

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 801

H. P. 613

House of Representatives, February 12, 1969

On motion of Mr. Soulas of Bangor referred to the Committee on Health and Institutional Services. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Soulas of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT to Create a Hearing Aid Dealer Board and Provide for Licensing of Hearing Aid Dealers and Fitters.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 32, c. 23-A, additional. Title 32 of the Revised Statutes is amended by adding a new chapter 23-A, to read as follows:

CHAPTER 23-A

HEARING AID DEALERS AND FITTERS

§ 1658. Definitions

As used in this chapter, unless the context requires otherwise:

1. Board. "Board" shall mean the Board for Licensing Hearing Aid Dealers and Fitters.
2. Department. "Department" shall mean the State Department of Health and Welfare.
3. Hearing Aid. "Hearing aid" shall mean 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 and cords.
4. License. "License" shall mean a license issued by the State under this chapter to hearing aid dealers and fitters.
5. Practice of fitting and dealing in hearing aids. "Practice of fitting and dealing in hearing aids" shall mean the measurement of human hearing by

means of an audiometer or by any means solely for the purpose of making selections, adaptations or sale of hearing aids. The term includes the making of impressions for earmolds. A dealer, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.

6. Sell or sale. "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 dealers.

7. Trainee permit. "Trainee permit" shall mean a temporary permit issued while the applicant is in training to be called a hearing aid dealer and fitter.

§ 1658-A. License required to sell or fit hearing aids

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 after January 1, 1970 unless he holds an unsuspended, unrevoked license issued by the department as provided in this chapter. The license required by this chapter shall be conspicuously posted in the licensee's office or place of business. Duplicate licenses shall be issued by the department to valid license holders operating more than one office without additional payment. A license issued under this chapter shall confer on the holder the right to select, fit and sell hearing aids.

Nothing in this chapter 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 natural persons in the direct sale and fitting of such products. Such corporations, partnerships, trusts, associations and other like organizations shall file annually with the board a list of all licensed hearing aid dealers and fitters directly or indirectly employed by it. Such organizations shall file with the board a statement on a form approved by the board that they submit themselves to the rules and regulations of the department and this chapter which the department shall deem applicable to them.

§ 1658-B. Receipt required to be furnished to a person supplied with hearing aid

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 and the number of his certificate, together with specifications as to the make and model of the hearing aid furnished, full terms of sale clearly stated. If an aid which is not new is sold, the receipt and the container thereof must be clearly marked as "used" or "reconditioned" whichever is applicable, with terms of guarantee, if any.

Such receipt must bear in no smaller type than the largest used in the body copy portion the following: Any examination or examinations or representa-

tion or representations made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of such hearing aid or aids 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.

Any person practicing in the fitting and sale of hearing aids will, when dealing with a child 10 years of age or under, ascertain if the child has seen an otolaryngologist within 90 days prior to the fitting for his recommendation. If such is not the case, a recommendation to do so must be made and this fact should be noted on the receipt.

§ 1658-C. Persons and practices not affected

This chapter is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided this person or organization employing such person does not sell hearing aids or accessories thereto.

This chapter does not apply to a person who is a physician or osteopath duly licensed under the laws of the State of Maine.

§ 1658-D. License by experience

1. Without examination. An applicant for a license without examination as a "hearing aid dealer and fitter" shall:

- A. Have been principally engaged as a hearing aid dealer and fitter for a total period of at least 2 years, within a period of 5 years immediately prior to the effective date of this chapter;
- B. Be a person of good moral character;
- C. Be 21 years of age or older;
- D. Be free of contagious or infectious disease.

Method of granting of license by experience shall be terminated 6 months after the effective date of this chapter.

§ 1658-E. Issuance of license

The department shall register each applicant without discrimination or examination who satisfactorily passes the experience requirement as provided in section 1658-D or passes an examination as provided in section 1658-F and upon the applicant's payment of \$50 shall issue to the applicant a license signed by the commissioner. The license shall be effective until January 30th of the year following the year in which it is issued.

Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this chapter for the practice to fit and sell hearing aids, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this chapter are qualified to dispense and fit hearing aids, the department may issue certificates of endorse-

ment to applicants who have current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicants for a certificate of endorsement pursuant to this paragraph shall be required to submit to or undergo a qualifying examination other than the payment of fees, pursuant to this chapter. The holder of a certificate of endorsement shall be registered in the same manner as holders of a license. The fee for an initial certificate of endorsement shall be the same as the fee for an initial license. Fees, grounds for renewal and procedures for suspension and revocation of certificates of endorsement shall be the same as for the renewal, suspension or revocation of a license.

1658-F. License by examination

1. Qualifications. Applicants who do not meet the experience qualification on the effective date of this chapter may obtain a license by successfully passing a qualifying examination, provided the applicant:

- A. Be at least 21 years of age;
- B. Be of good moral character;
- C. Has an education equivalent to a 4-year course in an accredited high school;
- D. Is free of contagious or infectious disease.

2. Examination. The applicant for license by examination shall appear at a time, place and before such persons as the department may designate, to be examined by means of written and practical tests in order to demonstrate that he is qualified to practice the fitting and sale of hearing aids. The examination administered as directed by the board constituting standards for licensing shall not be conducted in such a manner that college training be required in order to pass the examination. Nothing in this examination shall imply that the applicant shall possess the degree of medical competence normally expected by physicians.

3. Time. The department shall give examinations as required to permit applicants to be examined within 30 days following the submission of the official application form.

§ 1658-G. Temporary trainee permit

After January 1, 1970 an applicant who fulfills the requirements regarding age, character, education and health as set forth in section 1658-F, subsection 1, may obtain a trainee permit upon application to the department. Previous experience or a waiting period shall not be required to obtain this trainee permit.

Upon receiving an application as provided under this section and accompanied by a fee of \$25, the department shall issue a trainee permit which shall entitle the applicant to engage in the fitting and sale of hearing aids for a period of one year. A person holding a valid hearing aid dealer's and fitter's license shall be responsible for the supervision and training of such applicant and maintain adequate personal contact.

If a person who holds a temporary trainee permit under this section has successfully passed the licensing examination during this one-year period from the date of issuance, the temporary trainee permit may be renewed or reissued once upon payment of a \$50 fee.

§ 1658-H. Scope of examination

The qualifying examination provided in section 1658-F shall consist of:

1. Areas. Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing aids:

- A. Basic physics of sound;
- B. The anatomy and physiology of the ear;
- C. The function of hearing aids.

2. Practical tests. Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

- A. Pure tone audiometry, including air conduction testing and bone conduction testing;
- B. Live voice of recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
- C. Masking when indicated;
- D. Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid;
- E. Taking earmold impressions.

§ 1658-I. Notice to department of place of business; notice to holders of license; how given by department

A person who holds a license shall notify the department in writing of a regular address of the place or places where he engages or intends to engage in the fitting or the sale of hearing aids.

The department shall keep a record of the place of business of persons who hold licenses.

Any notice required to be given by the department to a person who holds a license shall be mailed to him by certified mail at the address of the last place of business of which he has notified the department.

§ 1658-J. Annual renewal of license; fees; effect of failure to renew

Each person who engages in the fitting and sale of hearing aids shall annually, on or before January 30th, pay to the department a fee of \$50 for a renewal of his license and shall keep such certificate conspicuously posted in his office or place of business at all times. Where more than one office is operated by the licensee, duplicate certificates shall be issued by the department for posting in each location. A 30-day grace period shall be al-

lowed after January 30th, during which time licenses may be renewed on payment of a fee of \$100 to the department. After expiration of the grace period, the department may renew such certificates upon the payment of \$200 to the department. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal, provided such renewal application is made within 2 years from the date of such expiration.

§ 1658-K. Grounds for suspension of license

The department may refuse to issue or refuse to renew or the Administrative Hearing Commissioner, as designated by Title 5, chapters 301 to 307, may suspend or revoke any license for any one or more of the following causes:

1. Moral turpitude. The conviction of a felony, or a misdemeanor involving moral turpitude. The record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction.

2. Fraud or deceit. Procuring of license by fraud or deceit practiced upon the department.

3. Unethical conduct. Unethical conduct means:

A. The obtaining of any fee or the making of any sale by fraud or misrepresentation;

B. Knowingly employing directly or indirectly any suspended or unregistered person to perform any work covered by this chapter;

C. 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;

D. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

E. 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 aids when that is not true, or using the word "doctor," "clinic" or similar words, abbreviations or symbols which tend to connote the medical profession when such use is not accurate;

F. Habitual intemperance;

G. Gross immorality;

H. Permitting another to use his license;

I. Advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist;

J. 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 aid dealer or fitter; or to influence persons to refrain from dealing in the products of competitors.

4. Disease. Conducting business while suffering from a contagious or infectious disease.

5. Falsity. Engaging in the fitting and sale of hearing aids under a false name or alias with fraudulent intent.

6. Violations. For any violation of this chapter.

§ 1658-L. Prohibited acts and practices

1. Prohibitions. No person shall:

A. Sell, barter or offer to sell or barter a license;

B. 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;

C. Alter a license with fraudulent intent;

D. Use or attempt to use as a valid license a license which has been purchased, fraudulently obtained, counterfeited or materially altered;

E. Willfully make a false statement in an application for license or application for renewal of a license.

§ 1659. Powers and duties of department

1. Powers and duties. The powers and duties of the department are as follows:

A. To authorize all disbursements necessary to carry out this chapter;

B. To supervise issuance of licenses "by experience" and to administer qualifying examinations to test the knowledge and proficiency of applicants licensed by examination;

C. To register persons who apply to the department and who are qualified to engage in the fitting and sale of hearing aids;

D. To purchase and maintain or rent audiometric equipment and other facilities necessary to carry out the examination of applicants in section 1658-F;

E. To issue and renew licenses;

F. To take action before the Administrative Hearing Commissioner for the suspension or revocation of licenses when there is indication that such is proper;

G. To designate the time and place for examining applicants;

H. To appoint representatives to conduct or supervise the examination;

I. To make and publish rules and regulations not inconsistent with the laws of this State which are necessary to carry out the provisions of this chapter;

J. To appoint or employ subordinate employees, subject to the Personnel Law.

§ 1659-A. Board of Hearing Aid Dealers and Fitters

1. Board. There shall be established a Board of Hearing Aid Dealers and Fitters which shall guide, advise and make recommendations to the department handling the license under this chapter.

2. Membership. Members of the board shall be residents of the State. The board shall consist of 5 hearing aid dealers and fitters, one otolaryngologist or audiologist. Each hearing aid dealers and fitter on the board shall have had no less than 5 years of experience and shall hold a valid license as a hearing aid dealer and fitter, as provided under this chapter. Exception shall be the hearing aid dealers and fitters of the first board appointed who shall have had no less than 5 years of experience and shall have fulfilled all qualifications for license by experience as provided under this chapter.

3. Appointment; term of office; chairman. All members of such board shall be appointed by the Governor. The term of office of each member shall be for 4 years, except that of the members of the first board appointed under this chapter, 2 shall be appointed for 2 years; 3 shall be appointed for 3 years; and 2 shall be appointed for 4 years. Before a member's term expires, the Governor shall appoint a successor to assume his duties at the expiration of his predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term. The members of the board shall annually designate one such member to serve as chairman and another to serve as secretary-treasurer. No member of the board shall be reappointed to the board until at least one year after the expiration of his second term of office.

4. Compensation. Members of the board shall receive for each day actually engaged in the duties of his office a per diem of \$20, not to exceed the sum of \$1,000 per year and reimbursement for his actual and necessary travel and other expenses to be paid from appropriations made for this purpose. Expenses of members shall not exceed the limit established by standard travel regulations for state employees in effect at the time of the expenditures.

§ 1659-B. Duties of the board

The board shall have the responsibility and duty of advising the department in all matters relating to this chapter, shall prepare the examinations

required by this chapter for the department and shall assist the department in carrying out this chapter.

The department shall be guided by the recommendations of the board in all matters relating to this chapter.

§ 1659-C. Meetings of board

The board shall meet not less than once each year at a place, day and hour determined by the board. The board shall meet at such other times and places as may be requested by the department.

§ 1659-D. Disposition of receipts; state department hearing aid account

On or before the 10th day of each month, the department shall pay into the State Treasury all moneys received by the department during the preceding calendar month. The State Treasury shall credit the moneys to the State Department of Health and Welfare Hearing Aid Account of the General Fund which account is created. All moneys received under this chapter shall constitute a permanent fund for carrying on the work of the board and department, and for such expenses as may be necessarily incurred from time to time by said department in carrying out this chapter.

§ 1660. Penalties

Violations of any provisions of this chapter shall be punishable, upon conviction, by a fine of not more than \$500 or by imprisonment for not more than 90 days, or by both.