

LCB File No. R021-00

**PROPOSED REGULATION OF THE
BOARD OF HEARING AID SPECIALISTS**

Nevada State Board of Hearing Aid Specialists
Recommended changes to Rules and Regulations II
(Changes - Additions in *Italics*; Deletions underlined)

Section 1. NAC 637A.080 shall be amended as follows:

Each licensee may file with the secretary of the board before June 30 of each year an application for renewal. No application for renewal will be considered by the board unless it is *fully completed and is* accompanied by the annual license fee and proof that the applicant has completed the continuing education requirements prescribed by NAC 637A.095. *An application for renewal which is incomplete or is not accompanied by the required fee and information will be returned and will not be deemed to have been filed.*

Section 2. NAC 637A.190 shall be amended as follows:

- ~~1. [On his application to the board, each hearing aid specialist shall state the name and location of the office or place of business where his license will be regularly displayed. The office must be accessible to the public during business hours and must contain adequate equipment and supplies for serving the needs of the licensee's clientele.]~~ *A licensee must inform the board of every office or business from which or for whom he dispenses hearing aids, and he must publicly display his license or a copy thereof at each such location.*
- 2. Every office in which the public is served must be compliant with the Americans with Disabilities Act, must be accessible to the public during business hours, and must contain adequate equipment and supplies to serve the needs of the licensee's patients.* If the office is a part of a building normally used as a residence, it must be in a space set aside for this purpose only, and have an entrance by which the public may have access to the office without going through any part of the residence.
3. If the office of a licensee is changed from the address shown in the files of the board, the licensee shall file notice thereof with the secretary of the board, together with the new address, within ~~30~~ *10* working days after the change. ~~[Failure to give notice is cause for suspension of a license by the board.]~~
- 4. If a licensee serves a patient in any place other than an office from which he regularly serves the public, he shall publicly display his license or a copy thereof and shall personally inform each patient of the address and telephone number of the office from which he regularly serves the public and the name, address, and telephone number of his managing specialist.*

Section 3. NAC 637A.200 shall be amended as follows:

1. Except as otherwise provided in subsection 2, all persons licensed pursuant to chapter 637A of NRS shall take the pertinent case history of ~~[,]~~ and perform personally ~~or through proper channels~~ the following minimum procedures on ~~[,]~~ each prospective candidate for a hearing aid:
 - (a) Pure tone audiometry, including air conduction testing and bone conduction testing through an annually calibrated system.
 - (b) Live voice, if a separate sound treated room is available, or recorded voice audiometry, including speech reception threshold testing, most comfortable and uncomfortable level testing, and speech discrimination testing presented through a speech audiometer.
 - (c) Effective masking, when applicable.
 - (d) Before a hearing test and an ear impression is performed, an otoscopic examination of the ear canal in which the tympanic membrane is visualized.
 - (e) After an ear impression is performed, an otoscopic examination in which the tympanic membrane is visualized.The licensee shall perform each procedure in a proper environment to obtain accurate results.
2. The minimum procedures set forth in subsection 1 are not required if the person supplies the hearing aid specialist with complete results of the required tests which have been given within the previous 6 months by a qualified tester who is licensed pursuant to the provisions of chapter 637A or 637B of NRS.

Section 4. NAC 637A.210 shall be amended as follows:

The board considers the following actions to constitute misconduct or unprofessional conduct:

1. Making a false or misleading statement or representation in the advertisement or solicitation of services.
2. Knowingly advertising a model or type of hearing aid for sale when that model or type cannot be purchased by members of the general public.
3. Advertising a manufacturer's product or using a manufacturer's name or trademark in a manner which falsely implies that a relationship exists between the licensee and the manufacturer.
4. *Publishing any statement, including an advertisement, that does not identify the name, address, and telephone number of the managing specialist and the office or business publishing the statement.*

Section 5. NAC 637A.220 shall be amended as follows:

1. ~~[A person licensed as a hearing aid specialist]~~ *The board's staff, investigator, and investigating board member may enter any site at which hearing aids are dispensed and may examine any record, document, facility, or equipment. Unless otherwise provided herein, a licensee shall provide information requested by the staff member, investigator, and investigating board member to ~~[the board]~~ that person within ~~[30]~~ immediately if the person is at the site and the requested materials may reasonably be copied during the visit or within 5 working days after a request for the information is made if the materials could not be reasonably copied during the visit ~~[by the board].~~*
2. A licensee shall not represent himself as an audiologist or other medical professional or use any other term to represent himself which is false or misleading.
3. Unless otherwise provided by the board, a licensee shall provide for the service and repair of each hearing aid he sells or fits.

4. A licensee shall provide to each person supplied with a hearing aid a bill of sale which includes:

- (a) The *name of the licensee's managing specialist and the* address of the licensee's principal place of business;
- (b) A description of the make, model and serial number of the hearing aid;
- (c) The amount charged for the hearing aid; and
- (d) The condition of the hearing aid, indicating whether it is new, used or reconditioned.

~~[5. A licensee shall provide to each person who purchases a hearing aid a written guarantee that the person may return the hearing aid:~~

- ~~(a) Within 30 days after receipt of the hearing aid; or~~
- ~~(b) If the hearing aid was returned for service or repair during the 30 day period, within 30 days after the hearing aid was serviced or repaired.~~

~~Except as otherwise provided in subsection 6, if the hearing aid and all accessories which accompanied the hearing aid are returned to the licensee in the same condition as they were received, the licensee shall provide the person with a refund within 30 days after the hearing aid is returned.~~

~~6. If a hearing aid is returned pursuant to subsection 5, a licensee may charge a fee for fitting the person with the hearing aid if the fee is specified in the original agreement between the licensee and the person. Unless a higher fee is authorized by the board, the fee must not exceed \$250 or 20 percent of the purchase price for the hearing aid, whichever is less.]~~

~~[7.] 5. A violation of the provisions of this section is a ground for disciplinary action.~~

Section 6. NAC ch. 637A shall be amended to add the following new language:

The following acts committed by a licensee shall be deemed conduct which is harmful to the public or conduct detrimental to the public health or safety:

- 1. Violation of any regulation of the board or any provision of the Code of Ethics adopted by the board pursuant to NAC 637A.020;*
- 2. Practicing while a license has not been renewed;*
- 3. Failure to give timely notice of a change of office pursuant to NAC 637A.190;*
- 4. Failure to comply with any obligation required of a hearing aid dispenser under the terms of NRS 597.264 through 597.2667.*

Section 7. NAC ch. 637A shall be amended to add the following new language:

Any document that must be filed with or provided to the board will be deemed filed on the date it is postmarked or received by the board secretary, whichever is earlier.

Section 8. NAC ch. 637A shall be amended to add the following new language:

- 1. Each office or business from which a licensee dispenses hearing aids shall have a managing specialist. The managing specialist must be a licensed hearing aid specialist in good standing with the board.*
- 2. The managing specialist is responsible for the acts and violations of the board's statutes and regulations of all licensees who serve the public through his office or business, regardless of the form of legal relationship between the licensee and the office, business, or managing specialist and regardless of the legal form of the business from which the hearing aid was dispensed. The managing specialist and the hearing aid specialist are jointly and severally liable for all refunds due to a patient resulting from the dispensing of a hearing aid,*

regardless of the form of legal relationship between the licensee who dispensed the hearing aid and the office, business, or managing specialist and regardless of the legal form of the business from which the hearing aid was dispensed.

3. A hearing aid specialist may be the managing specialist of only one office or business.

4. A managing specialist must work in the office or business from which a licensee dispenses hearing aids every hour that the office or business serves the public or at least forty hours per week, whichever is less, except that a managing specialist may be allowed to be absent from the office for vacations, illness, and other such usual and customary reasons.

5. No office or business may dispense hearing aids without a managing specialist. Every office or business that dispenses hearing aids must notify the board of its managing specialist and must notify the board of any change of managing specialist within 5 working days of any such change in managing specialist. Any office or business that dispenses hearing aids without a managing specialist may be enjoined from so doing through an action brought under NRS 637A.355.

Section 9. NAC ch. 637A shall be amended to add the following new language:

1. A person who has purchased a hearing aid may return the hearing aid for a refund to the hearing aid specialist or his managing specialist for any reason within 60 days after his receipt of the hearing aid. If a patient remains genuinely and reasonably dissatisfied with the performance of a hearing aid and returns the hearing aid to the hearing aid specialist for the purposes of attempting to attain satisfaction within the initial 60-day period or any extension, then an additional period of 30 days commences after the hearing aid is again returned to the patient.

OR

2. A hearing aid specialist or his managing specialist shall refund the full amount paid by the patient within two business days after the patient returns the hearing aid for a refund, except that the hearing aid specialist or his managing specialist may retain from the refund an amount for work done in an attempt to satisfy the patient. No amount for work performed by a licensee may be retained from a refund by a hearing aid specialist or his managing specialist unless:

(a) The work was performed as part of the licensee's regular duties and was performed specifically on behalf of or in an attempt to satisfy the patient;

(b) The work was recorded in the medical record of the patient contemporaneously with the performance of the work;

(c) The work was recorded in increments of time no greater than every fifteen minutes;

(d) The amount to be retained from a refund has been provided to a patient in the form of a written itemization that specifies in detail all work performed on behalf of or in an attempt to satisfy the patient, including:

i. The date when the work was performed,

ii. How long the work was performed,

iii. What work was performed, and

iv. Who performed the work; and

(e) The work is not billed at a rate exceeding \$20.00 per hour for hearing aid specialists and \$10.00 per hour for apprentices and the total amount retained does not exceed \$150.00.

3. A refund need not be given for any returned hearing aid that is damaged beyond normal and expected wear and tear.

4. A hearing aid specialist or the managing specialist shall tender the refund, with or without amounts retained therefrom, to the patient within three business days after the hearing aids have been returned. The tender of the refund may be by either personal delivery or by mail. If the tender of the refund is by mail, the tender shall be deemed made on the day on which the mailing is postmarked. No amount may be retained from a refund unless the hearing aid specialist or the managing specialist has timely tendered the refund to the patient.

Section 10. NAC 637A shall be amended to add the following new language:

Before a patient signs any contract to purchase a hearing aid, a hearing aid specialist must present to the patient a statement prepared by the board that states the rights, obligations, and duties of the patient and the hearing aid specialist. The statement must be signed and dated by the patient and the hearing aid specialist. Any transaction in which the patient and the hearing aid specialist do not execute a statement pursuant to this section shall be voidable by the patient and the patient may return the hearing aid for a full refund of all amounts paid for the hearing aid, and no amounts may be retained for work performed regarding that patient and that hearing aid.