTEE MEMBER. (a) A committee member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

- (1) may not vote on the matter at a committee meeting related to the complaint; and
  - (2) shall state at the meeting why the member is prohibited from voting on the matter.
- (b) A statement under Subsection (a)(2) shall be entered into the minutes of the meeting.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 22, eff. September 1, 2011.

#### SUBCHAPTER L. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 402.551. ADMINISTRATIVE PENALTY.

- (a) The committee, with the board's approval, may impose an administrative penalty on a person described in this chapter for a violation of this chapter or a rule adopted under this chapter.
- (b) The amount of the administrative penalty may not exceed \$250 plus costs for the first violation and \$1,000 plus costs for each subsequent violation.
- (c) The administrative penalty may be imposed as an alternative to any other disciplinary measure, except for the placement of a license or permit holder on probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.552. INJUNCTION. The committee may apply to a district court of any county for an injunction or other order to restrain conduct by a person, other than a license holder, who has engaged in any act that is an offense under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.5521. COMMITTEE-ORDERED REFUND. The committee 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 23, eff. September 1, 2011.

Sec. 402.5522. CEASE AND DESIST ORDER. (a) If it appears to the committee that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of fitting and dispensing hearing instruments, the committee, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. [1062](#), Sec. 23, eff. September 1, 2011.

Sec. 402.553. CIVIL PENALTY. (a) A person who violates this chapter or a rule or order adopted by the committee under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

(b) At the request of the committee, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 7, eff. Sept. 1, 2003.