



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

Texas Administrative Code
Title 22, Examining Boards
Part 7, State Committee of Examiners in the Fitting and Dispensing
Of Hearing Instruments
Chapter 141, Licensure and Regulation of
Hearing Instrument Fitters and Dispensers

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§141.1 – Purpose

This chapter implements the provisions of Texas Occupations Code, Chapter 402, concerning the licensure and regulation of hearing instrument fitters and dispensers.

Source Note: The provisions of this §141.1 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

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

(2) Administrative Law Judge--A judge employed by the State Office of Administrative Hearings.

(3) APA--Administrative Procedure Act, the Government Code, Chapter 2001.

(4) Applicant--A person who applies for a license or permit under the Act.

(5) Apprentice permit--A permit issued by the committee to a person who meets the requirements of Texas Occupations Code, §402.207.

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

(7) Committee--The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

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

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

(10) Contested case--A proceeding in accordance with Administrative Procedure Act (APA) in this chapter, including but not restricted to rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the committee after an opportunity for an adjudicative hearing.

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

(12) Department--Department of State Health Services.

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

(14) Fitting and dispensing hearing instruments--The measurement of human hearing by the use of an audiometer, or by any means, for the purpose of making 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 instrument and any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.

(15) Formal hearing--A hearing or proceeding in accordance with this chapter, including a "contested case" as defined in this section.

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

(17) License--A license or permit issued by the committee under Texas Occupations Code, Chapter 402, and this chapter to a person authorized to fit and dispense hearing instruments.

(18) Licensee--Any person licensed or permitted by the committee.

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

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

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

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

(31) Written contract for services--A written contract between the licensee and purchaser of a hearing instrument as set out in §141.29(c) of this title (relating to Joint Rule Regarding the Sale of Hearing Instruments).

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

Source Note: The provisions of this §141.2 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective March 23, 2003, 28 TexReg 2320; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751; amended to be effective December 4, 2012, 37 TexReg 9495

§141.2 – The Committee

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

(b) Transaction of official business.

(1) The committee may transact official business only when in a legally constituted meeting with a quorum present. Five members of the committee constitute quorum.

(2) The committee shall not be bound in any way by any statement or action on the part of any committee or staff member except when a statement or action is pursuant to specific instructions of the committee.

(3) Robert's Rules of Order Revised shall be the basis of parliamentary decisions except as otherwise provided in this chapter.

(c) Agendas.

(1) The executive director shall be responsible for preparing and submitting an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of committee business which have been approved for discussion by the president.

(2) The official agenda of a meeting shall be filed with the Texas Secretary of State as required by law.

(d) Minutes.

(1) The minutes of a committee meeting are official only when affixed with the original signatures of the president and the executive director.

(2) Drafts of the minutes of each meeting shall be forwarded to each member of the committee for review and comments or corrections 14 days prior to approval by the committee.

(3) The official minutes of the committee meetings shall be kept in the office of the executive director and shall be available on the department's website.

(e) Elections.

(1) At the meeting held nearest to August 31 of each year, the committee shall elect an assistant presiding officer.

(2) A vacancy which occurs in the office of assistant presiding officer may be filled at any regular meeting as required.

(f) Officers.

(1) Presiding Officer.

(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 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.

(C) 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. The assistant presiding officer shall perform the duties of the presiding officer in the absence or disability of the presiding officer.

(g) Subcommittees.

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

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

(3) Subcommittees shall make regular reports to the committee.

(4) Subcommittees may direct all reports or other materials to the executive director for distribution.

(5) Subcommittees shall meet when called by the subcommittee chairperson or when directed by the committee.

(6) The continuing education subcommittee shall consider matters relating to the continuing education of licensees and permit holders, including the approval of programs and sponsors, and shall make recommendations to the committee as appropriate.

(7) The examination subcommittee shall consider matters relating to the licensure examination, including administration and

content, and shall make recommendations to the committee as appropriate.

(8) The applications subcommittee shall consider matters relating to license and permit applications referred by the Executive Director and shall make recommendations to the committee as appropriate.

(9) The complaints subcommittee shall consider matters relating to complaints filed against licensees and permit holders and may propose disciplinary action if a violation of the Act or the rules is substantiated. The subcommittee may also dismiss matters for no violation, for lack of substantiation of a violation, or for lack of jurisdiction. The subcommittee shall make recommendations to the committee as appropriate.

(h) Executive director. The executive director shall:

(1) keep the minutes of proceedings of the committee and shall be custodian of the files and records of the committee;

(2) coordinate activities with department staff engaged in the administration of the licensing program;

(3) participate with department staff in complaint intake and processing and the investigation and presentation of complaints;

(4) be responsible for all correspondence for the committee and obtain, assemble, or prepare reports and information that the committee may direct, or as authorized or required by the department or other agency with appropriate statutory authority;

(5) have the responsibility of assembling and evaluating materials submitted for approval as set out in §141.7 of this title (relating to Processing Procedures). Determinations made by the executive director that propose denial of licensure are subject to the approval of the applications subcommittee of the committee; and

(6) coordinate with department staff in the administration of licensure examinations.

(i) Reimbursement for expenses.

(1) A committee member is entitled to reimbursement of travel expenses as provided by the General Appropriations Act.

(2) Payment to committee members of travel expenses shall be on official state vouchers which have been approved by the department.

(j) Official records of the committee.

(1) Requests for committee records may be made under the Texas Public Information Act, Government Code, Chapter 552. Records which are public may be reviewed by inspection, duplication, or both, upon written request.

(2) Applicable cost of duplication shall be paid by the requestor. The charge for copies shall be the same as set by the department for copies.

(k) Impartiality. Any committee member who is unable to be impartial in the determination of an applicant's eligibility for licensure or in a disciplinary action against a licensee or permit holder shall so declare this to the committee and shall not participate in any committee proceedings involving that applicant, licensee, or permit holder.

(l) Nondiscrimination. The committee shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, gender, national origin, age, disability, sexual orientation, or genetic information.

(m) Applicants with disabilities.

(1) The committee shall comply with the Americans with Disabilities Act.

(2) Applicants with disabilities shall inform the committee 30 days in advance of any special accommodations needed.

Source Note: The provisions of this §141.3 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective March 23, 2003, 28 TexReg 2320; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751; amended to be effective December 4, 2012, 37 TexReg 9495

§141.4 – Licensees and the Committee

(a) All licensees are bound by the provisions of Texas Occupations Code, Chapter 402, (Act), and this chapter.

(b) A licensee shall have the responsibility of reporting alleged violations of the Act or this chapter to the staff.

(c) A licensee shall keep his or her committee file updated by notifying the committee in writing of changes of name, address, telephone number, and employment. The committee is not responsible for lost, misdirected, or undelivered mail.

(d) A licensee shall cooperate with the committee by furnishing required documents or information and by responding to a request for information from a subpoena issued by the committee or its authorized representative.

(e) A licensee shall comply with any order issued by the committee relating to the licensee.

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

(g) A licensee shall not file a complaint with the committee in bad faith.

Source Note: The provisions of this §141.4 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.5 – Consumer Information and Display of License

A licensee shall:

(1) inform each client of the name, address, and telephone number of the committee office for the purpose of reporting violations of the Act or this chapter on:

(A) each written contract for services;

and

(B) a sign prominently displayed in the primary place of business;

(2) prominently display the license certificate and current renewal card issued by the committee in the primary place of business;

(3) not display a license certificate or current renewal card issued by the committee which has been reproduced or is expired, suspended, or revoked; and

(4) not make any alterations on a license certificate or renewal card issued by the committee.

Source Note: The provisions of this §141.5 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.6 – Application Procedures

(a) Purpose. The purpose of this section is to set out the application procedures for examination and licensure.

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official committee forms.

(2) The committee will not consider an application as officially submitted until the applicant pays the application fee and submits all required documents.

(3) The committee shall send a notice listing the additional materials required to an applicant who does not complete the application. An application not completed within 60 days after the date of notice shall be invalid; however, by written request to the committee an applicant may request that his or her application be kept active for an additional year. Deficient applications will be retained for one year; however, after that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) Fees paid to the committee by applicants are not refundable except in accordance with §141.7 of this title (relating to Processing Procedures).

(d) For all applications and renewal applications, the committee is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(e) For all applications and renewal applications, the committee is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(f) The fees for administering the Act and this chapter shall be as follows:

(1) temporary training permit--\$205;

- (2) examination fee--\$250;
- (3) apprentice permit--\$205;
- (4) licensure fee--\$205;
- (5) a license issued or renewed for a one-year term--\$205;
- (6) a license issued or renewed for a two-year term--\$405;
- (7) duplicate document fee--\$25;
- (8) continuing education sponsor fee--\$500 annually;
- (9) reinstatement fee for a license that was suspended for failure to pay child support--\$55; and
- (10) criminal history evaluation letter fee--\$50.

Source Note: The provisions of this §141.6 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective February 12, 1997, 22 TexReg 1315; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective March 23, 2003, 28 TexReg 2320; amended to be effective June 5, 2005, 30 TexReg 3206; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.7 – Processing Procedures

Committee staff shall comply with the following procedures in processing applications for a temporary training permit, apprentice permit, license, and renewal of a regular license.

(1) The following periods of time shall apply from the date of receipt of an application and applicable fee until the date of issuance of a written notice that the application is complete and accepted for examination, license issuance, or committee review, or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a completed application. The time periods are as follows:

- (A) letter of acceptance of application for examination, license issuance, or committee review--20 working days; and
- (B) letter of application deficiency--20 working days.

(2) The following periods of time shall apply from the receipt of all documentation necessary to complete the application until the date of issuance of written notice approving or denying

the application. The time periods for denial end on the day notice of the proposed decision is mailed to the applicant. The time periods are as follows:

(A) letter of acceptance of application for examination, license issuance, or committee review--20 working days; and

(B) letter of denial of a license--30 working days after presentation to the applications subcommittee or the committee and its subsequent action thereon.

(3) The period of time from the receipt of the application for renewal of a regular license until the renewal card is issued or written notice is given that the application is deficient and additional specific information is required shall be 20 working days. The regular license renewal may be issued in lieu of notice of acceptance. The period of time from the receipt of the last item necessary to complete the application for renewal until issuance of the renewed license or notification of denial of renewal shall be 14 working days. The committee is not responsible for lost, misdirected, or undelivered mail.

(4) The materials required for application are as follows:

(A) Application form. The application form shall contain:

(i) specific information regarding personal data, birth date, place of employment, other state licenses and certifications held, felony and misdemeanor convictions, educational background, supervised experience, and social security number;

(ii) a statement that the applicant has read Texas Occupations Code, Chapter 402 (Act), and this chapter and agrees to abide by them;

(iii) a statement that the applicant, if issued a temporary training permit, apprentice permit or license, shall return the license to the committee upon revocation or suspension of the license;

(iv) a statement that the applicant understands that fees submitted are not refundable;

(v) a statement that the applicant understands that materials submitted to the committee become the property of the committee and are not returnable (unless prior arrangements have been made);

(vi) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in denial of the application and failure to be granted any license or permit, or the revocation of any license or permit issued;

(vii) a statement that if issued a license or permit, the applicant shall keep the committee advised of his or her current mailing address;

(viii) the applicant's dated signature; and

(ix) the dated signature of the supervisor(s) who can formally attest to the applicant's direct supervised experience.

(B) Supervisor's Affidavit form. The Supervisor's Affidavit Form must be completed by the temporary training permit holder or the apprentice permit holder and the supervisor(s) and contain:

(i) the name of the temporary training permit holder or apprentice permit holder;

(ii) the name, address, and licensure status of the supervisor who agrees to assume responsibility for all services provided by the temporary training permit holder or apprentice permit holder;

(iii) the name and address of the business or organization where the supervised practicum experience will be completed;

(iv) the inclusive dates and types of supervised practicum experience and the total number of hours of supervised practicum experience;

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

Chapter 402, shall comply with all provisions of the Act and this chapter;

(vi) the supervisor's signature; and

(vii) the temporary training permit holder's or apprentice permit holder's signature.

(C) Education records. Applicants must submit:

(i) a photocopy which has been notarized as a true and exact copy of an unaltered:

(I) official diploma or official transcript indicating graduation from high school; or

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

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

(5) Applications may be denied as follows.

(A) The committee may deny an application if the applicant:

(i) has not completed the requirements of this section;

(ii) has failed to remit any applicable fees required by the Act or this chapter;

(iii) has failed or refused to properly complete or submit any application form(s) or endorsements, or deliberately presented false information on the application form and any other form or document required by the department to verify the applicant's qualifications;

(iv) has been or is in violation of the Act, or any other applicable provision of this chapter;

(v) has been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a fitter and dispenser of hearing instruments as set out in the Act; or

(vi) holds a license, certificate, registration, or permit to practice fitting and dispensing of hearing instruments in another state or jurisdiction and that license, certificate, registration, or permit has been suspended, revoked, or otherwise restricted by the licensing

entity in that state or jurisdiction for reasons relating to the person's professional competence or conduct which could adversely affect the health and welfare of a client.

(B) If after review the executive director determines that the application should be denied, the executive director shall ask the applications subcommittee to review the application. The applications subcommittee shall take one of the following actions.

(i) If the subcommittee concurs that the application should be denied, they shall instruct the executive director to give the applicant written notice of the reason for the denial and the opportunity for a formal hearing.

(I) The formal hearing, if requested, shall be conducted in accordance with the provisions of the APA.

(II) If the applicant fails to respond within 10 days after the receipt of the notice of opportunity for hearing, or if the applicant notifies the executive director that the hearing is waived, the committee shall deny the application.

(ii) If the subcommittee determines that the application should be approved, the executive director shall approve the application.

Source Note: The provisions of this §141.7 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective March 23, 2003, 28 TexReg 2320; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.8 – Issuance of Permits

(a) Temporary training permit.

(1) The training period begins on the date of the issuance of the temporary permit.

(2) The committee shall issue a temporary training permit to an applicant who meets the requirements of the Act, §402.251.

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

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

(4) A person shall obtain a temporary training permit prior to beginning the supervision.

(5) A temporary training permit holder shall maintain a valid temporary training permit during his or her supervised practicum experience.

(6) The supervisor must submit a written notification of termination of supervision to the committee and the temporary training permit holder within 10 days of cessation of supervision. The committee notification of termination of supervision shall include:

(A) the name and permit number of the temporary training permit holder, and the name, license number, and signature of the supervisor;

(B) a statement that supervision has terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the temporary training permit holder have complied with the requirements of Texas Occupations Code, Chapter 402 (Act), and this chapter.

(7) The temporary training permit holder shall give written notice to the executive director of the transfer of supervision within 10 working days of change in supervisor.

(8) A temporary training permit holder shall be required to have at least 160 hours of directly supervised practicum that shall include the following:

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

(B) 10 contact hours of masking;

(C) 25 client hours of hearing instrument evaluation including sound field measurements with recorded and live voice;

(D) 20 contact hours of instrument fittings with actual consumers;

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

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

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

(H) 20 contact hours of case history with actual consumers;

(I) 10 contact hours of 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;

(J) 20 hours of supplemental work in one or more of the areas described in subparagraphs (A) - (H) of this paragraph.

(9) On completion of the 160 hours of directly supervised practicum under paragraph (8) of this subsection, the Examination Eligibility Packet must be completed by the temporary permit holder and the supervisor(s) and contain the supervised practicum hours affidavit, and supervised practicum hours log(s), and notarized signatures of the temporary permit holder and the supervisor(s).

(b) Apprentice permit.

(1) A temporary training permit holder who has taken all parts of the examination given by the committee and has passed all parts of the examination with a score of 70% or greater shall be issued an apprentice permit to fit and dispense hearing instruments. An apprentice permit remains valid for one year unless it is extended by the committee for an additional period not to exceed six months.

(2) The committee shall issue an apprentice permit to an applicant who:

(A) has filed an application form and apprentice permit fee; and

(B) has taken and passed all parts of the examination with a score of 70% or greater.

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

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

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

(6) Prior to the issuance of an apprentice permit, the supervisor's affidavit form must be filed with the committee office.

(7) The apprentice permit holder shall complete 20 hours of classroom continuing education in one or more of the following approved subjects:

(A) basic physics of sound;

(B) structure and function of hearing instruments;

(C) fitting of hearing instruments;

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

(E) live voice and recorded voice speech audiometry;

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

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

(H) selection and adaptation of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(I) taking of earmold impressions;

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

(K) anatomy and physiology of the ear;

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

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

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

(O) the proper procedures for sound level measurements.

(8) The supervisor must submit written notification of cessation of supervision to the committee and the apprentice permit holder within 10 days of cessation of supervision. Notification of termination of supervision shall include:

(A) the name and permit number of the apprentice, name and license number of the supervisor, and the signature of the supervisor;

(B) a statement that supervision has been terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the apprentice permit holder have complied with the requirements of the Act and this chapter.

(9) The apprentice permit holder shall give written notice to the executive director of the transfer of supervision within 10 working days of change in supervisor.

(10) The Supervisor's Affidavit forms must be completed by the apprentice permit holder and the supervisor or supervisors and contain:

(A) the name of the apprentice permit holder;

(B) the name, address, and licensure status of the apprentice permit holder's supervisor and supervisors;

(C) the name and address of the business or organization where the apprentice permit holder practices;

(D) the inclusive dates of the supervised experience;

(E) the supervisor's notarized signature; and

(F) the apprentice permit holder's signature.

(c) Other conditions for supervised experience for temporary training permit or apprentice permit.

(1) A supervisor may not supervise more than two permit holders of each type at one time.

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

Source Note: The provisions of this §141.8 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective March 23, 2003, 28 TexReg 2320; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.9 – Issuance of Licenses

(a) Application form. The committee will send a licensure form to each applicant who has satisfactorily fulfilled all requirements for licensure. The applicant must complete the form and return it to the committee office with the licensure fee.

(b) License certificate. Upon receiving the licensure form and fee, the committee shall issue a license certificate which indicates the licensee's name and license number.

(1) Regular licenses shall bear the signature of the committee president.

(2) Temporary training permits and apprentice permits shall bear the signatures of the committee president.

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

(c) Replacement card. The committee will replace a lost, damaged, or destroyed license certificate or renewal card upon a written request from the licensee and payment for a duplicate document. Requests must include a statement detailing the loss or destruction of the licensee's

original license or card or be accompanied by the damaged certificate or card.

(d) Duplicate card. Upon the written request and payment of a duplicate document fee by a licensee, the committee will provide a licensee with a duplicate certificate for a second place of practice which is designated in a licensee's file.

Source Note: The provisions of this §141.9 adopted to be effective March 19, 1996, 21 Tex Reg 1877; amended to be effective August 1, 2006, 31 Tex Reg 5964; amended to be effective September 28, 2010, 35 Tex Reg 8751

§141.10 – 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 the International Licensing Examination for Hearing Instrument Dispenser (ILE) written examination; or

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

(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 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 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 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 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.

Source Note: The provisions of this §141.10 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective December 11, 2008, 33 TexReg 10025; amended to be effective September 28, 2010, 35 TexReg 8751; amended to be effective December 4, 2012, 37 TexReg 9495

§141.11 – Filing of a Bond

(a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments shall file a bond or a surety in lieu of a bond in the amount of \$10,000 with the committee conditioned on the promise to pay all:

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

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

(b) A sole proprietor, partnership, corporation, or other legal entity subject to subsection (a) of this section may file with the committee a deposit or other negotiable security acceptable to the committee in the amount required in subsection (a) of this section in lieu of a bond.

(c) The bond for a licensee must be received on or before the date of issuance of the license.

(d) The bond for a non-licensed entity engaged in the fitting and dispensing of hearing instruments must be received within 180 days of the effective date of these rules, or prior to the initiation of the fitting and dispensing of hearing instruments following such 180 day time limit.

(e) An individual who is exempt from the Act pursuant to Texas Occupations Code, §402.003, is not required to file a bond under this section.

Source Note: The provisions of this §141.11 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.12 – Surrender of a License or Permit

(a) Surrender by licensee or permit holder.

(1) A licensee or permit holder may at any time voluntarily offer to surrender his or her license or permit for any reason.

(2) The license or permit may be delivered to the committee office in person or by mail.

(3) If no complaint is pending, the committee office may accept the surrender and void the license or permit.

(b) Formal disciplinary action.

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

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

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

Source Note: The provisions of this §141.12 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.13 – Renewal of License

(a) General.

(1) A regular license must be renewed biennially.

(2) A person who holds a regular license must have fulfilled any continuing education requirements prescribed by the committee in §141.14 of this title (relating to Continuing Education Requirements) in order to renew a license.

(3) Each person who holds a regular license is responsible for renewing the license and shall not be excused from paying late renewal fees or renewal penalty fees.

(4) The committee shall deny the renewal of the license of a licensee who is in violation of

Texas Occupations Code, §402.501 (Act) or this chapter at the time of application for renewal.

(5) A person whose license has expired shall return his or her license certificate to the committee.

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

(7) The deadlines established for renewals, late renewals, and license renewal penalty fees in this section are based on the postmark date of the documentation submitted by the licensee.

(8) The committee shall deny renewal upon any findings relating to defaults on guaranteed students loans as required by the Education Code, §57.491.

(9) The committee shall deny renewal if required by the Texas Education Code, §57.491, relating to defaults on guaranteed student loans.

(b) Staggered renewals. The committee shall use a staggered system for license renewals. The renewal date of a license shall be the last day of the licensee's birth month.

(c) License renewal.

(1) At least 45 days prior to the expiration of a regular license, the committee will send notice of license expiration.

(2) A paper or electronic license renewal form shall be made available to licensees eligible for renewal. The form shall require the licensee to provide:

- (A) current addresses;
- (B) telephone numbers; and
- (C) information regarding continuing education that has been completed.

(3) The committee shall not renew a license until it receives the:

- (A) completed license renewal form;
- (B) renewal fee and any late fees;
- (C) required documents detailed in this section; and
- (D) documentation showing that the licensee has complied with applicable continuing education requirements if selected for audit.

(4) The committee shall issue a renewal card to a licensee who has met all the requirements

for renewal. The licensee must display the renewal card in association with the license.

(5) The license of a person who made a timely and sufficient request for renewal of his or her license does not expire until the application for renewal is finally determined by the committee; or in case the application is denied or the terms of the new license limited, until the last day for seeking review of the committee's order or a later date fixed by order of a reviewing court.

(6) A license that is not revoked or suspended as a result of a formal hearing shall be renewed provided that all other requirements are met.

(7) In the case of delay in the license renewal process because of a formal hearing, late fees and penalty fees shall not apply.

(8) Each license to fit and dispense hearing instruments shall be issued for the term of two years and shall, unless suspended or revoked, be renewed biennially on payment of the renewal fee and compliance with this section by the licensee.

(9) A licensee may renew an unexpired license by meeting the requirements of this section and by paying the required renewal fee to the committee before the expiration date of the license.

(10) If a person's license has been expired for less than 90 days, the person may renew the license by paying the required renewal fee and a fee that is one-half of the examination fee for the license to the committee.

(11) 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 all unpaid renewal fees and a fee that is equal to the examination for the license to the committee.

(12) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to re-examination and complying with the requirements and procedures for obtaining an original license set out in this chapter.

(13) 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 within one year prior to the renewal date, if the licensee is selected for audit.

(14) A licensee must demonstrate compliance with the continuing education requirements established by the committee, if selected for audit.

(15) Fitting and dispensing a hearing instrument without a current license as provided by this subsection shall be subject to the same penalties as fitting and dispensing a hearing instrument without a license.

(16) Licensees not selected for audit shall maintain all continuing education and certification of testing equipment documentation for a period of three years and shall provide copies if requested by the committee.

Source Note: The provisions of this §141.13 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective March 23, 2003, 28 TexReg 2320; amended to be effective June 5, 2005, 30 TexReg 3206; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§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 course.

(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 per renewal period 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 subsection (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.

(w) 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.

(x) 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.

Source Note: The provisions of this §141.14 adopted to be effective December 4, 2012, 37 TexReg 9495

§141.15 – Examination

(a) Purpose. This section sets out provisions governing the administration, content, grading, and other procedures for examination in the fitting and dispensing of hearing instruments.

(b) Application for examination.

(1) The department 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) An examination registration form must be completed and returned to the committee office by the applicant with the required examination fee and any requests for special accommodations at least 30 days prior to the date of the examination.

(c) Examination.

(1) The examination shall consist of a written section and a practical section. The examination will consist of the following areas as they relate to the fitting and dispensing of hearing instruments:

(A) basic physics of sound;

(B) structure and function of hearing instruments;

(C) fitting of hearing instruments;

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

(E) live voice and recorded voice speech audiometry;

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

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

(H) selection and adaptation of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(I) taking of earmold impressions;

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

(K) anatomy and physiology of the ear;

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

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

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

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

(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.

(2) If the applicant fails the examination, the applicant must repeat the hours of direct supervision required for the sections that were failed.

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

(4) The applicant has 30 days after notification of failing the examination to request in writing that the committee furnish the applicant with an analysis of that person's performance on the examination.

(e) Qualifications for Examination Proctor.

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

(2) A proctor must have held the license for at least 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.

Source Note: The provisions of this §141.15 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 Tex Reg 6671; amended to be effective August 1, 2006, 31 Tex Reg 5964; amended to be effective September 28, 2010, 35 TexReg 8751; amended to be effective December 4, 2012, 37 TexReg 9495

§141.16 – Conditions of Sale

(a) Compliance with other state and federal regulations.

(1) A licensee or permit holder shall adhere to the Federal Food and Drug Administration regulations in accordance with 21 Code of

Federal Regulations (CFR) §801.420 and §801.421.

(2) A licensee or permit holder shall receive a written statement before selling a hearing instrument that is signed by a physician or surgeon duly licensed by the Texas Medical Board who specializes in diseases of the ear. The written statement shall confirm that the client's hearing loss has been medically evaluated during the preceding six-month period and that the client is age 18 or older. The licensee may inform the client that the medical evaluation requirement may be waived as long as the licensee:

(A) informs the client that the exercise of the waiver is not in the client's best health interest;

(B) does not encourage the client to waive the medical evaluation; and

(C) gives the client an opportunity to sign a statement on the contract that says: "I have been advised by (licensee's or permit holder's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician or surgeon who specializes in diseases of the ear) before purchasing one or more hearing instruments. I do not wish to receive a medical evaluation before purchasing a hearing instrument".

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

(4) A licensee or permit holder shall advise clients who appear to have any of the following otologic conditions to consult promptly with a physician:

(A) visible, congenital or traumatic deformity of the ear;

(B) history of active drainage from the ear within the previous 90 days;

(C) history of sudden or rapidly progressive hearing loss within the previous 90 days;

(D) acute or chronic dizziness;

(E) unilateral hearing loss of sudden or recent onset within the previous 90 days;

(F) audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;

(G) visible evidence of significant cerumen accumulation or a foreign body in the ear canal; and

(H) pain or discomfort in the ear.

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

(c) 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) 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.

Source Note: The provisions of this §141.16 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective February 3, 2000, 25 TexReg 575; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective January 16, 2008, 33 TexReg 363; amended to be effective September 28, 2010, 35 TexReg 8751; amended to be effective December 4, 2012, 37 TexReg 9495

§141.17 – Complaints and Violations

(a) Disciplinary action; notices.

(1) The committee may refuse to issue or renew a license; may revoke or suspend a license or permit; may probate disciplinary action; or may issue a reprimand to a person who has:

(A) violated any provision of Texas Occupations Code, Chapter 402, (Act);

(B) violated any rule adopted by the committee;

(C) engaged in false, misleading or deceptive practices in competitive bidding or advertising; or

(D) been convicted of a misdemeanor that involved moral turpitude or a felony.

(2) Prior to initiation of formal proceeding to refuse to issue or renew a license, revoke or suspend a license or permit, probate disciplinary action, assess an administrative penalty, or issue a reprimand to a permit holder or licensee, the committee or its designee shall give written notice to the licensee, permit holder, or applicant by certified mail, return receipt requested, of the facts or conduct alleged to warrant the action, including the complainant's name if appropriate; and the licensee, permit holder, or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter, as required by Texas Government Code, §2001.054(c)(2).

(3) If disciplinary action against a licensee or permit holder or denial of a license or permit application or renewal application is proposed, the committee or its designee shall give written notice by certified mail, return receipt requested, of the basis for the proposal and that the licensee, permit holder, or applicant must request, in writing, a formal hearing within ten days of receipt of the notice, or the right to a hearing shall be waived and the proposed action shall be taken.

(4) Receipt of a notice described under paragraph (1), (2), or (3) of this subsection is presumed to occur on the tenth day after the notice is mailed to the last address known to the committee unless another date is reflected on a United States Postal Service return receipt.

(b) Reporting alleged violations.

(1) Any licensee, permit holder, person, or committee member wishing to report an alleged violation of Texas Occupations Code, Chapter 402, (Act) or the rules shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the committee office.

(2) Upon receipt of a complaint, the executive director shall send an acknowledgment letter to the complainant with an official form which the complainant shall be asked to complete and return the form to the committee. The executive director may accept an anonymous complaint if there is sufficient

information for investigation. The Executive Director may accept a complaint that is not on the official form.

(3) A complaints subcommittee shall be appointed to work with the executive director to:

(A) review each complaint and determine whether the complaint fits within the category of a complaint affecting the health and safety of clients or other persons;

(B) ensure that complaints are not dismissed without appropriate consideration;

(C) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(D) resolve the issues of the complaint which arise under the Act or this chapter.

(4) The executive director shall request a specific response from the licensee or permit holder against whom the alleged violation has been filed and gather information required by the complaints subcommittee.

(5) If the complaints subcommittee determines that there are insufficient grounds to support the complaint, the subcommittee shall dismiss the complaint and give written notice of the dismissal to both the licensee or permit holder against whom the complaint has been filed and the complainant.

(6) If it is determined that there are facts which may establish a violation of the Act or this chapter, the matters in question shall be investigated.

(7) 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.

(8) The committee shall address all complaints in a timely manner.

(9) The executive director shall notify the complaints subcommittee of a complaint that has not been resolved in a timely manner.

(c) Licensing of persons with criminal backgrounds.

(1) The purpose of this subsection is designed to set out the requirements and criteria for the eligibility of persons with criminal

backgrounds to obtain and retain licenses or permits.

(2) The committee may consider the felony conviction of a licensee, permit holder or applicant as grounds for the disciplinary action against the licensee, permit holder, or applicant and may review the conviction.

(3) The committee may suspend or revoke an existing license or permit, disqualify a person from receiving a license or permit, or deny to a person the opportunity to be examined for a license or permit because of a person's conviction of a felony or misdemeanor involving moral turpitude, if the crime directly relates to the duties and responsibilities of a licensee. In considering whether a criminal conviction directly relates to the profession of fitting and dispensing of hearing instruments, the committee shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purpose for requiring a license or permit to practice the fitting and dispensing of hearing instruments;

(C) the extent to which a license or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee or permit holder.

(4) In determining the present fitness of a person who has been convicted of a crime, the following shall be considered:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person at the time of the commission of the crime;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person prior to and following the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;

(F) other evidence of the person's present fitness, including letters of recommendation from prosecutors, law enforcement, correctional officers, the sheriff or chief of police in the community where the person resides, or any other persons in contact with the convicted person; and

(G) recommendations of the prosecution, law enforcement, and correctional authorities as required under Texas Occupation Code, Chapter 53 shall be secured and provided to the committee by the applicant to the extent possible; the licensee, permit holder or applicant shall also furnish proof in such form as may be required by the committee that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(5) If a licensee or permit holder 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;

(6) The executive director shall give written notice to a person with a criminal background when the committee intends to take disciplinary action after a hearing in accordance with the hearing procedures in §141.18 of this title (relating to Formal Hearings).

(d) Suspension, temporary suspension, probation, denial or revocation of a license or permit, or reprimand of a licensee or permit holder.

(1) If the committee suspends a license or permit, the suspension shall remain in effect for the period of time stated in the order or until the committee determines that the reason for the suspension no longer exists.

(2) If a suspension overlaps a license renewal date, the suspended fitter and dispenser

of hearing instruments shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to paragraph (1) of this subsection.

(3) Upon revocation of suspension of a license or permit, a licensee or permit holder shall return his or her license certificate or permit to the committee.

(e) Default orders.

(1) If the right to a hearing is waived under subsection (a) of this section, the committee shall consider an order taking disciplinary action as described in written notice to the licensee, permit holder, or applicant.

(2) The licensee, permit holder, or applicant and the complainant shall be notified of the date, time, and place of the committee meeting at which the default order will be considered.

(3) Upon an affirmative majority vote, the committee shall enter an order imposing appropriate disciplinary action.

(f) Monitoring of licensees.

(1) The department shall maintain a complaint tracking system.

(2) The committee may require each licensee, permit holder, or applicant that has had disciplinary action taken against his or her license or permit to submit regularly scheduled reports. The report, if required, shall be scheduled at intervals appropriate to each individual situation.

(3) The executive director shall review the reports and notify the complaints subcommittee if the requirements of the disciplinary action are not met.

(4) The complaint subcommittee may consider more severe disciplinary proceedings if noncompliance occurs.

(g) When a licensee or permit holder has offered the surrender of his or her license or permit after a complaint has been filed, the committee shall consider whether to accept the surrender of the license or permit. When the committee has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and a committee order accepting the surrender may be prepared.

(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.

Source Note: The provisions of this §141.17 adopted to be effective March 19, 1996, 21 TexReg 1877; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective March 23, 2003, 28 TexReg 2320; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751; amended to be effective December 4, 2012, 37 TexReg 9495

§141.18 – Formal Hearings

(a) Formal hearings will be conducted pursuant to the APA and will be held by the State Office of Administrative Hearings.

(b) Notice requirements.

(1) Notice of the hearing shall be given according to the notice requirements of APA.

(2) If a party fails to appear or be represented at a hearing after receiving notice, the Administrative Law Judge may proceed with the hearing or take action that is fair and appropriate under the circumstances.

(3) All parties shall timely notify the Administrative Law Judge of any changes in their mailing addresses.

(c) Parties to the hearing.

(1) The parties to the hearing shall be the applicant or licensee and the committee, complaints subcommittee, or executive director, as appropriate.

(2) A party may appear personally or be represented by counsel or both.

(d) Prehearing conferences.

(1) In a contested case, the Administrative Law Judge, on his own motion or the motion of a party, may direct the parties to appear at a

specified time and place for a conference prior to the hearing for the purpose of:

- (A) the formulation and simplification of issues;
- (B) the necessity or desirability of amending the pleading;
- (C) the possibility of making admissions or stipulations;
- (D) the procedure at the hearing;
- (E) specifying the number of witnesses;
- (F) the mutual exchange of prepared testimony and exhibits;
- (G) the designation of parties; and
- (H) other matters which may be expedite the hearing.

(2) The Administrative Law Judge shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering said matters or issues.

(3) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, are made a part of the record.

(e) Assessing the cost of a court reporter and the record of the hearing.

(1) In the event a court reporter is utilized in the making of the record of the proceedings, the committee shall bear the cost of the per diem or other appearance fee for such reporter.

(2) The committee may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The committee may pay the cost of the transcript or assess the cost to one or more parties.

(3) In the event a final decision of the committee is appealed to the district court wherein the committee is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the committee may require the appealing party to pay all or part of the cost of preparations of the original or a certified copy of the record of the committee proceedings that is required to be transmitted to the reviewing court.

(f) Disposition of case. Unless precluded by law, informal disposition may be made of any

contested case by agreed settlement order or default order.

(g) Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by this subchapter.

(h) Final orders or decisions.

(1) The final order or decision will be rendered by the committee. The committee is not required to adopt the recommendation of the Administrative Law Judge and may take action as it deems appropriate and lawful.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(3) All final orders shall be signed by the president of the committee; however, interim orders may be issued by the Administrative Law Judge.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(i) Motion for rehearing. A motion for rehearing shall be governed by APA, Texas Government Code, §2001.146 and shall be addressed to the committee and filed with the executive director.

(j) Appeals. All appeals from final committee orders or decisions shall be governed by APA, Texas Government Code, Subchapter G, and communications regarding any appeal shall be to the executive director.

Source Note: The provisions of this §141.18 adopted to be effective September 9, 2001, 26 TexReg 6671; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.19 – Administrative Penalties

(a) The committee may assess an administrative penalty in accordance with the Act.

(b) The complaints subcommittee, with the approval of the committee, may propose a fine not to exceed \$250 plus costs for the first violation and not to exceed \$1,000 plus costs for each subsequent violation of the Act, and the rules adopted under the Act, on any person or entity described in the Act. The fine may be invoked as an alternative to any other disciplinary measure, except for probation.

(c) The amount of an administrative penalty shall be based on the following criteria.

(1) The seriousness of a violation shall be categorized by one of the following severity levels:

(A) Level I--violations that have or had an adverse impact on the health or safety of a client (or former client, where applicable);

(B) Level II--violations that have or had the potential to cause an adverse impact on the health or safety of a client (or former client, where applicable) but did not actually have an adverse impact; or

(C) Level III--violations that have no or minor health or safety significance.

(2) The range of administrative penalties by severity levels are as follows:

(A) Level I--\$500 to \$1,000;

(B) Level II--\$250 to \$500; or

(C) Level III--no more than \$250.

(3) Subsequent violations in the same severity level for which an administrative penalty has previously been imposed shall be categorized at the next higher severity level.

(4) Adjustments to the range of an administrative penalty may be made for:

(A) prompt reporting;

(B) corrective action;

(C) compliance history; or

(D) multiple violations.

Source Note: The provisions of this §141.19 adopted to be effective February 12, 1997, 22 TexReg 1315; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.20 – Informal Disposition

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal conference held to determine whether an agreed order may be approved.

(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 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) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive director shall decide upon the time, date and place of the informal conference, and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than 10 days prior to the date of the conference to the last known address of the licensee or applicant or by personal delivery. The 10 days shall begin on the date of mailing or personal delivery. The licensee or applicant may waive the 10-day notice requirement.

(e) A copy of the committee's rules concerning informal disposition may be enclosed with the notice of the conference. The notice shall inform the licensee or applicant of the following:

(1) the nature of the alleged violation;

(2) that the licensee or applicant may be represented by legal counsel;

(3) that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate;

(4) that committee members may be present;

(5) that the committee's legal counsel or a representative of the Office of the Attorney General will be present;

(6) that the licensee's or applicant's attendance and participation is voluntary;

(7) that the complainant and any client involved in the alleged violations may be present; and

(8) that the conference will be canceled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend.

(f) The notice of the conference shall be sent to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall 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.

(h) The conference shall be informal and shall not follow the procedures for contested cases and formal hearings.

(i) The licensee or applicant, the licensee's or applicant's attorney, the complaints subcommittee members, the committee's legal counsel, and the executive director, may question witnesses, make relevant statements, present statements of persons not in attendance and present such other evidence as may be appropriate.

(j) The committee's legal counsel shall attend each conference.

(k) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(l) Access to the committee's complaint file may be prohibited or limited in accordance with the Public Information Act, Government Code, Chapter 552, and the Administrative Procedure Act (APA), Government Code, Chapter 2001.

(m) The panel 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 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 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 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) The licensee or applicant may either accept or reject the recommendations at the conference. If the recommendations are accepted, an agreed order shall be prepared by the committee staff or the committee's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the committee staff within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the recommendations.

(q) If the licensee or applicant rejects the proposed recommendations, the matter shall be referred to the executive director for appropriate action.

(r) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire committee for its approval. Placement of the agreed order on the committee agenda shall constitute only a recommendation for approval by the committee.

(s) The identity of the licensee or applicant shall not be made available to the committee until after the committee has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the committee meeting. The

licensee or applicant shall be notified of the date, time, and place of the committee meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant shall be voluntary.

(t) Upon an affirmative majority vote, the committee shall enter an agreed order approving the accepted recommendations. The committee may not change the terms of a proposed order and shall only approve or disapprove an agreed order unless the licensee or applicant is present at the committee meeting and agrees to other terms proposed by the committee.

(u) If the committee does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(v) A proposed agreed order is not effective until the full committee has approved the agreed order. The order shall then be effective in accordance with the APA.

(w) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the APA, Texas Government Code, §2001.054(c).

Source Note: The provisions of this §141.20 adopted to be effective February 12, 1997, 22 TexReg 1315; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751; amended to be effective December 4, 2012, 37 TexReg 9495

§141.21 – Suspension of License Relating to Child Support and Child Custody Orders

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support or failure to be in compliance with a court order relating to child custody, the executive director shall immediately determine if the committee has issued a license to the obligator named on the order, and, if a license has been issued:

- (1) record the suspension of the license in the committee's records;
- (2) report the suspension as appropriate;
- (3) demand surrender of the suspended license; and

(4) require payment of the child support obligation and demand compliance with a child custody order.

(b) The committee shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The committee will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The committee may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Texas Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the committee.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the standard renewal procedures in the Act and this title. However, the license will not be renewed until the requirements of subsections (g) and (h) of this section are met.

(f) An individual who continues to use the titles "licensed fitter and dispenser," "apprentice in fitting and dispensing," or "temporary training permit holder in fitting and dispensing" after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the committee.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive director shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee as set out at §141.6(e)(7) of this title (relating to Application Procedures) prior to issuance of the license under subsection (g) of this section.

Source Note: The provisions of this §141.21 adopted to be effective February 12, 1997, 22 TexReg 1315; amended to be effective September

§141.22 – Code of Ethics

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

(b) A licensee of hearing instruments must observe and comply with the code of ethics and standards of practice set forth in this chapter. Any violation of the code of ethics or standards of practice will constitute unethical conduct or conduct that discredits the profession of the dispensing and fitting of hearing instruments and is grounds for disciplinary action.

(c) A licensee or permit holder shall:

- (1) offer only those services that are within his or her professional competency;
- (2) comply with client confidentiality rights within the limits established by the law;
- (3) refer a client for those services that the licensee or permit holder is unable to provide;
- (4) comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);
- (5) ensure that all equipment used is in proper working order and is properly calibrated; and

(6) comply with any order relating to the licensee or permit holder which is issued by the committee.

(d) A licensee or permit holder shall not:

- (1) falsify records;
- (2) refuse to provide services solely on the basis of a client's age, gender, race, color, religion, national origin, or disability;
- (3) misrepresent his or her professional credentials and/or qualifications;
- (4) engage in sexual contact or sexual exploitation with a client. Sexual contact means the behaviors and activities described in the Texas Penal Code, §21.01 (relating to Sexual

Offenses; Definitions). Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal, sexual gratification, or sexual abuse;

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

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

Source Note: The provisions of this §141.22 adopted to be effective February 12, 1997, 22 TexReg 1315; amended to be effective September 9, 2001, 26 TexReg 6671; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.23 – Relevant Factors

When a licensee or permit holder has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which include: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the complaints subcommittee or administrative law judge. Specific factors are to be considered as set forth herein.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

(2) Nature of the violation. The following factors are identified:

(A) the culpability of the licensee, such as whether the violation was:
(i) intentional or premeditated;
(ii) due to blatant disregard or gross neglect; or
(iii) resulted from simple error or inadvertence; and

(B) the extent to which the violation evidences a lack of integrity, trustworthiness, or honesty.

(3) Personal Accountability. The following factors are identified:

(A) admission of wrong or error, and acceptance of responsibility;

(B) appropriate degree of remorse or concern;

(C) efforts to ameliorate the harm or make restitution;

(D) efforts to ensure future violations do not occur; and

(E) cooperation with any investigation or request for information.

(4) Deterrence. The following factors are identified:

(A) the sanction required to deter future similar violation by the licensee;

(B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and

(C) sanctions necessary to deter other licensees from such violations.

(5) Miscellaneous Factors. The following factors are identified:

(A) presence or absence of prior or subsequent violations;

(B) conduct and work activity prior to and following the violation;

(C) character references; and

(D) any other factors justice may require.

Source Note: The provisions of this §141.23 adopted to be effective March 23, 2003, 28 TexReg 2320; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.24 – Severity Level and Sanction Guide

The following severity levels and guide for sanctions are based on the relevant factors in §141.23 of this title (relating to Relevant Factors).

(1) Level One--revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or may require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.

(2) Level Two--extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year.

(3) Level Three--moderate suspension of license. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year.

(4) Level Four--probated suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms, conditions, and monitoring may be ordered as appropriate.

(5) Level Five--reprimand. These violations involve inadvertent or relatively minor misconduct and/or rule violations not directly involving the health, safety and welfare of the public.

Source Note: The provisions of this §141.24 adopted to be effective March 23, 2003, 28 TexReg 2320; amended to be effective August 1, 2006, 31 TexReg 5964; amended to be effective September 28, 2010, 35 TexReg 8751

§141.25 – Request for Criminal History Evaluation Letter

(a) In accordance with Texas Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(c) The department has the same authority to investigate a request submitted under this section and the requestor's eligibility that the department has to investigate a person applying for a license.

(d) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(e) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

Source Note: The provisions of this §141.25 adopted to be effective September 28, 2010, 35 TexReg 8751

§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 Bureau 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.

Source Note: The provisions of this §141.26 adopted to be effective December 4, 2012, 37 TexReg 9495

§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 Bureau 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).

Source Note: The provisions of this §141.27 adopted to be effective December 4, 2012, 37 TexReg 9495

§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.

Source Note: The provisions of this §141.28 adopted to be effective December 4, 2012, 37 TexReg 9495

§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. All charges associated with such trial period shall be included in this written contract for services, which shall include the name, address, and telephone number of the 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 returned to the manufacturer for repair or remake during the trial period, the 30 consecutive day trial period begins anew. The trial period begins on the day the client reclaims the repaired/remade hearing instrument(s). The expiration date of the new 30 consecutive day trial period shall be made available to the client in writing, through an amendment to the original written contract. The amendment shall be signed by both the licensed hearing instrument dispenser, apprentice permit holder, or temporary training permit holder and the client.

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

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

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

(1) the date of sale;

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

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

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

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

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

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The client has been advised that any examination or representation made by a licensed hearing instrument dispenser

or apprentice permit holder or temporary training permit holder in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice;"

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: "If you have a complaint against a licensed hearing instrument dispenser or apprentice permit holder or temporary training permit holder, you may contact the 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 (b) 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 committee'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.

Source Note: The provisions of this §141.29 adopted to be effective December 4, 2012, 37 TexReg 9495