

Title 22. Examining Boards

Part 7. State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Chapter 141 Fitting and Dispensing of Hearing Instruments.

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Amendment §141.3 The Committee

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Repeal §141.14 Continuing Education Requirements

New §141.14. Continuing Education Requirements

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New §141.27 Criminal History Record Information Requirement for License Renewal

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New §141.29 Joint Rules Regarding the Sale of Hearing Instruments

Proposed Preamble

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee), proposes amendments to §§141.2, 141.3, 141.10, 141.15 - 141,17, and 141.20, new §§141.14, and 141.26 - 141.29, and the repeal of §141.14 concerning the regulation and sale of hearing instruments by licensed hearing instrument dispensers, apprentice permit holders, and temporary training permit holders.

BACKGROUND AND PURPOSE

The proposed rules meet the requirements and directives of Senate Bill 663, 82nd Texas Legislature, Regular Session, 2011, concerning the adoption of rules jointly with the State Board of Examiners for Speech-Language Pathology and Audiology regarding the sale of hearing instruments, and concerning the Sunset Review of the committee. Additionally, the proposed rules meet the requirements and directives of Senate Bill 1733, 82nd Texas Legislature, Regular Session, 2011, concerning the adoption of rules relating to licensure of spouses of members of the military.

SECTION-BY-SECTION SUMMARY

The amendments to §§141.2, 141.3, 141.10, 141.15 - 141.17 and 141.20 address the changes required from the Sunset Review process of the committee regarding definitions, the committee, application by licensure holders from another state, continuing education requirements, examinations, conditions of sale, complaints, violations, and informal dispositions.

New §141.26 and §141.27 create requirements for obtaining fingerprints from applicants and license holders.

New §141.28 establishes the requirements for the licensing process for spouses of members of the military.

New §141.29 is a joint rule with the State Board of Examiners for Speech-Language Pathology and Audiology establishing the requirements for the sale of hearing instruments, including information required in the written contract for hearing instrument purchase, records that must be retained by licensed hearing instrument dispensers, apprentice permit holders, and temporary training permit holders, and guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument.

FISCAL NOTE

Joyce Parsons, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

Ms. Parsons has also determined that there will be no adverse economic impact to small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The amendments do not impose additional fees. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Parsons has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be to ensure the effective regulation of licensed hearing instrument dispensers or apprentice permit holders or temporary training permit holders in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The committee has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety

of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The committee has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Joyce Parsons, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347. Comments may also be sent through email to fdhi@dshs.state.tx.us. Please stipulate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendments, repeal, and new rules are authorized under Occupations Code, §402.102, which provides the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments with the authority to adopt rules necessary to administer and enforce Occupations Code, Chapter 402.

The amendments, repeal and new rules affect Occupations Code, Chapter 402.

Section for Repeal:

§141.14. Continuing Education Requirements.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold print and brackets] = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§141.2. Definitions.

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

(1) - (18) (No change)

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

(A) is engaged in the manufacturing or production of hearing instruments for wholesale to a licensee or other hearing provider;

(B) is engaged in the manufacturing or production of hearing instruments for sale to the public;

(C) is engaged in assembling hearing instruments for wholesale to a licensee or other hearing provider;

(D) is engaged in assembling hearing instruments for sale to the public;

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

(F) holds an entity, business, or corporation engaged in manufacturing, producing, or assembling hearing instruments as described above; or

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

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

(21) Online continuing education course--A continuing education course conducted through the Internet.

(22) [(19)] Ownership of dispensing practice--A person who owns, maintains, or operates an office or place of business where the person employs or engages under contract a person who practices the fitting and dispensing of hearing instruments shall be considered also to be engaged in the practice of fitting and dispensing of hearing instruments under this Act.

(23) [(20)] Person--An individual, corporation, partnership, or other legal entity.

(24) [(21)] Sell or sale--A transfer of title or the right to use by lease, bailment, or any other contract. For the purpose of Texas Occupations Code, §402.001(7), the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to the distributors for distribution and sale to persons licensed under Texas Occupations Code, §402.001(7), and this chapter.

(25) [(22)] Selling of hearing instrument by mail--Anytime a hearing instrument is not sold, fitted or dispensed in person by a licensee or permit holder.

(26) [(23)] Specific Product--Specific product shall include, but not be limited to, brand name, model number, shell type, and circuit type.

(27) [(24)] Sponsor--Provider of a continuing education activity.

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

(29) [(26)] Temporary training permit--A permit issued by the committee to persons authorized to fit and dispense hearing instruments only under the direct or indirect supervision as appropriate of a person who holds a valid license to fit and dispense hearing instruments under Texas Occupations Code, Chapter 401 or 402, other than an individual licensed under §401.311 or §401.312, and meets the qualifications established by Texas Occupations Code, §402.255 and this chapter.

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

(31) [(28)] Written contract for services--A written contract between the licensee and purchaser of a hearing instrument as set out in §141.16(c) of this title (relating to Conditions of Sale).

(32) [(29)] 30-day trial period--The period in which a person may cancel the purchase of a hearing instrument.

§141.3. The Committee.

(a) - (d) (No change.)

(e) Elections.

(1) At the meeting held nearest to August 31 of each year, the committee shall elect a **[president and a]** vice-president.

(2) A vacancy which occurs in the office of vice-president may be filled at any regular meeting as required.

(f) Officers.

(1) Presiding Officer. **[President. The president:]**

(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) [(A)] The presiding officer shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter. [; and]

(C) [(B)] The presiding officer is authorized by the committee to make day-to-day minor decisions regarding committee activities in order to facilitate the responsiveness and effectiveness of the committee.

(2) Assistant Presiding Officer. **[Vice-president.]** The assistant presiding officer [vice-president] shall [:

[(A)] perform the duties of the president in the absence or disability of the president. [; and]

[(B) serve as president until a successor is elected should the office of the president become vacant.]

(g) Subcommittees.

(1) The committee or the presiding officer [president] may establish subcommittees deemed necessary to carry out committee responsibilities.

(2) The presiding officer [president] shall appoint members of the committee to serve on subcommittees with at least one public member appointed to each subcommittee.

(3) - (9) (No change.)

(h) - (m) (No change.)

§141.10. Application By License Holder From Another State.

(a) (No change.)

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

(c) An [The committee shall require an] applicant for a license under this section shall [to] provide as part of the application:

(1) (No change.)

(2) written verification that:

(A) - (B) (No change.)

[(3) affirmation that the applicant is a resident of this state;]

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

(4) [(5)] a statement of the applicant's criminal history acceptable to the committee.

(d) The department [committee] may deny an application under this section based on the applicant's criminal history in accordance with Texas Occupations Code, Chapter 53, and §141.17(c) of this title (relating to Complaints and Violations), or an applicant's history of disciplinary action.

(e) If the department [committee] approves an application, on the next regularly scheduled examination date the applicant may take the practical section of the examination required under Texas Occupations Code, §402.202 and a written examination of Texas law administered by the committee. 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 [committee] may allow an applicant under this section who satisfies all application requirements other than the requirement under subsection (c)(2) of this section to take all sections of the examination required under Texas Occupations Code, §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 [committee] sends the applicant notice of the examination results, that the department [committee] furnish the applicant with an analysis of the applicant's performance on the examination.

(h) - (i) (No change.)

Legend: (Proposed New Rule)

Regular Print = Proposed new language

§141.14. Continuing Education Requirements.

(a) This section establishes the requirements and procedures for continuing education. These requirements are intended to maintain and improve the quality of their professional services in fitting and dispensing of hearing instruments that are provided to the public; to keep the licensee knowledgeable of current research, techniques and practices; and to provide other resources which will improve skill and competence in the fitting and dispensing of hearing instruments.

(b) A minimum of 20 contact hours of continuing education is required to be completed during each two-year renewal period. A two-year renewal period begins on the first day after the previous license expiration date and ends on the new license expiration date.

(c) A contact hour shall be 55 minutes of attendance in an approved continuing education activity.

(d) No more than 10 contact hours per renewal period may be earned from an approved online continuing education course offered by an approved continuing education sponsor.

(e) No more than 5 contact hours may be earned from an approved continuing education course offered by an approved manufacturer continuing education sponsor.

(f) On written request to the department, a licensee may take the state licensing examination. A licensee who pays the examination fee and passes the examination shall be exempt from the continuing education requirement for the renewal period in which the examination is taken.

(g) A licensee may be credited with continuing education hours for a published book or article written by the licensee that contributes to the licensee's professional competence. The continuing education subcommittee may grant credit hours based on the degree that the published book or article advanced knowledge regarding the fitting and dispensing of hearing instruments. No more than 5 contact hours per renewal period may be granted for preparation of a publication.

(h) The committee may renew the license of a licensee who has not complied with the continuing education requirements if the licensee:

(1) has served in the regular armed forces of the United States during any part of the 24 months before the end of the two-year renewal period;

(2) submits proof from an attending physician that the licensee suffered a serious disabling illness or physical disability that prevented compliance with the continuing education requirements during the 24 months before the end of the two-year renewal period; or

(3) was licensed for the first time during the 24 months before the end of the two-year renewal period.

(i) If selected for audit, a licensee shall provide written proof of compliance with this section, including written proof of attendance or completion of approved courses completed during the renewal period.

(j) Course categories. Continuing education shall be acceptable if the education is described in subsections (f) or (g) of this section or falls in one or more of the following categories:

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

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

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

(k) In accordance with the Act, continuing education courses must be provided by a department-approved continuing education sponsor. An individual or organization may request approval as a continuing education sponsor by submitting an application to the department. The department may consult as needed with a committee member designated by the presiding officer regarding the approval of continuing education sponsors.

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

(m) Upon approval, the continuing education sponsor applicant shall pay the continuing education sponsor fee as set out in §141.6 of this title (relating to Application Procedures). The approved sponsor status shall be effective for one year from the date of receipt of the sponsor fee.

(n) Continuing education sponsors are required to renew their approved sponsor status annually by completing and returning to the department the sponsor renewal form and the continuing education sponsor fee. If not renewed on or before the annual renewal date, the continuing education sponsor must reapply for approved sponsor status.

(o) The definitions of “manufacturer” and “non-manufacturer” found in §141.2 of this title (relating to Definitions) do not apply to a continuing education sponsor approved prior to September 1, 2011 and who was designated by the continuing education subcommittee as either a manufacturer or non-manufacturer sponsor. If a continuing education sponsor approved prior to September 1, 2011 does not renew the annual sponsor approval, that sponsor must comply with all requirements and procedures of this section upon reapplication for approved sponsor status.

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

(q) The department shall approve all continuing education courses submitted by approved sponsors. The department may consult as needed with a committee member designated by the presiding officer regarding the approval of continuing education courses.

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

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

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

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

(s) Approved sponsors who offer online continuing education must submit each course for approval. Course approval shall not be given for a website or domain name.

(t) Approved continuing education courses and sponsors will be listed on the department's website.

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

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

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

(y) The committee will not give continuing education credit to any licensee for:

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

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

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

§141.15. Examination.

(a) (No change.)

(b) Application for examination.

(1) The department **[committee]** shall notify the applicant whose application has been approved at least 45 days prior to the next scheduled examination. This notice shall include the examination registration form. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.

(2) (No change.)

(c) (No change.)

(d) Failure of examination.

(1) An applicant who fails an examination may retake the failed portion or portions of the examination after payment of an additional examination fee. An applicant must hold a current temporary training permit in order to be re-examined. [The applicant must be re-examined within 12 months of the unsuccessful examination.]

(2) (No change.)

(3) If the applicant fails the examination, the department [committee] may require the applicant to submit evidence of satisfactory completion of additional courses of study prescribed by the committee.

(4) (No change.)

(e) Qualifications for Examination Proctor.

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

(2) A proctor must have held the license for at least three years prior to the examination date.

(3) A proctor must have observed at least five full practical examination sessions prior to serving as a proctor.

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

(A) suspension or probated suspension;

(B) any action requiring supervision by another license holder; or

(C) an administrative penalty or reprimand within three years prior to the examination date.

§141.16. Condition of Sale.

(a) (No change.)

[(b) Guidelines for a 30-day trial period.]

[(1) All clients shall be informed of a 30-day trial period by written contract for services and all charges associated with such trial period be included in this written contract for services, which shall include the name, address, and telephone number of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.]

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

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

[(3) Should the hearing instrument(s) have to be repaired, remade, or adjusted during the 30-day trial period, the 30-day trial period is suspended for one day for each 24 hour period that the hearing instrument(s) is not in the client's possession. The 30-day trial period resumes on the day the client reclaims the repaired, remade, or adjusted hearing instrument(s). If the hearing instrument(s) is not picked up within five working days following client notification, the 30-day trial period resumes.]

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

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

[(c) Written contract for services to client - client protection. Upon the sale of any hearing instrument(s) or change of model or serial number of the hearing instrument(s), the owner shall ensure that each client receives a written contract that contains:]

[(1) the date of sale;]

[(2) the make and model of the hearing instrument(s);]

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

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

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

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

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

[(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: "If you have a complaint against a licensed fitter and dispenser of hearing instruments, you may contact the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, P.O. Box 149347, Austin, Texas 78714-9347, telephone 1-800-942-5540";]

[(9) the printed name, signature and license or permit number of the licensee or permit holder who dispensed the hearing instrument;]

[(10) the supervisory arrangement reflected on a written contract for services by signature of both the permit holder and licensee with both the permit holder's license number and the licensee's license number;]

[(11) a serial number(s) and follow-up appointment within 30 days after the hearing instrument fitting shall be part of the patient records;]

[(12) notice of the 30-day trial period under subsection (b) of this section; and]

[(13) the amount charged for the hearing instrument.]

[(d) Terms of sale.]

[(1) There shall be a full and complete disclosure of the cost of financing the purchase of hearing instruments.]

[(2) If the initial price of the hearing instrument(s) furnished is reduced by trade-in allowance or discount, the written contract for services shall conspicuously state:]

[(A) the initial price of the aid before trade-in allowance or discount;]

[(B) the amount of the trade-in allowance or discount; and]

[(C) the final price to the consumer.]

[(e) Record keeping.]

[(1) The owner of the dispensing practice shall ensure that records are maintained on every client who receives services in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least three years after the fitting and dispensing of the hearing instrument(s) to the client. If other hearing instruments are subsequently fitted and dispensed to that client, cumulative records must be maintained for at least three years after the latest fitting and dispensing of the hearing instrument(s) to that client. All of the business's records and contracts are solely the property of the person who owns the business. The records must be available for the committee's inspection and shall include but not be limited to the following:]

[(A) pertinent case history;]

[(B) source of referral and appropriate documents;]

[(C) medical evaluation or waiver of evaluation;]

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

[(E) a complete record of hearing tests, and services provided, including follow-up appointment within the 30-day trial period; and]

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

[(2) A complete record of tests shall be available for the client.]

(b) [(f)] Audiometers and audiometric testing devices shall meet the current standards of the American National Standards Institute or the International Electrotechnical Commission (IEC).

(c) [(g)] Audiometric testing not conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was not done in a stationary acoustical enclosure and 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 "ear covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing, or the test environment shall have a maximum allowable ambient noise level of 42 dBA.

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

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

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

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

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

(d) [(h)] Audiometric testing conducted in a stationary acoustical enclosure.

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

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

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

- (i) an audiometric test area;
- (ii) a hearing test space; or
- (iii) a hearing test room.

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

- (i) an audiometric test booth;
- (ii) a suite; or
- (iii) a sound treated room.

(e) 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 described in the Act and in this section.

§141.17. Complaints and Violations.

(a) - (g) (No change.)

(h) Cease and Desist Order.

(1) If it is determined by the committee or the committee's designee that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, or another state statute or rule relating to the practice of fitting and dispensing of 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.

(2) A violation of an order under this section constitutes grounds for imposing an administrative penalty in accordance with the Act.

§141.20. Informal Disposition.

(a) (No change.)

(b) If the executive director or the Complaints Subcommittee of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) determines that the public interest might be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this section **[chapter]** shall apply. A licensee or applicant may request an informal conference; however, the decision to hold a conference shall be made by the executive director or the complaints subcommittee.

(c) - (e) (No change.)

(f) The notice of the conference shall **[may]** be sent to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall **[may]** be informed that he or she may appear and testify or that he or she may submit a written statement for consideration at the conference.

(g) The department shall appoint a panel to conduct the conference. The panel shall include a public member and a professional member of the Complaints Subcommittee, the Executive Director, the committee's general counsel, and other department staff as appropriate. **[At least one member of the complaints subcommittee shall be present at a conference.]**

(h) The conference shall be informal and shall not follow the procedures **[established in this section]** for contested cases and formal hearings.

(i) - (l) (No change.)

(m) The panel **[subcommittee member or the executive director]** shall exclude from the conference all persons except witnesses during their testimony, the licensee or applicant, the licensee's or applicant's attorney, and the committee staff.

(n) The complainant shall not be considered a party in the conference but shall **[may]** be given the opportunity to be heard. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) At the conclusion of the conference, the panel **[subcommittee member(s) or executive director]** may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act and must use the schedule of sanctions adopted by the committee to determine the appropriate disciplinary action. The panel **[subcommittee member]** may also conclude that the committee lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, order that the investigation be closed, or refer the matter for further investigation.

(p) - (w) (No change.)

Legend: (Proposed New Rules)

Regular Print = Proposed new language

§141.26. Criminal History Record Information Requirement for License or Permit Issuance.

(a) An applicant for a license or a permit shall submit a completed legible set of fingerprints on a form prescribed by the committee, to the committee or the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureaus of Investigations.

(b) A person who does not comply with the requirements in subsection (a) of this section shall not be issued a license or permit by the committee.

(c) A criminal history check of each applicant for a license shall be conducted by the committee using information:

(1) provided by the individual seeking licensure; and

(2) made available to the committee by the Department of Public Safety, the Federal Bureau of Investigation, and an other criminal justice agency under Government Code, Chapter 411.

(d) On the committee's behalf, the Department of State Health Services 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.

§141.27. Criminal History Record Information Requirement for License Renewal.

(a) An applicant renewing a license shall submit a completed legible set of fingerprints on a form prescribed by the committee, to the committee or the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureaus of Investigations.

(b) A person who does not comply with the requirements in subsection (a) of this section shall not receive a license renewal.

(c) The requirements of this section do not apply to a license holder who has previously submitted fingerprints under this section or §141.26 of this title (relating to Criminal History Record Information Requirement for License or Permit Issuance).

§141.28. Licensing of Spouses of Members of the Military.

(a) This section sets out the alternative license procedure for military spouse required under Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing requirements shall complete and submit an application form and fee to the department. In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the

applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a committee order.

§141.29. Joint Rule Regarding the Sale of Hearing Instruments.

(a) This section constitutes the rules required by the Act to be adopted jointly with the State Board of Examiners for Speech-Language Pathology and Audiology. The requirements of this section shall be repealed or amended only through consultation with, and mutual action by, the State Board of Examiners for Speech-Language Pathology and Audiology.

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

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

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

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

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

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

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

- (1) the date of sale;
- (2) the make, model, and serial number of the hearing instrument(s);
- (3) the name, address, and telephone number of the principal place of business of the license or permit holder who dispensed the hearing instrument;
- (4) a statement that the hearing instrument is new, used, or reconditioned;
- (5) the length of time and other terms of the guarantee and by whom the hearing instrument is guaranteed;
- (6) a copy of the written forms (relating to waiver forms);
- (7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The client has been advised that any examination or representation made by a licensed hearing instrument dispenser or apprentice permit holder or temporary training permit holder in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice;"
- (8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: "If you have a complaint against a licensed audiologist or intern in audiology, you may contact the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, P.O. Box 149347, Austin, Texas 78714-9347, telephone 1-800-942-5540;"
- (9) the printed name, license type, signature and license or permit number of the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder who dispensed the hearing instrument;
- (10) the supervisor's name, license type, and license number, if applicable;
- (11) a recommendation for a follow-up appointment within 30 days after the hearing instrument fitting;
- (12) the expiration date of the 30 consecutive day trial period under subsection (f) of this section; and
- (13) the dollar amount charged for the hearing instrument and the dollar amount charged for the return or restocking fee, if applicable.

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

- (1) pertinent case history;
 - (2) source of referral and appropriate documents;
 - (3) medical evaluation or waiver of evaluation;
 - (4) copies of written contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;
 - (5) a complete record of hearing tests, and services provided; and
 - (6) all correspondence specifically related to services provided to the client or the hearing instrument(s) fitted and dispensed to the client.
- (e) The written contract and trial period information provided to a client in accordance with this section, orally and in writing, shall be in plain language designed to be easily understood by the average consumer.

Section for Repeal

~~§141.14. Continuing Education Requirements.~~

~~(a) Purpose. The purpose of this section is to establish the continuing education requirements which a licensee must complete every year for the renewal of a regular license. These requirements are intended to maintain and improve the quality of professional services in fitting and dispensing of hearing instruments provided to the public and to keep the licensee knowledgeable of current research, techniques and practices, and to provide other resources which will improve skill and competence in the fitting and dispensing of hearing instruments.~~

~~(b) General requirements. A fitter and dispenser licensed under the Act must complete 20 contact hours of continuing education each year. For purposes of this section:~~

~~—(1) each year begins on the first day of the effective month of a license issued under the Act and this chapter;~~

~~(2) a contact hour shall be 55 minutes of attendance; and~~

~~—(3) Online courses offered by a committee approved continuing education sponsor and courses sponsored by a manufacturer may not make up more than 5 contact hours of the required 20 contact hours. At least 15 contact hours of the required 20 contact hours must be obtained from the acceptable continuing education categories offered by a committee approved non-manufacturer sponsor as described in subsection (g) of this section.~~

~~(c) Exemption by examination. A licensee may take the state examination given by the committee or its designee, upon written request to the committee. A licensee who pays the examination fee and passes the examination shall be exempt from the continuing education requirement for the year that the test is taken.~~

~~(d) Noncompliance. A licensee who has not complied with the continuing education requirements of this section may not be issued a renewal license unless the licensee:~~

~~—(1) has served in the regular armed forces of the United States during any part of the 24 months before the reporting date;~~

~~—(2) submits proof from an attending physician that the licensee suffered a serious disabling illness or physical disability that prevented compliance with the requirements of this section during the 24 months before the reporting date; or~~

~~—(3) was licensed for the first time during the 24 months before the reporting date.~~

~~(e) If selected for audit, a licensee shall provide written proof of completion of approved courses.~~

~~(f) Renewal period for continuing education. Continuing education requirements for renewal shall begin on the first day of a licensee's renewal period and end on the last day of the licensee's renewal period.~~

~~(g) Course categories. Continuing education shall be acceptable if the education falls in one or more of the following categories:~~

~~—(1) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which are designed to increase professional knowledge related to the practice of fitting and dispensing of hearing instruments and are conducted by persons qualified within their respective professions by appropriate state license or certification where state licensure or certification exists, or in states outside of Texas where licensure or certification does not exist by completion of a degree in audiology or a related field and certification by their respective professional associations if such certification exists;~~

~~—(2) completion of academic courses at an accredited institution in areas supporting development of skills and competence in the fitting and dispensing of hearing instruments; and~~

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

~~(4) A licensee may be credited with continuing education credit hours for a published book or article written by the licensee that contributes to the licensee's professional competence. No more than five credit hours for preparation of a publication may be claimed by a license holder each year. The continuing education subcommittee may grant credit hours based on the degree that the published book or article advanced knowledge regarding the fitting and dispensing of hearing instruments.~~

~~(h) Requests for credit. Individuals and organizations may initiate requests for committee approval and hour credit of specific programs for continuing education credit at least 30 days prior to the first scheduled presentation.~~

~~—(1) Each licensee is responsible for providing the information necessary for the committee to make a determination of the applicability of the program to the continuing education requirements.~~

~~—(2) The committee is responsible for approving individual continuing education courses. The committee may approve an institute, agency, organization, association, or individual as a continuing education sponsor of continuing education units who pay the continuing education sponsor fee. This will permit the organizations to provide continuing education units for their fitting and dispensing of hearing instrument courses, seminars and conferences. Any organization or individual who meets the required criteria may advertise as approved sponsors of continuing education for licensed fitters and dispensers of hearing instruments.~~

~~—(3) Sponsors may initiate their own requests and when approval is obtained, shall announce, prior to the commencement of the continuing education activity, the number of hours approved and the content of the continuing education activity as submitted and pre-approved by the committee. When approval is requested by a sponsor, the sponsor shall provide each participant with written documentation of participation which shall set forth that participant's name, the number of approved continuing education hours, the title and date(s) of the program as approved by the committee, and the signature of the sponsor.~~

~~—(4) Sponsors shall pay a continuing education sponsor fee as set out in §141.6 of this title (relating to Application Procedures) which will be effective for one year from date of receipt.~~

~~(i) Evaluation of continuing education programs. Each continuing education program submitted by a licensee or approved sponsor will be evaluated on the basis of the following criteria:~~

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

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

~~—(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions, and the adequacy to implement learner objectives; and~~

~~—(4) sponsorship and leadership of program including:~~

~~——(A) the name of the sponsoring individual(s) or organization(s);~~

~~——(B) program leaders, if different from sponsor(s); and~~

~~——(C) contact person if different from the preceding.~~

~~(j) Academic requirements. Completion of academic work shall be in accordance with subsection (i) of this section. Official transcripts from accredited schools showing completion of hours in appropriate areas for which the licensee received at least a passing grade is required.~~

~~(k) Approved credit. The committee shall credit continuing education experience as follows.~~

~~—(1) Parts of programs which meet the criteria of this section shall be credited on a one-for-one basis with one contact hour of credit for each 55 minutes spent in the continuing education activity.~~

~~—(2) Teaching in programs which meet the committee's criteria as set out in this section shall be credited on the basis of one clock hour of credit for one contact hour taught plus two contact hour credits for preparation for each hour taught. No more than 10 of the 20 hours of required continuing education can be credited under this option, and credit may be granted for the same presentation or program not more than twice during any continuing education period. The remaining hours of continuing education required in each renewal period must be obtained under another of the available options in accordance with paragraphs (1) or (3) of this subsection.~~

~~—(3) Completion of academic work at an institution which meets the accreditation standards acceptable to the committee shall be credited on the basis of 15 contact hours of credit for each semester hour, 10 contact hours of credit for each quarter hour completed and for which a passing grade was received as evidenced on an official transcript.~~

~~(l) Reporting. If selected for audit, the requirements for reporting continuing education shall be as follows:~~

~~—(1) A licensee may submit the required report at the time of renewal. Continuing education must be reported and approved prior to renewal at the end of the renewal period. Each licensee is responsible for ensuring that the committee receives timely notice of the licensee's completion of continuing education activities.~~

~~—(2) Each report must be accompanied by appropriate documentation of the continuing education claimed on the report as follows:~~

~~———(A) for a program attended, signed certification by a program leader or instructor of the licensee's participation in the program by certificate, letter or letterhead of the sponsoring agency, or official continuing education validation form of the sponsoring agency;~~

~~———(B) for teaching or consultation in approved programs, a letter on the sponsoring agency's letterhead giving the name of the program, location, dates, and subjects taught and indicating total clock hours credited;~~

~~———(C) for completion of work from accredited schools, an official transcript showing course credit with at least a passing grade; or~~

~~———(D) for official verification of a course at a regionally accredited academic institution, a letter from the dean of the academic institution or professor which includes the actual number of clock hours attended.~~

~~(m) Disapproved credit. The committee will not give continuing education credit to any licensee for:~~

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

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

~~—(3) any program which does not fit the types of acceptable continuing education in this section.~~