

**Fifty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1279  
(Representatives Wrangham, Carlisle)  
(Senator Klein)

AN ACT to create and enact a new subsection to section 43-33-14 of the North Dakota Century Code, relating to duties of the board of hearing aid specialists; and to amend and reenact section 43-33-01, subsection 2 of section 43-33-02, section 43-33-02.1, subsection 2 of section 43-33-03, section 43-33-04, subsection 2 of section 43-33-08, sections 43-33-10 and 43-33-11, subsection 2 of section 43-33-12, section 43-33-15, subsection 2 of section 43-37-03, and subdivision m of subsection 1 of section 43-46-01 of the North Dakota Century Code, relating to hearing aid specialists.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 43-33-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-33-01. Definitions.** As used in this chapter, unless the context requires otherwise:

1. "Board" means the board of hearing ~~instrument dispensers~~ aid specialists.
2. "Hearing aid" or "hearing instrument" 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 including earmold, but excluding batteries, cords, and earmold tubing.
3. "License" means a license issued under this chapter to a hearing ~~instrument dispensers~~ aid specialist.
4. "Licensee" means a hearing aid specialist licensed under this chapter.
5. "Practice of fitting and dispensing hearing instruments" means the measurement of human hearing to determine hearing loss by means of an audiometer or by any means solely for the purpose of making selections, adaptations, repairs, or sale of hearing instruments. The term also includes the making of impressions for earmolds. ~~A dispenser licensee~~, at the request of a physician or member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.
5. ~~6.~~ "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. This excludes wholesale to distributors or dispensers.
6. ~~7.~~ "Trainee permit" means a temporary permit issued while an applicant is in training to become a ~~licensed hearing instrument dispenser~~ licensee.

**SECTION 2. AMENDMENT.** Subsection 2 of section 43-33-02 of the North Dakota Century Code is amended and reenacted as follows:

2. This chapter does not prohibit a person maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if that person employs only properly licensed individuals in the direct sale and fitting of such products. Such persons shall file annually with the board a list of all ~~licensed hearing instrument dispensers~~ licensees directly or indirectly employed by it. Those

persons shall also file with the board a statement on a form approved by the board that they submit themselves to the rules of the board and the provisions of this chapter.

**SECTION 3. AMENDMENT.** Section 43-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-33-02.1. Conviction not bar to licensure - Exceptions.** Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a hearing ~~instrument dispenser~~ aid specialist, or determines that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**SECTION 4. AMENDMENT.** Subsection 2 of section 43-33-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The receipt must 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 ~~instrument dispenser~~ aid specialist in connection with the fitting and selling of this hearing instrument 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.

**SECTION 5. AMENDMENT.** Section 43-33-04 of the North Dakota Century Code is amended and reenacted as follows:

**43-33-04. Persons and practices not affected.** This chapter does not prevent or restrict:

1. A person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if the person or organization employing that person does not sell hearing instruments.
2. A person employed as a hearing ~~instrument dispenser~~ aid specialist by the federal government from engaging in the practice of fitting and dispensing hearing instruments if the person performs the practice solely within the confines or under the jurisdiction of the government of the United States.
3. Activities and services of a person pursuing a course of study leading to a graduate degree in audiology at a college or university if the activities or services are under the direct supervision of a ~~licensed dispenser~~ licensee, constitute a part of a supervised course of study, and the person is designated an audiology intern or trainee or by another title clearly indicating the training status appropriate to the level of training.

**SECTION 6. AMENDMENT.** Subsection 2 of section 43-33-08 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receiving an application accompanied by a fee as established by the board, the board shall issue a trainee permit that permits the applicant to engage in the training of fitting and sale of hearing instruments for a period of one year under the direct supervision of a ~~person holding a valid hearing instrument dispenser license~~ licensee. The trainee shall train in the same place of business as that of the supervisor and must complete at least thirty hours of book and visual aid training and at least ten hours of training with an audiometer, as well as a minimum of one week with the supervisor before the trainee's first public contact alone. A trainee may not deal with the public outside the supervisor's office or place of business until these requirements have been fulfilled. After this initial period of training, the trainee must spend one day per week in the office or place of business with the supervisor. The trainee may not make any sale of a hearing instrument without first consulting with the supervisor and obtaining the supervisor's approval for the sale.

**SECTION 7. AMENDMENT.** Section 43-33-10 of the North Dakota Century Code is amended and reenacted as follows:

**43-33-10. Notice to board of place of business - Notice to holders of license licensees - How given by board.**

1. A ~~person who holds a license~~ licensee shall notify the board in writing of a regular address of the place or places where the ~~person~~ licensee engages or intends to engage in the fitting or the sale of hearing instruments.
2. The board shall keep a record of the place of business of ~~persons who hold licenses~~ licensees.
3. Any notice required to be given by the board to a ~~person who holds a license~~ licensee must be mailed by certified mail at the address of the last place of business of which the person has notified the board.
4. The board shall keep a record of the trainees, their place of training, and their supervisors.

**SECTION 8. AMENDMENT.** Section 43-33-11 of the North Dakota Century Code is amended and reenacted as follows:

**43-33-11. Annual renewal of license - Fees - Continuing education - Effect of failure to renew.** Each ~~person who engages in the fitting and sale of hearing instruments~~ licensee shall annually, before the expiration of the person's license, pay to the board the proper fees, together with a certificate showing attendance for a minimum of ten hours of continuing education per calendar year at schools or seminars approved by the board as defined by rule, pertaining to the fitting and sales of hearing instruments, for a renewal of a license. A thirty-day grace period must be allowed after the expiration of a license when a license may be renewed on payment of the proper fees together with the certificate of continuing education to the board. After expiration of the grace period, the board may renew a license upon the payment of the proper fees together with the certificate of continuing education to the board. A ~~person~~ licensee who applies for renewal, whose license has expired, may not be required to submit to an examination as a condition to renewal, if the renewal application is made within two years from the date of the expiration and is accompanied with a certificate of continuing education during the twelve months immediately preceding the date of application.

**SECTION 9. AMENDMENT.** Subsection 2 of section 43-33-12 of the North Dakota Century Code is amended and reenacted as follows:

2. The board may revoke or suspend a person's license for any of the following causes:
  - a. The conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a hearing ~~instrument dispenser~~ aid specialist, or the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
  - b. Procuring of a license by fraud or deceit.
  - c. Unethical conduct. Unethical conduct means:
    - (1) Obtaining any fee or making any sale by fraud or misrepresentation.
    - (2) Knowingly employing, directly or indirectly, any suspended; or unregistered person to perform any work covered by this chapter.
    - (3) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.

- (4) Advertising a particular model or type of hearing instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
  - (5) Representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when that is not true, or using the word "doctor", "clinic", "audiologist", or similar words, abbreviations, or symbols which tend to connote the medical or audiological profession when that is not accurate, or use of the titles "hearing instrument specialist", "hearing aid specialist", "board-certified hearing aid specialist", or "board-certified hearing instrument specialist" when the qualifying requirements have not been met through the ~~national~~ international hearing aid society or national board for certification in hearing instrument sciences.
  - (6) Habitual intemperance.
  - (7) Gross immorality.
  - (8) Permitting another to use the person's license.
  - (9) Advertising a manufacturer's product or using a manufacturer's name or trademark that implies a relationship with the manufacturer which does not exist.
  - (10) To directly or indirectly give or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a ~~hearing instrument dispenser~~ licensee, or to influence persons to refrain from dealing in the products of competitors.
  - (11) Sale of a hearing instrument to a person without adequate and proper audiometric testing.
  - (12) Sale of a hearing instrument to a person where the need for a hearing instrument has not been established after adequate and proper audiometric testing.
- d. Conducting business while suffering from a contagious or infectious disease.
  - e. Engaging in the fitting and sale of hearing instruments under a false name or alias with fraudulent intent.
  - f. For any violation of this chapter.
  - g. The fitting and sale of a hearing instrument to any person under eighteen years of age unless within six months before the fitting the person to be fitted has been examined by a physician and audiologist to determine whether there exist any physical deficiencies that would prohibit the effective use of a hearing instrument.

**SECTION 10.** A new subsection to section 43-33-14 of the North Dakota Century Code is created and enacted as follows:

At the board's discretion, provide funds to assist in providing continuing education for licensees.

**SECTION 11. AMENDMENT.** Section 43-33-15 of the North Dakota Century Code is amended and reenacted as follows:

**43-33-15. Board of hearing ~~instrument dispensers~~ aid specialists.**

1. There is established a board of hearing ~~instrument dispensers~~ aid specialists to carry out this chapter.
2. Members of the board must be residents of the state. The board consists of four ~~hearing instrument dispensers~~ licensees who are not audiologists or otolaryngologists, one otolaryngologist, three licensees who are audiologists, and two consumers. Each hearing ~~instrument dispenser~~ aid specialist on the board must be primarily engaged as a hearing ~~instrument dispenser~~ aid specialist, must have at least five years of experience in this state, and must hold a valid license as a hearing ~~instrument dispenser~~ aid specialist.
3. The governor shall appoint the members of the board. The term of office of each member is four years. Before a member's term expires, the governor shall appoint a successor to assume the member's duties at the expiration of the term. A vacancy in the office of a member must be filled by appointment for the unexpired term. The members shall ~~annually~~ annually designate annually one member to serve as chairman and another to serve as secretary-treasurer. ~~No~~ A member of the board may ~~not~~ be reappointed to the board until at least one year after the expiration of that person's second term of office.
4. Except for the secretary-treasurer, each member shall serve without compensation except mileage and travel expenses while engaged in the performance of the duties of the office as is provided for state employees. The board shall establish the amount of compensation for the secretary-treasurer.

**SECTION 12. AMENDMENT.** Subsection 2 of section 43-37-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A hearing aid ~~dealer~~ specialist from engaging in testing of hearing and other practices and procedures used solely for the fitting and selling of hearing aids in this state as provided in chapter 43-33.

**SECTION 13. AMENDMENT.** Subdivision m of subsection 1 of section 43-46-01 of the North Dakota Century Code is amended and reenacted as follows:

- m. The board ~~for licensing of hearing aid dealers and fitters~~ specialists;

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Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Chief Clerk of the House

\_\_\_\_\_  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1279.

House Vote:      Yeas    93      Nays    0      Absent    1

Senate Vote:    Yeas    46      Nays    0      Absent    1

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2003,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State