

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

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JUN 29 2 32 PM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: W. Va. Board of Hearing Aid Dealers TITLE NUMBER: 8

RULE TYPE: Legislative CITE AUTHORITY: §30-26 et seq.

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 1

TITLE OF RULE BEING AMENDED: Regulations Governing the West Virginia
Board of Hearing Aid Dealers

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

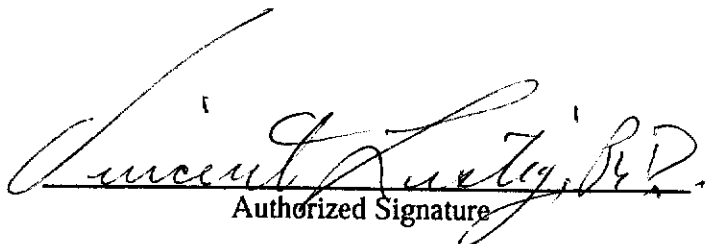
IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH
ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS
COMMENT PERIOD WILL END ON July 31 August 30, 2000 AT 4:00 pm ONLY WRITTEN
COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Board of Hearing Aid Dealers

701 Jefferson Road

South Charleston, WV 25309

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

BRIEF SUMMARY

Title 8 Legislative Rules Series 1 - originally filed April 30, 1986, governing the West Virginia Board of Hearing Aid Dealers.

Series 1 to be amended as follows: Delete language in §8-1-12, Complaint Procedures, with notation of reference to new rules being proposed added -

TITLE 8, SERIES 2, CONTESTED CASE HEARING PROCEDURE

TITLE 8, SERIES 3, DISCIPLINARY AND COMPLAINT PROCEDURES

□
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 8-1 Regulations Governing the W. Va. Board of Hearing Aid Dealers

Type of Rule: X Legislative Interpretive Procedural

Agency: W. Va. Board of Hearing Aid Dealers

Address: 701 Jefferson Road

South Charleston, WV 25309

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

The rule should have no fiscal implications.

3. Objectives of These Rules:

To delete language in 8-1-12 and replace with reference to two new rules being proposed - 8-1-2 and 8-1-3.

Rule Title: Title 8-1 Regulations governing the W. Va. Board of Hearing Aid
Dealers

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None

C. Economic Impact on Citizens/Public at Large.

None

Date: June 29, 2000

Signature of Agency Head or Authorized Representative:

Vincent Lustig, R.D.

FILED

**TITLE 8
LEGISLATIVE RULES
WEST VIRGINIA BOARD OF HEARING AID DEALERS**

JUN 29 2 32 PM '00

**SERIES 1
REGULATIONS GOVERNING THE WEST VIRGINIA
BOARD OF HEARING AID DEALERS**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§8-1-1. General.

1.1. Scope. -- These legislative regulations establish general rules governing the West Virginia Board of Hearing Aid Dealers.

1.2. Authority. -- W. Va. Code §30-26 et seq.

1.3. Filing Date. -- June 29, 2000

1.4. Effective Date. --

§8-1-2. Duties And Powers Of The Board.

2.1. The duties and powers of the Board are defined in article twenty-six, chapter thirty of the West Virginia Code and are hereby made a part of these regulations.

2.2. It shall be the duty of this Board to carry out the provisions of this article to the best of its ability.

2.3. Meetings of the Board.

(a) The Board shall hold at least one (1) annual meeting during May of each year at the place and time designated by the chairman for the purpose of electing a chairman and vice chairman. New officers shall take office on July 1 of that year.

(b) Meetings of the Board may be called by the chairman at any reasonable time. The chairman shall call a meeting at any time upon the request of three (3) or more of the Board members.

(c) Each Board member shall be notified by mail of the time and place of any meeting at least two (2) weeks prior to the date on which the meeting will be held. Notification of special or emergency meetings may be by the most expedient means. An agenda setting forth the subjects and areas to be discussed will normally be sent to each member prior to the meeting date. The West Virginia Department of Health shall be duly notified of all meetings of the Board.

(d) Robert's Rules of Order will be used as the guide to business proceedings.

(e) All meetings shall be open to the public unless otherwise designated by the Board.

2.4. All forms, revisions to license and/or trainee permit format and other printed material necessary for the administration of this licensing agency shall be approved by the Board.

2.5. No Board member shall act officially for the Board or convey the impression to others that he is acting officially for the Board without prior authorization from the Board.

§8-1-3. Duties Of The Chairman.

3.1. He shall designate the time and place of meetings on his own authority or at the direction of a majority of the Board members.

3.2. He shall preside at all meetings, or, in case of his inability to attend any meeting, the vice chairman shall preside. In the event the vice chairman is not available, the Board members present shall designate a chairman to serve for the meeting.

3.3. He will exercise general supervision of the affairs of the Board and shall have the usual powers of such office and any other powers and duties as the Board may direct.

3.4. He shall sign all licenses, permits and duplicates issued by the Board.

3.5. He shall sign the official minutes of the proceedings of the Board which shall remain on permanent file.

§8-1-4. Duties Of The Vice Chairman.

4.1. He shall assist the chairman in carrying out his duties when requested.

4.2. He shall preside over meetings in the absence of the chairman.

4.3. He shall act in behalf of the chairman in cases of extended incapacitation or long absence of the chairman.

§8-1-5. Duties Of The Secretary.

5.1. He shall keep the minutes of the proceedings at Board meetings and the records of the Board.

5.2. He shall have custody of all fees received by the Board and shall be responsible for the transfer of such funds to the State Treasurer.

5.3. He shall receive, accept responsibility for, issue (with Board approval) and account to the auditor of the state for all licenses, trainee permits and duplicates of certificates handled by the Board.

5.4. He shall be responsible, with the approval of the Board, for the preparation and submission of the annual budget of the Board.

5.5. He shall be responsible for the overall administration of the Board's office and shall render administrative services to Board members and report these activities to the Board.

§8-1-6. Application For Licenses And Permits.

6.1. Every person requesting an application for a license or trainee permit shall be furnished the necessary forms, a copy of the West Virginia law pertaining to the licensing of hearing aid dealers and fitters, a copy of any waiver forms prescribed by the Board and such other information or questionnaires as the Board may deem desirable.

6.2. The application forms shall be designed to provide the information necessary to satisfy itself that all requirements pertaining to the West Virginia law are being fulfilled.

6.3. All applications shall be signed by the applicant and sworn by him before a notary public. In the case of a trainee permit, the supervisor's name, address, license number and signature shall appear.

6.4. The application shall be accompanied by a money order or certified check.

6.5. Failure to complete all forms and provide all information may be just cause for rejection of the application by the Board and cause the application to be returned to the applicant.

6.6. Any person knowingly furnishing false information in such application shall be denied the right to the examination, or if the applicant has already been licensed before the falsification of such information has been made known to the Board, such license or permit holder shall be subject to suspension or revocation and the Board may forward all pertinent documents to the appropriate prosecuting attorney for possible prosecution for fraud and/or perjury.

§8-1-7. Issuance Of Licenses And Permits.

7.1. Until January 14, 1974, the Board shall issue to each applicant, within thirty (30) days of receipt of a properly completed application and payment of fifty dollars (\$50.00), a hearing aid dealer's or fitter's license if the applicant, if an individual:

(a) Meets the standards set forth in West Virginia Code subsections (1) through (5), section five, article twenty-six, chapter thirty;

(b) Has actively engaged on a full-time basis in the practice of dealing in or fitting hearing aids for at least three (3) years immediately preceding the date of application for such license.

7.2. An individual who has actively engaged in the practice of dealing in or fitting hearing aids for less than three (3) years immediately preceding the date of application shall, upon receipt of a properly completed application and payment of fifty dollars (\$50.00), be issued a temporary license as a dealer or fitter of hearing aids. Such temporary license shall in no event be in effect for more than twelve (12) months after the date of its issuance. Within such twelve (12) month period, if such individual shall successfully have passed a qualifying examination, he shall be issued a license by the Board upon the payment of an additional fee of twenty dollars (\$20.00).

7.3. If the applicant is a firm, partnership, trust, corporation, association or other like organization, the application, in addition to such information as the Board requires, shall be accompanied by an application for license for such person who engages in the dealing in or fitting of hearing aids. No such partnership, trust, association or corporation thus licensed shall permit any unlicensed person to sell or fit hearing aids.

7.4. Each person engaged in training to become a licensed hearing aid dealer or fitter shall apply to the Board for a hearing aid dealer's and fitter's trainee permit. The Board shall issue to each applicant, within thirty (30) days of receipt of a properly executed application and payment of twenty-five dollars (\$25.00), a trainee permit if such applicant is:

(a) A person of good moral character and has never been convicted nor is presently under indictment for a crime involving moral turpitude;

(b) Is eighteen (18) years of age or older;

(c) Has an education equivalent to a four (4) year course in an accredited high school;

(d) Is free of chronic infectious or contagious disease;
and

(e) Will engage in training to become a hearing aid dealer or fitter on a full-time basis.

Each trainee permit issued by the Board expires one (1) year from the date it was first issued, and may be renewed once if the trainee has not successfully completed the qualifying examination for licensing as a hearing aid dealer or fitter before the expiration date of such permit. The Board shall issue a renewal permit to each applicant upon the receipt of a properly completed application and the payment of fifty dollars (\$50.00):

Provided, That the trainee so applying has taken the qualifying examination at least once during this first year and shall have attained a grade of at least fifty percent (50%) in the written portion of the examination and at least seventy percent (70%) in the performance test.

7.5. No person holding a trainee permit shall engage in the practice of dealing in or fitting of hearing aids except while under the direct supervision of a specified licensed hearing aid dealer or fitter. Such supervisor and the holder of the temporary trainee permit shall work in the same office and shall continue to so work so long as that temporary trainee permit shall endure. No licensed hearing aid dealer or fitter may supervise more than one (1) trainee at any time. The supervisor may be held responsible to the Board for any violations of the law regulating hearing aid dealers and fitters, or the regulations of the Board.

7.6. Each trainee permit is valid only for the trainee in whose name it is issued and for his specific sponsor unless otherwise approved by the Board.

7.7. A trainee shall present himself for examination after six (6) months from the date of the issuance of his permit.

7.8. After January 14, 1974, no person shall be issued a hearing aid dealer's and fitter's license unless such person has successfully taken and passed a qualifying examination as specified and administered by the Board.

7.9. The Board shall require any applicant for license or a trainee's permit to appear before it in person for further examination before the issuance of such license or trainee permit, unless otherwise waived.

7.10. Each license expires on the first day of July of each year. Each person engaged in the practice of dealing in or fitting hearing aids who holds a valid license shall apply annually to the Board for renewal of such license. The Board shall issue to such applicant, on payment of forty dollars (\$40.00) on or before August 1, forty-five dollars (\$45.00) after August 1 but before August 31, or fifty dollars (\$50.00) thereafter, a renewal license. No person who applies for renewal of a hearing aid dealer's or fitter's license which has expired shall be required to take any examination as a condition for renewal: **Provided**, That application for renewal is made within two (2) years of the date such license was suspended.

7.11. Responsibility for filing and paying fees for renewals shall rest with the licensee or permit holder, and if reminders of such renewals are sent by the secretary it shall be as courtesy only and shall not be considered a responsibility of the Board.

7.12. Each person who holds a hearing aid dealer's or fitter's license shall display such license in a conspicuous place in his office or place of business at all times. The Board shall issue duplicate copies of a license upon receipt of a properly completed application and payment of one dollar (\$1.00) for each copy requested.

§8-1-8. Reciprocity.

8.1. The Board shall promote reciprocity agreements with those states adjoining the State of West Virginia whose existing legislation permits. Reciprocity will be considered with other states on an individual basis.

8.2. A license issued to an individual, partnership, trust, association or other like organization by another state will not be honored in lieu of a license issued by the State of West Virginia. However, if an individual applicant has completed an examination equal or superior to the West Virginia examination, the Board may waive or partially waive the examination requirements for licensure in the State of West Virginia.

8.3. Violation of laws regulating the fitting and dispensing of hearing aids in any state by an individual, partnership, trust, association or other like organization licensed by this Board, while he is visiting or residing in such other state, shall be considered as unethical conduct by this Board.

§8-1-9. Responsibilities Of The Licensee.

9.1. It shall be the responsibility of each person engaged in dealing in or fitting of hearing aids to be familiar with the requirements of the law regulating such activities in West Virginia and with the regulations of this Board.

9.2. It shall be the responsibility of each person engaged in dealing in or fitting of hearing aids to make timely application for licensure or renewal of license, to complete such forms properly and pay the fees required, and to hold himself available for examination at the times and places designated by the Board. Any information or reminders which the Board may issue shall be regarded as courtesies and shall not diminish the responsibility of the person engaged in dealing in or fitting of hearing aids for performing these functions for himself.

9.3. The licensed dealer or fitter must utilize the results of appropriate test procedures on every individual to whom he sells or fits a hearing aid, and have them on file for a period of seven (7) years. The minimum acceptable test records are:

(a) Pure tone tests, including air and bone conduction with masking where appropriate;

(b) Speech reception threshold expressed in decibels;

(c) Most comfortable level expressed in decibels;

(d) Uncomfortable (tolerance) level expressed in decibels;

(e) Discrimination scores expressed in percentage with indication of the test word used.

9.4. Full responsibility for the compliance of a trainee permit holder shall rest with the licensed supervisor who is registered as the trainee's supervisor at the time any noncompliance may occur. Such supervisor may relieve himself of the responsibility of a trainee by advising the Board by certified mail and explaining fully the circumstances under which he is withdrawing supervisory responsibility of the trainee. Such trainee permit shall be forwarded to the Board by the supervisor.

§8-1-10. Sales Receipt.

10.1. The signature used on the customer's receipt shall be that of the licensed individual or permit holder making the sale and must be the same name under which the license or permit holder is registered with the Board.

10.2. The receipt shall bear the following information:

(a) The name, address and date of birth of the recipient of the hearing aid;

(b) The date of sale;

(c) The name of the manufacturer, the model number and serial number of the instrument sold;

(d) The name, address and telephone number of the licensee's office;

(e) The signature of the licensee or permit holder making the fitting;

(f) The terms of the guarantee or warranty under which the hearing aid is sold. To satisfy this requirement, the receipt may bear the notation "One Year Warranty" or similar expression:

Provided, That the full terms of the warranty by the manufacturer or seller are available for inspection;

(g) If the hearing aid has previously been sold at retail, the receipt shall bear the term "Used" or "Reconditioned," whichever is applicable, with the terms of the guarantee or warranty;

(h) The retail of the aid, any discount or trade-in allowance, the sales or use tax if applicable, the net price of the aid and the terms of the installment or time purchase agreement if applicable. If more convenient, the terms of the installment or time payment contract may be executed on a separate document and attached to the receipt;

(i) The type face for the required information or the handwritten information shall not be less small than the type used in the general body of the receipt.

10.3. For the purpose of interpreting this regulation, the term "New" shall mean a hearing aid which has not been previously sold at retail or used as a clinic demonstrator.

10.4. If all the requirements of this Section 10 of the regulations are contained and/or met in a sales agreement, sales contract or purchase order, such agreement, contract or order shall be considered as a receipt for the purposes of this section.

§8-1-11. Advertising.

11.1. All advertisements to the general public offering replicas, descriptive literature on wearable hearing aids, hearing loss, etc., placed by an individual or organization whose business includes the merchandising of hearing aids shall be considered as advertising hearing aids for sale.

11.2. It is prohibited to advertise a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised mode or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type.

11.3. No advertising shall represent that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, nor shall such advertising use the words "Doctor," "Clinic" or similar words, abbreviations or symbols which tend to connote the medical profession when such use is not accurate.

11.4. No advertising shall use the words "Audiologist," "State Licensed Clinic," "State Registered," "State Certified," "State Approved" or any other term, abbreviation or symbol when it would falsely give the impression that service is being provided by persons holding a degree in audiology, or trained in clinical audiology, or that the licensee's service has been recommended by the state when such is not the case. The terms "Certified Member" or "Certified Hearing Aid Audiologist" may be used when such certification has been granted by the National Hearing Aid Society: **Provided**, That it is made clear that the certification is granted by the National Hearing Aid Society and not by any college, university or agency of the state.

11.5. No advertising shall use a manufacturer's name or trademark which would imply that a relationship exists with that manufacturer when in fact it does not.

11.6. In evaluating advertising, the Board may use all available criteria (such as the regulations of the Federal Trade Commission, the code of ethics of the National Hearing Aid Society, the Hearing Aid Industry Conference and the West Virginia Hearing Aid Society) and may regard a violation of any of these criteria as unethical conduct.

§8-1-12. Complaint Procedures.

~~12.1. The secretary or his designee may attempt to resolve complaints received before referring them to the Board for formal action and shall report these solutions to the Board at the first meeting following the effective date of the solution. The purpose of this regulation is to minimize minor or unsubstantiated complaints which might otherwise clutter the docket. If the secretary or his designee is unable to resolve the complaint to the full satisfaction of both parties, it shall be referred to Board action in accordance with West Virginia Code section sixteen, article twenty-six, chapter thirty.~~

~~12.2. When a license or trainee permit is revoked or suspended, all licenses or permit certificates shall be returned to the Board by certified mail within fifteen (15) days of receipt of notification by the licensee or permit holder.~~

Refer to: TITLE 8, SERIES 2, "CONTESTED CASE HEARING PROCEDURE" and TITLE 8, SERIES 3, "DISCIPLINARY AND COMPLAINT PROCEDURES FOR HEARING-AID DEALERS".

§8-1-13. Definitions.

13.1. A "Permanent Office" shall be defined as an office or place of business which is staffed, open and available to the public during the normal business hours of the community which it serves. The closing of an office for a lunch period not to exceed one (1) hour or of an additional day on an extended holiday weekend will not be regarded as a violation of this regulation, but the rental of desk space, the use of a post office box number as an address or the use of a telephone answering service will not qualify as a permanent office.

13.2. "Reasonable Distance" as used in West Virginia Code subsection (1), section five, article twenty-six, chapter thirty, shall mean within twenty (20) statute miles by highway from the borders of the State of West Virginia. The Board shall be empowered to waive this regulation in a specific instance when, in the sole opinion of the Board, the welfare of the people of West Virginia would be better served by such waiver.

13.3. The statement "The Making of Impressions for Ear molds" shall mean such ear molds to be used in conjunction with a hearing aid.

13.4. The term "Significant Air-Bone Gap" shall mean a differential between air and bone readings of fifteen (15) or more decibels at five hundred (500), one thousand (1,000) and two thousand (2,000) Hertz, ANSI standard.

§8-1-14. Causes For The Suspension Or Revocation Of Licenses Or Permits.

14.1. The Board may suspend or revoke the license or permit if the individual or person holding such license or permit:

(a) Violates any provision of the law regulating the licensure of hearing aid dealers and fitters or any violation of the regulations of the Board of Hearing Aid Dealers;

(b) Procured a license by fraud or deceit practiced upon the Board;

(c) Obtained any fee or made any sale of a hearing aid by fraud or misrepresentation;

(d) Employed any person without a license or trainee permit or an individual whose license was suspended or revoked to engage in the fitting or sale of hearing aids;

(e) Used, caused or promoted the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, grand, insignia or other representation however disseminated or published which is misleading, deceptive or untruthful;

(f) If found by the Board to be a person of habitual intemperance or gross immorality;

(g) Fitted, sold or attempted to fit or sell, a hearing aid to a person without first utilizing the appropriate procedures and instruments required for the proper fitting of hearing aids;

(h) Engaged in the fitting or sale of hearing aids under a false name or alias;

(i) Engaged in the practice of fitting hearing aids while suffering from a contagious or infectious disease;

(j) Permitted another person to use his license;

(k) Is found by the Board to be guilty of gross incompetence or negligence in the fitting and sale of hearing aids.

§8-1-15. Right To Rescind Purchase Agreement.

15.1. In the event that the prospective purchaser of a hearing aid shall exercise his right to rescind the purchase agreement, the fee to be charged for such cancellation shall not exceed one hundred twenty-five dollars (\$125). This fee shall

include all services performed by the dealer and all materials used in the fitting including the fee for the examination, fitting, training, use of the hearing aid, the cost of the earmold if required, any batteries furnished and any pertinent taxes.

The purchase agreement shall contain the following wording in type not smaller than that used in the body of the purchase agreement:

"You have the right to return the hearing aid to the dealer from whom it was purchased at any time within thirty (30) days after receipt of the aid and to rescind the purchase agreement excepting for reasonable fitting and examination charges if the aid does not function properly, cannot be adjusted to correct the deficiency in your hearing or is otherwise unsatisfactory. The aid so returned must be without damage."

15.2. The hearing aid dealer and fitter may elect to meet the return privilege by renting or leasing the aid to the prospective customer. If the dealer so elects, the rental or leasing agreement shall have a fee not to exceed one hundred twenty-five dollars (\$125) and the agreement shall specify that the prospective buyer may rescind the rental or lease agreement at any time by returning the hearing aid in good condition and that he shall incur no further costs by so doing.