

LAWS OF DELAWARE
VOLUME 84
CHAPTER 234
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 141

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS, AND HEARING AID DISPENSERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3702, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3702. Definitions.

The following words, ~~terms~~ terms, and phrases, when used in this chapter, shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

(1) "Audiologist" ~~shall mean~~ means a person who is licensed to practice audiology pursuant to this act and who offers such services to the public under any title or description of services incorporating the words "audiologist," "hearing clinician," "hearing therapist," "aural rehabilitator" or any other similar title or description of service.

(2) "Audiology aide" ~~shall mean a person who is certified by the Council of Accreditation of Occupational Hearing Conservationists, or its equivalent, and whose supervising licensed audiologist annually shall register such person with the Board. The audiology aide shall perform services only under the direct supervision of an audiologist licensed in this State.~~

(3) (2) "Board" ~~shall mean~~ means the State Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers established in this chapter.

(4) (3) "Division" ~~shall mean~~ means the state Division of Professional Regulation.

(5) (4) "Excessive use or abuse of drugs" ~~shall mean~~ means any use of narcotics, controlled ~~substances~~ substances, or illegal drugs without a prescription from a licensed physician, or the abuse of alcoholic beverage such that it impairs an individual's ability to perform the work of a speech/language pathologist, ~~audiologist~~ audiologist, or hearing aid dispenser.

(6) (5) "Hearing aid" ~~shall mean any personal, wearable instrument or device designed for, offered for the purpose of, or represented as, aiding persons with, or compensating for, impaired hearing.~~

(7) (6) "Hearing aid dispenser" ~~shall mean~~ means a person licensed to dispense prescription hearing aids pursuant to this Act. ~~Act and who is engaged in the evaluation or measurement of the power or range of human hearing by means of an audiometer or any other means devised for the purpose of selecting, adapting and distributing or selling of hearing aids. Testing shall not include medical diagnosis or audiologic evaluation. Licensed hearing aid dispensers may provide instruction, orientation and counseling on the use and operation of a hearing aid; and they may use an otoscope or "ear light" to evaluate the feasibility and use of ear molds and ear mold impressions.~~

(7) "Over-the-counter hearing aid" means an air-conduction hearing aid that does not require implantation or other surgical intervention, and is intended for use by a person age 18 or older to compensate for perceived mild to moderate hearing impairment. The device, through tools, tests, or software, allows the user to control the hearing aid and customize it to the user's hearing needs. The device may use wireless technology or may include tests for self-assessment of hearing loss. The device is available over-the-counter, without the supervision, prescription, or other order, involvement, or intervention of a licensed person, to consumers through in-person transactions, by mail, or online, provided that the device satisfies the requirements in this section.

(8)(8) "Person" ~~shall mean~~ means a corporation, company, ~~association~~ association, or partnership, as well as an individual. Licenses shall be issued only to individuals under this chapter.

(9)(9) "Practice of audiology" ~~shall mean~~ means the application of principles, methods and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, ~~habilitation~~ habilitation, and rehabilitation related to ~~hearing and disorders of hearing~~ hearing, disorders of hearing, and balance for the purpose of evaluating, identifying, preventing, ~~ameliorating~~ ameliorating, or modifying such disorders and conditions in individuals ~~and/or~~ and groups. For the purpose of this paragraph, the terms "habilitation" and "rehabilitation" shall ~~include, but are not limited to,~~ include hearing aid evaluation, recommendation, and fitting and selecting, ~~adapting~~ adapting, and distributing or selling of hearing aids. The practice of audiology includes the practice of dispensing prescription hearing aids.

(10) "Practice of hearing aid dispensing" means the selection, fitting, dispensing, adapting, selling, or renting of prescription hearing aids to a prospective hearing aid user who is at least eighteen years of age. A hearing aid dispenser may:

- a. Perform otoscopic observation of the ear canal solely for the purpose of fitting a prescription hearing aid or making necessary referrals.
- b. Perform non-diagnostic testing of hearing solely for the purpose of fitting a prescription hearing aid or making necessary referrals.
- c. Make ear impressions for manufacture or modification of ear molds and prescription hearing aids.
- d. Make adjustments and repairs to prescription hearing aids for impaired hearing only.
- e. Provide instruction, orientation, and counseling on the use and operation of a prescription hearing aid.

A hearing aid dispenser may not:

- a. Provide cerumen management services.
- b. Adapt or adjust prescription hearing aids to conduct sound therapy treatment for tinnitus management.
- c. Verbally or in writing make a statement or reference to a prospective prescription hearing aid user regarding any audiologic or medical condition or diagnosis.

For this purpose of the paragraph, “audiologic diagnosis” means the diagnosis of a conductive and sensorineural hearing loss. Before dispensing a prescription hearing aid, a hearing aid dispenser shall advise a prospective hearing aid user to consult immediately with a licensed physician if the hearing aid dispenser determines the presence of any of the following:

- a. Visible congenital or traumatic deformity of the ear.
- b. History of active drainage from the ear within the previous 90 days.
- c. History of sudden or rapidly progressive hearing loss within the previous 90 days.
- d. Acute or chronic dizziness.
- e. Unilateral hearing loss within the previous 90 days or since the last evaluation.
- f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 100 Hertz, and 2000 Hertz.
- g. Visible evidence of significant cerumen accumulation or a foreign body in the ear canal.
- h. Tinnitus as a primary symptom.
- i. Pain or discomfort in the ear.

~~(10)~~ (11) “Practice of speech/language pathology” shall mean means the application of principles, methods methods, and procedures for measurement, testing, evaluation, prediction, counseling, instruction, habilitation, or rehabilitation related to the development and disorders of speech, language, voice, rate or rhythm fluency, cognition, and swallowing for the purpose of evaluating, preventing, ameliorating ameliorating, or modifying such disorders in individuals and/or and groups.

(12) “Prescription hearing aid” means a hearing aid that is not an over-the-counter hearing aid as defined in this section.

~~(11)~~ (13) “Speech/language pathologist” shall mean means a person who is licensed to practice speech/language pathology pursuant to this act and who offers such services to the public under any title or description of services incorporating the words “speech/language pathologist,” “speech pathologist,” “language pathologist,” “speech and/or language therapist,” “speech and/or language correctionist,” “speech and/or language clinician,” “voice therapist,” “communicologist,” “aphasiologist” or any other similar title or description of service.

~~(12) “Speech pathology aide” shall mean a person, who meets minimum qualifications that the Board may establish, which permit such an aide to assist speech/language pathologists in their professional endeavors, but only while under the direct supervision of a licensed speech/language pathologist.~~

~~(13)~~ (14) “State” shall mean means the State of Delaware.

~~(14)~~ (15) “Substantially related” means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of speech/language pathology, audiology and/or the dispensing of hearing aids.

Section 2. Amend § 3703, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3703. Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

~~(c) Except as provided in subsection (d) of this section, each member shall serve a term of 3 years, and may succeed himself or herself for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified~~

~~in the appointment; however, the Board member shall remain eligible to participate in Board proceedings unless or until replaced by the Governor. Persons who are members of the Board on February 4, 2000, shall complete their terms. Each member shall serve for a period of 3 years and may be reappointed to serve 1 additional 3-year term. Each term of office expires on the date specified in the appointment, except that a member may serve until a successor is duly appointed.~~

Section 3. Amend § 3704, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3704. Organization; meetings; officers; quorum.

~~(d) Minutes of all meetings shall be recorded, and the Division of Professional Regulation shall maintain copies. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The person requesting it shall incur the expense of preparing any transcript. The Division shall take and maintain minutes of all meetings.~~

Section 4. Amend § 3706, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3706. Powers and duties; immunity.

(a) The Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers shall have authority to:

(4) Evaluate the credentials of all persons applying for a license to practice speech/language pathology, audiology or to dispense prescription hearing aids in this State ~~or to act as audiology aides or speech pathology aides~~; in order to determine whether such persons meet the qualifications set forth in this chapter.

(10) Where it has been determined after a hearing that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty . ~~penalty after time for appeal has lapsed.~~

(11) ~~Adopt and publish~~ Establish by rule and regulation a code of ethics for each professional specialty. ~~specialty. specialty and promulgate within 60 days of adoption.~~

(12) Establish ~~and publish~~ by rule and regulation standards for electronic equipment used for the purpose of measuring hearing, and require ~~written~~ proof of calibration for such equipment annually.

(14) Establish by rule and regulation standards for the sale of prescription hearing aids.

Section 5. Amend § 3708, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3708. Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) For licensure as a speech/language pathologist, ~~has met the national requirements for~~ has current certification of clinical competence issued by the ~~American Speech/Language and Hearing Association (ASHA)~~ American Speech-Language-Hearing Association (ASHA) or its successors . ~~The requirements include:~~

a. ~~Possession of a master's degree or its equivalent from an accredited college or university in accordance with the Board's rules and regulations.~~

b. ~~A supervised clinical practicum in accordance with the Board's rules and regulations.~~

c. ~~Completion of 9 months' full time or 18 months' part time supervised clinical fellowship year, begun after fulfilling academic and clinical practicum requirements.~~

d. ~~Successful completion of a national examination in the area of applicant's specialty prepared by a national testing service and approved by the Division.~~

(2) For licensure as an audiologist, ~~has met the national requirements for~~ current certification of clinical competence issued by the ~~American Speech/Language Hearing Association, or ASHA, or its successors~~, has been issued board certification from the American Board of Audiology, or its ~~successors~~. ~~The requirements include:~~ successors, or has met the following requirements:

a. Possession of a doctoral degree in audiology from an accredited college or ~~university~~. university, except that audiologists licensed in Delaware prior to July 10, 2009, who have maintained Delaware licensure, shall be exempted from this requirement.

b. Successful completion of a national examination in the area of the applicant's specialty prepared by a national testing service approved by the Division.

~~e. Audiologists licensed prior to July 10, 2009, shall be exempted from the educational requirement set forth in paragraph (a)(2)a. of this section.~~

(3) For licensure as a hearing aid dispenser, shall submit evidence, verified by oath and satisfactory to the Board, that such person has met the current standards promulgated by the National Institute for Hearing Instrument Studies International Hearing Society or its ~~sueecessor~~; successor. ~~in~~ In addition, the applicant shall:

a. Provide verification of a high school diploma or its equivalent.

b. Provide proof of successful completion of a national examination prepared by a national testing service and approved by the Division.

c. ~~An applicant shall complete~~ Complete 6 months of training prior to taking the examination. The Board in its rules and regulations shall establish the content of the training and the frequency of direct supervision during the training period.

~~d. [Repealed.]~~

~~e. Paragraphs (a)(3)a., c. and d. [repealed]~~ d. Paragraphs (a)(3)a. and c. of this section herein shall not apply to applicants who are licensed audiologists.

(b) All applicants shall meet the following conditions:

(1) Shall not have been the recipient of any administrative penalties regarding their practice of speech/language pathology, audiology or dispensing of hearing aids, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a Board on that applicant's professional conduct and practice, including any voluntary surrender of a license. ~~The Board, after a hearing,~~ Board may determine whether such administrative penalty is grounds to deny licensure.

(2) Shall not have ~~any impairment related to drugs, alcohol~~ excessively used or abused drugs or have a finding of mental incompetence by a physician that would limit the applicant's ability to undertake that applicant's practice in a manner consistent with the safety of the public.

(e) All individuals licensed to practice speech/language pathology, audiology or hearing aid dispensing in this State shall be required to be fingerprinted by the State Bureau of Identification, at the licensee's expense, for the purposes of performing subsequent criminal background checks. ~~Licensees shall submit by January 1, 2016, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.~~

Section 6. Amend § 3709, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3709 Examination.

~~(a) In the event an applicant for licensure has not successfully completed the examinations required by this chapter, the Board shall administer or authorize the administration of such examinations described in § 3708(a)(1)d., (a)(2)b. and/or (a)(3)b. of this title. All examinations~~ The examination described in § 3708(a)(2) and § 3708(a)(3)b. of this title shall be graded by the testing service providing the examinations. The passing score for all examinations shall be established by the testing agency.

~~(b) The Board shall provide at least 2 dates annually for the administration of the examinations required by this section. The Board, with the approval of the Division, shall establish the time and place of the examinations.~~

~~(c) Persons who fail an examination required by this section may reapply for examination at the next possible date. Persons failing 2 examinations shall submit proof of additional education and/or training as may be required by the Board in the rules and regulations. Such persons may not be reexamined for a period of at least 1 year from the time of the second failure.~~

Section 7. Amend § 3710, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3710. Reciprocity.

~~(a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Board, the Board shall grant a license to an applicant who:~~

(1) Shall present proof of current licensure in "good standing" in another state, the District of Columbia, or territory of the United States whose standards for licensure are substantially similar to those of this State. A license in "good standing" is defined in § 3708(b)(1), (2) and (3) of this title; and

(2) Shall present proof of current licensure of clinical competence from the American Speech/Language and Hearing Association, or its successors, in the area in which the applicant is applying for licensure and who, if licensed in another state or states, meets the requirements of § 3708(b)(1), (2) and (3) of this title.

(3) Audiologists licensed prior to July 10, 2009, shall be exempted from the educational requirement set forth in § 3708(a)(2)a. of this title.

(b) An applicant who is licensed or registered in a state whose standards are not substantially similar to those of this State shall have practiced for a minimum of 5 years after licensure, provided, however, that the applicant meets all other qualifications for reciprocity in this section.

(c) An applicant for licensure as a speech/language pathologist who has received a degree from a foreign school, college or university, shall have received a master's degree, or its equivalent, or a doctoral degree, or its equivalent, and shall submit a certified copy of that applicant's school, college or university record for evaluation. An applicant for licensure as an audiologist, who has received a degree from a foreign school, college or university, shall have received a doctoral degree or its equivalent, and shall submit a certified copy of that applicant's school, college or university record for evaluation. Where an applicant for licensure as an audiologist has submitted an application prior to July 10, 2009, the applicant shall have received at least a master's degree, or its equivalent.

(d) In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed in this State until the proceeding or complaint has been resolved. Applicants for licensure in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such information as evidence at any hearing or other proceeding to which the applicant may be subject.

(a) Upon payment of the appropriate fee and submission and acceptance of an application, the Board shall grant a license to an applicant who presents proof of current licensure in good standing, as defined in paragraph 3708(b) of this title, in another state, the District of Columbia, or territory of the United States whose standards for licensure are substantially similar to those of this State. An individual with a license from a state with less stringent requirements than those of this State may obtain a license through reciprocity if the individual can prove to the satisfaction of the Board that the individual has worked in another jurisdiction or jurisdictions in the field for which the individual is seeking a license in Delaware for a minimum of 5 years after licensure. All applicants shall submit evidence verified by oath that, in all states in which the applicant is or was licensed, the applicant's license is in good standing.

(b) Audiologists licensed prior to July 10, 2009, and who have maintained licensure, shall be exempted from the educational requirement set forth in paragraph 3708(a)(2) of this title.

(c) An applicant for licensure as a speech/language pathologist who has received a degree from a foreign school, college, or university, shall have received a master's degree, or its equivalent, or a doctoral degree, or its equivalent, and shall submit an evaluation of professional education and training, prepared by a Board approved credentialing agency, and paid for by the applicant. The evaluation must provide evidence and documentation that the applicant's education is substantially equivalent to the education of a speech/language pathologist who graduated from a program approved for the educational preparation of speech/language pathologists by the appropriate accrediting agency recognized by the Board. An applicant for licensure as an audiologist, who has received a degree from a foreign school, college, or university, shall have received a doctoral degree or its equivalent, and shall submit an evaluation of professional education and training, prepared by a Board approved credentialing agency, and paid for by the applicant. The evaluation must provide evidence and documentation that the applicant's education is substantially equivalent to the education of an audiologist who graduated from a program approved for the educational preparation of audiologists by the appropriate accrediting agency recognized by the Board.

(d) In the event that a disciplinary proceeding or unresolved complaint is pending at the time of application, the applicant shall report the final disposition of the matter to the Board within 20 days.

Section 8. Amend § 3712, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3712 Issuance and renewal of licenses.

(b) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division, and attestation, as set forth in the Board's rules and regulations, that the licensee has met the continuing education requirements established by the Board. In addition, audiologists

and hearing aid dispensers shall attest to calibration of electronic equipment used to assess hearing, as set forth in the Board's rules and regulations.

(d) A licensee ~~upon written request~~, may be placed in an inactive status for no more than 5 years. Such person, who desires to reactivate that person's license, shall ~~complete a Board-approved application form~~, submit a request for reactivation and a renewal fee set by the Division, and submit proof of fulfillment of continuing education requirements in accordance with the rules and regulations of the Board.

(e) Audiologists licensed in the State of Delaware prior to July 10, 2009, and who meet the renewal requirements set forth in this subsection and maintain Delaware licensure, shall be exempted from the educational requirement set forth in 3708(a)(2)a.

(f) An applicant or licensee must notify the Division of a change in address or in any other information on the application, registration, or renewal within 30 days of the change.

Section 9. Amend § 3713, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) The Board may issue a temporary license to practice speech/language pathology ~~or audiology~~ in this State to an applicant who completes the application and pays the temporary license fee; and who, in addition, has completed all academic and clinical practicum requirements in that applicant's specialty but who has not completed a clinical fellowship year ~~(CFY). (CF)~~. The application shall be accompanied by a copy of the ~~CFY~~ CF plan signed by a sponsor holding a valid state license as a speech/language pathologist. ~~pathologist and/or audiologist~~. ~~However, an audiology applicant who has obtained a doctoral degree is not required to satisfy the clinical practicum and CFY requirements and may be issued a temporary license to practice audiology in this State upon completion of the application and payment of the temporary license fee.~~

(b) ~~The Board may issue a temporary license to dispense hearing aids to an applicant waiting to take the examination for licensure who completes the application and pays the application fee. The application shall be accompanied by a statement from a Delaware licensed audiologist or hearing aid dispenser who affirms that the licensed audiologist or hearing aid dispenser shall provide direct supervision and training of the applicant during the period of temporary licensure.~~

(c) ~~The temporary license shall expire at the end of 1 year from issuance, except that a temporary license issued to an audiologist with a doctoral degree shall expire at the end of 90 days. The temporary license may be renewed once in accordance with the Board's rules and regulations.~~

(b) The temporary license issued to a speech/language pathologist shall expire at the end of 1 year from issuance. The temporary license may be renewed 3 times for a maximum of 48 months. The licensee must apply on a yearly basis for renewal of the temporary license. The request for renewal must be received prior to expiration of the temporary license.

(c) The Board may issue a temporary license to dispense prescription hearing aids to an applicant waiting to take the examination for licensure who completes the application and pays the application fee. The application shall be accompanied by a statement from a Delaware licensed audiologist or hearing aid dispenser who affirms that the licensed audiologist or hearing aid dispenser shall provide direct supervision and training of the applicant during the period of temporary licensure.

Section 10. Amend § 3715, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3715 Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 3716 of this title if after a hearing, the Board finds that the speech/language pathologist, ~~audiologist~~ audiologist, or hearing aid dispenser:

(5) Has excessively used or abused drugs. ~~drugs either in the past 2 years or currently.~~

Section 11. Amend § 3716, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 3716. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that one of the conditions or violations set forth in § 3715 of this title applies to a practitioner regulated by this chapter:

~~(2) Censure a practitioner.~~

(6) Impose a monetary penalty not to exceed ~~\$500~~ \$1,000 for each violation.

Section 12. Amend § 3717, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 3717 Hearing Procedures.

~~(b) All hearings shall be informal without use of rules of evidence. If the Board finds, by a majority vote of all members, that the complaint has merit, the Board shall take such action permitted under this chapter as it deems necessary. The Board's decision shall be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.~~

~~(e)~~ (b) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days of service, ~~or of the postmarked date of the copy of the decision mailed to the practitioner.~~ the day that notice of the decision was mailed. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with § 10144 of Title 29.

Approved September 21, 2023