



State of West Virginia

BOARD OF HEARING AID DEALERS
DEPARTMENT OF HEALTH
1800 Washington Street, East
Charleston, W. Va. 25305

FILED
1985 NOV 26 PM 1:51

SECRETARY OF STATE

RECEIVED

NOV 15 1985

NOTICE OF AGENCY APPROVAL

ATTY GEN. OFFICE

LEGISLATIVE RULE: Regulations governing the West Virginia
Board of Hearing Aid Dealers

The attached legislative rule constitutes the official rule approved by the West Virginia Board of Hearing Aid Dealers on the 10th day of September, 1985 and filed pursuant to law with the West Virginia Secretary of State and the Legislative Rulemaking Review Committee.


CHAIRMAN



FILED

1985 NOV 26 PM 1:51

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
~~XXXXXXXXXXXXXXXXXX~~
ATTORNEY GENERAL

November 25, 1985

The Honorable Ken Hechler
Secretary of State
State Capitol
Charleston, West Virginia 25305

Re: Regulations governing the West Virginia Board
of Hearing Aid Dealers

Dear Mr. Hechler:

Upon behalf of my client, West Virginia Board of Hearing Aid
Dealers, please be advised as follows:

(a) That a public hearing was scheduled and
held pursuant to a public notice previously filed,
at 1:30 p.m. on October 10, 1985, at the Board's
office at 701 Jefferson Road, South Charleston,
West Virginia;

(b) That no parties aside from representa-
tives of the Board attended;

(c) That no comments were received; and

(d) That no amendments were made to the
proposed rules.

Very truly yours,

PAUL RICHARD HULL
SENIOR ASSISTANT ATTORNEY GENERAL

PRH/jm

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Regulations governing the West Virginia Board of Hearing Aid Dealers.

Type of Rule: x Legislative Interpretive Procedural

Agency W.Va. Board of Hearing Aid Dealers Address 701 Jefferson Avenue, South Charleston, W. Va.

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates.
No estimated cost increase or decrease.

3. Objectives of these rules:

To insure the safety and health of each patient by limiting the number of trainees a licensee may supervise and to comply with recent statutory changes requiring the Board to a maximum fee which may be charged when a hearing is returned.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No anticipated impact on state government.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

Will promote the return of hearing aids in cases where the device does not properly fit or for other reasons of dissatisfaction by the elderly and handicapped and other groups so that more members of these groups who need hearing aid services will avail themselves of these services..

C. Economic Impact on Citizens/Public at Large.

See item B above.

Date

9/10/85

Signature of Agency Head or Authorized Representative

Ralph E. Hower

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WEST VIRGINIA LEGISLATIVE RULE
WEST VIRGINIA BOARD OF
HEARING AID DEALERS
CHAPTER 30-26
SERIES I

Title: Regulations governing the West Virginia Board of
Hearing Aid Dealers

Section 7.05.

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 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 any violation of the Administrative Regulations.

Section 14.01.

(j) 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 (\$125.00). 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 days after receipt of the aid and to rescind the purchase agreement excepting for reasonable fitting and examination

EMERGENCY
Board of Hearing Aid Dealers
Leg. Rule, 30-26
Series I, Sec. 14.01

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."

(k) 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 (\$125.00) 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.

WEST VIRGINIA LEGISLATIVE RULES
WEST VIRGINIA BOARD OF HEARING AID DEALERS

FILED

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Chapter 30-26
Series I
(1983)

Subject: Regulations Governing the West Virginia Board of Hearing Aid Dealers

Section 1. General

1.1. Scope - These legislative regulations establish general rules governing the West Virginia board of hearing aid dealers.

1.2. Authority - These legislative regulations are issued under authority of and are related to the West Virginia Code, Chapter 30, Article 26. et seq., as amended.

1.3. Effective Date - These legislative regulations were promulgated on October 18, 1973, and became effective November 22, 1973.

1.4. Filing Date - These legislative regulations were filed in the office of the Secretary of State on October 22, 1973.

1.5. Refiling Date - These legislative rules were refiled pursuant to Chapter 29A, Article 2, Section 5 of the West Virginia Code of 1931, as amended on the 30th day of December, 1982, in the Secretary of State's office.

1.6. Certification - These legislative regulations are certified authentic by the Secretary of State.

Section 2. Duties and Powers of the Board

2.1. The duties and powers of the board are defined in Article 26 of Chapter 30 of the Code of West Virginia and are hereby made a part of these regulations.

WEST VIRGINIA BOARD OF HEARING-AID DEALERS

In the matter of: PUBLIC HEARING OR COMMENT PERIOD
ON A PROPOSED RULE

RULE TITLE: REGULATIONS GOVERNING
THE WEST VIRGINIA BOARD OF
HEARING-AID DEALERS

TRANSCRIPT OF PROCEEDINGS

The following is a transcript of proceedings had
in the above-entitled matter before PAUL RICHARD HULL,
HEARING EXAMINER for the West Virginia Board of Hearing-Aid
Dealers, at 701 Jefferson Road, South Charleston, Kanawha
County, West Virginia, on the 10th day of October, 1985, at
1:20 p.m.

APPEARANCES: DELBERT B. CAMP, Member
SHARON WARD, Secretary
West Virginia Board of Hearing-Aid Dealers

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OCT 16 1985

ATTY GEN. OFFICE

N. JOAN THAXTON COURT REPORTERS, INC.

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Sissonville, WV 25320
(304) 988-8970 988-1634

E X H I B I T S

<u>Description</u>	<u>Marked</u>
<u>Public Hearing Exhibit #1</u> Notice of Public Hearing	4
<u>Public Hearing Exhibit #2</u> Notice of Emergency Rule and attached copy of Rule	4

P R O C E E D I N G S

MR. HULL: I will call this hearing to order.
This is a public hearing for the purpose of entertaining
comments on certain proposed rules and regulations promulgated
by the State Board of Hearing-Aid Dealers.

My name is Paul Richard Hull. I'm an Assistant
Attorney General, acting today as a Hearing Examiner for the
Board of Hearing-Aid Dealers for the sole purpose of this
hearing.

This hearing is held in accordance with
Chapter 29A of the West Virginia Code, dealing with the
promulgation of rules and regulations for State Regulatory
Boards. It is being held pursuant to a notice of public
hearing of comment on a proposed rule which was duly filed
in the Secretary of State's Office on September 10, 1985,
and which called for a public hearing to be held on the
proposed rule at one o'clock p.m. on October 10, 1985, at
701 Jefferson Road, South Charleston, West Virginia.

It is now 1:20 on October 10th. At this time
I am having a copy of the notice of public hearing marked as
Public Hearing Exhibit Number 1 and having it entered into

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the record.

(WHEREUPON, the Notice of Public Hearing referred to was marked for identification as Exhibit Number 1 and is hereto attached.)

MR. HULL: The proposed rule amendments for which this hearing is being held were filed as emergency rules on July 15, 1985 with the Secretary of State. A copy of those is available to any interested parties either from the Secretary of State's Office or from the Board of Hearing-Aid Dealers. I am asking that a copy of that notice of emergency rule and the attached rule be marked as Public Hearing Exhibit Number 2 and that it be entered into the record.

(WHEREUPON, the Notice of Emergency Rule and attached Rule were marked for identification as Exhibit Number 2 and is hereto attached.)

MR. HULL: In addition to myself, there are present Mr. D.B. Camp, representative for the Board of Hearing-Aid Dealers; Sharon Ward, Secretary for the Board of Hearing-Aid

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Dealers and Jean Payne, Court Reporter.

At this time, since there is no one else present and no one here to comment on the proposed rules, we are going to adjourn for fifteen minutes to wait and see if anyone comes.

(WHEREUPON, a short recess was taken, after which the following proceedings were had.)

MR. HULL: We are back on the record in the public hearing held for comment on proposed rules for the State Board of Hearing-Aid Dealers, and no one has come to give comment or file a written comment. It is now 1:35 p.m. and we are calling this hearing to a conclusion.

(WHEREUPON, at 1:35 p.m. the hearing was adjourned.)

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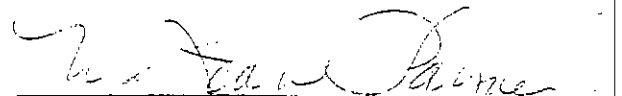
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Sissonville, WV 25320
(304) 988-8970 988-1694

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, N. Jean Payne, a Certified Court Reporter, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all proceedings had in the aforementioned case as set forth in the caption hereof.

Given under my hand this 12th day of October, 1985.


Certified Court Reporter

N. JOAN THAXTON COURT REPORTERS, INC.
7715 Sissonville Drive
Sissonville, WV 25320
(304) 988-9070 988-1224



State of West Virginia

BOARD OF HEARING AID DEALERS
DEPARTMENT OF HEALTH
1800 Washington Street, East
Charleston, W. Va. 25305

Notice of Adoption of a Legislative Rule Authorized by the Legislature

The Board of Hearing Aid Dealers legislative rule Regulations Governing the West Virginia Board of Hearing Aid Dealers is being adopted by this agency and final filed with the Secretary of State. This rule was authorized by the Legislature in Senate Bill 434, Section 64-2-30(26)(3), passed on March 8, 1986, effective from passage.

Ralph E. Hoover
Ralph E. Hoover, Chairman

FILED
1986 APR 30 PM 3:02
OFFICE OF THE
SECRETARY OF STATE

ANAYLSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia Board of Hearing Aid Dealers

Subject: Proposed rules and regulations governing the West Virginia Board of Hearing Aid Dealers

PERTINENT DATES

Filed for public comment: September 10, 1985
Public Comment period ended: October 10, 1985
Filed following public comment period: November 26, 1985
Filed LRMRC: November 27, 1985
Filed as emergency: July 15, 1985
FN: \$0.00

ABSTRACT

The proposed rule amends the Board's present rule relating to supervision of trainees and recision of purchase agreements.

Section 7.05 has been amended to require that a person holding a training permit may only engage in the practice of dealing in or fitting of hearing aids while under the direct supervision of a specified hearing-aid dealer or fitter. It also provides that no licensed hearing-aid dealer or fitter may supervise more than one trainee at one time. The prior rule contained no restrictions as to the number of trainees a hearing aid dealer or fitter could supervise.

Section 14.01 is completely new and is in response to an amendment to the Code during the 1984 Legislative Session relating to recision of purchase agreements. It provides that if a purchaser exercises his right to recind a purchase agreement the fee to be charged for such cancellation shall not exceed \$125. This section also requires that the purchase agreement contain specified language in the same size type as that used in the body of the purchase agreement relating to the purchaser's right to return the hearing aid within thirty days.

Subsection (k) of this section would allow a hearing aid-dealer and fitter to elect to meet the return privilege by renting or leasing the hearing aid to the prospective purchaser. The rental or leasing agreement may not exceed \$125 and shall specify that the prospective buyer may rescind the lease agreement at any time and shall incur no further cost by the recision.

AUTHORITY

Statutory Authority: W. Va. Code, §30-26-3 and 30-26-15

W. Va. Code, §30-26-3 provides, in part, as follows:

The Board shall promulgate reasonable rules and regulations in accordance with and subject to chapter twenty-nine-A of this Code: ...

(b) to define and prescribe the ethical practice of dealing in or fitting of hearing aids for the safety, protection and welfare of the public;

...

W. Va. Code, § 30-26-15 provides, in part, as follows:

(a) ... Such receipt shall be in the manner and form as prescribed by the board in its rules and regulations. Such rules and regulations shall prescribe the type and size of print to be used in such receipt and the receipt shall set forth such additional information as the board may prescribe.

...

(c) ... The maximum fees which may be charged by a hearing-aid dealer for examination and fitting shall be fixed by the West Virginia board of hearing-aid dealers by rule and regulation lawfully promulgated in accordance with the provisions of chapter twenty-nine-A of this Code.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No. Under the above-cited code provisions, the Board has both general and specific authority to promulgate rules and regulations of the type proposed.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes. Relating to Section 7.05, it is clearly the intent of the Legislature, as stated above, that the Board define and prescribe ethical practice for hearing-aid dealers for the safety, protection and welfare of the public. The Board is of the opinion that no more than one trainee can be directly supervised by a licensed person in order to insure the safety and health of each patient. Further, regarding Section 14.01, the legislative intent is clearly stated in W. Va. Code,

§30-26-15, which directs the Board to promulgate rules and regulations relating to the type and size of print in the receipt and the maximum fees to be charged.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

There seems to be a conflict between Section 14.01 of the proposed rule and W. Va. Code, §30-26-15(a), which requires that the "receipt" be in the manner and form as prescribed by the Board in its rules and regulations and that they also prescribe the type and size of print to be used in the "receipt" as well as specifying any other information the "receipt" should contain. The proposed rule does not address the manner and form of a "receipt" and in addressing type and size of print refers to the "purchase agreement" and not the "receipt". It is not clear whether the "purchase agreement" referred to in the proposed rule is the same as the "receipt" specified in the Code.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Maybe. Perhaps after a discussion with a representative of the Board, Counsel will understand the rationale behind the rent or lease provision. It is not clear why a dealer would elect to rent or lease a hearing aid for any length of time beyond thirty days if he is restricted to a fee of \$125 considering the cost of purchasing a hearing aid and the fact that a purchaser would have to return the hearing aid within thirty days and still be liable for up to \$125 whereas a renter could have it for substantially longer for the same fee.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Counsel has a few minor modifications to discuss with a representative of the Board which would make the rule clearer.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3, AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Technically, no. But, in essence, yes. W. Va. Code, §29A-11a-2 and 3, require a brief summary of the content of the legislative rule and a statement of the circumstances which require the rule. This information is contained in the notice of emergency rule which was attached to the proposed legislative rule.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

March 11, 1986

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

IMPORTANT NOTICE

TO: Sherrie Ward, Hearing Aid Dealers Board

FROM: RICH O. HARTMAN, DIRECTOR

RE: LEGISLATIVE RULE Rules Governing The Board

THE 1986 LEGISLATURE HAS AUTHORIZED YOUR AGENCY TO FINAL FILE AND ADOPT THE ABOVE LEGISLATIVE RULE. THIS AUTHORIZATION IS IN S.B. 434 SECTION 64-2-30(26)(3) PASSED ON March 8, 1986, EFFECTIVE FROM PASSAGE. YOU HAVE 60 DAYS FROM THAT DATE TO FINAL FILE THE ABOVE RULE WITH THIS OFFICE. NO RULE WILL BE ACCEPTED AFTER THAT DATE. YOU MAY ESTABLISH ANY EFFECTIVE DATE FOR YOUR RULE RANGING FROM THE SAME DATE YOU FINAL FILE TO 90 DAYS FROM THE DATE YOU FINAL FILE. REMEMBER TO RE-TYPE YOUR RULE IN ITS ENTIRETY FOLLOWING THE PROPER FORMAT. PLEASE CALL IF YOU HAVE ANY QUESTIONS.

1 Bill 16

2 H. B. 1761

3 Delegate Casey

4 (By _____)

5 (Introduced February 5, 1986; referred to the

6 Committee on Government Organization with the direc-

7 tion that it later be referred to the Committee

8 on the Judiciary.]

9
10 A BILL to amend article two, chapter sixty-four of the code of
11 West Virginia, one thousand nine hundred thirty-one, as
12 amended, by adding thereto two new sections designated
13 sections thirty(twenty-six)(three) and thirty(twenty-
14 six)(fifteen), relating to rules governing the West Virginia
15 board of hearing aid dealers.

16 Be it enacted by the Legislature of West Virginia:

17 That article two, chapter sixty-four of the code of West
18 Virginia, one thousand nine hundred thirty-one, as amended, be
19 amended by adding thereto two new sections, designated sections
20 thirty(twenty-six)(three) and thirty(twenty-six)(fifteen), to
21 read as follows:

22 ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
23 LEGISLATIVE RULES.

24 §64-2-30(26)(3). West Virginia board of hearing aid dealers.

25 The legislative rules filed in the state register on the
26 twenty-sixth day of November, one thousand nine hundred eighty-

1761

1 five, modified by the West Virginia board of hearing aid dealers
2 to meet the objections of the legislative rule-making review
3 committee and refiled in the state register on the twenty-eighth
4 day of January, one thousand nine hundred eighty-six, relating to
5 the West Virginia board of hearing aid dealers (rules governing
6 the West Virginia board of hearing aid dealers) are authorized.
7 These rules were proposed by the West Virginia board of hearing
8 aid dealers pursuant to sections three and fifteen, article
9 twenty-six, chapter thirty of this code.

10 §64-2-30(26)(15). West Virginia board of hearing aid dealers.

11 The rules authorized by the Legislature in section
12 thirty(twenty-six)(three) of this article were also proposed by
13 the West Virginia board of hearing aid dealers pursuant to
14 section fifteen, article twenty-six, chapter thirty of this code.

15
16 NOTE: The purpose of this bill is to authorize the West
17 Virginia board of hearing aid dealers to promulgate legislative
18 rules relating to governing the West Virginia board of hearing
19 aid dealers.

20
21 This section is new; therefore, strike-throughs and
22 underscoring have been omitted.
23

1 Bill 16

SENATE BILL NO. 444

2 (By Senator R. Williams

3
4 [Introduced February 3, 1986

5 referred to the Committee on Health and Human Resources;
6 then to the Committee on the Judiciary

7
8
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6-1986 JWS

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