

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

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WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: WV Board of Hearing Aid Dealers TITLE NUMBER: 8

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: Rule Governing the WV Board of Hearing Aid
Dealers

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

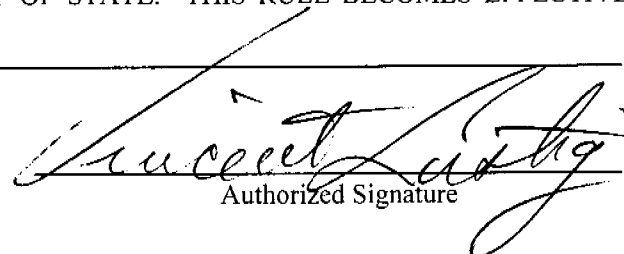
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 349

SECTION 64-9-8, PASSED ON March 8, 2008

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2008


Authorized Signature

#3,80

FILED

2008 APR 23 PM 3: 22

TITLE 8
LEGISLATIVE RULE
WEST VIRGINIA BOARD OF HEARING AID DEALERS
SERIES 1
RULE GOVERNING THE WEST VIRGINIA
BOARD OF HEARING AID DEALERS

SECRETARY OF STATE

§8-1-1. General.

1.1. Scope. -- This legislative rule establishes general regulations governing the West Virginia Board of Hearing Aid Dealers.

1.2. Authority -- W. Va. Code §30-26-3; W.Va. Code § 30-26- 14, W.Va. Code § 30-26-15

1.3. Filing Date – April 23, 2008.

1.4. Effective Date. -- July 1, 2008.

1.5. This rule repeals and replaces 8CSR1, Regulations Governing the West Virginia Board of Hearing Aid Dealers, that went into effect June 1, 2001.

§8-1-2. Definitions.

2.1. A "Permanent Office" is 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 rule, 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 does not qualify as a permanent office.

2.2. "Reasonable Distance" as used in W. Va. Code §30-26-5(1) means within twenty (20) statute miles by highway from the

borders of the State of West Virginia. The Board may waive this requirement 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 the waiver.

2.3. The statement "The Making of Impressions for Ear Molds" means making molds of the ear to be used in conjunction with the manufacture and fitting of a hearing aid.

2.4. "Significant Air-Bone Gap" means 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.

§8-1-3. Application for Licenses and Permits.

3.1. The Board shall furnish every person requesting an application for a license or trainee permit 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 considers necessary.

3.2. The Board shall design the application forms to provide the information necessary to satisfy itself that all requirements pertaining to the West Virginia law are being fulfilled.

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

3.4. The application shall be accompanied by a money order or certified check for the license or permit fee.

3.5. The Board may reject an incomplete application form and return it to the applicant for completion.

3.6. The Board shall deny any person knowingly furnishing false information in application the right to the examination. If the applicant has already been licensed or received a permit before the falsification of the information has been made known to the Board, the license or permit is 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.

§8-1-4. Issuance of Licenses and Permits.

4.1. The Board shall issue to each applicant, within thirty (30) days of receipt of a properly completed application and payment of one hundred dollars (\$100.00), a hearing aid dealer's or fitter's license if the applicant is an individual who:

(a) Meets the standards set forth in W. Va. Code §§30-26-5(1)-(5); and

(b) Has successfully taken and passed a qualifying examination as specified and administered by the Board.

4.2. If the applicant is a firm, partnership, trust, corporation, association or other like organization, the application, in addition to

information required by the Board, shall be accompanied by an application for license for each person who engages in the dealing in or fitting of hearing aids. No licensed partnership, trust, association or corporation shall permit any unlicensed person to sell or fit hearing aids.

4.3. Each license expires on the first day of July of each year. Each licensee engaged in the practice of dealing in or fitting hearing aids shall apply annually to the Board for renewal of the license. The Board shall issue to the applicant a renewal license. The renewal fee is one hundred dollars (\$100.00). A person who applies for renewal of a hearing aid dealer's or fitter's license which has expired is not required to take any examination as a condition for renewal: Provided, that application for renewal is made within two (2) years of the date the license expired.

4.4. The licensee or permittee is responsible for filing and paying fees for renewals. If reminders of the renewals are sent by the secretary it is a courtesy only and shall not be considered a responsibility of the Board.

4.5. Each licensee shall display his or her license in a conspicuous place in his or her 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 ten dollars (\$10.00) for each copy requested.

4.6. 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 one hundred dollars (\$100.00), a trainee permit if the

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.

4.7. 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 the permit. The Board shall issue a renewal permit to each applicant upon the receipt of a properly completed application and the payment of one hundred dollars (\$100.00); Provided, That the trainee applying for the renewal permit has taken the qualifying examination at least once during the first year the permit was issued and 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.

4.8. A person holding a trainee permit shall not 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. The supervisor and the holder of the temporary trainee permit

shall work in the same office for the duration of the temporary trainee permit. A licensed hearing aid dealer or fitter may not 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 rules of the Board.

4.9. Each trainee permit is valid only for the trainee in whose name it is issued and for his or her specific supervisor unless otherwise approved by the Board.

4.10. A trainee shall present himself or herself for examination within twelve (12) months from the date of the issuance of his or her permit.

4.11. 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 the license or trainee permit, unless the Board waives the personal appearance.

§8-1-5. Reciprocity.

5.1. The Board shall promote reciprocity agreements with those states adjoining the State of West Virginia if those states provide for reciprocity with West Virginia. The Board shall consider reciprocity with other states on an individual basis.

5.2. The Board will not honor a license issued to an individual, partnership, trust, association or other like organization by another state 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.

§8-1-6. Responsibilities Of The Licensee.

6.1. Each licensee engaged in dealing in or fitting of hearing aids shall be familiar with the requirements of the law regulating those activities in West Virginia and with the rules of the Board.

6.2. Each licensee engaged in dealing in or fitting of hearing aids shall make timely application for a license or renewal of a license, to complete the forms properly and pay the fees required, and to hold himself or herself available for examination at the times and places designated by the Board.

6.3. The licensed dealer or fitter shall use the results of appropriate test procedures on every individual to whom he or she 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.

6.4. Full responsibility for the compliance of a trainee permit holder rests with the licensed supervisor who is registered as the trainee's supervisor at the time any noncompliance may occur. The supervisor may relieve himself or herself of the

responsibility of a trainee by advising the Board by certified mail and explaining fully the circumstance under which he or she is withdrawing supervisory responsibility of the trainee. The trainee permit shall be forwarded to the Board by the supervisor.

§ 8-1-7. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

7.1. Every licensee engaged in the practice of dealing in or fitting of hearing aids shall, prior to the sale or fitting of a hearing aid to a prospective customer, make the following disclosure, in writing, to the prospective customer: "The purchaser has been advised at the outset of his relationship with the hearing aid dealer that any examination or representation made by a licensed hearing aid dealer in connection with the practice of fitting this hearing aid is not an examination, diagnosis or prescription by a person licensed to practice medicine in this state and therefore must not be regarded as medical opinion."

7.2. Every licensee engaged in the practice of dealing in or fitting of hearing aids shall, prior to the sale or the fitting of a hearing aid intended to be worn or used by any person under eighteen years of age, first ascertain whether such person has within the next preceding six months been examined for the defective or impaired hearing condition sought to be relieved by an otolaryngologist or other duly licensed physician.

7.3. If such person under the age of eighteen has been so examined, the licensee shall, prior to the sale or fitting of such hearing aid, obtain from such otolaryngologist or physician written authority to fit a hearing aid.

7.4. If such person under the age of eighteen has not been examined by an otolaryngologist or physician, the licensee shall not proceed with the sale or fitting of a hearing aid until after such person has been so examined.

7.5. If the prospective user of a hearing aid is eighteen years of age or older, prior to the sale or fitting of a hearing aid to the prospective customer, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement provided that the hearing aid dispenser:

a) Informs the prospective user that the exercise of the waiver is not in the user's best health interests;

b) Does not in any way actively encourage the prospective user to waive such a medical evaluation;

c) Affords the prospective user the opportunity to sign the following statement, prior to the sale or fitting of a hearing aid: "I have been advised by (hearing aid dispenser's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician, preferably one who specializes in diseases of the ear, before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid."

d) Prior to the sale of a hearing aid, every licensee shall determine that the prospective purchaser's best interest would be served by consulting an otolaryngologist or other physician specializing in disease of the ear, or any other physician duly licensed to practice medicine in this state, if any of the following conditions are found upon examination of such person:

1) Visible congenital or traumatic deformity of the ear;

2) History of active ear discharge within the previous ninety days;

3) History of sudden or rapidly progressive hearing loss within the previous ninety days;

4) Acute or chronic dizziness;

5) Unilateral hearing loss of sudden or recent onset within the previous ninety days; or

6) Significant air-bone gap.

7.6. A copy of any writing or form required to be given to a prospective purchaser or other person by the terms of this section shall be retained in the records of the licensee for a period of at least seven years following the issuance of each writing.

§ 8-1-8. Sales Receipt.

8.1. The licensed individual or permit holder making the sale shall sign a customers receipt and the name shall be the same name under which the licensee or permit holder is registered with the Board.

8.2. 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 hearing aid 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 term "Used" or "Reconditioned", whichever is applicable, with the terms of the guarantee or warranty; and

(h) The retail price of the hearing aid, any discount or trade-in allowance, 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) Information about the right to rescind the purchase agreement as required by §§ 8-1-12.2 and 8-1-12.4 of this Title.

8.3. For the purpose of interpreting this rule, the term "New" means a hearing aid which has not been previously sold at retail or used as a demonstrator.

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

§8-1-9. Advertising.

9.1. 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.

9.2. The licensee shall not advertise a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model 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.

9.3. The licensee shall not advertise 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 the advertising use the words "Doctor", "Clinic" or similar words, abbreviations or symbols which tend to connote the medical profession when the use is not accurate.

9.4. The licensee shall not advertise using 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 that is not the case. The term "Certified Member" may be used when the 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 this state.

9.5. The licensee shall not advertise using a manufacturer's name or trademark which would imply that a relationship exists with that manufacturer when in fact it does not.

9.6. 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.

9.7. The hearing aid dealer must prominently display the following advisement: "Consumers may contact the West Virginia Board of Hearing Aid Dealers at 167 11th Avenue, South Charleston, WV 25303, if the consumer believes that the hearing aid dealer has not satisfied the terms of the contract."

§8-1-10. Complaint Procedures.

10.1. A licensee or permittee whose license has been revoked or suspended by the Board, or to whom the Board has refused to issue a license or permit, may appeal the Board's decision under the Board's Rule "CONTESTED CASE HEARING PROCEDURE" 8CSR2.

10.2. The Board shall investigate complaints and discipline licensees and permittees under the Board's Rule "DISCIPLINARY AND COMPLAINT PROCEDURES FOR HEARING-AID DEALERS" 8CSR3.

§8-1-11. Causes For The Suspension Or Revocation Of Licenses Or Permits.

11.1. The Board may suspend or revoke the license or permit if the person holding the license or permit:

(a) Violates any provision of the law regulating the licensure of hearing aid dealers and fitters or any violation of the rules 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 he or she is 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 or her license; or

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

§ 8-1-12. Right to Rescind Purchase Agreement.

12.1. Each person supplied with a hearing aid by a licensed hearing-aid dealer shall have the right to return the hearing aid to the dealer

within thirty calendar days of receipt and rescind the purchase agreement if the hearing aid does not function properly, cannot be adjusted to satisfactorily compensate for the deficiency in the person's hearing, or the person is otherwise dissatisfied with the hearing aid.

12.2. The sales receipt 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 rescind the purchase agreement except for reasonable fitting and examination charges (\$125.00 maximum fitting charge), if the aid does not function properly or cannot be adjusted to correct the deficiency in your hearing or is otherwise unsatisfactory. The aid so returned must be without damage."

12.3. In the event that the prospective purchaser of a hearing aid exercises his or her right to rescind the purchase agreement, the fee to be charged for the cancellation shall not exceed one hundred twenty-five dollars (\$125) per hearing aid provided. 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(s), the cost of the earmold(s) if required, and any batteries provided.

12.4. Hearing aid dealers are required to provide at least one thirty (30) calendar day extension of the right to rescind the purchase agreement so long as the consumer alerts the hearing aid dealer of the hearing aids deficiencies within the first thirty (30) days of purchase and the hearing aid dealer makes an adjustment or advises the consumer to continue using the aid.

12.5. For purposes of computing the thirty calendar day extension to rescind the purchase agreement, the last visit or communication the customer made to the hearing aid dealer within the original thirty (30) day right to rescind period shall constitute the first day of the thirty (30) day extension.

12.6. Unless the purchase agreement provides otherwise, further adjustments or advisements to continue wearing the hearing aid made within the thirty day extension period will not constitute a new beginning of another thirty day extension period for the consumer to rescind the purchase agreement.

12.7. The hearing aid dealer or 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) per hearing aid 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 or she shall incur no further costs by returning the hearing aid.



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

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April 23, 2008

By Hand Delivery

Judy Cooper, Manager, Administrative Law
Office of the West Virginia Secretary of State
State Capitol, Bldg. 1, Room 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Ms. Cooper:

Enclosed is Title 8, the Legislative Rule Governing the West Virginia Board of Hearing Aid Dealers.

Please note that for W. Va. Code R. § 8-1-7.1, I changed the quotation from "any examination *of* representation made by a licensed hearing aid dealer" to "any examination *or* representation." I believe the "of" is a typo as other states' hearing aid dealer rules use "or."

Also, please note that W. Va. Code R. § 8-1-8.2(i), makes a citation to both §§ 8-1-12.2 and 8-1-12.4. However, the citation to W. Va. Code R. § 8-1-12.4 should be deleted. This is because when the rules were originally filed on July 25, 2007, the proposed W. Va. Code R. § 8-1-12.4 dealt with certain disclosures on sales receipts. However, that section was subsequently deleted and the new W. Va. Code R. § 8-1-12.4 is not a matter that needs to be included on the sales receipt.

Please let me know if I can be of any assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Wegman".

James "Jake" Wegman
Assistant Attorney General