

**NORTH CAROLINA STATE
HEARING AID DEALERS AND FITTERS BOARD
ADVERTISING GUIDELINES**

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ADVERTISING GUIDELINES

INTRODUCTION

These guidelines are provided to inform licensees and apprentices, as well as other advertisers, of the Board's interpretation of the North Carolina Administrative Code (NCAC) Title 21, Chapter 22, and North Carolina General Statute (G.S.) 93D, as they relate to advertising. Per G.S. § 93D-13(a) (8) and (9), the Board has authority to initiate disciplinary action regarding advertising of a character or nature tending to deceive or mislead the public, as well as advertising declared to be unethical by the Board or prohibited by the code of ethics established by the Board. Specifically, per 21 NCAC 22J.0103 (1), it is unethical "to use or cause or prompt the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation however disseminated or published which is misleading, deceiving, or untruthful."

This current update (i.e., revisions effective as of 11/01/2005) of the Board's advertising guidelines does not negate those advertising practices previously considered to be misleading by the Board; but, rather, reflects the current views of the industry and the Board (e.g., advertising such wording as "100% digital"). **The guidelines set forth in this document should clarify those advertising practices that are declared to be unethical by the Board** by means of further explanation of previously published advertising scenarios, as well as the addition of other examples of wording considered to be misleading by the Board. These guidelines are also consistent with the Federal Trade Commission Act which requires that advertising must be truthful and non-deceptive, advertisers must have evidence to back up their express and implied claims, and advertisements cannot be unfair.

For the purpose of these guidelines, advertising is defined as any commercial message or promotional information, whether written, oral, electronic, or otherwise including price tags and other price information, as well as stationery, name tags, and business cards. Advertising via the Internet is also required to conform to these guidelines. All advertisements must be accurate and truthful. Advertising deception of any type is unlawful. Licensees and apprentices assume full and final responsibility for all advertising and/or merchandising methods used, regardless of the source (e.g., self-prepared versus commercially-prepared advertisements). When an advertisement containing any statement(s) considered by the Board to be misleading is published/distributed by some individual or entity other than a licensee or apprentice, the Board views all licensees and apprentices providing products and services at the advertised location(s) to be benefiting from the misleading advertisement. Likewise, when a location is not listed in the advertisement, all registered or licensed persons who are known to the Board to be affiliated with the advertised business are viewed as benefiting from the misleading advertisement, until proven otherwise. Furthermore, the Board considers it misleading to list a telephone number or email address in any advertisement without also listing either the actual name of the advertised business or the physical street location(s) of such business.

It is important that all persons regulated by G.S. 93D be aware that this Board, while not intending to restrain competition or subject licensees and apprentices to overly restrictive guidelines, is serious about protecting the public from misleading advertising

practices by enforcing its statute, rules, and guidelines. If anyone has a question regarding these guidelines or wishes to request that the Board review their proposed advertisement, such persons should submit to the Board's office a written statement containing an example that illustrates the issue being questioned, or an exact copy of the proposed advertisement should be included with the written request for a Board review. The Board's Committee on Investigations shall review the question/request, and present the request and the Committee's recommendation(s) to the Board, for its approval at the Board's next regularly scheduled meeting. It should be noted that, in order for the matter to come before the Board, such written questions/requests must be received at the Board's office no less than 10 working days prior to the date of the Board's next regularly scheduled meeting.

In addition to being subject to specific sections of G.S. 93D and NCAC Title 21, Chapter 22 concerning advertising, licensees and apprentices should be aware that numerous North Carolina laws prohibit false, misleading, or deceptive acts or practices in the conduct of any trade or commerce. In general, an act or practice is deceptive if it has a tendency or capacity to mislead a substantial number of consumers in a material way. The term "misleading" has the same meaning. Licensees and apprentices should review and be familiar with G.S. § 93D-13(a) and NCAC Title 21, Subchapter 22J in addition to reading the general guidelines set forth in this document.

It should be understood that even though a particular form of advertising may not be addressed in these guidelines, it shall be interpreted as deceptive if it tends to mislead the consumer or fails to include information that leaves the consumer with a misimpression about the product. Likewise, any attempt to enhance the value of a product or service in an advertisement, so that the actual cost to the consumer still equals the seller's usual price after deducting the advertised price reduction or value of the added benefits, is considered to be deceptive. **Therefore, since any form of advertisement could potentially be challenged as being deceptive/misleading, licensees and apprentices should be prepared to provide the Board with appropriate and adequate substantiation for all advertising claims.**

I. Price Comparison Advertising.

Price comparison advertising is any advertising which compares the selling price of an item with some other reference price. This reference price may be the former price of the item, the price at which the item is sold elsewhere, the manufacturer's suggested list or retail price (if one exists), the introductory price, or any other price. Price comparison advertising is proper only if the reference price is true and the comparison is legitimate.

A. Types of Reference Prices.

A seller may compare the selling price of a product or service to:

- (1) The price at which the specified item was previously sold ("regular price," "formerly," "usually," etc.) ONLY IF fifty percent or more of sales of the item were made by the seller at this price, at some time within the previous six months. ACCEPTABLE EXAMPLE: "\$50 Off Our Regular Priced (insert brand, model, type, or style name here)

Hearing Aids." (If 50% or more have been sold at or above the "regular price" during the last six months).

- (2) The price at which other merchants sell the specified product or service ("elsewhere," "retail value," etc.) ONLY IF fifty percent or more sales of the item were made by other merchants in the trading area (i.e., area in which the seller does business) at this price, at some time within the last six months. Therefore, a survey of other prices charged in the trading area must have been completed before the ad is published/distributed. It must be local, cost tabulated, dated, and retained for future inspection for a period of at least three years. Furthermore, any "unsupported superlative" statement is considered by the Board to be misleading, and all advertisements referencing such wording as the "cheapest price" or "best prices" must be documented by a local price survey, meeting all of the aforementioned conditions, that verifies the other area merchants' "regular price." ACCEPTABLE EXAMPLE: "Free Hearing Aid Cleaning - Could be up to a \$20 value elsewhere." or "Documented lowest price in this county for (insert brand, model, type, and/or style name here) hearing aids."
- (3) The price recommended by the manufacturer or distributor ("manufacturer's list price," "suggested retail," "MSRP," etc.) ONLY IF the seller obtained a copy of the manufacturer's/distributor's recommended price list before the advertisement is published/distributed, which must be dated and retained for future inspection for a period of at least three years. ACCEPTABLE EXAMPLE: "\$50 off suggested retail price on any (insert manufacturer's or distributor's actual name here) digital hearing aid purchase." (If the seller has a copy of the manufacturer or distributor's recommended prices).
- (4) The price at which a similar product is sold ONLY IF the relevant requirements of (1), (2), or (3) are met AND if all material differences between the two products are fully and conspicuously disclosed.
- (5) If an "introductory price" is advertised for a newly/recently manufactured product (i.e., within twelve months from the introduction of the product), or for a product that has not been previously sold in the trading area as documented by a local survey made before the advertisement is published/distributed, the actual dollar amount should always be specified and the seller may only advertise such a price for six consecutive months. After that period of time, a "regular price" has been established for the advertised product. Furthermore, the aforementioned survey must be dated and retained for future inspection for a period of at least three years.

B. Implied Reference Prices.

- (1) Terms like "Half Price," "2 for 1," "Free Bonus," "Tremendous Incentives," etc. imply that the specified item being offered for sale, and any advertised incentives to encourage the purchase of the advertised sales item, have a reference price that is the item's "regular price." The term "half price sale" implies that the former price (i.e., regular price) of the item is twice its present selling price; whereas "free bonus" implies that the item is selling at no more than its regular price and that an additional item, routinely having an actual dollar value that can be documented, is included without cost. Likewise, when an advertisement references the availability of "incentives" (e.g., "Grand Opening Discounts Available" or "Ask about our Special Financial Incentives") such incentives must be specified in the advertisement and must be a tangible product or service routinely having an actual dollar value that can be documented as being reduced, as compared to the regular price of the incentive, or as being added as a bonus (i.e., the incentive cannot be regularly or routinely "free"). Thus, all terms that indirectly reference a "regular price" may be used ONLY IF at least fifty percent of the sales of the advertised item and any advertised incentives were sold at the implied reference price during the previous six months.
- (2) Terms such as "10% Off," "\$200 Off," "Save \$300," or "\$100 Discount" must identify what price is being referenced (e.g., regular price, manufacturer's suggested retail price, or the introductory price), for the specified product or service being offered for sale. However, the actual dollar amount of the referenced price does not need to be specified in the advertisement. Furthermore, it should be noted that the use of such wording as "Save up to \$400" or "Discounts of at least \$500" is considered by the Board to also require specification of the quantity of the specific item being offered for sale (e.g., "Save up to \$400 off the regular price for a pair of XYZ digital canal hearing aids" or "Discounts of at least \$500 off the suggested retail price for any binaural ABC digital hearing system").
- (3) Terms like "Sale," "Reduced," "Special," "Rebate," "Gigantic Savings," "Huge Discounts," or "Now" also imply a reference price although this reference price is not ascertainable from the advertisement. Furthermore, the advertisement of any pictured item and/or printed statement pertaining to a product or service, that is presented in a coupon-type format, is considered by the Board to have a reference price. Thus, advertising of this type may be used ONLY IF there is a reduction from the immediately preceding price of the item AND at least fifty percent of the sales of the specified item were made by the seller at that price, at some time within the previous six months (i.e., the regular price for the specified item must be reduced and that advertised item cannot be regularly and

routinely free). In addition, the Board considers that terms such as "gigantic," "tremendous," or "huge" may be used ONLY IF there is a substantial (i.e., $\geq 20\%$) reduction from the immediately preceding "regular price" of the specified item. Likewise, if a "rebate" is advertised that is to be applied toward a purchase and not mailed in for redemption by the purchaser, the actual dollar value of the "rebate" must be stated and must truly reflect a price reduction as compared to the regular price of the item being offered for sale. In addition, in order not to be misleading, an advertised manufacturer's rebate should specify the (1) full name of the manufacturer, (2) dollar amount of the rebate, (3) "regular price" of the product or service being offered in conjunction with the rebate, and (4) expiration date for obtaining the rebate.

- (4) Terms like "Free Trial" and "Free Demonstration" imply that there is no penalty, obligation, or charge to the consumer if the product, regardless of its condition, is returned to the seller or not purchased by the consumer at or before the time that the trial or demonstration terminates. Such terms may be used ONLY IF there are absolutely no direct or indirect charges to the consumer (e.g., there are no required deposits, loss or damage charges, loaner fees, fitting fees, restocking fees, testing fees, molding fees, etc.). However, when the term "Risk Free" is advertised, it implies that there is no penalty, obligation, or charge to the consumer for any reason. If a totally refundable deposit or downpayment is going to be required, in the case where the product is timely returned to the seller regardless of its condition, the Board considers that the trial is not "free." Such an advertised trial should contain such wording as "100% money back." Furthermore, when a security deposit is going to be required and it is going to be kept by the seller, if the product is "damaged" or the potential buyer fails to complete the advertised terms of the trial/demonstration and/or fails to timely return the product, the trial/demonstration is not considered by the Board to be "free" or "risk free." Such an advertisement should contain such wording as "security deposit required," and the conditions under which the deposit will not be refunded should always be published in the advertisement.

C. Miscellaneous References.

- (1) Terms like "factory prices," "manufacturer's prices," etc. may be used ONLY IF the stated price is that at which the item may be bought by a consumer directly from the manufacturer.
- (2) Terms like "cost," "cost + 10%," "\$20 above dealer's price," etc. may be used ONLY to represent the actual price at which the seller may purchase the item for resale.
- (3) The term "wholesale" may be used ONLY IF the advertised items are to be sold to merchants for resale OR if the price designated as

wholesale is established by an independent agency not engaged in the manufacture, distribution, or sale of such items. (N.C.G.S. § 75-29.)

- (4) The price of items which are "used," "reconditioned," or "demonstrators" may be compared with standard prices for new and perfect products ONLY IF the advertisement conspicuously states the condition of the items for sale and notes that the reference price applies to new and perfect items.
- (5) The announcement of any special circumstances must be truthful, (e.g., "special purchase sale" may be used ONLY IF the items to be sold are actually a special purchase; "clearance sale" may be used ONLY IF the items are old merchandise being cleared, etc.).
- (6) An advertisement should not contain such wording as "We honor our competitors' coupons," unless the advertiser/seller has access to the proprietary products of the competitors.

D. Reference Pricing Exception, with Accurate and Complete Explanations. Notwithstanding Guidelines A, B, and C, a seller may make price comparisons of any sort only if:

- (1) The comparison is accurate and truthful, and has no capacity to lead buyers to believe that the product may be purchased at a reduced price if the price at which the product is being sold is not truly a reduction, AND
- (2) The advertisement includes, in size and position comparable to the price comparison, an explanation of each way in which the reference price does not meet the relevant requirements for reference prices set out in Guidelines A, B, and C (e.g., an advertisement may compare the selling price of a hearing aid with the price at which fifty percent or more sales were made by the seller one year before ONLY IF the advertisement clearly and explicitly notes that the reference price is the price that was charged one year before).

II. Bait Advertising.

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser does not actually wish to sell. The intent of this type of advertising is to attract customers interested in buying merchandise of the type advertised. Once the customer is attracted, the seller may not attempt to discourage the customer from buying the advertised merchandise in order to sell some other, usually higher priced, merchandise. BAIT ADVERTISING IS ILLEGAL.

- A. An advertisement containing an offer to sell a product may be published ONLY IF the offer is a bona fide effort to sell the advertised product.

- B. A seller may not in any way discourage the purchase of the advertised merchandise as part of a bait scheme to sell other merchandise.
- C. After a sale of the advertised item is made, a seller may not attempt to "unsell" the product, and have the buyer buy another product in its place.

III. Ambiguous Statements.

When a material representation has more than one generally acceptable meaning, one of which is false, it is deceptive. The following are examples of advertisements that would be considered ambiguous and misleading, and are therefore declared to be unethical by the Board.

- A. Advertising a service or product as being available for a limited time (e.g., "This Week Only" or "3 Days Only") is false and misleading if the advertisement is run week after week (i.e., a "continuous sale"). It becomes a false call to action and is misleading by misrepresenting the ending date of the promotion. Thus, advertisements containing a specified offer that (1) is repeated by the seller, via any advertising format, more often than once in five consecutive months, and/or (2) is advertised as being available for a duration of more than one month, are no longer "specials" and become regular and routine. Furthermore, advertising a limited time offer containing such wording as "Available Thursday and Friday" or "Good Thru Wednesday" is considered by the Board to be misleading, and the actual "ending date" for the specified offer should always be included in the advertisement. In summary, all specified offers should not be repeated, extended, or held over by the seller in any manner, beyond a maximum duration of one additional month, on more than one occasion within a five-month period starting as of the initial date of publication/distribution. It should be noted that an advertisement of a specified offer is considered by the Board to be "repeated" when the specified offer is disseminated, by any means, to the same consumers, potential customers, or marketing area. This type of advertising must be reviewed frequently by the seller. ACCEPTABLE EXAMPLE: The seller could advertise on the first day of June "Free 5-year loss/damage coverage provided with the purchase of two XYZ digital hearing aids, during the month of June." Then the seller could (1) advertise an extension of the specified offer "to end the last day of July," with this aforementioned advertisement not being offered again for the next three months (i.e., August, September, and October), or (2) republish the offer in the same or a different newspaper within the same marketing area as the original advertisement, with a new "ending date" listed for no later than one month from the "repeated" publication date, on one occasion within the five-month period starting as of the initial date of publication (i.e., once during the five months from June through October).
- B. Advertising "Free Hearing Evaluations - A \$65.00 Value" is misleading if the seller does not have a regular established hearing evaluation charge of \$65.00, independent of hearing aid sales. Furthermore, placing a value

on something that is regularly and routinely free is always considered by the Board to be misleading (e.g., It is misleading to advertise "Free hearing test, this week only," "Free in-office repairs with this coupon," "Free to the first 10 callers," or "Free limited time offer" when the item or service advertised is regularly and routinely free). If a regularly or routinely "free" product or service is advertised as being "free" under some limitation or restriction, such as "free hearing tests scheduled for Tuesday and Friday" or "present this coupon for a free 2nd year warranty on any XYZ digital hearing aid purchase," it is considered by the Board to be misleading unless the advertisement contains a statement that the product or service is "always free" or "routinely free."

- C. Advertising such wording as "Free Batteries, Service, and/or Maintenance for Life" requires a definitive statement in the body of the advertisement as to what "life" is relevant (e.g., life of the consumer, life of the hearing aid, etc.). Furthermore, if the advertisement contains a reference to a lifetime offer, it is considered by the Board to be misleading unless it also contains a statement that lists the conditions whereby the offer would reasonably be negated. Such conditions could include the sale or termination of the advertiser's/seller's or the manufacturer's/distributor's business, the relocation of the purchaser/consumer to a site outside of the seller's marketing area, the inability of the purchaser/consumer to travel to the seller's office, and/or a change of ownership regarding the purchased product.
- D. Advertising that contains any reference to "years of experience or service" is considered by the Board to be misleading unless the reference pertains to the actual experience or service of the specific licensee or apprentice currently making the claim and not to that of a manufacturer, corporation, previous business owner(s)/operator(s), or any other collective group of individuals (e.g., "the XYZ Family" or "our staff"). Furthermore, advertising such wording as "over 8 years experience" or "10 years experience in the Triangle area," without clarifying what type of experience is being referenced, is considered to be misleading. In addition, use of a phrase such as "years of combined experience or service" is considered by the Board to be misleading and should not appear in an advertisement. Advertisements that reference the existence of the business, itself, would not be considered to be misleading if the advertisement contains factual statements that can be documented (e.g., such statements, when accurate, as "XYZ Hearing Center has been at its current location for 20 years"). Likewise, factual statements such as "A member/members of the ABC family has/have been helping the hearing impaired residents of this county for 50 years" would not be considered to be misleading.
- E. Advertising "Satisfaction Guaranteed" is considered by the Board to be misleading since the term "satisfaction" has multiple meanings that can vary from one consumer to the next, and it should not appear in an advertisement. Advertising such wording as "Hundreds of Satisfied Patients" would not be considered by the Board to be misleading if the claim can be documented as true and there is a definitive statement in the

body of the advertisement that specifies how "patient satisfaction" was measured. In addition, if a "guarantee" is mentioned in an advertisement (e.g., "guaranteed better hearing" or "45-day money back guarantee"), the advertisement would not be considered by the Board to be misleading if a definitive statement in the body of the advertisement is made that specifies all of the terms of the guarantee.

- F. Advertising "New" and/or "Improved" must be limited to twelve months from the introduction of the new/improved product. After this date, the Board considers that the product can no longer be classified as new or improved, and these terms should not appear in an advertisement.
- G. Advertising a "Trial" or "Demonstration" requires a definitive statement in the body of the advertisement as to what are the specific terms of the offer, including the duration of the "trial." The Board considers a "trial" to involve reality testing (i.e., a "trial" implies that consumers are able to have the actual product fitted for their ear(s) and then they wear that product outside the seller's office for a specified period of time exceeding 24 hours); whereas a "demonstration" implies that the consumer was exposed to the product for only a short duration and also implies that the product may have been "simulated" or not customized for the consumer.
- H. Advertising "American Made" or "Made in the USA" is considered by the Board to be false and misleading, unless it can be substantiated that all parts, processing, and labor that go into the product are of U.S. origin.
- I. Advertising "Convert or Upgrade Your Hearing Aid to a Digital" requires a definitive statement in the body of the advertisement explaining what will be different about the circuitry and the way the hearing aid performs, after the conversion or upgrade. In addition, the Board considers it to be misleading to refer to a hearing aid as "100% Digital," unless it can be documented that the amplifying chip is 100% digital.
- J. Advertising that contains such terms as "Hearing Specialist," "Hearing Health Provider," "Hearing Care Professional," "Health Care Practitioner," "Clinician," or "Licensed Specialist or Professional" is considered by the Board to be misleading since these terms have multiple meanings, and they should not appear in an advertisement. Furthermore, any abbreviations or combination of letters following an individual's name, that represent the aforementioned terms, should not appear in an advertisement. In addition, the advertisement would be considered by the Board to be misleading if it (1) references anyone as being a "Licensed Hearing Aid Specialist" or "Licensed Hearing Instrument Specialist," unless that individual holds a valid license to fit and sell hearing aids in the State of North Carolina, and (2) does not clarify that the individual is not licensed to fit and sell hearing aids in North Carolina.
- K. Advertising that contains the non-specific word "doctor," as in the phrases "come in and see our doctors" or "the doctor will test," is considered by the Board to be misleading, unless the actual person currently making the

claim is a licensed physician. Use of the word "doctor" or the abbreviation "Dr." is not considered by this Board to be deceptive when it is used as the person's valid title in combination with that individual's name. However, it should be noted that other licensing boards in this State may have policies regarding the use of this title.

- L. Advertising that contains the letters "NC" in combination with any other letters such as "HIS" or "HCP," following an individual's name, is considered by the Board to be misleading, unless there is an official North Carolina agency/organization that has a recognized credentialing or certification process. **Note: The Board considers that the credentialing or certification process involves more than just becoming a "member" of a North Carolina organization.** Furthermore, this Board's statute and rules do not grant a "title" to the individuals regulated by G.S. 93D; however, the Board does recognize the occupational classification "Hearing Aid Specialist" or "Hearing Instrument Specialist." Such occupational classifications should always be written out, rather than using the letters "HAS" or "HIS" following an individual's name.
- M. Advertising a name or logo to imply affiliation or membership is considered by the Board to be misleading, unless the seller and/or business is a current affiliate or member of the referenced entity, and it can be documented that the name or logo applies to a currently existing agency or organization. Likewise, all advertisements that contain any references to existing agencies or organizations should list the accurate title of such an entity.
- N. Advertising the sale of "All brands" or "All major brands" is considered by the Board to be misleading, unless all brands or all major brands of the advertised product would be available to consumers for demonstration and purchase (i.e., the seller must have access to both Miracle-Ear and Beltone products, as well as other manufacturers having exclusive distribution agreements). Furthermore, if the advertisement offers repairs on all brands or all major brands with a "warranty" or a "factory warranty," the advertisement is considered by the Board to be misleading unless the warranty is actually issued by the original manufacturer of the product. In addition, advertising such statements as "We honor all manufacturers' warranties" is considered by the Board to be misleading, unless the seller has access to repairs performed by all manufacturers, for those repairs covered under the original factory warranty.
- O. Advertising a testimonial, endorsement, or any quote by a living person, as well as pictures of any person, is considered by the Board to be misleading, unless the advertisement (1) contains the actual full name of the person directly following the quote or directly under any picture, (2) the person's city and state of residence is listed for any person who is not a nationally recognized celebrity, and (3) there is a statement that the person in question did/did not receive any compensation for making the testimonial/endorsement. In addition, the actual quote by a person who is not a nationally recognized celebrity must be hand-written, signed, and

dated by the person making the testimonial or endorsement, and it must be retained by the seller for future inspection for a period of at least three years. Furthermore, when an advertised endorsement is in any format, including a picture, logo, or credential, that indicates or suggests some form of exclusive "membership," and such membership has actually been paid for or is owned by the advertiser/seller, the endorsement is considered by the Board to be deceptive.

- P. Advertising such wording as "Comprehensive or Complete Hearing Evaluations, Examinations, or Assessments" is considered by the Board to be misleading if the seller is not a N.C. licensed audiologist or physician who is qualified, within their scope of practice, to offer a "comprehensive or complete" hearing evaluation. Likewise, advertising "Comprehensive or Complete Diagnostic Evaluations, Examinations, or Assessments" has multiple meanings and should not appear in an advertisement. Furthermore, advertising such wording as "Comprehensive Hearing Check-Up" or "Complete Hearing Screenings" is considered by the Board to be contradictory and should not appear in an advertisement.
- Q. Advertisements referencing any services to be provided by a "guest" consultant, factory representative, or any other individual who is not licensed or apprenticed under G.S. 93D, except a licensed physician, would be considered by the Board to be misleading if the advertisement stated or implied that the "guest" was going to (1) interpret an audiogram or other test results, (2) test hearing, (3) perform an otoscopic inspection or make an ear impression, and/or (4) recommend a specific product based on the individual consumer's hearing loss and/or test results.

IV. Readability of Printed Advertisements.

Failure to provide information, in any printed form of advertisement, as a result of the use of any text or image that is not readable without the use of magnification by the average adult, with or without wearing glasses, shall be considered by the Board to be deceptive.

V. Advertising Mistakes.

From time to time, sellers, advertising agencies, or the media make errors in their advertising. For example, a newspaper may mistakenly print the wrong price for an advertised product, or a seller may submit the wrong picture to accompany a written advertisement. Regardless of who is responsible for the error, the effect on consumers is the same. Consumers are encouraged to come to the seller's office to purchase the described product at the advertised price. The N.C. Attorney General's Office has issued the following statement as a standard for fair and equitable resolution of such disputes:

IF THE MISTAKE IN THE ADVERTISEMENT IS OBVIOUS - IN OTHER WORDS, IF A REASONABLE CONSUMER WOULD REALIZE THAT THE PRODUCT DESCRIBED COULD NOT REALISTICALLY BE PURCHASED AT THE ADVERTISED PRICE, THEN THE SELLER

NEED NOT FEEL OBLIGED TO SELL THE PRODUCT IN CONFORMITY WITH THE AD. HOWEVER, IF A REASONABLE CONSUMER IS LIKELY TO BELIEVE THAT THE PRODUCT DESCRIBED IN THE ADVERTISEMENT WILL BE SOLD AT THE ADVERTISED PRICE, THEN THE SELLER SHOULD SELL THE DESCRIBED PRODUCT AT THE ADVERTISED PRICE TO A CONSUMER WHO COMES INTO YOUR OFFICE IN RESPONSE TO THE AD.

For example, suppose that a new hearing aid is normally priced at \$995.00. The advertiser wishes to place it on sale for \$875.00. The newspaper, however, leaves out the first digit from the ad, and the price appears as \$75.00. A reasonable consumer should realize that a mistake has been made, and the seller need not feel bound by the mistaken ad. On the other hand, suppose the advertiser wishes to sell a digital In-The-Ear aid for \$1,650.00. Mistakenly, an In-The-Canal hearing aid is prominently pictured in the ad along with the correct price for the digital In-The-Ear aid (i.e., \$1,650.00), and the wording "In-The-Ear" does not appear in the advertisement. Because a reasonable consumer is likely to think the ad is correct, the seller should sell the In-The-Canal model at the advertised price to consumers who come in response to the ad, until the error has been corrected.

VI. Defamation of Competitors.

Per the Board's rules, "[i]t shall be unethical to defame competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, or questioned credit standing or competency, or to falsely disparage the products of competitors in any respect." Furthermore, advertising any superlative statement such as "the most advanced equipment in the area," "the best products," "unmatched service," or "superior training" is considered by the Board to be misleading, unless the statement is factual and documented through the use of a local survey, made before the advertisement is published/distributed, which is dated and retained for future inspection for a period of at least three years.

VII. Use of Credentials and Certifications.

Advertising titles and/or credentials is misleading if the licensee or apprentice is not able to (1) verify that they hold a "current" credential/certification, and (2) document the credentialing or certification process that qualified the individual to use the particular title/credential in question. Likewise, the term "Board Certified" is considered by this Board to be misleading, unless (1) there is an official agency or organization which has a recognized "Board" that conferred the certification upon the individual using this title, (2) the area/field/type of certification is listed in the advertisement, and (3) the name of the Board is listed directly after or under the term "Board Certified." Note: Licensees and apprentices regulated by this Board are not "Board Certified," and the N.C. Board of Examiners for Speech and Language Pathologists and Audiologists does not confer the title "Board Certified."

It should be noted that, in order to identify to the Board an individual's legitimate use of a newly earned title/credential, all licensees and apprentices should submit written documentation to the Board Office within 10 working days following the issuance of the new title/credential. The Board annually requests that all titles/credentials currently used by a licensee to offer services to the public be listed on the license renewal form.

VIII. Conclusion.

These guidelines are not intended to be exhaustive and do not address every possible advertising scenario or every possible type of complaint received by the Board. The guidelines contained herein should (1) provide basic guidance for acceptable advertising practices, (2) place emphasis on the areas for which this profession is currently experiencing an increasing number of complaints, (3) clarify those advertising practices that are misleading and declared to be unethical by the Board, and (4) ensure that all licensees and apprentices understand that the North Carolina State Hearing Aid Dealers and Fitters Board will apply strict enforcement of accurate and truthful advertising practices.

SUMMARY OF FREQUENT ADVERTISING PROBLEMS

1. New and/or improved: A product should no longer be called "new" and/or "improved" after twelve months from its introduction.
2. Value: An item that is routinely "free" cannot be advertised as having any value. Example: Advertising "Free, clean and check, valued at \$15.00" when a clean and check is always provided at no charge.
3. Elsewhere: Before publishing/distributing an advertisement that refers to prices elsewhere, it is necessary to complete a local price survey that is dated and retained for future inspection for a period of at least three years. Example: "Free hearing test that could cost up to \$50.00 elsewhere."
4. Limited time offers: If an item is offered at a reference price or free of charge "for a limited time only," it must not regularly be available at that reference price or free of charge.
5. Lifetime: References to lifetime offers must identify the applicable "lifetime," and must contain a disclaimer.
6. Cheapest: Before publishing/distributing an ad identifying an item as the "cheapest" or "best price," it is necessary to conduct a local price survey that is dated and retained for future inspection for a period of at least three years.
7. Price comparisons: Prior to publishing/distributing an advertisement comparing or referring to competitors' prices, it is necessary to conduct a local price survey that is dated and retained for future inspection for a period of at least three years.
8. Manufacturer's suggested retail price: Manufacturers may not have suggested retail prices. It is necessary to have documentation to prove that such a price exists before publishing/distributing the advertisement.
9. Special or reduced prices: At least fifty percent of the same items offered at a special or reduced price must have been sold within the last six months, for more than the "sale" price.
10. Specials: Special offers that are repeated weekly or monthly are no longer deemed as "special" and become regular and routine. Such advertising has been deemed misleading and unethical.
11. All brands/all major brands: A licensee or apprentice cannot advertise that they sell, or can provide repairs with a "warranty" or "factory warranty," for all brands/all major brands when all brands/all major brands would not be available for demonstration and purchase, or the repairs would not be made by the original manufacturer of the product.