

CHAPTER 484

DISPENSING OF OPTICAL DEVICES AND HEARING AIDS

PART I PREPARING AND DISPENSING OF EYEGLASSES AND OTHER OPTICAL DEVICES (ss. 484.001-484.019)

PART II FITTING AND DISPENSING OF HEARING AIDS (ss. 484.0401-484.059)

PART I

PREPARING AND DISPENSING OF EYEGLASSES AND OTHER OPTICAL DEVICES

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484.001 Purpose; legislative findings; intent.—

(1) The Legislature finds that the practice of opticianry by unskilled and incompetent practitioners presents a danger to the public health and safety. The Legislature finds further that it is difficult for the public to make an informed choice about opticians and that the consequences of a wrong choice could seriously endanger their health and safety. The only way to protect the public from the incompetent practice of opticianry is through the establishment of minimum qualifications for entry into the profession and through swift and effective discipline for those practitioners who violate the law.

(2) The sole purpose of enacting this part is for the protection of the public health, safety, and welfare.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 1, 11, 12, ch. 86-254; s. 4, ch. 91-429.

484.002 Definitions.—As used in this part:

- (1) "Department" means the Department of Business and Professional Regulation.
 (2) "Board" means the Board of Opticianry.
 (3) "Opticianry" means the preparation and dispensing of lenses, spectacles, eyeglasses, contact lenses, and other optical devices to the intended user or agent thereof, upon the written prescription of a medical doctor or optometrist who is duly licensed to practice or upon presentation of a duplicate prescription. The selection of frame designs, the actual sales transaction, and

the transfer of physical possession of lenses, spectacles, eyeglasses, contact lenses, and other optical devices subsequent to performance of all services of the optician shall not be considered the practice of opticianry; however, such physical possession shall not be transferred until the optician has completed the fitting of the optical device upon the customer. The practice of opticianry also includes the duplication of lenses accurately as to power, without prescription. A board-certified optician qualified and operating under rules established by the board may fill, fit, adapt, or dispense any soft contact lens prescription. Such optician may fill, fit, adapt, or dispense any extended wear or hard contact lens prescription to the extent authorized to do so by the prescribing medical doctor or optometrist.

(4) "Optician" means any person licensed to practice opticianry pursuant to this part.

(5) "Direct supervision" means supervision where the licensee remains on the premises while all work is being done and gives final approval to any work performed by an employee.

(6) "Board-certified optician" means an optician licensed in this state who:

(a) Has passed the National Contact Lens Registry Examination;

(b) Has successfully completed a board-approved course of at least 20 contact hours covering the competencies required in fitting, adapting, and dispensing of contact lenses;

(c) Has met any other requirements established by the board to assure competence in the fitting, adapting, and dispensing of contact lenses;

(d) Has completed the application form and remitted a nonrefundable application fee set by the board not to exceed \$100; and

(e) Has been issued a certificate by the department.

(7) "Optical establishment" means any establishment in the state which offers, advertises, and performs opticianry services for the general public.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; s. 83, ch. 83-329; ss. 2, 11, 12, ch. 86-254; s. 27, ch. 88-205; s. 57, ch. 89-162; s. 29, ch. 91-220; s. 4, ch. 91-429; s. 1, ch. 94-192; s. 177, ch. 94-218.

484.003 Board of Opticianry; membership; appointment; terms.—

(1) The Board of Opticianry is created within the Department of Business and Professional Regulation and shall consist of seven members to be appointed by the Governor and confirmed by the Senate.

(2) Five members of the board must be licensed opticians. The remaining two members must be residents of the state who never have been licensed as opticians and who are in no way connected with the practice of opticianry. At least one member of the board must be 60 years of age or older.

(3) Members shall be appointed for terms of 4 years.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; s. 99, ch. 83-218; ss. 11, 12, ch. 86-254; s. 24, ch. 87-172; s. 4, ch. 91-429; s. 2, ch. 94-192; s. 178, ch. 94-218.

484.004 Board headquarters.—The board shall maintain its official headquarters in the City of Tallahassee.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429.

484.005 Authority to make rules.—The board is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon it by this part and as may be necessary to protect the health, safety, and welfare of the public. Such rules shall include, but not be limited to, rules relating to:

(1) A standard of practice for opticians licensed pursuant to this part.

(2) Minimum equipment which shall be utilized to prepare, fit, measure, and dispense lenses, spectacles, eyeglasses, contact lenses, and other optical devices allowed under the practice of opticianry.

(3) Procedures for transfer of prescription files upon the going out of business of an optician, corporation, or other person.

(4) A standard of practice for filling prescriptions for contact lenses and fitting, adapting, and dispensing contact lenses.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 3, 11, 12, ch. 86-254; s. 4, ch. 91-429.

484.006 Certain rules prohibited.—

(1) No rule or policy of the board shall prohibit any optician from offering a discount in any form or manner in conjunction with the practice of opticianry or from advertising, either directly or indirectly by any means whatsoever, any definite or indefinite price or credit terms on prescriptive or corrective lenses, frames, complete prescriptive or corrective glasses, or other opticianry service.

(2) No rule or policy of the board shall prohibit any optician from practicing jointly with optometrists or medical doctors licensed in this state.

(3) No rule or policy of the board shall prohibit the sale of spectacles for reading purposes; toy glasses; goggles or sunglasses consisting of plano white, plano colored, or plano tinted glasses; or readymade nonprescription glasses; nor shall anything in this part be construed to affect in any way the manufacturing and sale of plastic or glass artificial eyes or any person engaged in the manufacturing or sale of plastic or glass artificial eyes.

(4) No rule or policy of the board shall prohibit any optician licensed under this part from engaging in the practice of opticianry with, or in the employ of, any partnership, corporation, lay body, organization, group, or individual.

(5) No rule or policy of the board shall prohibit the location of offices or branch offices by an optician.

(6) No rule or policy of the board shall prohibit the practice of opticianry under a trade name or service mark.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429.

484.007 Licensure of opticians; permitting of optical establishments.—

(1) Any person desiring to practice opticianry shall apply to the department, upon forms prescribed by it, to take a licensure examination. The department shall examine each applicant who the board certifies:

(a) Has completed the application form and remitted a nonrefundable application fee set by the board, in the amount of \$100 or less, and an examination fee set by the board, in the amount of \$325 plus the actual per applicant cost to the department for purchase of portions of the examination from the American Board of Opticianry or a similar national organization, or less, and refundable if the board finds the applicant ineligible to take the examination;

(b) Is not less than 18 years of age;

(c) Is a graduate of an accredited high school or possesses a certificate of equivalency of a high school education; and

(d)1. Has received an associate degree, or its equivalent, in opticianry from an educational institution the curriculum of which is accredited by an accrediting agency recognized and approved by the United States Department of Education or the Council on Postsecondary Education or approved by the board;

2. Is an individual licensed to practice the profession of opticianry pursuant to a regulatory licensing law of another state, territory, or jurisdiction of the United States, who has actively practiced in such other state, territory, or jurisdiction for more than 3 years immediately preceding application, and who meets the examination qualifications as provided in this subsection;

3. Is an individual who has actively practiced in another state, territory, or jurisdiction of the United States for more than 5 years immediately preceding application and who provides tax or business records, affidavits, or other satisfactory documentation of such practice and who meets the examination qualifications as provided in this subsection; or

4. Has registered as an apprentice with the department and paid a registration fee not to exceed \$60, as set by rule of the board. The apprentice shall complete 6,240 hours of training under the supervision of an optician, a physician, or an optometrist licensed under the laws of this state. These requirements must be met within 5 years after the date of registration. However, any time spent in a recognized school may be considered as part of the apprenticeship program provided herein. The board may establish administrative processing fees sufficient to cover the cost of administering apprentice rules as promulgated by the board.

(2) The department may permit an applicant who has satisfied all requirements of subsection (1) to take the examination and shall issue a license to practice opticianry to any candidate who successfully completes the examination.

(3) Any person desiring to operate an optical establishment shall apply to the department, upon forms prescribed by the department, for a permit. The department shall issue a permit to each applicant who:

(a) Has completed the permit form and remitted a nonrefundable application fee set by the department in an amount not to exceed \$500.

(b) Has identified the optical establishment by name, street and mailing address, and telephone number.

(c) Has identified the owner of the optical establishment by name, street and mailing address, and telephone number and, in the case of a partnership, corporation, association, or entity, has identified a registered agent or other person to receive service of papers or other documents or perform other duties as specified by the department.

(4)(a) A permit issued to an optical establishment is for that establishment only, is valid for as long as that establishment operates at that location, and is not transferable to another owner or location by any means, including, but not limited to, any sale of a corporation, partnership, sole proprietorship, or other business entity.

(b) The owner of a permitted optical establishment shall notify the department within 30 days after a change in ownership of the establishment and at the same time return the permit to the department for cancellation. Upon any change in ownership of an optical establishment, the new owner of the establishment shall file for a new permit and shall pay the prescribed permit fee.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; s. 82, ch. 83-329; ss. 4, 11, 12, ch. 86-254; s. 28, ch. 88-205; s. 58, ch. 89-162; s. 59, ch. 89-374; s. 4, ch. 91-429; s. 156, ch. 92-149; s. 3, ch. 94-192.

484.008 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and the fee set by the board not to exceed \$350.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

(3) The board may by rule prescribe continuing education, not to exceed 20 hours biennially, as a condition for renewal of a license or certificate. The criteria for such programs or courses shall be approved by the board. All education programs which contribute to the advancement, extension, or enhancement of professional skills and knowledge, whether conducted by a nonprofit or a profitmaking entity, are eligible for approval. The board may establish by rule an application fee not to exceed \$200 for anyone seeking approval to provide continuing education courses and may provide by rule for a fee not to exceed \$200 for renewal of providership.

(4) The board may excuse any licensee or group of licensees from the continuing education requirement, until the licensee or group of licensees is capable of fulfilling the continuing education requirement, if an unusual circumstance, emergency, or hardship prevented the licensee or group of licensees from complying with such requirement.

History.—ss. 1, 5, ch. 79-275; s. 4, ch. 80-291; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 1, ch. 87-335; s. 29, ch. 88-205; s. 59, ch. 89-162; s. 4, ch. 91-429; s. 246, ch. 94-119.

484.009 Inactive status.—

(1) A license that has become inactive may be reactivated under s. 484.008 upon application to the department. The board shall prescribe by rule continuing education requirements as a condition of reactivating a license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive.

(2) The board shall promulgate rules relating to licenses which have become inactive and for the renewal of inactive licenses. The board shall prescribe by rule a fee not to exceed \$200 for the reactivation of an inactive license and a fee not to exceed \$50 for the renewal of an inactive license.

History.—ss. 1, 5, ch. 79-275; s. 360, ch. 81-259; ss. 2, 3, ch. 81-318; s. 114, ch. 83-329; ss. 11, 12, ch. 86-254; s. 60, ch. 89-162; s. 4, ch. 91-429; s. 247, ch. 94-119.

484.011 Supportive personnel.—No person other than a licensed optician may engage in the practice of opticianry, except that a licensed optician may delegate to nonlicensed supportive personnel those duties, tasks, and functions which fall within the purview of s. 484.002(3). All such delegated acts shall be performed under the direct supervision of a licensed optician, who shall be responsible for all such acts performed by persons under his supervision.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; s. 35, ch. 82-179; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429.

484.012 Prescriptions; filing; duplication of prescriptions; duplication of lenses.—

(1) Any prescription written by a duly licensed medical doctor or optometrist for any lenses, spectacles, eyeglasses, contact lenses, or other optical devices shall be kept on file for a period of 2 years with the optical establishment that fills such prescription. However, the licensed optician may maintain a copy of the prescription.

(2) Upon request by the intended user of the prescribed lenses, spectacles, eyeglasses, contact lenses, or other optical devices, or by an agent of the intended user, the optician who fills the original prescription shall duplicate, on a form prescribed by rule of the board, the original prescription. However, for medical reasons only, the prescribing medical doctor or optometrist may, upon the original prescription, prohibit its duplication. Any duplication shall be considered a valid prescription to be filled for a period of 5 years from the date of the original prescription, except that a contact lens prescription shall be considered a valid prescription to be filled for a period of 2 years from the date of the original prescription.

(3) Nothing in this part shall be construed to prohibit a licensed optician from accurately duplicating lenses as to power without a prescription.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 5, 11, 12, ch. 86-254; s. 4, ch. 91-429.

484.013 Violations and penalties.—

(1) It is unlawful for any person:

(a) To make a false or fraudulent statement, either for himself or for another person, in any application, affidavit, or statement presented to the board or in any proceeding before the board.

(b) To prepare or dispense lenses, spectacles, eyeglasses, contact lenses, or other optical devices when such person is not licensed as an optician in this state.

(c) To prepare or dispense lenses, spectacles, eyeglasses, contact lenses, or other optical devices without first being furnished with a prescription as provided for in s. 484.012.

(2) It is unlawful for any person other than an optician licensed under this part to use the title "optician" or

otherwise lead the public to believe that he is engaged in the practice of opticianry.

(3) It is unlawful for any optician to engage in the diagnosis of the human eyes, attempt to determine the refractive powers of the human eyes, or, in any manner, attempt to prescribe for or treat diseases or ailments of human beings.

(4) It is unlawful for any person to open or operate, either alone or with any other person or persons, an optical establishment which does not have the permit required by this part.

(5) Any person who violates a provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 6, 11, 12, ch. 86-254; s. 115, ch. 91-224; s. 4, ch. 91-429; s. 4, ch. 94-192.

484.014 Disciplinary actions.—

(1) The following acts relating to the practice of opticianry shall be grounds for both disciplinary action against an optician as set forth in this section and cease and desist or other related action by the department as set forth in s. 455.228 against any person operating an optical establishment who engages in, aids, or abets any such violation:

(a) Procuring or attempting to procure a license by misrepresentation, bribery, or fraud or through an error of the department or the board.

(b) Procuring or attempting to procure a license for any other person by making or causing to be made any false representation.

(c) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by federal or state law, willfully impeding or obstructing such filing, or inducing another person to do so. Such reports or records shall include only those which the person is required to make or file as an optician.

(d) Failing to make fee or price information readily available by providing such information upon request or upon the presentation of a prescription.

(e) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(f) Fraud or deceit, or negligence, incompetency, or misconduct, in the authorized practice of opticianry.

(g) Violation or repeated violation of this part or of chapter 455 or any rules promulgated pursuant thereto.

(h) Practicing with a revoked, suspended, inactive, or delinquent license.

(i) Violation of a lawful order of the board or department previously entered in a disciplinary hearing or failing to comply with a lawfully issued subpoena of the department.

(j) Violation of any provision of s. 484.012.

(k) Conspiring with another licensee or with any person to commit an act, or committing an act, which would coerce, intimidate, or preclude another licensee from lawfully advertising his services.

(l) Willfully submitting to any third-party payor a claim for services which were not provided to a patient.

(m) Failing to keep written prescription files.

(n) Willfully failing to report any person who the licensee knows is in violation of this part or of rules of the department or the board.

(o) Exercising influence on a client in such a manner as to exploit the client for financial gain of the licensee or of a third party.

(p) Gross or repeated malpractice.

(q) Permitting any person not licensed as an optician in this state to fit or dispense any lenses, spectacles, eyeglasses, or other optical devices which are part of the practice of opticianry.

(r) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, in a court of this state or other jurisdiction, a crime which relates to the ability to practice opticianry or to the practice of opticianry.

(s) Having been disciplined by a regulatory agency in another state for any offense that would constitute a violation of Florida law or rules regulating opticianry.

(t) Being unable to practice opticianry with reasonable skill and safety by reason of illness or use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. An optician affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent practice of opticianry with reasonable skill and safety to his customers.

(2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the optician on probation for a period of time and subject to such conditions as the board may specify, including requiring the optician to submit to treatment or to work under the supervision of another optician.

(3) The board shall not reinstate the license of an optician it has deemed unqualified until such time as it is satisfied that he has complied with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of opticianry.

(4) A permit holder under this part shall be subject to the provisions of this section which shall be enforced by the department.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 7, 11, 12, ch. 86-254; s. 4, ch. 91-429; s. 248, ch. 94-119; s. 5, ch. 94-192.

484.015 Authority to inspect.—Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any establishment in the state in which lenses, spectacles, eyeglasses, contact lenses, and any other optical devices are prepared and dispensed, for the purposes of:

(1) Determining if any provision of this part, or any rule promulgated under its authority, is being violated;

(2) Securing samples or specimens of any lenses, spectacles, eyeglasses, contact lenses, or other optical devices, after paying or offering to pay for such sample or specimen; or

(3) Securing such other evidence as may be needed for prosecution under this part.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 8, 11, 12, ch. 86-254; s. 4, ch. 91-429.

484.017 Reciprocity.—In order to ensure that opticians licensed in this state may be licensed in other states, the board may enter into reciprocity agreements with other states.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429.

484.018 Exceptions.—

(1) Nothing in this part shall be construed to prevent a person licensed in this state as a physician or as an optometrist from performing those services he is licensed to perform.

(2) Nothing in this part shall be construed to mean that an employee of a licensed physician or a licensed optometrist shall be required to secure a license under this part, so long as the employee is working exclusively for, and under the direct supervision of, the licensed physician or optometrist and does not hold himself out to the public generally as an optician.

(3) Nothing in this part shall be construed to mean that a practitioner licensed under chapter 458, chapter 459, or chapter 463 shall be required to secure a permit under this part for the operation of an optical establishment.

History.—ss. 1, 5, ch. 79-275; ss. 2, 3, ch. 81-318; ss. 11, 12, ch. 86-254; s. 4, ch. 91-429; s. 6, ch. 94-192.

484.019 Saving clauses.—

(1) No judicial or administrative proceeding pending on October 1, 1986, shall be abated as a result of the repeal and reenactment of this part.

(2) All licenses valid on October 1, 1986, shall remain in full force and effect. Henceforth, all such licenses shall be renewed pursuant to this part.

History.—ss. 2, 4, ch. 79-275; s. 2, ch. 81-318; ss. 10, 11, 12, ch. 86-254; s. 4, ch. 91-429.

PART II

FITTING AND DISPENSING OF HEARING AIDS

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484.0401 Purpose.—The Legislature recognizes that the dispensing of hearing aids requires particularized knowledge and skill to ensure that the interests of the hearing-impaired public will be adequately served and safely protected. It recognizes that a poorly selected or fitted hearing aid not only will give little satisfaction but may interfere with hearing ability and, therefore, deems it necessary in the interest of the public health, safety, and welfare to regulate the dispensing of hearing aids in this state. Restrictions on the fitting and selling of hearing aids shall be imposed only to the extent necessary to protect the public from physical and economic harm, and restrictions shall not be imposed in a manner which will unreasonably affect the competitive market.

History.—ss. 1, 18, ch. 83-153; ss. 1, 7, ch. 84-94; ss. 1, 19, 20, ch. 86-283; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 4, ch. 91-429.

484.041 Definitions.—As used in this part, the term:

- (1) "Board" means the Board of Hearing Aid Specialists.
- (2) "Department" means the Department of Business and Professional Regulation.
- (3) "Dispensing hearing aids" means and includes:
 - (a) Conducting and interpreting hearing tests for purposes of selecting suitable hearing aids, making earmolds or ear impressions, and providing appropriate counseling.
 - (b) All acts pertaining to the selling, renting, leasing, pricing, delivery, and warranty of hearing aids.
- (4) "Hearing aid specialist" means a person duly licensed in this state to practice the dispensing of hearing aids.
- (5) "Hearing aid" means an amplifying device to be worn by a hearing-impaired person to improve hearing.
- (6) "Trainee" means a person studying hearing aid dispensing under the direct supervision of an active licensed hearing aid specialist for the purpose of qualifying for certification to sit for the licensure examination.
- (7) "Hearing aid establishment" means any establishment in the state which offers, advertises, and performs hearing aid services for the general public.
- (8) "Sponsor" means an active, licensed hearing aid specialist under whose direct supervision one or more trainees are studying hearing aid dispensing for the purpose of qualifying for certification to sit for the licensure examination.

History.—ss. 2, 18, ch. 83-153; ss. 1, 7, ch. 84-94; ss. 2, 19, 20, ch. 86-283; s. 1, ch. 87-47; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 4, ch. 91-429; s. 179, ch. 94-218.

484.042 Board of Hearing Aid Specialists; membership, appointment, terms.—

- (1) The Board of Hearing Aid Specialists is created within the Department of Business and Professional Regulation and shall consist of nine members to be appointed by the Governor and confirmed by the Senate.
- (2) Five members of the board shall be hearing aid specialists who have been licensed and practicing in

this state for at least the preceding 4 years. The remaining four members, none of whom shall derive economic benefit from the fitting or dispensing of hearing aids, shall be appointed from the resident lay public of this state. One of the lay members shall be a hearing aid user but may neither be nor have been a hearing aid specialist or a licensee of a closely related profession. One lay member shall be an individual age 65 or over. One lay member shall be an otolaryngologist licensed pursuant to chapter 458 or chapter 459.

(3) Members of the board shall be appointed for terms of 4 years each.

(4) All provisions of chapter 455 relating to activities of regulatory boards apply to the board. However, notwithstanding the requirement of s. 455.225(4) that the board provide by rule for the determination of probable cause by a panel composed of its members or by the department, the board may provide by rule that its probable cause panel may be composed of one current member of the board and one past member of the board, as long as the past member is a licensed hearing aid specialist in good standing. The past board member shall be appointed to the panel for a maximum of 2 years by the chairman of the board with the approval of the secretary.

History.—ss. 3, 18, ch. 83-153; ss. 1, 7, ch. 84-94; s. 82, ch. 85-81; ss. 3, 19, 20, ch. 86-283; s. 25, ch. 90-134; s. 22, ch. 90-341; ss. 5, 11, ch. 90-345; s. 27, ch. 91-137; s. 4, ch. 91-429; s. 49, ch. 92-149; s. 333, ch. 94-119; s. 6, ch. 94-160; s. 180, ch. 94-218.

484.043 Board headquarters.—The board shall maintain its official headquarters in Tallahassee.

History.—ss. 4, 18, ch. 83-153; ss. 1, 7, ch. 84-94; ss. 19, 20, ch. 86-283; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 4, ch. 91-429.

484.044 Authority to make rules.—

(1) The board is authorized to make such rules not inconsistent with law as may be necessary to carry out the duties and authority conferred upon the board by this part.

(2) The board shall adopt rules requiring that each prospective purchaser of a hearing aid be notified by the attending hearing aid specialist, at the time of the initial examination for fitting and sale of a hearing aid, of telecoil, "t" coil, or "t" switch technology. The rules shall further require that hearing aid specialists make available to prospective purchasers or clients information regarding telecoils, "t" coils, or "t" switches. These rules shall be effective on or before October 1, 1994.

History.—ss. 14, 18, ch. 83-153; ss. 1, 7, ch. 84-94; ss. 4, 19, 20, ch. 86-283; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 4, ch. 91-429; s. 334, ch. 94-119; s. 7, ch. 94-160.

484.0445 Training program.—

(1) The board shall establish by rule a training program not to exceed 6 months in length, which may include a board-approved home study course. Upon submitting to the department the registration fee, the applicant may register and enter the training program. Upon completion of the training program, the trainee shall take the first available written and practical examinations offered by the department. The department shall administer the written and practical examinations as prescribed by board rule. If the trainee fails either the written or the practical examination, he may repeat the training program one time and retake the failed examina-

tion, provided he takes the next available examination. No person may remain in trainee status or further perform any services authorized for a trainee if he fails either the written or the practical examination twice; but, a trainee may continue to function as a trainee until he has received the results of his examinations. Any applicant who has failed an examination twice and is no longer functioning as a trainee shall be eligible for reexamination as provided in s. 484.045(2) and (3).

(2) A trainee shall perform the functions of a hearing aid specialist in accordance with board rules only under the direct supervision of a licensed hearing aid specialist. The term "direct supervision" means that the sponsor is responsible for all work being performed by the trainee. The sponsor or a hearing aid specialist designated by the sponsor shall give final approval to work performed by the trainee and shall be physically present at the time the hearing aid is delivered to the client.

(3) The board may limit pursuant to rule the number of trainees a hearing aid specialist may supervise.

(4) The board may, by rule, require that a licensed hearing aid specialist acting as a sponsor or as the designee of a sponsor under this section be certified by the National Board for Certification in Hearing Instrument Sciences.

History.—ss. 5, 20, ch. 86-283; s. 2, ch. 87-47; s. 35, ch. 88-392; s. 60, ch. 89-374; s. 1, ch. 90-38; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 4, ch. 91-429; s. 158, ch. 94-119.

484.0447 Fees.—The board shall by rule establish fees to be paid as follows:

- (1) Examination application fee, not to exceed \$150;
- (2) Examination fee, not to exceed \$175, which is refundable if the applicant is found to be ineligible to take the examination;
- (3) Reexamination fee, not to exceed \$175;
- (4) Initial licensure fee, not to exceed \$600;
- (5) Trainee registration fee, not to exceed \$100; and
- (6) Biennial renewal fee, not to exceed \$600.

History.—ss. 6, 20, ch. 86-283; s. 30, ch. 88-205; s. 61, ch. 89-162; s. 26, ch. 90-134; s. 22, ch. 90-341; ss. 6, 11, ch. 90-345; s. 28, ch. 91-137; s. 4, ch. 91-429.

484.045 Licensure by examination.—

(1) Any person desiring to be licensed as a hearing aid specialist shall apply to the department to take the licensure examination, which shall include a clinical practical component. The department shall examine each applicant who the board certifies:

- (a) Has completed the application form and remitted the applicable fee to the board and has paid the examination fee;
- (b) Is of good moral character;
- (c) Is 18 years of age or older;
- (d) Is a graduate of an accredited high school or its equivalent; and
- (e)1. Has met the requirements set forth in s. 484.0445; or

2.a. Has a valid, current license as a hearing aid specialist or its equivalent from another state and has been actively practicing in such capacity for at least 12 months; or

b. Is currently certified by the National Board for Certification in Hearing Instrument Sciences and has been actively practicing for at least 12 months. Persons

qualifying under this sub-subparagraph need not take the written or practical examination, but must take and pass a test on Florida laws and rules relating to the fitting and dispensing of hearing aids.

(2) On or after October 1, 1990, every applicant who is qualified to take the examination shall be allowed to take the examination three times. If, after October 1, 1990, an applicant fails the examination three times, he shall no longer be eligible to take the examination.

(3) Notwithstanding the provisions of subsection (2), any applicant who was eligible for examination prior to October 1, 1990, shall be allowed to take the examination a total of five times, provided that the applicant completes such examinations prior to September 30, 1991.

(4) The department shall issue a license to practice dispensing hearing aids to any applicant who successfully completes the examination in accordance with this section.

History.—ss. 5, 18, ch. 83-153; ss. 1, 7, ch. 84-94; ss. 7, 19, 20, ch. 86-283; s. 2, ch. 90-38; s. 30, ch. 90-134; s. 22, ch. 90-341; ss. 9, 11, ch. 90-345; s. 4, ch. 91-429; s. 159, ch. 94-119.

484.047 Renewal of license.—

(1) The board by rule shall provide a method for the biennial renewal of a license.

(2) The department shall renew a license upon receipt of the renewal application, the renewal fee, and a written statement affirming compliance with all other requirements set forth in this section and by the board. A licensee must maintain, if applicable, a certificate from a manufacturer or independent testing agent certifying that the testing room meets the requirements of s. 484.0501(6) and, if applicable, a certificate from a manufacturer or independent testing agent stating that all audiometric testing equipment used by the licensee has been calibrated on an annual basis acoustically to American National Standards Institute standard specifications. Possession of the certificates shall be a prerequisite to renewal.

(3) A licensee shall notify the board in writing of any change of address.

(4) The board may adopt rules to require no more than 30 approved hours of mandatory continuing education for the renewal of a hearing aid specialist's license.

History.—ss. 7, 18, ch. 83-153; ss. 1, 7, ch. 84-94; s. 1, ch. 84-239; s. 83, ch. 85-81; ss. 9, 19, 20, ch. 86-283; s. 3, ch. 90-38; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 30, ch. 91-137; s. 4, ch. 91-429; s. 249, ch. 94-119.

484.0501 Minimal procedures and equipment.—

(1) The following minimal procedures shall be used in the fitting and selling of hearing aids:

(a) Pure tone audiometric testing by air and bone to determine the type and degree of hearing deficiency.

(b) Effective masking when indicated.

(c) Appropriate testing to determine speech reception thresholds, speech discrimination scores, the most comfortable listening levels, uncomfortable loudness levels, and the selection of the best fitting arrangement for maximum hearing aid benefit.

(2) The following equipment shall be used:

(a) A wide range audiometer which meets the specifications of the American National Standards Institute for diagnostic audiometers.

(b) A speech audiometer or a master hearing aid in order to determine the most comfortable listening level and speech discrimination.

(3) A final fitting ensuring physical and operational comfort of the hearing aid shall be made.

(4) The following medical clearance shall be obtained: If, upon inspection of the ear canal with an otoscope in the common procedure of a hearing aid fitter and upon interrogation of the client, there is any recent history of infection or any observable anomaly, the client shall be instructed to see a physician, and a hearing aid shall not be fitted until medical clearance is obtained for the condition noted. If, upon return, the condition noted is no longer observable and the client signs a medical waiver, a hearing aid may be fitted. Any person with a significant difference between bone conduction hearing and air conduction hearing must be informed of the possibility of medical correction.

(5)(a) A hearing aid office must have available, or have access to, a selection of hearing aid models, hearing aid supplies, and services complete enough to accommodate the various needs of the hearing aid wearers.

(b) At the time of the initial examination for fitting and sale of a hearing aid, the attending hearing aid specialist must notify the prospective purchaser or client of the benefits of telecoil, "t" coil, or "t" switch technology, including increased access to telephones and noninvasive access to assistive listening systems required under the Americans with Disabilities Act of 1990.

(6) Each audiometric test conducted by a licensee or authorized trainee in the fitting and selling of hearing aids shall be made in a testing room that has been certified by the department, or by an agent approved by the department, not to exceed the following sound pressure levels at the specified frequencies: 250Hz-40dB, 500Hz-40dB, 750Hz-40dB, 1000Hz-40dB, 1500Hz-42dB, 2000Hz-47dB, 3000Hz-52dB, 4000Hz-57dB, 6000Hz-62dB, and 8000Hz-67dB. An exception to this requirement shall be made in the case of a client who, after being provided written notice of the benefits and advantages of having the test conducted in a certified testing room, requests that the test be conducted in a place other than the licensee's certified testing room. Such request shall be documented by a waiver which includes the written notice and is signed by the licensee and the client prior to the testing. The waiver shall be executed on a form provided by the department. The executed waiver shall be attached to the client's copy of the contract, and a copy of the executed waiver shall be retained in the licensee's file.

(7) The board shall have the power to prescribe the minimum procedures and equipment which shall be used in the conducting of hearing assessments, and for the fitting and selling of hearing aids, including equipment that will measure the hearing aid's response curves to ensure that they meet the manufacturer's specifications. These procedures and equipment may differ from those provided in this section in order to take full advantage of devices and equipment which may hereafter become available and which are demonstrated to be of greater efficiency and accuracy. The

board shall adopt and enforce rules necessary to carry out the provisions of this subsection and subsection (6).

(8) Any duly authorized officer or employee of the department shall have the right to make such inspections and investigations as are necessary in order to determine the state of compliance with the provisions of this section and the applicable rules and may enter the premises of a licensee and inspect the records of same upon reasonable belief that a violation of this law is being or has been committed or that the licensee has failed or is failing to comply with the provisions of this act.

History.—ss. 11, 18, ch. 83-153; ss. 1, 7, ch. 84-94; s. 1, ch. 85-262; ss. 11, 19, 20, ch. 86-283; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 4, ch. 91-429; ss. 250, 335, ch. 94-119; s. 8, ch. 94-160.

484.051 Itemization of prices; delivery of hearing aid; receipt, packaging, disclaimer, guarantee.—

(1) Prior to delivery of services or products to a prospective purchaser, any person who fits and sells hearing aids shall disclose on request by the prospective purchaser an itemized listing of prices, which listing shall include separate price estimates for each service component and each product. Provision of such itemized listing of prices shall not be predicated on the prospective purchaser's payment of any charge or agreement to purchase any service or product.

(2) Any person who fits and sells a hearing aid shall, at the time of delivery, provide the purchaser with a receipt containing the seller's signature, the address of his regular place of business, and his license or trainee registration number, if applicable, together with the brand, model, manufacturer or manufacturer's identification code, and serial number of the hearing aid furnished and the amount charged for the hearing aid. The receipt also shall specify whether the hearing aid is new, used, or rebuilt and shall specify the length of time and other terms of the guarantee and by whom the hearing aid is guaranteed. When the client has requested an itemized list of prices, the receipt shall also provide an itemization of the total purchase price, including, but not limited to, the cost of the aid, earmold, batteries and other accessories, and any services. Notice of the availability of this service shall be displayed in a conspicuous manner in the office. The receipt also shall state that any complaint concerning the hearing aid and guarantee therefor, if not reconciled with the licensee from whom the hearing aid was purchased, should be directed by the purchaser to the Department of Business and Professional Regulation. The address and telephone number of such office shall be stated on the receipt.

(3) No hearing aid may be sold to any person unless both the packaging containing the hearing aid and the itemized receipt provided pursuant to subsection (2) carry the following disclaimer in 10-point or larger type: "A hearing aid will not restore normal hearing, nor will it prevent further hearing loss."

History.—ss. 12, 18, ch. 83-153; ss. 1, 7, ch. 84-94; ss. 12, 19, 20, ch. 86-283; s. 4, ch. 90-38; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 4, ch. 91-429; s. 336, ch. 94-119; s. 9, ch. 94-160.

484.0512 Thirty-day trial period; purchaser's right to cancel; notice; refund; cancellation fee.—

(1) A person selling a hearing aid in this state must provide the buyer with written notice of a 30-day trial

period and money-back guarantee. The guarantee must permit the purchaser to cancel the purchase for a valid reason as defined by rule of the board within 30 days after receiving the hearing aid, by returning the hearing aid or mailing written notice of cancellation to the seller. If the hearing aid must be repaired, remade, or adjusted during the 30-day trial period, the running of the 30-day trial period is suspended 1 day for each 24-hour period that the hearing aid is not in the purchaser's possession. A repaired, remade, or adjusted hearing aid must be claimed by the purchaser within 3 working days after notification of availability. The running of the 30-day trial period resumes on the day the purchaser reclaims the repaired, remade, or adjusted hearing aid or on the fourth day after notification of availability.

(2) The board, in consultation with the Board of Speech-Language Pathology and Audiology, shall prescribe by rule the terms and conditions to be contained in the money-back guarantee and any exceptions thereto. Such rule shall provide, at a minimum, that the charges for earmolds and service provided to fit the hearing aid may be retained by the licensee. The rules shall also set forth any reasonable charges to be held by the licensee as a cancellation fee. Such rule shall be effective on or before December 1, 1994. Should the board fail to adopt such rule, a licensee may not charge a cancellation fee which exceeds 5 percent of the total charge for a hearing aid alone. The terms and conditions of the guarantee, including the total amount available for refund, shall be provided in writing to the purchaser prior to the signing of the contract.

History.—s. 337, ch. 94-119; s. 10, ch. 94-160.

484.0513 Cancellation by medical authorization; purchaser's right to return.—

(1) In addition to any other rights and remedies the purchaser of a hearing aid may have, the purchaser shall have the right to rescind the transaction if the purchaser for whatever reason consults a licensed physician with specialty board certification in otolaryngology or internal medicine or a licensed family practice physician, subsequent to purchasing a hearing aid, and the physician certifies in writing that the purchaser has a hearing impairment for which a hearing aid will not provide a benefit or that the purchaser has a medical condition which contraindicates the use of a hearing aid.

(2) The purchaser of a hearing aid shall have the right to rescind provided in subsection (1) only if the purchaser gives a written notice of the intent to rescind the transaction to the seller at the seller's place of business by certified mail, return receipt requested, which notice shall be posted not later than 60 days following the date of delivery of the hearing aid to the purchaser, and the purchaser returns the hearing aid to the seller in the original condition less normal wear and tear.

(3) If the conditions of subsections (1) and (2) are met, the seller shall, without request, refund to the purchaser, within 10 days of the receipt of notice to rescind, a full and complete refund of all moneys received, less 5 percent. The purchaser shall incur no additional liability for rescinding the transaction.

History.—ss. 13, 20, ch. 86-283; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 4, ch. 91-429.

484.053 Prohibitions; penalties.—

- (1) A person may not:
- (a) Practice dispensing hearing aids unless the person is a licensed hearing aid specialist;
 - (b) Use the name or title "hearing aid specialist" when the person has not been licensed under this part;
 - (c) Present as his own the license of another;
 - (d) Give false, incomplete, or forged evidence to the board or a member thereof for the purposes of obtaining a license;
 - (e) Use or attempt to use a hearing aid specialist license that has been suspended, revoked, or placed on inactive or delinquent status;
 - (f) Knowingly employ unlicensed persons in the practice of dispensing hearing aids; or
 - (g) Knowingly conceal information relative to violations of this part.
- (2) Any person who violates any of the provisions of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) If a person licensed under this part allows the sale of a hearing aid by an unlicensed person not registered as a trainee or fails to comply with the requirements of s. 484.0445(2) relating to supervision of trainees, the board shall, upon determination of that violation, order the full refund of moneys paid by the purchaser upon return of the hearing aid to the seller's place of business.

History.—ss. 9, 18, ch. 83-153; ss. 1, 7, ch. 84-94; ss. 14, 19, 20, ch. 86-283; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 116, ch. 91-224; s. 4, ch. 91-429; s. 251, ch. 94-119.

484.054 Sale or distribution of hearing aids through mail; penalty.—It is unlawful for any person to sell or distribute hearing aids through the mail to the ultimate consumer. Any violation of this section constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—ss. 13, 18, ch. 83-153; ss. 1, 7, ch. 84-94; ss. 15, 19, 20, ch. 86-283; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 32, ch. 91-137; s. 117, ch. 91-224; s. 4, ch. 91-429.

484.056 Disciplinary proceedings.—

(1) The following acts relating to the practice of dispensing hearing aids shall be grounds for both disciplinary action against a hearing aid specialist as set forth in this section and cease and desist or other related action by the department as set forth in s. 455.228 against any person owning or operating a hearing aid establishment who engages in, aids, or abets any such violation:

(a) Violation of any provision of s. 455.227(1) or s. 484.053.

(b) Attempting to procure a license to dispense hearing aids by bribery, by fraudulent misrepresentations, or through an error of the department or the board.

(c) Having a license to dispense hearing aids revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of dispensing hearing aids or the ability to practice dispensing hearing aids, including violations of any federal laws or regulations regarding hearing aids.

(e) Making or filing a report or record which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing, or inducing another person to impede or obstruct such filing. Such reports or records shall include only those reports or records which are signed in one's capacity as a licensed hearing aid specialist.

(f) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(g) Proof that the licensee is guilty of fraud or deceit or of negligence, incompetency, or misconduct in the practice of dispensing hearing aids.

(h) Violation or repeated violation of this part or of chapter 455, or any rules promulgated pursuant thereto.

(i) Violation of a lawful order of the board or department previously entered in a disciplinary hearing or failure to comply with a lawfully issued subpoena of the board or department.

(j) Practicing with a revoked, suspended, inactive, or delinquent license.

(k) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, deceiving, or untruthful.

(l) Showing or demonstrating, or, in the event of sale, delivery of, a product unusable or impractical for the purpose represented or implied by such action.

(m) Misrepresentation of professional services available in the fitting, sale, adjustment, service, or repair of a hearing aid, or use of the terms "doctor," "clinic," "clinical," "medical audiologist," "clinical audiologist," "research audiologist," or "audiologic" or any other term or title which might connote the availability of professional services when such use is not accurate.

(n) Representation, advertisement, or implication that a hearing aid or its repair is guaranteed without providing full disclosure of the identity of the guarantor; the nature, extent, and duration of the guarantee; and the existence of conditions or limitations imposed upon the guarantee.

(o) Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle and that in many cases of hearing loss this type of instrument may not be suitable.

(p) Making any predictions or prognostications as to the future course of a hearing impairment, either in general terms or with reference to an individual person.

(q) Stating or implying that the use of any hearing aid will improve or preserve hearing or prevent or retard the progression of a hearing impairment or that it will have any similar or opposite effect.

(r) Making any statement regarding the cure of the cause of a hearing impairment by the use of a hearing aid.

(s) Representing or implying that a hearing aid is or will be "custom-made," "made to order," or

"prescription-made" or in any other sense specially fabricated for an individual person when such is not the case.

(t) Canvassing from house to house or by telephone either in person or by an agent for the purpose of selling a hearing aid, except that contacting persons who have evidenced an interest in hearing aids, or have been referred as in need of hearing aids, shall not be considered canvassing.

(u) Failure to submit to the board on an annual basis, or such other basis as may be provided by rule, certification of testing and calibration of audiometric testing equipment on the form approved by the board.

(v) Failing to provide all information as described in s. 484.051(1).

(w) Exercising influence on a client in such a manner as to exploit the client for financial gain of the licensee or of a third party.

(2)(a) Except as provided in paragraph (b), when the board finds any hearing aid specialist to be guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

1. Denial of an application for licensure.
2. Revocation or suspension of a license.
3. Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.
4. Issuance of a reprimand.
5. Placing the hearing aid specialist on probation for a period of time and subject to such conditions as the board may specify, including requiring the hearing aid specialist to attend continuing education courses or to work under the supervision of another hearing aid specialist.
6. Restricting the authorized scope of practice.

(b) The board shall revoke the license of any hearing aid specialist found guilty of canvassing as described in this section.

(3) The department shall reissue the license of a hearing aid specialist who has been disciplined upon certification by the board that the hearing aid specialist

has complied with all of the terms and conditions set forth in the final order.

History.—ss. 10, 18, ch. 83-153; ss. 1, 7, ch. 84-94; s. 84, ch. 85-81; ss. 16, 19, 20, ch. 86-283; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 33, ch. 91-137; s. 4, ch. 91-429; s. 252, ch. 94-119.

484.058 Declaration of place of business; posting of license and notice.—Each licensee shall declare and establish a regular place of business, at which his license shall be conspicuously displayed.

History.—ss. 17, 20, ch. 86-283; s. 22, ch. 90-341; s. 11, ch. 90-345; s. 4, ch. 91-429.

484.059 Exemptions.—

(1) The licensure requirements of this part do not apply to any person engaged in recommending hearing aids as part of the academic curriculum of an accredited institution of higher education, or as part of a program conducted by a public charitable institution supported primarily by voluntary contribution, provided this organization does not dispense or sell hearing aids or accessories.

(2) The licensure requirements of this part do not apply to any person licensed to practice medicine in the state, except that such physician shall comply with the requirement of periodic filing of the certificate of testing and calibration of audiometric equipment as provided in this part. No person employed by or working under the supervision of a person licensed to practice medicine shall perform any services or acts which would constitute the dispensing of hearing aids as defined in s. 484.041(3), unless such person is a licensed hearing aid specialist.

(3) The licensure requirements of this part do not apply to an audiologist licensed pursuant to part I of chapter 468.

(4) The provisions of s. 484.053(1)(a) shall not apply to registered trainees operating in compliance with this part and rules of the board.

History.—ss. 16, 18, ch. 83-153; ss. 1, 7, ch. 84-94; ss. 18, 19, 20, ch. 86-283; s. 27, ch. 90-134; s. 22, ch. 90-341; ss. 7, 11, ch. 90-345; s. 4, ch. 91-429.