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Oklahoma  
Secretary of State  
Office of Administrative Rules

# Permanent Final Adoptions

The full text of the rule may be obtained by contacting the Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th St, Oklahoma City, OK 73117, phone (405) 271-5779, email CHSLicensing@health.ok.gov.

[OAR Docket #16-705; filed 7-11-16]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 265. HEARING AID DEALERS AND FITTERS

[OAR Docket #16-706]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

310:265-1-1 [AMENDED]

310:265-1-2 [AMENDED]

Subchapter 3. Examinations

310:265-3-1 [AMENDED]

310:265-3-2 [AMENDED]

310:265-3-3 [AMENDED]

Subchapter 5. License Requirements

310:265-5-1 [AMENDED]

310:265-5-2 [AMENDED]

310:265-5-3 [AMENDED]

310:265-5-4 [AMENDED]

310:265-5-6 [AMENDED]

310:265-5-7 [AMENDED]

310:265-5-8 [AMENDED]

Subchapter 7. Regulatory Enforcement

310:265-7-2 [AMENDED]

310:265-7-3 [AMENDED]

Appendix A. Statements Required by OAC 310:265-5-4(e) [NEW]

### AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. Section 1-104 and Title 63 O.S. Section 1-1750.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

September 9, 2015

### COMMENT PERIOD:

October 1, 2015 through November 4, 2015

### PUBLIC HEARING:

November 4, 2015

### ADOPTION:

December 8, 2015

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 18, 2015

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 9, 2016

### FINAL ADOPTION:

June 9, 2016

### EFFECTIVE:

November 1, 2016

### SUPERSEDED EMERGENCY ACTIONS:

"n/a"

### INCORPORATIONS BY REFERENCE:

"n/a"

### ANALYSIS:

This Chapter applies to individuals licensed for the purpose of fitting and dealing hearing aids as set forth in Title 63, Section 1-1750 and the sections that follow. The changes clarify the exam requirements to agree with changes to the law effective November 1, 2015, but also have given consideration to a review of best practices for the entire chapter. A summary of these changes include updates and clarification to temporary permits, reciprocity, business regulatory authority, customer notification, continuing education requirements, clarification of waivers and update of the advisory council. These changes allow the hearing aid fitting and dealing profession

to stay current with national standards and ensure customers are protected and aware of their rights under this Rule. The effect of this Rule change will allow applicants the option to choose the most applicable exam for hearing aid fitters and dealers licensure and update the rule with current practices in the profession.

These changes make the rule consistent with changes in advisory board composition specified in House Bill 1467, effective November 1, 2013, and changes in exam requirements specified in Senate Bill 46, effective November 1, 2015. They further address issues identified by the Advisory Board.

### CONTACT PERSON:

Lynnette Jordan, Service Director, Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th St, Oklahoma City, OK 73117, (405) 271-5779, Lynnette@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2016:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 310:265-1-1. Purpose

The rules in this Chapter implement the Hearing Aid Dealers and Fitters Act, 63 O.S. ~~Supp.—1990~~, Section 1-1750 et seq.

### 310:265-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means those statutes relating to Hearing Aid Dealers and Fitters codified at 63 O.S., Sections 1-1750 to 1-1754, as amended.

"**Board**" means the State Board of Health.

"**Commissioner**" means the State Commissioner of Health or his/her authorized representative.

"**Department**" means the Oklahoma State Department of Health.

"**Direct on-site supervision**" means a licensed hearing aid dealer and fitter shall accompany a temporary permit holder anytime the permit holder is performing the practice of fitting and dealing in hearing aids.

"**Established procedures and instrumentation in fitting of hearing aids**" means a minimum requirement all hearing tests shall include both air\_ conduction and bone conduction threshold measurements except in the case of a re-test when there is less than a fifteen (15) dB loss between the current air\_ conduction threshold and the previous air\_ conduction threshold and the previous tests showed the loss to be sensorineural.

"**Hearing aid**" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, but excluding earmolds, batteries, and cords; provided that this definition shall not include lenses or spectacle frame fronts for eyeglass-type hearing aids; except in the case of spectacle frame fronts which include electrical wiring as part of the hearing aid.

"**Hearing Screening**" means a binary pure tone screening at a preset intensity level for the purpose of determining if an individual screened needs further testing prior to the selection or sale of a hearing aid.

"**License**" means a license issued by the Commissioner to hearing aid dealers and fitters.

"**Practice of fitting and dealing in hearing aids**" means those practices used for the purpose of selection, adaptation and sale of hearing aids including direct observation of the ear together with the counseling and instruction pertaining thereto, the testing of human hearing for these purposes and the making of impressions for earmolds.

"**Qualified waiver**" means a written acknowledgment endorsed by the person supplied with a hearing aid, or his lawfully appointed guardian, that indicates that the person supplied with a hearing aid was advised that the ambient noise level of the testing environment used to fit a hearing aid exceeded 45 dB on a slow weighted dB (a) scale and that the hearing test conducted could result in an inappropriately fitted hearing aid.

"**Sell**" or "**sale**" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

"**Seller**" means any person who dispenses a hearing aid to any member of the consuming public.

"**Temporary permit**" means a permit issued while the applicant is training to become a licensed hearing aid dealer or fitter.

### SUBCHAPTER 3. EXAMINATIONS

#### 310:265-3-1. Qualifications

(a) Applicants may obtain a hearing aid dealer or fitter license by successfully passing qualifying examinations, provided the applicant:

- (1) Is at least eighteen (18) years of age;
- (2) Is of good moral character. A criminal record shall not in itself bar an applicant from licensing, but evidence of such record may be considered along with other information in determining whether or not the applicant is of good moral character.
- (3) Has an education equivalent to a four-year course in an accredited high school; and
- (4) Has filed with the Commissioner an application for registration and examination and paid the examination fee of Ninety-five Dollars (\$95.00), or paid the examination fee to a national examination provider whose exam meets the requirements of this Chapter and who has entered into an agreement with the Department to provide the exam.

(b) An applicant for license by examination shall appear ~~at a time, place and~~ before such persons as the Commissioner may designate to be examined to demonstrate that he/she is qualified to practice the fitting and sale of hearing aids. Nothing in this examination shall imply that the applicant shall possess the degree of medical competence normally expected of physicians.

(c) The Commissioner shall give examination as required to permit applicants to be examined within six (6) months following the submission of the official application form.

(d) Successfully passing the examination means passing each of the sections ~~based on the following criteria~~. When a passing score is obtained for any section, that section will not have to be taken again. A passing score for each section below will be approved by the Department based on the submitted and approved examination.

- (1) Written Examination meeting the requirements of this Chapter ~~Passing score for the written examination is established by the examination provider.~~
- (2) ~~Passing score for the Oklahoma Audiometric Practical examination is 70% or above.~~
- (3) ~~Passing score for the Oklahoma Hearing Aid Rules examination is 70% or above.~~
- (4) ~~Passing score for the Oklahoma Ear Impression Practical~~ practical examination is 70% or above.
- (5) ~~Passing score for the Hearing Aid Trouble Shooting Practical Examination is 70% or above.~~

(e) No person may take any portion of the ~~state~~ examination more than three (3) times and must wait at least seven days before retaking a portion of any examination. Any person failing any section of the state licensing examination three times shall not be allowed to apply for an Oklahoma Hearing Aid Dealers and Fitters License for ~~five (5) years~~ one (1) year from their ~~application last testing date~~. If a person fails any portion of the ~~state licensing examination~~ three (3) times, the Department shall summarily suspend and seek permanent revocation of the person's current temporary hearing aid dealers and fitters permit.

#### 310:265-3-2. Contents of examination

The hearing aid dealer or fitter examination shall consist of an examination ~~as compiled~~ at the discretion of the Commissioner, taking into consideration the guidelines if available for a national examination and guidelines if available for similar examinations given by surrounding states. The tests under this section shall not require a higher education in the fields of medicine, audiology or communication disorders. The examination shall consist of tests of knowledge as it pertains to the sale and fitting of hearing aids as follows:

- (1) Function of a hearing aid;
- (2) Pure tone audiometry, including air conduction testing and bone conduction testing (continuous-pulsing ~~audiometer~~ audiometer setting not accepted);
- (3) Recorded voice speech audiometry;
- (4) Masking when indicated;
- (5) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid;
- (6) Taking earmold impressions;
- (7) Rules and regulations pertaining to the sale and fitting of hearing aids; and
- (8) Trouble Shooting pertaining to the identification of ~~visible~~ visible physical defects or damage to hearing aids.

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### 310:265-3-3. Fees for ~~licenses~~ license applications and examinations

(a) Fees for ~~licenses~~ license applications, permits and examinations shall be as follows:

- (1) Initial License Application Fee - \$50.00;
- (2) Examination Fee - \$95.00, or receipt for payment of an examination fee for an examination from a national provider that meets the requirements of this Chapter and who has entered into an agreement with the Department to provide the exam;
- (3) Temporary Permit Application Fee - \$15.00;
- (4) ~~Renewal of License Fee (on or before January 30)~~ - \$50.00;
- (5) Reexamination Fee - \$95.00;
- (6) ~~Renewal of Temporary Permit Extension Fee~~ - \$15.00;
- (7) Renewal of License (within thirty-day grace period) - \$75.00; and
- (8) Renewal of License (after thirty-day grace period) - \$100.00.

(9b) Licensure by equivalency fees, grounds for renewal and procedures for the suspension and revocation shall be the same as for initial licensing, renewal, suspension and revocation of a license.

(c) Application fees are non-refundable.

## SUBCHAPTER 5. LICENSE REQUIREMENTS

### 310:265-5-1. License required

(a) No person shall engage in the sale of or practice of fitting hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting and sale of hearing aids without first obtaining a license or permit in accordance with these rules from the ~~commissioner~~ Commissioner or his designated representative. The license shall be conspicuously posted in his/her office or place of business. Duplicate licenses shall be issued by the Commissioner to valid license holders operating more than one office, without additional payment.

(b) Nothing in these regulations shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided ~~that~~ it employs only properly licensed persons in the direct sale and fitting of such products. Such corporations, partnerships, trust, associations or other like organizations shall ~~file annually with the Commissioner~~ make a list of all licensed hearing aid dealers and fitters directly or indirectly employed by them available to the Department upon request.

(c) Nothing in these regulations shall permit a licensed hearing aid dealer or fitter to take facial measurements for eyeglasses or to fit, adjust, duplicate or adapt lenses or spectacle frames, except that a licensed hearing aid dealer or fitter may adapt or replace the temple or temples incorporating hearing aid components in eyeglass-type hearing aids.

### 310:265-5-2. Applicant requirements for reciprocity

(a) Whenever the Commissioner determines ~~that~~ another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to these regulations excluding trouble-shooting and Oklahoma regulations, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to these regulations are qualified to dispense and fit hearing aids, the Commissioner may issue a license to applicants who hold current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. ~~No such applicants shall be required to submit to or undergo a qualifying examination other than the payment of fees, pursuant to these regulations, and shall be registered in the same manner as licensees. The fee shall be the same as the fee for an initial license.~~

(b) Applicants must submit an application for reciprocity on forms as designated by the Department.

(c) Applicants must submit an Out-of-State Licensure Verification form filled out by the other licensing state.

(d) Applicants must register with the Department and pass the Oklahoma Hearing Aid Rules examination and Hearing Aid Trouble Shooting Practical Examination.

### 310:265-5-3. Address of place of business

(a) A person who holds a license shall notify the Commissioner in writing of each address of the business(es) where he/she engages or intends to engage in the fitting or the sale of hearing aids. A post office box number by itself does not fulfill this requirement.

(b) The Commissioner shall keep a record of the place of business of licensees.

(c) Any notice required to be given by the Commissioner to a person who holds a license shall be mailed to him/her by certified mail at the address of the last place of business of which he/she has notified the Commissioner.

(d) Where more than one (1) office is operated by the licensee, duplicate licenses shall be issued by the Commissioner for posting in each location, without additional payment. The licensee must send a written request for a duplicate license indicating the address of the place of business where the duplicate license will be posted.

### 310:265-5-4. Receipts

(a) Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a hearing aid a receipt which shall contain the licensee's signature and show his business address, (a post office box number by itself does not meet the requirement of a business address), and number of his State license, together with specifications as to the make and model of the hearing aid furnished, with full terms of the sale clearly stated. If an aid which is not new is sold, the receipt shall be clearly marked as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

(b) Such receipt shall bear in no smaller type than the largest used in the body copy portion the following: "Any examination or representation made by a licensed hearing aid dealer

and fitter in connection with the fitting and selling of 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 or advice. Further, it is recommended that medical advice from a licensed physician should be obtained."

(c) No receipt for a hearing aid shall be valid without the original signature of a licensed hearing aid dealer and fitter. Said receipt shall constitute a contract of sale between the hearing aid dealer and fitter and the purchaser. The holder of a temporary license may not issue a receipt unless the original signature of the direct supervisor also appears on the receipt. Said receipt shall have the state license number of both the licensed hearing aid dealer and fitter and the temporary licensed person.

(d) The hearing aid dealer and fitter may retain a cancellation fee of 10% or \$150 per aid, whichever is less, of the purchase price of the hearing aid(s). The guarantee must entitle the purchaser, upon cancellation for any reason within the 30-day period after taking possession of the hearing aid(s), to receive the full refund less the cancellation fee. Said refund shall be provided to the purchaser within 30 days after the return of the hearing aid(s). If the hearing aid must be repaired, remade or adjusted during the 30-day refund period, the running of the 30-day period is tolled for any period during which the hearing aid provider takes possession or control of a hearing aid after its original delivery.

(e) ~~The hearing aid provider shall provide a written receipt or contract to the purchaser that includes, in immediate proximity to the space reserved for the signature of the purchaser, the following specific statement in all bold faced type capital letters no smaller than the largest print used in the written receipt or contract: The hearing aid provider shall provide a written receipt or contract to the purchaser that includes, in immediate proximity to the space reserved for the signature of the purchaser, the two specific statements as set forth in Appendix A, in all bold-faced type capital letters no smaller than the largest print used in the written receipt or contract.~~ **OKLAHOMA STATE LAW GIVES THE PURCHASER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON BY RETURNING THE HEARING AID TO THE HEARING AID PROVIDER AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRTIETH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID. BY LAW, THE HEARING AID PROVIDER MAY BE ENTITLED TO A CANCELLATION FEE NOT TO EXCEED TEN PER CENT (10%) OF THE TOTAL PURCHASE PRICE FOR THE HEARING AID OR ONE HUNDRED FIFTY DOLLARS (\$150.00) PER HEARING AID, WHICHEVER IS LESS, TO COVER THE COSTS INCURRED BY THE HEARING AID PROVIDER. IF THE PURCHASER RETURNS THE HEARING AID WITHIN THE THIRTY DAY PERIOD, THE PURCHASER WILL RECEIVE A REFUND OF \$.00. (HEARING AID PROVIDER MUST INSERT THE DOLLAR AMOUNT OF THE REFUND). IF THE HEARING AID PROVIDER FAILS TO COMPLY WITH THIS PROVISION, COMPLAINTS SHOULD BE FORWARDED TO: OKLAHOMA STATE DEPARTMENT OF HEALTH OCCUPATIONAL LICENSING DIVISION 1000**

~~N.E. 10<sup>TH</sup> STREET OKLAHOMA CITY, OKLAHOMA 73117 [15:764.1(A)(3)]~~

(f) The following information and measurements shall be included in each customer/patient file or permanent record, and be documented for the client:

- (1) A description, including location of any visible, congenital or deformity of the ear.
- (2) Whether the client has active, or a history of, drainage from the ear within the last 90 days.
- (3) Whether the client has acute or chronic dizziness.
- (4) Whether the client has unilateral hearing loss of a sudden or recent onset within the previous 90 days.
- (5) Whether the client has a history of sudden or rapidly progressive hearing loss within the previous 90 days.
- (6) Whether the client has an Audiometric Air Bone Gap equal to or greater than 15 decibels at 500 Hertz, 1000 Hertz and 2000 Hertz.
- (7) Whether the client has visible evidence of significant cerumen accumulation or a foreign body in the ear canal.
- (8) Whether the client has pain or discomfort in the ear.

**310:265-5-6. Continuing education requirements**

(a) Each applicant for renewal of a hearing aid dealer or fitter license must submit written evidence showing he/she has completed ten (10) clock hours of continuing education, completed during the previous year and pertaining to the hearing sciences, ~~as approved by the National Institute of Hearing Instruments Studies or an equivalent; or have had the curriculum approved by the Department.~~

- (1) No more than four (4) online continuing education clock hours may be submitted for the required ten (10) annual hours.
- (2) The continuing education hours must be approved by the International Institute of Hearing Instruments or have had the curriculum approved by the Department.

(b) **Continuing education course approval by the Department.** An entity which desires to sponsor education to licensees in compliance with the continuing education requirements of subsection (a) of this Section shall file an application for approval on the form prescribed by the Department. An application shall include a list of the course instructors and their qualifications, an agenda detailing the material to be presented, the location of the training, the program objectives, and the number of clock hours of classroom and supervised instruction. After completion of the course, the entity shall submit sign-in sheets for all sessions which require a signature and social security number or state license number of each person in attendance. The program shall verify the total number of continuing education hours completed by each attendee. All programs shall be presented as submitted unless changes have been approved prior to presentation. Changes which occur during the presentation shall be submitted to the Department within ten (10) days of the training session for review by the Department. Failure to obtain approval of changes may result in loss of certification.

(c) **Approval requirements for continuing education.**

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- (1) All material and information presented shall pertain to the hearing aid dealers and fitters profession.
- (2) ~~The training location must be outside the regular work place or after regular work hours.~~
- (3) All training should utilize materials that are to be generic and non-proprietary in nature.

### 310:265-5-7. Temporary permits

- (a) An applicant who fulfills the requirements regarding age, character and education as set forth in these regulations shall be entitled to a temporary hearing aid dealer or fitter permit upon application to the Commissioner. Previous experience or a waiting period shall not be required to obtain a temporary permit.
- (b) Upon receiving an application as provided under this section and accompanied by a temporary permit application fee of Fifteen Dollars (\$15.00), the Commissioner shall issue a temporary permit which shall entitle the applicant to engage in the fitting and sale of hearing aids for a period not to exceed six (6) months or until the holder has successfully passed the examination required for a license, whichever period is less. A person holding a valid Oklahoma Hearing Aid Dealers' and Fitters' License shall be responsible for the direct on-site supervision and training of such applicant ~~and maintain adequate personal contact.~~
- (c) A temporary permit may be extended for an additional period by the Commissioner upon payment of a fee of Fifteen Dollars (\$15.00). The Commissioner shall not extend a temporary permit more than one (1) time.
- (d) A maximum of two (2) people with temporary permits may work under the direct on-site supervision of a person holding a valid Oklahoma Hearing Aid Dealers' and Fitters' License.

### 310:265-5-8. Procedures and instrumentation in fitting of hearing aids.

- (a) **Testing.**
  - (1) All instruments used to measure thresholds shall be annually certified to meet American National Standard Specifications for Audiometer, S3.6-1969 or a standard which supersedes it. In addition, some form of live voice or recorded voice testing must be made to obtain at least a subjective evaluation of the individual's ability to discriminate. In the case of live voice testing, the tests should be run without visual cue. A hearing aid of similar characteristics can be refitted to an individual without a hearing test if this is done within six (6) months of the original fitting and original hearing test.
  - (2) Hearing testing for the purpose of fitting hearing aids shall not be conducted where ambient noise levels exceed 45 dB measured on a slow weighted dB (a) scale. If the testing environment exceeds 45 dB, the testing shall be considered a "Hearing Screening" and shall not be utilized to determine the auditory thresholds in the selection of a hearing aid unless a qualified waiver is executed by the person supplied with a hearing aid and is accompanied

by written documentation from a competent medical authority as outlined in 310:265-5-8(c).

- (b) **Screening.** A licensee may conduct a hearing screening at a health fair, state fair, public location or similar facility, but due to excessive background noise commonly found in these environments, measurement of auditory thresholds are not acceptable. A licensee should present to the person receiving the "Hearing Screening" a written statement at the time of the screening containing the following provisions: Results of a "Hearing Screening" are not a medical or audiological evaluation of your ear nor a diagnosis of a hearing disorder. You passed/failed (circle one) the hearing screening. Failing a screening is an indication you need further testing prior to the selection of a hearing aid.
- (c) **Qualified waiver.** The waiver must be accompanied by written documentation from a competent medical authority that the person supplied with a hearing aid is not ambulatory and any transport of that person would create a serious risk of harm or cause an imminent threat to their health and ~~well being~~ wellbeing. A qualified waiver may not be utilized at a hearing screening conducted at a health fair, state fair, public location or similar facility that exceeds 45 dB on a slow weighted dB (a) scale.

## SUBCHAPTER 7. REGULATORY ENFORCEMENT

### 310:265-7-2. Prohibited acts

- (a) No person shall:
  - (1) Sell, barter, or offer to sell or barter a license;
  - (2) Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to practice the fitting and sale of hearing aids;
  - (3) Alter a license with fraudulent intent;
  - (4) Use or attempt to use as a valid license which has been purchased, fraudulently obtained, counterfeited or materially altered;
  - (5) Willfully make a false statement in an application for a license or application for renewal of a license;
  - (6) Engage in the practice of fitting and dealing in hearing aids with a temporary permit unless under the direct on-site supervision of an Oklahoma Licensed Hearing Aid Dealer and Fitter; ~~or~~
  - (7) Allow a temporary permit holder to engage in the practice of fitting and dealing in hearing aids unless under the direct supervision of an Oklahoma Licensed Hearing Aid Dealer and Fitter;
  - (8) Sell a hearing instrument to a person under eighteen (18) years of age unless the prospective user, parent or guardian has presented to the licensee a medical evaluation signed by a ~~board eligible or board certified otolaryngologist-physician who specializes in diseases of the ear,~~ otolaryngologist-physician who specializes in diseases of the ear that states the client may be considered a candidate for a hearing instrument. This requirement may be waived if a otolaryngologist-physician who specializes in diseases of the ear is not available within 100 miles of the person's residence and a licensed physician provides the medical

evaluation. This evaluation must have taken place within the preceding six (6) months of the testing and fitting. A licensed audiologist should perform the evaluation and rehabilitation; or-

(9) ~~An Oklahoma licensed hearing aid dealer and fitter shall not infer~~ Infer directly or indirectly in advertisement or written material that the hearing aid dealer and fitter is licensed as a physician or audiologist or performs diagnostic procedures to determine the cause of a hearing impairment.

(b) Violations of this Section may be brought pursuant to Title 63 O.S. Section 1-1701.1A (Administrative penalty), as amended.

**310:265-7-3. Complaint procedure**

(a) **Purpose.** The purpose of this section is to specify the administration and investigation of complaints and the filing of disciplinary actions against hearing aid dealers and fitters who hold a license or temporary permit in Oklahoma, or against persons who sell hearing aids in Oklahoma without a license or temporary permit and who are not otherwise exempt from the license requirements.

(b) **Complaints.**

(1) Any person may file a complaint against a licensed hearing aid dealer and fitter or temporary licensed dealer and fitter or a person selling or fitting hearing aids. A person desiring to report a complaint or violation by a licensee or seller shall notify the Department in writing. The Department will determine whether the complaint alleges a possible violation of the Act or this chapter. The

Department may present the complaint to the ~~Hearing Aid Advisory Council~~ Consumer Protection Licensing Advisory Council for consultation.

(2) The Department may request a written response to the complaint from the licensee to determine if the complainant has exhausted their remedy under the sales agreement.

(3) Except as provided in Paragraph (2) of this subsection, the complaint and the identity of the complainant may be confidential and unavailable for public inspection or disclosure unless otherwise required by law. The Department shall confirm whether or not a complaint has been received.

(c) **Investigation.** If the Department determines ~~that~~ a possible violation of the Act or this Chapter has occurred, the Department may commence an investigation of the complaint.

(d) **Filing of an action.** The Department may begin a disciplinary action against a person who holds a license or temporary permit as a hearing aid dealer and fitter or a person selling hearing aids who is not exempt from licensure. The Department shall specifically state the violation(s) and shall request the appropriate remedy. Remedies include revocation of a license, suspension of a license, probation of a licensee, an administrative penalty, injunctive relief, or a combination of the foregoing remedies.

(e) **Referral of investigation.** Notwithstanding subsection (d) of this section, the Commissioner of Health may refer the results of an investigation, or complaint, received by the Department to the appropriate official(s) in consideration for criminal prosecution.

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### APPENDIX A. STATEMENTS REQUIRED BY OAC 310:265-5-4(E) [NEW]

As specified in 310:265-5-4(e), the statements below must be included in any written receipt or contract provided to the purchaser. The statements shall be placed in immediate proximity to the space reserved for the signature of the purchaser in all bold-faced type capital letters no smaller than the largest print used in the written receipt or contract.

(1) Statement One:

*OKLAHOMA STATE LAW GIVES THE PURCHASER THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON BY RETURNING THE HEARING AID TO THE HEARING AID PROVIDER AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRTIETH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID.*

*BY LAW, THE HEARING AID PROVIDER MAY BE ENTITLED TO A CANCELLATION FEE NOT TO EXCEED TEN PER CENT (10%) OF THE TOTAL PURCHASE PRICE FOR THE HEARING AID OR ONE HUNDRED FIFTY DOLLARS (\$150.00) PER HEARING AID, WHICHEVER IS LESS, TO COVER THE COSTS INCURRED BY THE HEARING AID PROVIDER.*

*IF THE PURCHASER RETURNS THE HEARING AID WITHIN THE THIRTY-DAY PERIOD, THE PURCHASER WILL RECEIVE A REFUND OF \$ \_\_\_\_\_ .00. (HEARING AID PROVIDER MUST INSERT THE DOLLAR AMOUNT OF THE REFUND).*

*IF THE HEARING AID PROVIDER FAILS TO COMPLY WITH THIS PROVISION, COMPLAINTS SHOULD BE FORWARDED TO:*

*OKLAHOMA STATE DEPARTMENT OF HEALTH  
OCCUPATIONAL LICENSING DIVISION  
1000 N.E. 10TH STREET  
OKLAHOMA CITY, OKLAHOMA 73117  
[15:764.1(A)(3)]*

(2) Statement two:

*DURING THE THIRTY-DAY PERIOD, IF THE HEARING AID IS RETURNED FOR REPAIRS OR ADJUSTMENTS THE THIRTY-DAY PERIOD SHALL BE TOLLED UNTIL RETURN OF THE AID(S) TO THE PURCHASER.*

*[OAR Docket #16-706; filed 7-11-16]*

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# Permanent Final Adoptions

The full text of the rule may be obtained by contacting the Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th St, Oklahoma City, OK 73117, phone (405) 271-5779, email CHSLicensing@health.ok.gov.

[OAR Docket #16-705; filed 7-11-16]

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[OAR Docket #16-706]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

310:265-1-1 [AMENDED]

310:265-1-2 [AMENDED]

Subchapter 3. Examinations

310:265-3-1 [AMENDED]

310:265-3-2 [AMENDED]

310:265-3-3 [AMENDED]

Subchapter 5. License Requirements

310:265-5-1 [AMENDED]

310:265-5-2 [AMENDED]

310:265-5-3 [AMENDED]

310:265-5-4 [AMENDED]

310:265-5-6 [AMENDED]

310:265-5-7 [AMENDED]

310:265-5-8 [AMENDED]

Subchapter 7. Regulatory Enforcement

310:265-7-2 [AMENDED]

310:265-7-3 [AMENDED]

Appendix A. Statements Required by OAC 310:265-5-4(e) [NEW]

### AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. Section 1-104 and Title 63 O.S. Section 1-1750.

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

September 9, 2015

### COMMENT PERIOD:

October 1, 2015 through November 4, 2015

### PUBLIC HEARING:

November 4, 2015

### ADOPTION:

December 8, 2015

### SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 18, 2015

### APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 9, 2016

### FINAL ADOPTION:

June 9, 2016

### EFFECTIVE:

November 1, 2016

### SUPERSEDED EMERGENCY ACTIONS:

"n/a"

### INCORPORATIONS BY REFERENCE:

"n/a"

### ANALYSIS:

This Chapter applies to individuals licensed for the purpose of fitting and dealing hearing aids as set forth in Title 63, Section 1-1750 and the sections that follow. The changes clarify the exam requirements to agree with changes to the law effective November 1, 2015, but also have given consideration to a review of best practices for the entire chapter. A summary of these changes include updates and clarification to temporary permits, reciprocity, business regulatory authority, customer notification, continuing education requirements, clarification of waivers and update of the advisory council. These changes allow the hearing aid fitting and dealing profession

to stay current with national standards and ensure customers are protected and aware of their rights under this Rule. The effect of this Rule change will allow applicants the option to choose the most applicable exam for hearing aid fitters and dealers licensure and update the rule with current practices in the profession.

These changes make the rule consistent with changes in advisory board composition specified in House Bill 1467, effective November 1, 2013, and changes in exam requirements specified in Senate Bill 46, effective November 1, 2015. They further address issues identified by the Advisory Board.

### CONTACT PERSON:

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF NOVEMBER 1, 2016:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 310:265-1-1. Purpose

The rules in this Chapter implement the Hearing Aid Dealers and Fitters Act, 63 O.S. ~~Supp.—1990~~, Section 1-1750 et seq.

### 310:265-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means those statutes relating to Hearing Aid Dealers and Fitters codified at 63 O.S., Sections 1-1750 to 1-1754, as amended.

"**Board**" means the State Board of Health.

"**Commissioner**" means the State Commissioner of Health or his/her authorized representative.

"**Department**" means the Oklahoma State Department of Health.

"**Direct on-site supervision**" means a licensed hearing aid dealer and fitter shall accompany a temporary permit holder anytime the permit holder is performing the practice of fitting and dealing in hearing aids.

"**Established procedures and instrumentation in fitting of hearing aids**" means a minimum requirement all hearing tests shall include both air\_ conduction and bone conduction threshold measurements except in the case of a re-test when there is less than a fifteen (15) dB loss between the current air\_ conduction threshold and the previous air\_ conduction threshold and the previous tests showed the loss to be sensorineural.

"**Hearing aid**" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, but excluding earmolds, batteries, and cords; provided that this definition shall not include lenses or spectacle frame fronts for eyeglass-type hearing aids; except in the case of spectacle frame fronts which include electrical wiring as part of the hearing aid.