

## **Chapter 93D.**

### **North Carolina State Hearing Aid Dealers and Fitters Board.**

#### **§ 93D-1. Definitions.**

For the purposes of this Chapter:

- (1) "Board" shall mean the North Carolina State Hearing Aid Dealers and Fitters Board.
- (2) "Fitting and selling hearing aids" shall mean the evaluation or measurement of the powers or range of human hearing by means of an audiometer or by other means and the consequent selection or adaptation or sale or rental of hearing aids intended to compensate for hearing loss including the making of an impression of the ear.
- (3) "Hearing aid" shall mean any instrument or device designed for or represented as aiding, improving or compensating for defective human hearing and any parts, attachments or accessories of such an instrument or device. (1969, c. 999.)

#### **§ 93D-2. Fitting and selling without license unlawful.**

It shall be unlawful for any person to fit or sell hearing aids unless he has first obtained a license from the North Carolina State Hearing Aid Dealers and Fitters Board or is an apprentice working under the supervision of a board licensee. (1969, c. 999; 1981, c. 601, s. 1.)

#### **§ 93D-3. North Carolina State Hearing Aid Dealers and Fitters Board; composition, organization, duties and compensation.**

(a) There is hereby created a board whose duty it shall be to carry out the purposes and enforce the provisions of this Chapter, and which shall be known as the "North Carolina State Hearing Aid Dealers and Fitters Board." The Board shall be composed of seven members. Four members who have been actively engaged in the fitting and selling of hearing aids for three years shall be appointed by the Governor. These initial appointments are for the following terms: one for one year, one for two years, one for three years and one for four years. All appointments made on or after July 1, 1981, shall be for terms of three years.

One member shall be appointed by the Governor who shall be a physician practicing in North Carolina, preferably specializing in the field of otolaryngology. All appointments shall be for terms of three years.

One member shall be appointed by the Governor from a list of two audiologists residing in North Carolina, which list shall be compiled by the North Carolina Speech and Hearing Association. This initial appointment shall be for a term of three years. All appointments made on or after July 1, 1981, shall be for a term of three years.

One member shall be appointed by the Governor to represent the interest of the public at large. This member shall have no ties to the hearing aid business nor shall he be an

audiologist. The Governor shall appoint the public member not later than July 1, 1981, to serve a term of three years.

All Board members serving on June 30, 1981, shall be eligible to complete their respective terms. No member appointed to a term on or after July 1, 1981, shall serve more than two complete consecutive terms.

Vacancies on the Board shall be filled by appointment of the Governor. Appointees shall serve the unexpired term of their predecessor in office and must be appointed from the same category as their predecessor in office. The members of the Board, before entering their duties, shall respectively take all oaths taken and prescribed for other State officers, in the manner provided by law, which oaths shall be filed in the office of the Secretary of State, and the Board shall have a common seal.

(b) The Board shall choose, at the first regular meeting and annually thereafter, one of its members to serve as president and one as secretary and treasurer. A majority of the Board shall constitute a quorum. The Board shall meet at least once a year, the time and place of the annual meeting and any special meetings to be designated by the president. The secretary and treasurer of the Board shall keep a full record of its proceedings, including a current list of all licensees, which shall at all reasonable times be open to public inspection. The Board is authorized to employ an executive secretary and to provide such assistance as may be required to enable said Board to properly perform its duties.

(c) The Board shall:

- (1) Authorize all disbursements necessary to carry out the provisions of this Chapter;
- (2) Supervise and administer qualifying examinations to test and determine the knowledge and proficiency of applicants for licenses;
- (3) Issue licenses to qualified persons who apply to the Board;
- (4) Obtain audiometric equipment and facilities necessary to carry out the examination of applicants for licenses;
- (5) Suspend or revoke licenses pursuant to this Chapter;
- (6) Make and publish rules, including a code of ethics, that are necessary and proper to regulate the fitting and selling of hearing aids and to carry out the provisions of this Chapter;
- (7) Exercise jurisdiction over the hearing of complaints, charges of malpractice including corrupt or unprofessional conduct, and allegations of violations of the Board's rules that are made against any fitter and seller of hearing aids in North Carolina;
- (8) Require the periodic inspection and calibration of audiometric testing equipment of persons who are fitting and selling hearing aids;
- (9) In connection with any matter within the jurisdiction of the Board, summon and subpoena and examine witnesses under oath and to compel their attendance and the production of books, papers, or other documents or writings deemed by the Board to be necessary or material to the inquiry. Each summons or subpoena shall be issued under the

hand of the secretary and treasurer or the president of the Board and shall have the force and effect of a summons or subpoena issued by a court of record. Any witness who shall refuse or neglect to appear in obedience thereto or to testify or produce books, papers, or other documents or writings required shall be liable to contempt charges. The Board shall pay to any witness subpoenaed before it the fees and per diem as paid witnesses in civil actions in the superior court of the county where such hearing is held;

- (10) Inform the Attorney General of any information or knowledge it acquires regarding any "price-fixing" activity whatsoever in connection with the sales and service of hearing aids;
- (11) Establish and enforce rules to guarantee that a full refund will be made by the seller of a hearing aid to the purchaser when presented with a written medical opinion of an otolaryngologist that the purchaser's hearing cannot be improved by the use of a hearing aid;
- (12) Fund, establish, conduct, approve and sponsor instructional programs for registered apprentices and for persons who hold a license as well as for persons interested in obtaining adequate instruction or programs of study to qualify them for registration to the extent that the Board deems such instructional programs to be beneficial or necessary;
- (13) Register persons serving as apprentices as set forth in G.S. 93D-9;
- (14) Have the power to set and collect fees in accordance with Chapter 150B of the General Statutes for the items listed in this subdivision and for other items for which this Chapter gives the Board the authority to set a fee:
  - a. For a continuing education make-up class provided by the Board, a fee not to exceed fifty dollars (\$50.00) per person for each day of instruction. The Board may not offer a make-up class that is longer than two days;
  - b. For a license examination preparation course provided by the Board, a fee not to exceed fifty dollars (\$50.00) per person for each day of instruction. The Board may not offer an examination preparation course that is longer than three days;
  - c. For approval of a continuing education program provider, a fee not to exceed forty dollars (\$40.00);
  - d. For verifying and recording attendance at a continuing education program not provided by the Board, a fee not to exceed fifteen dollars (\$15.00) per licensee per program;
  - e. For providing a voluntary two-day apprentice training workshop, a fee not to exceed one hundred dollars (\$100.00) per person, and for providing a three-day voluntary apprentice training workshop, a fee not to exceed one hundred fifty dollars (\$150.00) per person;

- f. For administering an examination, a fee of three hundred dollars (\$300.00); and
- (15) Adopt annually a balanced budget prior to the beginning of its fiscal year, against which expenditures shall be reviewed throughout the fiscal year to ensure that expenditures during the year do not exceed receipts for that year plus amounts held by the Board in reserve. Except for monies from charges for photocopying and similar charges, the Board's receipts shall consist of and be limited to funds derived from fees expressly authorized by law.

(d) Members of the Board shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5. The expenses shall be paid from the fees and assessments received by the Board under the provisions of this Chapter. No part of these expenses or any other expenses of the Board, in any manner whatsoever, shall be paid out of the State treasury. All moneys received in excess of expense allowance and mileage, as above provided, shall be held by the secretary-treasurer as a special fund for meeting other expenses of the Board and carrying out the provisions of this Chapter.

The Board shall make an annual report of its proceedings in accordance with G.S. 93B-2. (1969, c. 999; 1973, c. 1331, s. 3; c. 1345, ss. 1, 2; 1975, c. 550, s. 1; 1981, c. 601, ss. 2-5; 1987, c. 827, s. 80; 1991, c. 592, s. 1; 2007-406, ss. 1, 2.)

#### **§ 93D-4. Board may enjoin illegal practices.**

The Board may, if it finds that any person is violating any of the provisions of this Chapter, apply to superior court for a temporary or permanent restraining order or injunction to restrain such persons from continuing such illegal practices. If upon application, it appears to the court that such person has violated or is violating the provisions of this Chapter, the court shall issue an order restraining the sale or fitting of hearing aids or other conduct in violation of this Chapter. All such actions by the Board for injunctive relief shall be governed by the Rules of Civil Procedure and Article 37, Chapter 1 of the General Statutes; provided, that injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under the provisions of this Chapter. Actions under this section shall be commenced in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the respondent resides or has his principal place of business. (1969, c. 999; 1981, c. 601, s. 6; 1987 (Reg. Sess., 1988), c. 1037, s. 105.)

#### **§ 93D-5. Requirements for registration; examinations; apprentice licenses.**

(a) No person shall begin the fitting and selling of hearing aids in this State unless the person has been issued a license by the Board or is an apprentice working under the supervision of a licensee. Except as hereinafter provided, each applicant for a license shall pay a fee set by the Board, not to exceed two hundred fifty dollars (\$250.00), which fee may be prorated by the Board, and shall show to the satisfaction of the Board that the applicant:

- (1) Is a person of good moral character.

- (2) Is 18 years of age or older.
- (3) Has an education equivalent to a four-year course in an accredited high school.
- (4) Repealed by Session Laws 2007-406, s. 3, effective August 21, 2007.

(b) Except as hereinafter provided, no license shall be issued to a person until he has successfully passed a qualifying examination administered by the Board.

(c) No license shall be issued to any person until the person has served as an apprentice as set forth in G.S. 93D-9 for a period of at least one year; provided, that this subsection shall not apply to those persons qualified under G.S. 93D-6 nor to those persons holding a license in Audiology issued by the North Carolina Board of Examiners for Speech and Language Pathologist and Audiologist who have undergone 250 hours of supervised activity fitting and selling hearing aids under the direct supervision of a licensed hearing aid dispenser approved by the Board, or have met the licensure requirements under Article 22 of Chapter 90 of the General Statutes and have worked full time for one year fitting and selling hearing aids in the office of and under the direct supervision of an otolaryngologist and have participated in 250 hours of Board-supervised, continuing professional education in fitting hearing aids. (1969, c. 999; 1975, c. 550, s. 2; 1981, c. 601, ss. 7, 8; c. 990, s. 1; 1991, c. 592, s. 2; 2007-406, s. 3.)

#### **§ 93D-6. Persons selling in other jurisdictions.**

Whenever the Board determines that another state or jurisdiction has requirements at least equivalent to those in effect pursuant to this Chapter for the fitting and selling of hearing aids, and that such state or jurisdiction has a program at least equivalent to the program for determining whether applicants pursuant to this Chapter are qualified to sell and fit hearing aids, the Board may issue, but is not compelled to issue, licenses to applicants therefor who hold current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicant shall be required to submit to any examination or other procedure required by G.S. 93D-5, but shall be required to pay an application fee to the Board in an amount set by the Board, not to exceed one hundred fifty dollars (\$150.00). Such applicant must have one full year of experience satisfactory to the Board before issuance of the license. (1969, c. 999; 1971, c. 1093, s. 2; 1981, c. 990, s. 2; 1991, c. 592, s. 3; 1991 (Reg. Sess., 1992), c. 1030, s. 24.)

#### **§ 93D-7. Statements of sale.**

Every person fitting and selling a hearing aid, be it new or used, in the State of North Carolina, at the time of delivery of the hearing aid shall render to the user and/or purchaser a statement of sale to include the following:

- (1) Date of delivery
- (2) Condition of hearing aid; new, used, reconditioned
- (3) Hearing aid identification number
- (4) Name of manufacturer
- (5) Price of hearing aid
- (6) Charge for fitting and service

- (7) Name of dealer and/or fitter
- (8) Signature of customer. (1969, c. 999; 1973, c. 1345, s. 3.)

**§ 93D-8. Examination of applicants; issue of license certificate.**

(a) Every applicant for a license who is notified by the Board that he has fulfilled the requirements of G.S. 93D-5(a), except those making application pursuant to G.S. 93D-6, shall appear at a time, place and before such persons as the Board may designate, to be examined by written and practical tests in order to demonstrate that he is qualified for the fitting and selling of hearing aids. The Board shall give one examination of the type prescribed herein each year at a duly prescribed time and place, which shall be publicized for at least 90 days in advance. Additional examinations may be given at the discretion of the Board. The examination provided in this section shall not include questions requiring a medical or surgical education but shall consist of:

- (1) Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:
  - a. The basic physics of sound,
  - b. The human hearing mechanism, including the science of hearing and the cause and rehabilitation of abnormal hearing and hearing disorders, and
  - c. The structure and function of hearing aids.
- (2) Tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:
  - a. Pure tone audiometry, including air conduction testing and bone conduction testing,
  - b. Live voice and recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing,
  - c. Effective masking,
  - d. Recording and evaluation of audiograms and speech audiometry to determine hearing aid candidacy,
  - e. Selection and adaption of hearing aids and testing of hearing aids,
  - f. Taking earmold impressions, and
  - g. Such other skills as may be required for the fitting of hearing aids in the opinion of the Board.

(b) Upon payment of a fee set by the Board, not to exceed twenty-five dollars (\$25.00), the Board shall issue a license certificate to each applicant who successfully passes the examination. (1969, c. 999; 1981, c. 601, s. 9; 1991, c. 592, s. 4.)

**§ 93D-9. Registration of apprentices.**

(a) Any person age 17 or older may apply to the Board for registration as an apprentice. Each applicant must be sponsored by a hearing aid dealer and fitter licensed by the Board.

(b) Upon receiving an application accompanied by a fee in an amount set by the Board, not to exceed one hundred dollars (\$100.00), the Board may register the applicant as an apprentice, which shall entitle the applicant to fit and sell hearing aids under the supervision of a holder of a regular license.

(c) No applicant shall be registered as an apprentice by the Board under this section unless the applicant shows to the satisfaction of the Board that the applicant is or will be supervised and trained by a hearing aid fitter and seller who holds a license.

(d) If a person 18 years of age or older who is registered as an apprentice under this section does not take the next succeeding examination given after a minimum of one full year of apprenticeship, the person's apprentice registration shall not be renewed, except for good cause shown to the satisfaction of the Board.

(e) If a person who is registered as an apprentice takes and fails to pass the next succeeding examination given after one full year of apprenticeship, the Board may renew the apprenticeship license for a period of time to end 30 days after the results of the examination given next after the date of renewal of said registration. The fee for renewal of apprenticeship registration shall be set by the Board at an amount not to exceed one hundred fifty dollars (\$150.00).

(f) The Board shall adopt rules implementing initial and renewal registration of apprentices. (1969, c. 999; 1973, c. 1345, s. 4; 1981, c. 601, ss. 10-15; c. 990, s. 3; 1991, c. 592, s. 5.)

#### **§ 93D-10. Registration and notice.**

The Board shall register each apprentice and each person to whom it grants a license. The secretary-treasurer of the Board shall keep a record of the place of business of all licensees and apprentices. Any notice required to be given by the Board to a person holding a license or apprenticeship registration may be given by mailing to him at the last address received by the Board from him. (1969, c. 999; 1981, c. 601, s. 16.)

#### **§ 93D-11. Annual fees; failure to pay; expiration of license; occupational instruction courses.**

Every licensed person who engages in the fitting and selling of hearing aids shall pay to the Board an annual license renewal fee in an amount set by the Board, not to exceed two hundred fifty dollars (\$250.00). The payment shall be made prior to the first day of April in each year. In case of default in payment the license shall expire 30 days after notice by the secretary-treasurer to the last known address of the licensee by registered mail, certified mail, or in a manner provided by G.S. 1A-1, Rule 4(j)(1)d. The Board may reinstate an expired license upon the showing of good cause for late payment of fees, upon payment of said fees within 60 days after expiration of the license, and upon the further payment of a late penalty of twenty-five dollars (\$25.00). After 60 days after the expiration date, the Board may reinstate the license for good cause shown upon application for reinstatement and payment of a late penalty of fifty dollars (\$50.00) and the renewal fee. The Board may require all licensees to successfully attend and complete a course or courses of occupational instruction funded, conducted or approved or

sponsored by the Board on an annual basis as a condition to any license renewal and evidence of satisfactory attendance and completion of any such course or courses shall be provided the Board by the licensee. (1969, c. 999; 1975, c. 550, s. 3; 1979, c. 848; 1981, c. 601, s. 17; c. 990, s. 4; 1991, c. 592, s. 6; 2007-406, s. 4.)

**§ 93D-12. License to be displayed at office.**

Every person to whom a license or apprenticeship registration is granted shall display the same in a conspicuous part of his office wherein the fitting and selling of hearing aids is conducted, or shall have a copy of such license or apprenticeship registration on his person and exhibit the same upon request when fitting or selling hearing aids outside of his office. (1969, c. 999; 1981, c. 601, s. 18.)

**§ 93D-13. Discipline, suspension, revocation of licenses; records.**

(a) The Board may in its discretion administer the punishment of private reprimand, suspension of license for a fixed period or revocation of license as the case may warrant in their judgment for any violation of the rules and regulations of the Board or for any of the following causes:

- (1) Repealed by Session Laws 2007-406, s. 5, effective August 21, 2007.
- (2) Gross incompetence.
- (3) Inability to perform the functions for which the person is licensed or substantial impairment of the person's ability to perform the functions for which the person is licensed by reason of physical or mental disability.
- (4) Commission of a criminal offense indicating professional unfitness.
- (5) The use of a false name or alias in his or her business.
- (6) Conduct involving willful deceit.
- (7) Conduct involving fraud or any other business conduct involving moral turpitude.
- (8) Advertising of a character or nature tending to deceive or mislead the public.
- (9) Advertising declared to be unethical by the Board or prohibited by the code of ethics established by the Board.
- (10) Permitting another person to use his or her license.
- (10a) Failure by a licensee to properly supervise an apprentice under his or her supervision.
- (11) For violating any of the provisions of this Chapter.

(b) Board action in revoking or suspending a license shall be in accordance with Chapter 150B of the General Statutes. Any person whose license has been suspended for any of the grounds or reasons herein set forth, may, after the expiration of 90 days but within two years, apply to the Board to have the same reissued; upon a showing satisfactory to the Board that reissuance will not endanger the public health and welfare, the Board may reissue a license to such person for a fee set by the Board, not to exceed

two hundred dollars (\$200.00). If application is made subsequent to two years from date of suspension, reissuance shall be in accordance with the provisions of G.S. 93D-8.

(c) Records, papers, and other documents containing information collected or compiled by or on behalf of the Board as a result of an investigation, inquiry, or interview conducted in connection with registration, licensure, or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of charges, notice of hearing, or decision rendered by the Board in connection with a hearing is a public record. However, information that identifies a consumer who has not consented to the public disclosure of services rendered to the consumer by a person registered or licensed under this Chapter shall be deleted from the public record. All other records, papers, and documents containing information collected or compiled by or on behalf of the Board shall be public records, provided that any information that identifies a consumer who has not consented to the public disclosure of services rendered to the consumer is deleted. (1969, c. 999; 1973, c. 1331, s. 3; 1981, c. 601, s. 19; c. 990, s. 5; 1987, c. 827, s. 1; 1991, c. 592, s. 7; 2007-406, s. 5.)

#### **§ 93D-14. Persons not affected.**

This Chapter shall not prevent any person from engaging in the measuring of human hearing for the purpose of selection of hearing aids, provided such person or organization employing such person does not sell hearing aids or accessories thereto, nor shall this Chapter apply to any physician licensed to practice medicine or surgery in the State of North Carolina. Nothing in this Chapter shall permit a licensee hereunder to perform any practices or services set forth in Article 17 of Chapter 90 of the General Statutes of North Carolina. (1969, c. 999.)

#### **§ 93D-15. Violation of Chapter.**

Any person who violates any of the provisions of this Chapter and any person who holds himself out to the public as a fitter and seller of hearing aids without having first obtained a license or apprenticeship registration as provided for herein shall be deemed guilty of a Class 2 misdemeanor. (1969, c. 999; 1981, c. 601, s. 20; 1993, c. 539, s. 660; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 93D-16. Severability.**

If any provision of the Chapter shall be declared unconstitutional or invalid, such invalidity shall not affect other provisions or the application of the Chapter which can be given effect without the invalid provisions. To this end, the provisions of this Chapter are declared to be severable. (1969, c. 999.)