

**ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672**

**3503 HLAB HB 424 - HB 430**

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

MEMORANDUM

TO: The Honorable Marco Pignalberi      DATE: February 13, 1986  
Alaska State Legislature  
House of Representatives

FROM: Barbara A. Dale      SUBJECT: HB 424  
Special Staff Assistant  
to the Governor  
Boards and Commissions

While Governor Sheffield supports the licensing of social workers, the office of Boards and Commissions has a strong preference for a combined board approach to licensing behavioral health professionals.

Governor Sheffield's policy of not supporting the creation of new boards and commissions is based primarily on budget considerations. There are currently over 140 official boards, commissions, councils, and task forces, which accommodate in excess of 1245 participants.

As an example of the expenditure involved, the FY 86 authorized operating budgets of 30 of these boards, councils, and commissions are in excess of 73 million.

The Division of Occupational Licensing, which provides administrative support for 18 existing licensing boards, has shown an increase of 27% in their operating budget since FY 84. Of the 27% increase, only 12% was generated from fees.

It is this office's recommendation that proposed boards, commissions, councils, and task forces be scrutinized for their potential to be combined with like professions, and that there be consideration given to inserting intent language that would instruct Occupational Licensing to set fees that would cover the costs of licensing, administration, and investigation.

cc: Ray Gillespie  
Jim Ayers

# MEMORANDUM

State of Alaska

TO: Barbara Dale  
Special Assistant to Governor  
for Boards and Commissions

DATE: February 12, 1986

FILE NO: 377-068-86

TELEPHONE NO: 465-3600

FROM: Harold M. Brown  
Attorney General

SUBJECT: Revised draft of  
proposed CS for  
HB 424 (Board of  
Behavioral Science)

By: Peter B. Froehlich  
Assistant Attorney General  
Legislation/Regulations Section

Yesterday I delivered to you and distributed copies of the revised draft of a proposed Committee Substitute for HB 424 (Board of Behavioral Science), that I had hoped to finish last week. This revision incorporates some of the suggestions made by the Alaska chapter of the National Association of Social Workers (NASW) in their January 15, 1986 letter, by the Alaska Association of Marriage & Family Therapists (AAMFT) in their February 3, 1986 letter, and the Alaska chapter of the American Association of Counseling and Development (AACD) in January 30 telephone conversation with Chapter President Pat Reeves. All 3 groups also made some suggestions on the January 29 telephone conference call we had with them.

As you know, this continuing project is a cooperative effort by your office, ours, and the 3 professional organizations to develop HB 424 into an acceptable compromise bill combining the 3 new separate licensing boards sought by these 3 professions into one Board of Behavioral Science. The effort was initiated last summer by your predecessor, Carol Derfner, in an attempt to reconcile the governor's longstanding policy against the creation of new occupational licensing boards with the increasing demands from these 3 professional organizations for 3 separate new boards. It was decided that 1 new combined board was the next best alternative instead of separate new boards for each behavioral science profession. HB 424, following this approach, was introduced late last session by Representative Pignalberi and, although it was incomplete and imperfect, it was chosen as a vehicle for developing a combined behavioral science board bill.

A meeting of all concerned parties, including the staff of the House Labor and Commerce Committee and of the House HESS Committee, was held in Anchorage on September 13, 1985 and we went through HB 424 section-by-section, forging agreement in concept on each provision. The minutes of that meeting are attached. I drafted a proposed CS for HB 424 based on those agreements and sent it to the office of House HESS Committee Co-Chair Gruenberg whose staff had promised to distribute it along with minutes to all who had attended. I also supplied the draft to

you and to Representative Pignalberi. Although I solicited comments and suggestions so I could revise the draft, we heard nothing until the first week of the session when we were contacted by the president of NASW. You then contacted the other professional groups and again solicited their comments, this time successfully.

This redraft of the proposed CS is the result of my synthesis of those comments and of Representative Gruenberg's HB 396 (professional counselors), Senator Fahrenkamp's SB 227 (social workers), Representative Pignalberi's HB 421 (marriage and family therapists), SB 195 (governor's bill on miscellaneous occupational licensing amendments), and, of course, HB 424 (behavioral science), as it was originally introduced.

Some parts of my revised proposed CS for HB 424 may be the focus of some disagreement. Therefore I want to identify them along with some of the general principles I considered in drafting it:

- 1) On page 10 of the bill, in AS 08.15.210(b) and (c) setting the examination qualifications for master and independent level social worker licenses, the language of subsec. (a) was mistakenly repeated. The correct language is on pages 3 and 4 of CSSB 227(Fin) in AS 08.-87.100(b) and (c).
- 2) The justification for occupational licensing is protection of consumers, not protection of professionals from competition within their own profession or from other professions. Therefore, for example, I have not drafted the CS to automatically grandfather all current practitioners into permanent licenses. Rather, a current practitioner who is a clinical member of a national certifying body would be allowed within one year to apply for a two-year temporary license, until the practitioner can take and pass the same exam as other applicants. Section 13 of the bill needs some revision to accomplish this.
- 3) The costs to government of a licensing system should be minimized and should be passed on to those licensed.
- 4) Government's involvement in occupational licensing means that professional associations sacrifice some control. Therefore, as much as possible, the CS should place functions in the department rather than in the board, according to principles of centralized licens-

ing. Examinations should be objective to minimize the need for special expertise and the danger of arbitrariness in grading.

- 5) A combined board is a compromise, so no single profession will get everything it may want in a licensing system.
- 6) Efficiency in drafting and in the operation of a combined board both require that the general provisions in art. 5, on such things as renewals, credential licenses, temporary licenses, and discipline must all be set out only once uniformly for all 3 professions.
- 7) All licensing boards should have as much flexibility as possible to adopt and amend detailed regulations on the specifics of a license system.
- 8) In the interest of preserving the strong executive form of government established by the constitution, all board members should serve at the pleasure of the governor as now provided in AS 08.01.020.

I still have some concerns about parts of the CS, even as I have drafted it. These are mainly focused on the inordinate degree of minute detail regarding marriage and family therapists' eligibility to take the Alaska license exam and the stringent supervision requirements for entry level professionals in that profession only. It seems that these details should be eliminated and the subjects either dealt with in a general way in statute for all 3 professions, or in special ways for each in regulations. NASW seems to agree with this concept in their comments on supervision and approved supervisors of marriage and family therapists.

Another concern I have is the omission of psychologists and the existing board for that profession. That omission of a related and even overlapping profession, while not entirely logical, is apparently a matter of political practicality and the time constraints of this legislative session. The Board of Psychologists and Psychological Associates Examiners will be subjected to sunset review next session. So, whether or not this bill is successful this session, combining the psychologists into a true and complete Board of Behavioral Science can be taken up during that sunset review.

A third concern is that perhaps it would be more efficient and logical for the Department of Commerce and Economic

Barbara Dale, Special Assistant to  
Governor for Boards & Commissions

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Development to register behavioral science professionals without a board. This approach may well be equally as effective as an expensive and somewhat cumbersome board in protecting clients from dangerously incompetent or unscrupulous professionals.

My final concern is that SB 227, creating a new social workers board has this session been passed by the Senate and is now in the House HESS Committee before it goes to the House Finance Committee. This bill, HB 424, creating a single combined board including social workers as agreed in concept by NASW is in the House Labor and Commerce Committee before going to the House Judiciary and Finance Committees. It would be much easier to develop the combined board approach if both bills were considered at the same time by the same committee, before they separately reach the House Finance Committee.

I hope to continue to work with you, the professional organizations, the Departments of Commerce and Economic Development and Health and Social Services, and the interested legislative staff and committees in resolving the remaining issues on licensing of behavioral science professionals in the most efficient way.

PBF:md

cc: Hon. Marco Pignalberi  
Ak. House of Representatives

Hon. Max Gruenberg  
Co-Chair, House HESS Committee  
Ak. House of Representatives

Hon. Mike Navarre  
Chair, House Labor & Commerce  
Committee  
Ak. House of Representatives

Hon. Bettye Fahrenkamp  
Chair, Senate HESS Committee  
Ak. Senate

Hon. Loren H. Lounsbury, Commissioner  
Dept. of Commerce & Economic Development

Hon. John Pugh, Commissioner  
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Jim Ayers, Director  
Legislative Relations  
Governor's Office

Mike Price, Director  
Div. of Family & Youth Services  
DHSS

Nancy Dunn, Director  
Div. of Occupational Licensing  
DCED

PRESENTED AS: TESTIMONY TO HOUSE BILL #424  
as Proposed in  
THE LEGISLATURE OF THE STATE OF ALASKA  
FOURTEENTH LEGISLATURE - SECOND SESSION

PRESENTED ON: February 14, 1986 at 1:15p.m. Proposed Hearing

PRESENTED BY: Jerome J. Mayfield, Me.d., *Jerome J. Mayfield*  
Guidance and Counseling  
Alaska Association for Counseling and Development (AACD)  
of the State of Alaska

CC: Pat Reeves, President  
Alaska Association for Counseling and Development

In support of an Act to establish the Board of Behavioral Science for the State of Alaska:

*CERTIFIED*

Be it understood that Guidance Counselors in the State of Alaska who are Certified by the National Association for Counseling and Development (NBCC) should be GRANDFATHERED into the proposed ACT whereby Behavioral Scientists are eligible to practice their profession in the State; *BOARD*

Be it understood that the Counselors certified by the NBCC are academically trained to successfully complete an examination assessing their cognitive counseling knowledge for certification;

Be it understood that the NBCC Examination recognizes the diversity in educational preparation among candidates who apply for certification; therefore, the NBCC utilizes a common instrument of measurement; and,

The NBCC Examination samples eight (8) topic areas deemed important for Professional Counselors, regardless of professional specialization.

DEFINITION OF THOSE CONTENT AREAS NBCC ASSESSES

(1) THE HELPING RELATIONSHIP:

This area includes philosophic bases of the helping relationship; consultation theory, practice, and application; and an emphasis on development of counselor and client (or consultee) self-awareness.

(2) GROUP DYNAMICS, PROCESSING AND COUNSELING:

This area includes theories and types of groups as well as descriptions of group practices, methods, dynamics, and facilitative skills.

(3) HUMAN GROWTH AND DEVELOPMENT:

This area includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels. Emphasis is placed on psychological approaches. Also included are such areas as human behavior (normal and abnormal), personality theory and learning theory.

(4) LIFESTYLES AND CAREER DEVELOPMENT:

This area includes vocational choice theory, relationship between career choice and lifestyle, sources of occupational and educational information, approaches to career decision-making process and career development exploration.

(5) PROFESSIONAL ORIENTATION:

This area includes goals and objectives of professional organizations, CODES OF ETHICS, legal consideration, standards of preparation, certification, licensing, and role identities of counselors and other personnel services specialists.

(6) APPRAISAL OF INDIVIDUALS:

This area takes under consideration factors such as ETHNIC, CULTURAL, and SEX when providing a developmental framework for understanding the individual including methods of data gathering and interpretation, individual and group testing, case study approaches, and the study of individual differences.

(7) SOCIAL AND CULTURAL FUNDATION:

This area includes studies of change, ethnic groups, subcultures, changing roles of women and men, sexism, urban and rural societies, population, patterns, cultural mores, use of leisure time and differing life patterns. This area also includes the integration of several disciplines, i.e., Behavioral Sciences, Economic and Political Science, etc., to achieve effective results through guidance, counseling and development.

(8) RESEARCH AND EVALUATION:

This area includes successful completion of course work in statistics, research (parametric and non-parametric) design and development of research and demonstration proposals. It includes understanding legislation relating to the development of research, program development and demonstration proposals, as well as the development and evaluation of program objectives.

BECAUSE there is no undergraduate program to prepare Guidance Counselors;  
BECAUSE Guidance Counselors are required to complete supervised practicums as a requisite to become a Guidance Counselor;  
BECAUSE there is a certification process and BOARD to certify Guidance Counselors, and that a Behavioral Science Board in the State of Alaska would duplicate some aspects already performed by the NBCC, Inc.;

BE it understood that the Alaska's Association for Counseling Development are asking that Guidance Counselor already CERTIFIED by NBCC get GRANDFATHERED into the PROPOSED HOUSE BILL NO. 424 to allow Guidance Counselors to practice their profession, as CERTIFIED by NBCC.

Providing that AACD CERTIFIED Guidance Counselors are Grandfathered into House Bill #424, it is assured that the public is protected from the unprofessional, improper, and unauthorized practice of the Behavioral Science Profession, so long as Guidance Counselors meet those requirements specified by NBCC and the State of Alaska. AACD supports House Bill #424, and it is understood that the post secondary institutions with Guidance and Counseling Programs support this bill too.

PACKET FOR HB 424

HB 424: " An act establishing the Board of Behavioral Science Examiners; amending Rule 504 of the Alaska Rules of Evidence; and providing for an effective date."

This packet contains the following:

Historical overview letter dated 2-13-86

House Bill 424

Proposed CS for House Bill No. 424

Section-by-Section Analysis of Proposed CS

Anchorage Daily News article dated 4-15-85 in support of Super Board bill

POMs which have been received pertaining to HB424

Boards and Commissions list from occupational licensing

# MEMORANDUM

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TO: Barbara Dale  
Special Assistant to Governor  
for Boards and Commissions

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DHSS

Nancy Dunn, Director  
Div. of Occupational Licensing  
DCED

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BEHAVIORAL HEALTH LICENSING MEETING  
Governor's Conference Room  
3601 West 36th Avenue  
Anchorage, Alaska  
September 13, 1985

Present were:

Carol Derfner  
Special Staff Assistant to the Governor  
Boards and Commissions  
Pouch A  
Juneau, Alaska 99811  
Telephone: (907) 465-3651

Connie Sipe  
Deputy Commissioner for Social Services  
Department of Health and Social Services  
Pouch H-01  
Juneau, Alaska 99811  
Telephone: (907) 465-3030

Peter Frøehlich  
Assistant Attorney General  
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Juneau, Alaska 99811  
Telephone: (907) 465-3600

Yvonne Chase  
Alaska Chapter of the National Association of Social Workers  
3023 Madison Way  
Anchorage, Alaska  
Telephone: (907) 563-1000 (work)  
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Alaska Chapter of the National Association of Family Therapists  
2550 Denali Street  
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Anchorage, Alaska 99503  
Telephone: (907) 276-3027 (work)  
(907) 694-7988 (home)

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95 Farewell, #1  
Fairbanks, Alaska 99701  
Telephone: (907) 452-1742 (work)  
(907) 456-5039 (home)

Nora Young  
American Association for Counseling and Development  
P.O. Box 80866  
Fairbanks, Alaska  
Telephone: (907) 479-8160

Carolyn Frichette  
Division of Family and Youth Services  
Pouch H-05  
Juneau, Alaska 99811  
Telephone: (907) 465-3170

Leon Webber  
Family Institute of Alaska  
3500 LaTouche  
Suite 301  
Anchorage, Alaska 99508  
Telephone: (907) 561-1847

Roger Poppe, Legislative Aide  
Representative Mike Navarre  
House Labor and Commerce Committee  
1024 West Sixth Avenue  
Suite 200-A  
Anchorage, Alaska 99501  
Telephone: (907) 276-5045

Christopher Clark, Legislative Aide  
Representative Max F. Gruenberg, Jr.  
House Health, Education, and Social Services Committee  
1024 West Sixth Avenue  
Suite 201-D  
Anchorage, Alaska 99501  
Telephone: (907) 276-3240

Carol Derfner started the Behavioral Health Licensing meeting at 10:00 am, and adjourned it at 12:30. She began by requesting that someone take minutes, and Christopher Clark of Rep. Gruenberg's office volunteered. She then proceeded to outline the goals and objectives of the meeting, which were basically to come to consensus on, and developing an amended version of, House Bill 424 by Pignalberi that could be used to establish a new Board of Behavioral Science Examiners, and an outline agenda as follows:

- 1 Introduction and Expectation
- 2 Review Pending Legislation
- 3 Identify Consensus Points, Agreements and Conflicts
- 4 Conflict Resolution
- 5 Review/Follow-up
- 6 Comments
- 7 Adjournment

Ms. Derfner warned that when government comes, bureaucracy follows. Members of boards are public and NOT industry representatives. Although

Occupational Licensing is designed to protect the public and not industry, most of the number of complaints the division sees are cases of one practitioner within the industry against another.

Ms. Derfner stressed: let's work out the minimal legislation required to establish a board. Let's not get carried away with writing detailed, complex legislation. This actually hurts the board's activity, because it ties their hands to statutory requirements, which are harder to change, rather than leaving most of it to regulatory development, which is much easier to change.

Commerce's Occupational Licensing will staff and administer HB 424. Already the division is responsible for the licensing of 99 professions in the state. Within the division there are two sections: Licensing and Investigating. Both sections are already understaffed.

Ms. Derfner reviewed the number of bills related to the licensing of social workers and counselors. Today's meeting would focus on fine-tuning HB 424 and using it as a model. Already the Senate HESS Committee has passed SB 227, a bill relating to the licensing of social workers.

Ms. Derfner praised HB 424 for having one solid board for the behavioral sciences.

Peter Froehlich asked what model states did the drafters of HB 424 turn to. John Pagan said that years of work were put into this draft and that the states of Georgia, California, Florida, and Michigan were used as models.

Mr. Froehlich asked how many licensees would the board have to address. Here are the following estimates offered by the members present:

- 149 Counselors who belong to the Alaska Association of Counseling and Development;
- 42 Counselors who belong to the National Board of Certified Counselors;
- 145 State Social Workers;
- 240 Social workers who belong to the National Association of Social Workers;
- 40 Marriage and Family Therapists.

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616 Total

Presently, there is no profession licensing of counselors at all. Counselors merely must have a business license in order to practice.

Roger Poppe asked the members to consider paraprofessionals. Ms. Derfner acknowledged the importance of this issue but asked that this issue be taken up later in the meeting.

Mr. Froehlich then gave a section-by-section analysis of HB 424. He advised keeping the language as broad as possible. He suggested as one alternative to creating a new board, that we could consider expanding the Board of Psychologists and Psychological Associate Examiners, but the

members were overwhelmingly opposed to this. Mr. Webber argued that this would only be thwarted by the legislative process and Ms. Chase pointed out that psychologists already have professional licenses whereas social workers, professional counselors, and marriage and family therapists do not, so the psychologists would resist any additions to their Board.

Ms. Derfner again stressed that we do not need a perfect bill, just one that passes.

Mr. Froehlich then continued giving a section-by-section analysis of HB 424.

Ms. Derfner explained that membership on 20% of the boards are confirmed by the legislature. All quasi-judicial and regulatory boards and executive department appointments by the Governor must be confirmed by the legislature (with the exception of the Bd. of Education, whose members are appointed by the state Board of Education).

Mr. Webber stated that ethical guidelines can be established by each association. Ethical standards are not legal standards.

The meeting had a snag with section 08.15.070 (page 6) regarding the standards committee. Ms. Derfner suggested not placing this in statute for once done, only the legislature can make changes. She urged that the members keep themselves flexible by setting up a standards committee through regulation that would deal with ethical issues. This would make it easier for the board to change. However, the professional people in attendance at the meeting seemed to indicate a clear preference for keeping a standards committee in the bill rather than set it up through regulation.

Mr. Froehlich questioned AS 08.15.080 and suggested leaving it open-ended. Have a Technical Advisory Group created by regulations like those used by the Medicaid Rate Commission. The Administrative Procedure Act is too binding.

Add licensed social workers, clinical social workers. Counselors group need to set up regulations for Article 2.

Ms. Derfner also announced that today the Governor formed a Governor's Task Force to investigate insurance and to gather facts on professional liability. She predicted that insurance will be one of next session's major issues.

Mr. Froehlich suggested leaving the qualifications for licensing less detailed and suggested they be clarified in regulations. Again he stressed that the bill be less specific. Mr. Webber requested Mr. Froehlich to red line the bill and when he finished, to circulate it to the members.

Ms. Derfner stated that the board is too big as it is currently written in the bill (page 3, line 24). The way the bill is written now, there would be twelve members. She pointed out that while some boards have 20+ members, the average size of most current boards are five to seven, with nine being an upper limit. She suggested that the board be cut down to nine: two counselors, two social workers, two marriage and family therapists, and

three members of the public. Perhaps in the future the board would include therapists and counselors in controlled substances as well.

Returning to the issue of the standards committee, the group of professionals preferred keeping it as it is written, and leaving it in the bill. Mr. Froehlich suggested that he could easily delete half of this section so as to guarantee the board flexibility.

Ms. Sipe urged that in regards to insurance, language should be included that would protect the state from liability.

The issue of paraprofessionals was brought up again. Mr. Poppe and Ms. Sipe explained to the group of professionals that this is a serious political issue that must be addressed so that the bill may pass. A career education ladder must be developed to assist bush paraprofessionals in obtaining degrees and certificates if they so desire them. A lot of these paraprofessionals have been in the state working at providing services to people in need in rural areas for a long time, and it would be unfair to overlook them. Besides, the political reality is that some of the most powerful people in the legislature are bush legislators, and if something is not done to at least deal with these people, the bill will very likely not pass.

Ms. Chase said that the paraprofessionals could keep their current jobs but, for purposes of licensing, they could no longer call themselves "social workers." She suggested calling them "associates."

Ms. Derfner announced Barbara Dale as her replacement as the Special Assistant in charge of Boards and Commissions. Ms. Dale will be working with women's issues and also with Boards, but will not be taking as active a role with Board development and activity as Carol had, because most of the key changes that were needed have already taken place.

Before the meeting's end, it was agreed that Mr. Froehlich would do a mock-up of the bill with today's proposed changes and that the professionals would write follow-up letters to Representatives Pignalberi, Koponen, Gruenberg, and the members of the House Health, Education, and Social Services Committee.

BOARDS AND COMMISSIONS

ATHLETIC COMMISSION:	-----	-----
A.E.L.S.:	-----	-----
BARBERS & HAIRDRESSERS:	-----	-----
CHIROPRACTORS:	-----	-----
COLLECTION AGENCIES:	<u>TRADE</u>	-----
CONTRACTORS:	<u>TRADE</u>	-----
CONCERT PROMOTERS:	<u>TRADE</u>	-----
DENTAL:	-----	-----
DISPENSING OPTICIANS:	-----	-----
ELECTRICAL ADMINISTRATORS:	-----	-----
GEOLOGISTS:	<u>TRADE</u>	-----
GUIDES:	-----	-----
MEDICAL:	-----	-----
MARINE PILOTS:	-----	-----
MORTUARY SCIENCE:	<u>TRADE</u>	-----
NURSING:	-----	-----
NURSING HOME ADMIN.:	-----	-----
OPTOMETRY:	-----	-----
PHARMACY:	-----	-----
PHYSICAL THERAPY:	-----	-----
PSYCHOLOGY:	-----	-----
PUBLIC ACCOUNTANCY:	-----	-----
VETERINARY:	-----	-----

\*\*\*\*\*  
COMMENTS:

Introduced May 3 and referred to Health, Education & Social Services, Judiciary.

Bd. of Behavioral Science Examiners  
(establishing)  
page 782

HOUSE BILL NO. 424, by Rep. Pignalber. Would establish the Board of Behavioral Science Examiners "to ensure that the public is protected from the unprofessional, improper, and unauthorized practice of the behavioral science professions." The board would consist of three persons from each behavioral

HB 424 (cont'd)

science profession regulated by the board and one public member for each profession regulated by the board. Members must be state residents for three years before appointment. Outlines powers and duties of the board, and requires the board to appoint a standards committee for each behavioral science profession it regulates.

Establishes qualifications for marital and family therapists (also see HB 421, this report), and sets out licensing requirements. Lists grounds for imposition of disciplinary sanctions, prohibited acts, penalties, and exemptions.

Behavioral science professionals are listed under the definition of "health care provider" as it appears in numerous statute references, and under the definition of "practitioner of the healing arts." Section extending privileged status for disclosure of information to licensed behavioral science professionals has the effect of amending Rule 504 of the Alaska Rules of Evidence. Provides Act takes effect July 1, 1985.

Introduced May 4 and referred to Labor & Commerce, Judiciary, Finance.

Natural Gas Lease on State Land  
(royalty value)

HOUSE BILL NO. 425, by Rep. Pearce. Amends AS 38.05.180 (Oil and Gas Leasing) by adding a new subsection: "(aa) Notwithstanding other provisions of this section, the value of the production of natural gas taken in value and sold under a lease issued under (f) of this section may not exceed the long-term contract price for the natural gas unless it is established by clear and convincing evidence that the long-term contract price was unreasonably low at the time of contract." The law would apply retroactively to leases issued before this law takes effect. Provides for immediate effective date. Identical to SB 309.

Introduced May 4 and referred to House Oil & Gas, Resources.

INTRODUCTION OF RESOLUTIONS (House)

Fisheries Enhancement  
(Andy Simons Wilderness Unit)

HOUSE JOINT RESOLUTION NO. 38, by Reps. Navarre & Marrou. Requests the U.S. Fish and Wildlife Service to continue to permit the stocking of fish and the enhancement of the fishery resources within the Tustumena Lake of the Kenai National Wildlife Refuge.

Introduced April 29 and referred to House Fisheries, Resources.

Alaska Crude Oil  
(export of)

HOUSE JOINT RESOLUTION NO. 39, by the House Special Committee on Oil and Gas. Urges Alaska's Congressional delegation to continue using its best efforts to obtain passage of legislation permitting the foreign export of Alaskan crude oil.

MAY 9 1985

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

*West*  
MEMORANDUM

May 9, 1985

SUBJECT: Sectional Analysis of HB 424  
TO: Representative Marco Pignalberi  
FROM: Theresa L. Bannister *TB*  
Legislative Counsel

Section 1 states the legislative findings and purpose of the bill.

Section 2 lists the Board of Behavioral Science Examiners in the centralized licensing chapter.

Section 3 directs the Department of Commerce and Economic Development to provide investigative services to the board.

Section 4 adds a behavior science professional licensed under this act to the persons who must identify themselves professionally with appropriate letters or titles.

Section 5 gives the board a sunset date of June 30, 1988.

Section 6 contains the substance of the regulatory provisions of the act.

Sec. 08.15.010 establishes the Board of Behavioral Science Examiners.

Sec. 08.15.020(a) provides for a board of three professional members and one public member for each behavioral science regulated.

Sec. 08.15.020(b) requires that a board member be a three-year resident of the state.

Sec. 08.15.020(c) establishes the qualifications for the professional members of the board.

Sec. 08.15.030(a) directs the governor to appoint the board members subject to legislative confirmation for staggered terms of four years.

Sec. 08.15.030(b) directs the governor to solicit names of eligible candidates for board positions from appropriate professional organizations.

Sec. 08.15.030(c) directs the governor to designate the chairperson of the board each year.

Sec. 08.15.030(d) sets restrictions on appointments to unexpired and consecutive terms on the board.

Sec. 08.15.040 sets the frequency of regular board meetings and who can call special meetings.

Sec. 08.15.050 authorizes the governor to remove a board member for good cause and lists some items that constitute good cause.

Sec. 08.15.060 itemizes the powers and duties of the board.

Sec. 08.15.070 establishes a standards committee for each behavioral science profession regulated by the board to advise and make recommendations to the board on matters relating to the profession represented by the standards committee. The section establishes the duties of a standards committee and the relationship between the board and the committee.

Sec. 08.15.080 applies the Administrative Procedure Act to regulations and proceedings of the board.

Sec. 08.15.090 establishes the qualifications for a marital and family therapy license; restricts the taking of a subsequent examination after failing; establishes the duration and renewal of the license; and authorizes continuing education requirements for the license renewal.

Sec. 08.15.100 authorizes the board to issue a license to practice marital and family therapy under supervision, establishes the criteria for issuing the license, and sets certain conditions on the use and duration of the license.

Sec. 08.15.110 authorizes the issuance of a temporary license to practice marital and family therapy to qualified

applicants who are waiting to take the exam, and specifies certain conditions affecting the duration and renewal of the temporary license.

Sec. 08.15.120 authorizes the board under certain conditions to issue a license to a person who is licensed as a marital and family therapist in another state.

Sec. 08.15.130 prohibits a person in certain situations from supervising another person in marital and family therapy unless the person is approved by the board; establishes the criteria for approval; and authorizes the board to cancel its approval under certain conditions.

Sec. 08.15.140 sets the licensing fees for the chapter.

Sec. 08.15.150 restricts the circumstances when a marital and family therapist can reveal communications made by a client.

Sec. 08.15.160 requires a person licensed by the board to carry malpractice insurance.

Sec. 08.15.170 establishes the grounds for disciplinary actions by the board.

Sec. 08.15.180 establishes the disciplinary sanctions that the board may impose and requires the board to seek consistency in its application of sanctions.

Sec. 08.15.190 prohibits an unlicensed person from practicing marital and family therapy, representing that the person is licensed, or advertising that the person is licensed.

Sec. 08.15.200 makes a person who violates Sec. 08.15.190 guilty of a class B misdemeanor.

Sec. 08.15.210 lists the persons and occupations that are exempt from the licensing requirements of the chapter and prohibits them from representing that they are licensed marital and family therapists.

Sec. 08.15.220 is the definition section for the licensing chapter.

Section 7 adds a behavioral science professional licensed by the board to the professions that must comply with the

procedures and requirements established for medical malpractice actions in AS 09.55.530 - 09.55.560.

Section 8 adds a behavioral science professional to the occupations that can obtain malpractice insurance from the Medical Indemnity Corporation of Alaska.

Section 9 makes the members of the Board of Behavioral Science Examiners subject to the conflict of interest chapter, AS 39.50.

Section 10 adds the board to the list of agencies required to comply with the Administrative Procedure Act.

Section 11 clarifies that a behavioral science professional licensed by the board is covered by the chapter dealing with the reporting of child abuse and neglect.

Section 12 provides for staggered terms for initial appointments to the board and for the licensing of the initial professional members of the board.

Section 13 is intended to establish special marital and family therapy licensing requirements for the first year of the act. However, to do so, the section needs a paragraph stating that the section applies only to persons who apply for a license within one year of the effective date of the Act.

Section 14 establishes special requirements for approval of supervisors during the first year of the board.

Section 15 gives notice that the confidentiality of communications established by Sec. 08.15.150 of the act amends Rule 504 of the Alaska Rules of Evidence.

Section 16 makes the act effective July 1, 1985.

TLB:mkr  
J14/107

REPORT AND RECOMMENDATION  
ON THE REGULATION OF  
MARRIAGE COUNSELORS  
IN MICHIGAN

October 1, 1982



COMMISSION ON PROFESSIONAL  
AND  
OCCUPATIONAL LICENSURE  
MICHIGAN DEPARTMENT OF LICENSING AND REGULATION

COMMISSION ON PROFESSIONAL AND OCCUPATIONAL LICENSURE

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John L. Ayre, Jr.                      Andrew G. McLemore, Sr.

Public Members

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Byron W. Brown                      Edward M. Gramlich  
Muriel Converse, Chairperson      David E. S. Marvin

Lenora Finn-Paradis

Members of the Subcommittee  
Addressing Marriage Counselors

Lenora Finn-Paradis

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PREFACE

This report is the eighth in a series of 21 evaluations being done in response to a mandate from the Michigan Legislature embodied in Section 215 of 1980 PA 299, as amended. The Act calls for the creation of a temporary Commission on Professional and Occupational Licensure (COPOL), with eleven members appointed by the Director of Licensing and Regulation with the advice and consent of the Senate. The Act further requires that four of the members be persons licensed or registered under the Act, and that seven members be representatives of the general public. The life of the Commission is four years.

The charge to the Commission is to recommend to the Legislature changes in the regulatory provisions of the Act, including the possible repeal of certain articles. The criteria to be used in this evaluation are:

1. The ability of the general public to competently evaluate the service provided by an occupation.
2. Whether an occupation directly offers services to the general public.
3. A balancing of the costs of regulation, including entrance restriction and reduced competition in an occupation through licensure or registration, with the costs incurred by the general public as a result of nonlicensure or nonregistration.
4. The quality of consumer information provided by the Department and the Board.
5. The capacity of existing mechanisms to protect the general public.
6. The number and frequency of penalties imposed on persons under Article 15 or a statute repealed by the Act.
7. The availability of alternative forms of regulation of an occupation, including registration, and civil or criminal prosecution under state consumer protection laws and similar state laws.
8. The increase or decrease in competence of an occupation as a direct result of a licensure or registration requirement under this Act.

This particular report focuses on marriage counselors and the appropriateness of regulation, and makes recommendations for improvements in the present form of regulation for this profession in the State of Michigan.

## SUMMARY AND RECOMMENDATIONS

### SUMMARY

The basic function of state licensure statutes is to protect the public health, morals, safety, and general welfare. The three ways in which licensure laws address this function are as follows: 1) they establish entry requirements, either by education, experience, or examination, which must be met before an individual may offer services to the public; 2) they provide a means for discipline for incompetent or unethical practice, and enforcement of licensing standards; 3) they prohibit unlicensed practice or use of legally protected titles, thereby preventing unqualified persons from misrepresenting themselves to the public. The key question that the Commission on Occupational and Professional Licensure must address is whether these controls by the State are warranted for the field of marriage and family therapy. After careful analysis of this field of professional practice COPOL has concluded:

- 1) that it is in the public interest to have assurances that the services in this field are offered by properly trained and experienced individuals;
- 2) that incompetence or unethical activities can harm clients, who need recourse for such if it should occur;
- 3) that a publicly advertised title should represent a qualified practitioner, reliably offering services which can affect the health and well-being of the persons seeking services.

## RECOMMENDATIONS

As a result of its series of meetings and investigations of the appropriateness of regulation of \* marriage and family therapists (marriage counselors), the Commission on Professional and Occupational Licensure recommends the continuation of regulation for this field, based upon the above described need for public protection.

As part of its deliberations, the Commission has also concluded that there does exist an overlap of functions among all mental health practitioners, notably psychologists, social workers, and marriage and family therapists. For this reason, the Commission recommends that consideration be given to the implementation of a coordinated system of regulation for those individuals engaged in the practice of behavioral science professions which are involved in the delivery of mental health services to the public.

\*"Marriage counselor" as a professional title has been replaced by the term "marriage and family therapist". The terms are used interchangeably in this report, chiefly where current statutory language retains the older term, "marriage counselor".

## DEFINITION AND HISTORY OF THE PROFESSION

Marriage and family counseling is a service that provides guidance, psychotherapy, or behavioral assistance to alleviate marital or family conflict, and to help troubled individuals or family groups to solve emotional and other problems which may prevent normal functioning. Marriage and family therapists are members of a clinical mental health profession which utilizes scientific knowledge and behavioral skills which are specifically directed toward assisting individuals, married couples, and families to solve emotional and functional difficulties experienced by families under stress. Professional marriage and family therapists offer psychotherapy, conflict resolution, and other treatment to alleviate or resolve intra-marriage and intra-family conflict. They also help with divorce resolution where a marriage cannot be saved, adjustment to divorce, and the rebuilding of troubled or fragmented families, thus encompassing the broadest range of family therapeutic services.

Marriage and family therapists embrace a variety of theoretical approaches and use many different modes of treatment and intervention. They may see the marital partners and family members together, individually, or in various combinations. Depending on the situation, help may range from crisis intervention to long-term intensive psychotherapy. A concern with the marital relationship and the dynamics of the family system as the major focus of intervention is the common factor which distinguishes the work of marriage and family therapists, regardless of the specific professional preparation or orientation. Marriage and family therapy has its historical roots in a number of disciplines, including psychiatry, psychology, social work, family and child therapy, and child guidance. From multiple and varied beginnings, marriage and family therapy has developed into a specialized body of knowledge

and clinical practice geared to an understanding of family structure and interactions, problem assessment, and clinical treatment.

Marriage and family therapy emerged as a specialized mental health profession in the 1960's and 1970's, with the accompanying development of master's and doctoral specialty programs in the field. The U. S. Department of Defense officially recognized marriage and family counselors as qualified mental health service providers in 1965, the same year as the first state licensure law was passed in California. The U. S. Department of Education, after extensive study of the field, recognized the distinct profession of marriage and family therapy (the term which has replaced marriage counseling) and has granted official status to the American Association for Marriage and Family Therapy as the accrediting agency for graduate education and clinical training of therapists. Thus while educational preparation for practice in this field may be based upon a variety of disciplines, there is a basic core of specialized knowledge and clinical skill which is specific to the practice of marriage and family therapy. Regulation for this profession in Michigan now recognizes this uniqueness and restricts the use of the title of "marriage counselor" (as the present law designates the practitioner) to individuals specifically trained to practice in this field. The figures below indicate the number of persons who have been registered as marriage counselors in the State of Michigan during the last five years. The vast majority of these practitioners offer their services directly to the public.

<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
458	494	492	524	519

No data is available concerning the number of unregistered persons who are providing marriage counseling services, either as part of another profession or as lawful practitioners.

## REGULATION IN MICHIGAN

In Michigan, regulation for the field of marriage counseling was first sought by an interprofessional group of concerned judges, attorneys, and others who saw the need for qualified and competent personnel who could assist the courts in providing marriage and family counseling services. The increased public pressure for family counseling services after World War II was also a significant factor in the growth of this specialty area of service. Unfortunately, this very pressure also caused the emergence of numerous unqualified opportunists -- individuals who were willing to exploit the public need. A series of articles in the Detroit Free Press in 1965 played a significant role in exposing the extent of charlatanism and misrepresentation which was extant in Michigan at that time, and has been credited with informing the public about the problem. As a result of public and professional pressure, state regulation was introduced in 1966 with the passage of the marriage counseling act. This original act was incorporated into 1980 PA 299, the Occupational Code, as Article 15.

The Act provides for registration of the title of "marriage counselor", restricting its use to those who have met the requirements of the State Board. The aim of the regulation is to identify qualified practitioners and to help the public avoid being harmed either by the charlatan or by the inappropriately-trained professional who might offer marriage and family therapy services without adequate knowledge or skill.

Article 15 of the Occupational Code has seven sections which provide for the following:

Section 1501. Definition of advertising and marriage counseling.

Section 1502. Creation of the Board of Marriage Counselors.

Section 1503. Enumeration of the titles under which a person not registered by the act may not advertise, i.e., marriage counselor, marriage therapy, unless registered under the act.

Section 1504. Exclusion from the act for licensed psychologists, attorneys, social workers working within a governmental agency, and an ordained cleric.

Section 1505. Establishment of qualifications for receipt of certificate of registration.

(a) resident of the state.

(b) meets the following education requirements, i.e. doctorate in psychology, sociology, psychiatry, marriage or pastoral counseling, or another equivalent doctorate together with 5 years professional experience including one year specialization in marriage counseling under the direct supervision of a licensed marriage counselor; or a master's degree in social work or marriage or pastoral counseling from an institution approved by the department together with 5 years professional experience.

Section 1506. Establishment of fee schedule.

Section 1507. Protection of client confidentiality.

The rules promulgated under this article serve to outline board procedures and provide for the evaluation of educational qualifications.

#### REGULATION IN OTHER STATES

The following table indicates the pattern of regulation for marriage and family counseling/therapy in effect at this time:

<u>STATE</u>	<u>DATE OF LAW</u>	<u>REGULATORY AGENCY</u>
CALIFORNIA	1963	Board of Behavioral Science Examiners (Social Workers, Psychologists, Marriage and Family Counselors)
FLORIDA	1981	Board of Psychology, School Psychology, Clinical Social Work, Marriage and Family Therapy, Mental Health Counseling
GEORGIA	1976	Behavioral Science Practitioners Licensing Board
MICHIGAN	1966	Board of Marriage Counselors
NEVADA	1977	Board of Marriage and Family Counselor Examiners

NEW JERSEY	1968	State Board of Marriage Counselor Examiners
NORTH CAROLINA	1979	Board of Marriage and Family Counselors
UTAH	1973	Committee of Marriage and Family Counselors
VIRGINIA	1977	Board of Behavioral Sciences, Psychology, Social Workers, Professional Counselors

Most other states regulate marriage counselors as members of the professions of psychology, psychiatry, or social work. All of the states in which marriage and family counselors are regulated require at least a master's degree for entry into practice, combined with experience requirements ranging from one to five years of supervised practice. At least four states require an entry-level examination. All states specify a range of acceptable academic preparation, recognizing the interdisciplinary nature of educational programs. Of the other states regulating marriage counselors, four grant licenses by endorsement if the applicant is currently licensed in another state with substantially equivalent requirements; a fifth will grant licenses by reciprocity with other states which grant their licenses automatic acceptance. Michigan has neither reciprocity nor endorsement for marriage counselor registration. Education and experience requirements of the Michigan law must be met by all applicants, regardless of licensure or registration in another state.

One item of note in the survey of other states is the trend towards the combined behavioral science practitioner regulatory agency. California, Georgia, Virginia, and Florida have enacted this form of legislation. In Alaska, the Department of Commerce and Economic Development, according to a recent report, is exploring the feasibility of a board of mental health practitioners which would license qualified practitioners by a "consistent set of standards" it believes to be in the public interest.

## EDUCATION AND EXPERIENCE REQUIREMENTS

In dealing with needed reforms in the law governing the practice of marriage and family therapy, the following issues need to be addressed to improve the entry level requirements of 1980 PA 299, as amended. The academic credentials recommended by the American Association of Marriage and Family Counselors in its model for regulatory legislation are as follows:

Minimum qualifications for licensure: a master's degree in marriage and family counseling, family life education, psychology, social work, sociology of the family, or a closely related field. In addition, three years of experience, two years of which are under supervision of a licensed marriage/family counselor.

The current legislation in Michigan requires a doctorate in psychology, sociology, psychiatry, marriage or pastoral counseling, or an equivalent doctorate, together with 5 years professional experience, including one year specialization in marriage counseling under direct supervision of a licensed marriage counselor; or a master's degree in social work or marriage or pastoral counseling from an institution approved by the Department, plus 5 years professional experience. The original law providing for the registration of marriage counselors was modeled on the Act certifying consulting psychologists. The Psychology Section of the Public Health Code now calls for a master's degree plus one year of supervised experience for a limited license, and a doctorate plus two years of supervised experience for the full license. The changes in professionally-accepted educational preparation, the validity of the specialty academic programs in marriage and family therapy, plus the acceptance of the master's degree as an appropriate entry level credential, have made the current regulation governing marriage and family therapy with its unnecessarily stringent entry-level requirements anachronistic and difficult to administer.

Legislation being proposed by the Board to revise Article 15 of the Occupational Code, 1980 PA 299, calls for revised educational requirements of

a master's degree in marital and family therapy, or an equivalent graduate degree from an educational institution recognized by the Board, with a course of study specific to marriage and family scientific education and therapeutic techniques. The entry requirements for a limited registration include 2000 hours of supervised clinical practice, similar to the requirements for psychologist licensure, as part of the educational program. In addition, 4000 hours of experience after the receipt of the qualifying degree are required for a full certificate of registration which will then allow unsupervised practice of marriage and family therapy.

Arguments for the change in educational entry requirements are based upon the development, in the years since 1960, of specific academic programs and a specific body of skills and knowledge relating to marriage and family problems and conflict resolution. Excessive pre-entry requirements beyond what are required for safe and competent practice have the effect of severely limiting the availability of qualified providers. This limitation on the supply of practitioners has a direct impact upon cost to the consumer, and at the same time reduces the public's opportunity to obtain needed services. The Commission contends that many standards which exist for licensure are not commensurate with the public risk involved in performing the tasks and with the required skill. These standards go far beyond what is necessary to protect the public and instead serve to protect the profession. This situation is relevant to the other mental health professions, and argues for consistent and equitable entry level requirements for all three groups now regulated by the state.

## THE ISSUE OF THE SCOPE OF PRACTICE

As part of the Commission's charge to investigate the need for regulation, if any, and the need for change or improvement in present regulation of occupations governed by 1980 PA 299, as amended, several issues have emerged in connection with the profession of marriage and family therapy. Specifically, these issues are the interdisciplinary nature of the practice of marriage and family counseling/therapy and the variety of educational backgrounds practitioners may have in preparation for practice.

While there is considerable overlap in practice and education among the several professions engaged in family therapy, such as psychology, social work, and family studies, it should be noted that there has developed over the years a specific body of skills and knowledge related to the practice of marriage and family counseling. All psychologists or all social workers may not have the specialized education or experience to engage in the specialized practice of this field. Documentation provided by the Michigan Society of Licensed Psychologists indicates that in regard to professional psychology the following statistics are relevant to this issue:

...the American Psychological Association has 51,233 members trained in 32 specialized areas.... Of these, only 4337 or 8 1/2 percent are in the Division of Clinical Psychology. Of these, based on a survey of the Michigan Society of Licensed Psychologists through its Directory, we may estimate that only 40 percent have an interest in marriage and family problems, per se, and that only a quarter of this 40 percent have any specialized training in marriage and family therapy.

Social work, because of its orientation to a "systems" approach in treatment of individuals and families, recognizes the complex interactions which affect the functioning of the family and the social group, and has long had a professional involvement with marriage and family therapy. Once again, however, all social workers are not marriage counselors, either by training

or practice. Recent trends in social work education have been to strengthen academic programs in this distinct area of specialization. Social work practitioners, who have through educational preparation and experience achieved competence as marriage and family therapists, are able to be certified through the American Association for Marriage and Family Therapy, an interdisciplinary accrediting body for this area of professional practice. A master's degree in social work, plus professional experience in marriage counseling, has been recognized by the Michigan law from its inception. The MSW (master's in social work) would presumably be more equitably recognized as a specialty degree by the Board under the proposed revision to Article 15 which is under consideration by the present Board and the profession of marriage and family therapy.

In similar fashion, problems may arise when insufficiently trained persons, such as the clergy, go beyond pastoral counseling and attempt to engage in the private practice of marriage counseling. The American Association of Pastoral Counselors has made available training opportunities and has established standards of practice to address this problem. It has been widely recommended by individuals and organizations testifying at COPOL public hearings that members of the clergy who offer specific marriage therapy services be required to meet the standards for practice in this field to prevent the offering of services, outside the pastoral counseling area, by unqualified persons.

The problems noted above stem from the fact that there is substantial overlap in the scopes of practice of the three mental health professions, but no corresponding similarity in entry requirements.

The psychology statute defines and protects its scope of practice, but allows exemptions for certain aspects of its practice, such as psychotherapy,

counseling, behavior modification, etc., to be performed by other statutorily recognized professions. The practical result of these exemptions is that these functions, which may require specific training and clinical competence, can be legally performed by persons who are unqualified. The issue is not that social workers, pastoral counselors, or other legally-recognized professions should be prevented from practicing their professions under the law, but that they should all meet appropriate standards to perform specific services which require special training or expertise.

The issue goes beyond the problems uncovered in COPOL's study of the marriage counseling statute, and affects all the groups which engage in helping professions. The solution to the problem could best be found by statutorily defining which areas of practice in all these fields are potentially harmful if unregulated. These areas have been defined elsewhere in the report as the clinical functions of 1) psychological testing; 2) assessment or evaluation of psychological or behavioral problems; and 3) treatment or therapy to alleviate these problems. Once specific functions have been defined for each profession, regulation should address appropriate education and experience to qualify persons to perform these functions legally. Only through such a clear resolution of the complex issue of overlap of scope of practice can the public, and indeed the professional, be adequately protected from harm.

In summary, regardless of their particular academic or professional training, minimal requirements should be established for all practitioners, who perform the regulated functions. For those whose training has been interdisciplinary, a standard of clinical competence should be required which is equivalent for anyone seeking to offer services to the public as specialists in this field. In addition, provisions for the protection of confidentiality

of information obtained from clients in the course of therapy should be included in the law regulating all of the mental health therapeutic professions.

#### COMPLAINTS

Prior to September of 1980, nine complaints had been received by the Department of Licensing and Regulation about marriage counselors. Six of these complaints, filed by the Board, dealt with improper use of title by unregistered practitioners. The other complaints, filed by consumers and dealing with unprofessional conduct or malpractice, were settled informally or dismissed by the Office of Complaint Analysis. During the period from October 1980 through September 1981, 22 complaints were filed, the majority of which dealt with social workers advertising as marriage counselors who were not registered as such. According to Royce Wills of the Complaint Analysis office of the Department of Licensing and Regulation, many of these complaints were filed by registrants who noticed improper advertising. Fifteen of these complaints were resolved by a letter of reprimand and a site visit from a Department investigator. The Department requires proof of compliance if an advertising rule has been violated. Of the 22 complaints filed that year, two are being considered by the Attorney's Office for cease and desist orders, again for false advertising of services by unregistered individuals.

During 1981-82 16 complaints were filed. Four were still open as of January 1982, three of which were awaiting the approval of the Attorney General before formal action could be taken by the Board. In addition, numerous issues were handled informally by the Board without requiring formal legal action. The low number of formal consumer complaints could indicate that the public is not aware of the procedure of redress through the Board and Department. It could also indicate that the competence, ethics, and standards of practice

for the field of marriage and family therapy in Michigan have been enhanced by the existence of state regulation. It can be asserted with some objectivity that since the passage of the original law in 1966, the situation in Michigan has been such that charlatans have not functioned as they did prior to that time, and that the law has been effective to a marked degree in protecting the public.

According to the provisions of 1980 PA 299, the Occupational Code, penalties may be enacted against practitioners who commit one or more of the following acts in Section 604:

- a) Practices fraud or deceit in obtaining a license or certificate of registration.
- b) Practices fraud, deceit, or dishonesty in practicing an occupation.
- c) Violates a rule of conduct of an occupation.
- d) Demonstrates a lack of good moral character.
- e) Commits an act of gross negligence in practicing an occupation.
- f) Practices false advertising
- g) Commits an act which demonstrates incompetence.
- h) Violates any other provision of this act or a rule promulgated under this act for which a penalty is not otherwise prescribed.
- i) Fails to comply with a subpoena issued under this act.

It may be argued that the efficacy of these regulations to protect the public are only as good as the grievance procedure. The Board and the Department have functioned well under the remodeled complaint procedure which has been developed since the establishment of a centralized Complaint Analysis system. The ongoing need for expanded consumer information about the redress of grievances available through the regulatory system is one which the Board, the Department, and ultimately the Legislature, must address if the system is to work effectively in the public interest.

#### ALTERNATE FORMS OF CONSUMER PROTECTION

Consumer protection is the underlying reason for state regulation of professions and occupations. Central to the process of public protection

is the consumer complaint system of the Department of Licensing and Regulation. Through a central office where complaints may be registered, and the accompanying investigation, administrative hearing, and disciplinary action, if warranted, the interests of the consumer are addressed.

Outside of the state regulatory system, the best known legal remedy for consumer grievances is the malpractice suit, in which damages may be awarded for economic, physical, or mental injuries sustained by the consumer. Criminal suits may also be sought for fraud or improper exploitation of patient or client. The malpractice suit, however, is a lengthy and expensive process and is often an option of limited choice for the consumer, particularly in connection with psychotherapy or related activities.

A limitation of the efficacy of this legal remedy as it applies to marriage and family therapy, and indeed any mental health profession, is in the nature of the professional services. William C. Nichols, Chairperson of the Michigan Board of Marriage Counselors states:

There are significant differences between malpractice in marital and family and/or individual psychotherapy and malpractice in medical treatment or related work. When a sponge is left inside a body cavity, or a tire is not adequately repaired, even the least informed layperson can conclude that an error was made. With marital and family problems, the poorly-served layperson is most often left with a question and a vague sense that all may not have been done appropriately or gone well, rather than certitude.

Another method of consumer protection is the self-policing process of the American Association of Marriage and Family Therapist, the interprofessional association which establishes professional standards and a Code of Professional Ethics. All complaints against members are brought before a complaint committee, and they risk disciplinary action or expulsion from affiliation for incompetence or breach of ethics. However, as a voluntary private sector association, jurisdiction extends to members only. No action

can be taken against non-members, who, one might speculate, might be those more likely to be in need of discipline.

A historic review of the conditions which led to the introduction of legislation to regulate the practice of marriage counseling indicate that the widespread abuses of the public's confidence have been significantly contained by the regulation of this field. Blatant deception of the public by incompetent or fraudulent practitioners which was documented by a number of journalistic expose's has diminished greatly, as public awareness of the field of marriage counseling service has increased. In that context, increased public information services to assist consumers to make informed choices about practitioners have been an ongoing goal of the present Board and the Department of Licensing and Regulation. Unfortunately, legislative appropriation for this important service has been severely limited, and the present fiscal circumstances of the State of Michigan will undoubtedly continue to place severe restraints upon this activity. The current regulation does provide the consumer with the protection of a screening process for practitioners who must meet educational and experience requirements, along with the availability of a consumer grievance process through the Department. The Commission feels, however, that increased consumer information should be a priority goal, for the Department if the public is to receive fullest benefit from state regulation.

#### COSTS OF REGULATION

In the past five years, the Board expenditures have been greater than direct fees collected. However, financial reports of board activities reflect expenditure of monies which are appropriated to the Department from general fund sources, and may or may not show a balance of revenue vs. expenses.

According to the Revenue to Expenditure Comparison Summary of the Department of Licensing and Regulation for Fiscal Year 1980-81: "in some cases a profession being regulated may not be able to support itself financially, but may provide other vital functions, particularly in the area of public protection." Before final conclusions are drawn about the financial status of a board, one must consider that a large portion of expenditures on behalf of the overall operations of the regulatory agency (the Department of Licensing and Regulation), such as complaint investigation, enforcement, administrative services, data processing services, public information, etc., are charged on a pro rata basis to each of the boards within the agency. The following chart lists figures for the Board of Marriage Counselors for the past five years.

<u>YEAR</u>	<u>EXPENDITURES</u>		<u>REVENUE</u>		<u>PERCENTAGE</u>
	<u>DOLLARS</u>	<u>INDEX</u>	<u>DOLLARS</u>	<u>INDEX</u>	<u>COVERED BY REVENUE</u>
1976	16,017	100	11,275	100	70
1977	14,613	91	12,000	106	82
1978	22,703	142	12,700	113	56
1979	27,600	173	13,830	123	50
1980	23,080	144	14,044	125	61

The index numbers show the percent of change from the base of year of 1976.

The decrease in expenditures from fiscal year 1979-80 to fiscal year 1980-81 is largely due to general budget cuts suffered by the Department of Licensing and Regulation.

Indirect expenses of the Department to support the functions of regulation are legitimate expenses to consider when evaluating the cost of regulating a profession or occupation. The question which must be answered is whether the benefits of public protection afforded by the law outweigh the costs to the state. In the case of health and safety-related occupations, these costs may be warranted. One hidden cost, however, which the present regulation

for marriage counselors as contained in 1980 PA 299 may be engendering is the cost of artificial shortages of personnel caused by inordinately high entry-level qualification, which is discussed elsewhere in this report, would make it possible for the Board to open the field more equitably to qualified practitioners, thus reducing costs to consumers caused by shortages of personnel available to provide services.

DISCUSSION: COORDINATION OF MENTAL HEALTH PROFESSIONS

As part of its deliberations, the Commission has also concluded that there does exist an overlap of functions among all mental health practitioners, notably psychologists, social workers, and marriage and family therapists. For this reason, the Commission recommends that consideration be given to the implementation of a coordinated system of regulation for those individuals engaged in the practice of behavioral science professions which are involved in the delivery of mental health services to the public.

One suggested method is the establishment of a Behavioral Science Board, or a similar umbrella type agency within the Department of Licensing and Regulation, which can coordinate the regulation of these three professions. Models for such a consolidated method of regulation are in existence, or under consideration by a number of states, and are engendering national interest as a means to resolve fragmentation in the delivery of mental health services. Such a Behavioral Science Board could have representation from all the involved professions, as well as from the public, to better address issues of common concern. Serious overlap of practice, need for appropriate criteria for education and experience in the several related but distinct professions, and the need for consistent and equitable regulation are issues which such a combined Board could address with greater effectiveness than separate regulatory bodies.

A coordinated Board could exercise administrative efficiency, promote consistent licensing standards and application of the law, and encourage inter-professional communication and cooperation, which would ultimately work towards better public protection. The combined Board could continue to issue separate licenses, based on separate criteria for education, experience, and scope of practice, thus preserving professional identification. At the same time, similar standards for entry which would work towards removing unnecessary barriers to practice could be established for all three professions. Such consistency, combined with vigorous public information efforts, would help the public to obtain services more readily, and identify the provider best suited to provide those needed services.

Based on these considerations, COPOL further recommends that Social Work and Marriage and Family Therapy be regulated along with Psychology under the aegis of the Michigan Public Health Code, rather than under the Occupational Code. This would allow the same regulatory standards to be applied to all three groups, and enable the Department of Licensing and Regulation to coordinate the administrative functions involved. It is recommended that entry level licensure requirements for marriage and family therapists, psychologists, and clinical social workers be set at a consistently appropriate level, as adopted by each Board for license approval. It is further recommended that a procedure for financial redress or restitution be incorporated into the Public Health Code similar to that provided in the Occupational Code so that consumers have recourse through the complaint process.

With the formation of a Behavioral Science Board, the Commission further recommends that several guidelines be used for the regulation of mental health professionals:

1) That the issue of patient/client confidentiality is essential to the protection of both patient/client and the practitioner, and should be an inherent part of legislation governing all the behavioral science professions.

2) That the discrepancy in licensing requirements between private and public employers be ended.

3) That licensure statutes should be directed only towards those clinical functions which carry an element of risk to the public. In the behavioral science professions, these have been identified as follows: (a) psychological testing; (b) assessment and evaluation (diagnosis); and (c) psychotherapy (treatment). Attempts to regulate other aspects of practice could lead to a rigidity and inflexibility in the law which would not be in the public interest, nor in the interest of innovation or advancement of professional services to patients or clients.

In conclusion, the Commission strongly supports the creation of a Behavioral Science Licensing Board to regulate the practice of marriage and family therapy, psychology, and social work, in a consistent and coordinated system. The Commission contends that the establishment of one Board will economize resources needed for administrative services, complaint investigation, and enforcement of the law. Such a system can provide greater uniformity of regulation, solve interprofessional issues relating to scope of practice and appropriate education/training/experience, and provide better guarantees to the public that practitioners regulated under this Board must meet uniform standards for competent and safe services.

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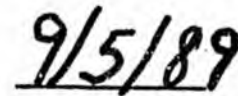


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

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COMMITTEE REPORT  
HOUSE

3/7  
HEALTH, EDUCATION AND  
SOCIAL SERVICES

(7)

FURTHER: FINANCE

5/9/85

Date: May 9 1985

The Committee on LABOR & COMMERCE has had HB 430

"An Act regulating audologists, hearing aid dealers and the dispensing of hearing aids."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HR 430 (LVC)  same title  
and recommends to pass  new title
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee *sup 95*

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

*W. J. ...*

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*W. J. ...*  
CHAIRMAN

# STATE OF ALASKA 1986 LEGISLATIVE SESSION

## FISCAL NOTE

Revision Date : 4/3/86

**REQUEST**

Bill/Resolution No. : CSHB 430 (HESS)  
 Title : Regulating audiologists,  
hearing aid dealers & dispensing  
of hearing aids  
 Sponsor : House HESS  
 Requestor : House Finance Committee  
 Date of Request : 4/3/86

**FISCAL DETAIL**

Agency Affected : Commerce & Econ. Dev.  
 BRU : Occupational Licensing  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
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REVENUE		10.3	2.7	3.1	3.5	10.1
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
TOTAL		0	0	0	0	0

**POSITIONS :**

FULL-TIME		0	0	0	0	0
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

**ANALYSIS :** Attach a separate page if necessary

The \$100 estimated as needed for printing of applications and statute booklets can be absorbed within the Department's FY 87 budget.

APA

Prepared by : Al Adams, Chair Phone : 465-3706  
 Division : House Finance Committee Date : 4/3/86

Approved by Commissioner : \_\_\_\_\_ Date : \_\_\_\_\_  
 Agency : \_\_\_\_\_

**Distribution (by Agency preparing fiscal note) :**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: CSHB 430 (HESS)  
 Title: Regulating Audiologists, Hearing Aid Dealers and dispensing of hearing aids;  
 Sponsor: House HESS  
 Requester: House Finance  
 Date of Request: 4/2/86

**FISCAL DETAIL**

Agency Affected: Commerce & Econ. Dev.  
 BRU: Occupational Licensing  
 Components: \_\_\_\_\_

**EXPENDITURES / REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		.1	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		.1	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE		10.3	2.7	3.1	3.5	10.1
---------	--	------	-----	-----	-----	------

**FUNDING: (Thousands of dollars)**

GENERAL FUND		.1	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		.1	-0-	-0-	-0-	-0-

**POSITIONS:**

FULLTIME		-0-	-0-	-0-	-0-	-0-
PARTTIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary.

The bill charges the department with the responsibility of licensing audiologists and hearing aid dealers. Information received indicates that the number of practitioners affected by the bill are few -- 12 audiologists and 10 legitimate hearing aid dealers. Apparently, fly-by-night individuals have harmed Alaskan consumers as documented by complaints on file with Consumer

Prepared by: Jennifer Strickler, Management Analyst  
 Division: Occupational Licensing

Phone: 465-2144  
 Date: 4-3-86

Approved by Commissioner: Lois L. Lounsbury  
 Agency: Commerce and Economic Development

Date: 4/3/86

**Distribution (by Agency preparing fiscal note):**

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 430 (HESS)

Protection in the Department of Law, the Office of the Ombudsman, and the Department of Health and Social Services, Communicable Disease Control Section. Licensing of Audiologists and hearing aid dealers may be one instance where the need for licensure out-weighs the small number of practitioners.

An estimate of operating costs derived from comparing qualifications and numbers of practitioners with a similar existing license function indicate the costs to total \$4.5 each year. Of the yearly costs; \$.1 is expected to be new costs as a result of this legislation, for printing of application and statute booklets. The remainder of \$4.4 consists largely of personal services costs which would be absorbed by the division through funding already included in the agency's operating budget.

The following fee schedule was developed so that fees generated over the four-year renewal cycle would match, as closely as possible, costs over the same period.

Revenues were estimated on the following fee schedule:

Application Fee	\$ 30	
Credentials Review Fee	20	
Temporary Permit Fee	100	
Audiologist:		
License & Renewal Fee	520	quadrennially (\$130 annually)
Hearing Aid Dealers	200	annually

As a result of quadrennial licenses issued to Audiologists, revenues collected in FY 87 essentially covers a portion of the costs in FY 88 to FY 90. A detailed description follows:

FY 87:			Distribution across
12 Audiologists seeking licensure	\$ 6.2		quadrennial renewal:
10 Hearing Aid Dealers	2.0		
22 Application/Credentials Review	1.1		
	\$ 9.3		\$ 9.3
			- 4.5 costs
			\$ 4.8 balance
FY 88:			
Assuming there will be two new applicants seeking Audiology temporary permits	\$ .2		
2 new Hearing Aid Dealers:			
Application & Credentials Review Fee	.1		
License fee	.4		
10 Hearing Aid Dealers renewing	2.0		\$ 4.8 balance forward
	\$ 2.7		.2.7
			\$ 7.5
			- 4.5 costs
			\$ 3.0 balance

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 430 (HESS)

FY 89:

Assuming there will be two new applicants seeking Audiology temporary permits	\$ .2	
2 new Hearing Aid Dealers:		
Application & Credentials Review Fee	.1	
License Fee	.4	
12 Hearing Aid Dealers	2.4	
	\$ 3.1	
		\$ 3.0 balance forward
		3.1
		\$ 6.1
		- 4.5 costs
		\$ 1.6 balance

FY 90:

Assuming there will be two new applicants seeking Audiology temporary permits	\$ .2	
2 new Hearing Aid Dealers:		
Application & Credentials Review Fee	.1	
License Fee	.4	
14 Hearing Aid Dealers renewing	2.8	
	\$ 3.5	
		\$ 1.6 balance forward
		3.5
		\$ 5.1
		- 4.5 costs
		\$ .6 balance

FY 91 will be the start of a new quadrennial license period for Audiologists, and is the reason for revenues increasing from \$3.5 in FY 90 to \$10.1 in FY 91.

FY 91:

Assuming there will be one new applicant seeking licensure as an Audiologist	\$ .5	
2 new Hearing Aid Dealers, license fee	.4	
Application & Credentials fee for 3 new applicants	.2	
12 Audiologists renewing	6.2	
14 Hearing Aid Dealers renewing	2.8	
	\$10.1	



# Illinois Hearing Aid Consumer Protection

A consumer protection service provided through  
the Illinois Department of Public Health - IDPH.

CALL TOLL-FREE 1-800-572-3270

VOLUME 85-1

## The Illinois Hearing Aid Consumer Protection Program

"A Hearing Aid Can Be A Good Sound Investment." This is the promotional theme for the new Illinois law designed to promote the benefits of hearing aids and protect the public from fraudulent dispensing practices which threaten the health, safety and welfare of Illinois citizens.

The Illinois Hearing Aid Consumer Protection Act (HACPA-Supplement to Ill. Rev. Stat. 1983, chap. 111, par. 7403 et seq.) supports sound hearing aid dispensing practices through the certification of dispensers and the follow-up of complaints and/or inquiries. The Illinois Department of Public Health is responsible for administering the provisions of the Hearing Aid Consumer Protection Act (HACPA) by initiating a four component action plan which focuses on:

1. health promotion/  
consumer education;
2. continuing education services for  
hearing aid dispensers;
3. certification of dispensers; and
4. follow-up of inquiries and com-  
plaints.

The Illinois Department of Public Health has developed and implemented a system to follow-up consumer inquiries and problems. Inquiries can be received by the toll-free action line or by

mail. Program staff are available to respond to all inquiries and initiate follow-up activities, whether received by the toll-free action line or by mail. Should a reconciliation be unattainable, the individual case and all documentation will be forwarded to the Department and after review, if warranted, to the Board. The Board has the authority, by mandate, to conduct hearings and make recommendations to the Director, should disciplinary action be indicated. The Board is comprised of:

Jack D. Clemis, M.D.  
Board Chairman, Otolaryngologist,  
Chicago, Illinois

Thomas Regnier, Hearing Aid  
Dispenser, Illinois Society of  
Hearing Aid Specialists, Peoria,  
Illinois

Gail Gudmundsen, Hearing Aid  
Dispenser, Illinois Speech, Hearing  
and Language Association, Hoffman  
Estates, Illinois

Bee White, Senior Advocate,  
Springfield, Illinois\*

To facilitate the promotion of the HACPA, its provisions, and the service it provides to consumers, program staff are currently developing a statewide networking effort to involve all state and community programs which provide a link to the senior citizens. By successfully educating these interested allied agencies to the services and provision of the HACPA, a larger population of hearing aid consumers can be served.

\* One Board position is currently vacant due to the recent resignation of Richard Gelula, Chicago Hearing Society, Chicago, Illinois.



## THE ILLINOIS HEARING AID DISPENSERS EXAMINATION

To carry out the requirements for the hearing aid dispensers examinations as stated in the Illinois Hearing Aid Consumer Protection Act, the Department of Public Health convened a statewide committee of hearing aid dispensers to review available tests and decide upon a test for Illinois hearing aid dispensers. This committee chose to work with the Educational Testing Service (ETS) to develop the Illinois Hearing Aid Dispensers' Examination. Guided by the committee, ETS designed a job analysis survey that was completed by over half of the practicing dispensers in Illinois. Based on the survey results and the committee's recommendations, ETS developed multiple forms of a 75-question exam, using questions drafted by the committee.

This first examination is intended for temporary certificate holders. Those temporary certificate holders who registered with IDPH on or before May 31, 1985 will be notified by ETS regarding the examination scheduled for August 24, 1985. On this date, two examinations will be conducted simultaneously in Springfield and Chicago. The times and locations will be announced in registration packages. Registration packages must be completed and returned to ETS so that an entrance ticket to the examination can be mailed to each registrant.

The examination will consist of multiple-choice questions. Each question will have four options and only one correct answer. Test-takers are encouraged to choose the option they think is more than likely correct when they do

not know the correct answer. There is no penalty for guessing on this examination.

Test-takers will have ample time to complete this exam. The three and one-half hours scheduled for the test should allow sufficient time for all test-takers. You need only bring one or two #2 pencils. No notes, dictionaries, etc., will be allowed in the test room. You may bring a silent, hand-held calculator. Calculators, however, are not really needed for this exam.

The examination questions will cover the following subjects:

1. ACOUSTICS
2. NATURE OF THE EAR  
(normal ear, hearing process, disorders of the ear)
3. HEARING MEASUREMENT  
(data collection and measurement)
4. HEARING AID TECHNOLOGY
5. SELECTION OF HEARING AIDS
6. DISPENSING AND SERVICING HEARING AIDS
7. CONSUMER PROTECTION REGULATIONS  
--(Federal and State)

In developing this examination, the committee has made every effort to limit the examination to basic information that all hearing aid dispensers should know so that the public may be adequately protected.

The passing score on the examination will be set in a meeting of the committee on July 11. The committee, in reviewing the test, will define what it expects a person to know in order to be minimally qualified as a hearing aid dispenser.

Test-takers will be informed of the passing score as they begin the examination on August 24. Again, the purpose of the passing score will be to assure that the public is adequately protected. This is not a competitive examination in which the top group passes and the rest fail. If all test-takers are minimally qualified, as defined above, all will pass this examination.

The practicum component of the examination is only available to those who successfully complete the written examination. (The written exam will be offered October 19, 1985 only, at the ETS Headquarters in Evanston for those who fail the written component and wish to retake the examination.) The practicums will be comprised of eight stations each, manned by two examiners (certified hearing aid dispensers). All examiners will be trained by ETS to objectively and uniformly evaluate the practicum performance. This examination component is scheduled to take approximately one hour per person. Admission tickets with the assigned date and location will be mailed with notifications of passing the written examination. The practicums will be conducted:

October 22, 23, 24, 25 and December 4  
(Chicago Metropolitan Area)

November 12, 13, (Springfield)



AT YOUR FINGER TIPS:

A toll-free action line was established earlier this year to facilitate

the consumer service component of the Hearing Aid Consumer Protection Act (HACPA). Since its development, over 400 calls have been received by the Illinois Department of Public Health. A majority of the calls received focused on consumer education and awareness about the newly enacted program.

The toll-free telephone line (1-800-572-3270) is provided to respond to problems, questions, or about hearing aid goods and services. In addition, a telecommunication device for the deaf (TDD) can be accessed through this same number. Program staff are available 8:30 a.m. - 5:00 p.m. Monday - Friday to accept calls. A telephone answering device will accept telephone calls received after work hours. The toll-free action line is being promoted on posters and pamphlets developed and disseminated by the Hearing Aid Consumer Protection Program. Copies are available upon request by contacting the toll-free action line. All telephone calls are forwarded to IDPH Vision and Hearing Regional Consultants, for follow-up.

#### "CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT"

The Consumer Fraud and Deceptive Business Practices Act protects consumers, borrowers, and businessmen against fraud, unfair methods of competition and deceptive acts or practices in the conduct of any trade or commerce. It also clarifies the powers of the Attorney General. For these reasons, it is crucial that hearing aid dispensers and consumers understand the Consumer Fraud and Deceptive Business Practices Act. Several major points of this Act are identified below.

1. If a sale of merchandise involving \$25 or more is made or contracted to be made to a consumer as a result of or in connection with a person's contact

with or call on the consumer, that consumer may void the contract or transaction by notifying the seller within three full business days following that day on which the contract was signed or the sale was made. In addition, the consumer must return in its original condition, any merchandise delivered to the consumer under the contract or sale.

2. At the time of a transaction, the dispenser should furnish the consumer with a completed receipt or contract containing a "Notice of Cancellation" informing the consumer that the transaction may be cancelled within three days.
3. The following statement shall be, located near the consumer's signature on the contract or on the front page of the receipt (if a contract is not used) in at least 10-point type.

"YOU, THE CONSUMER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

4. Attached to the receipt or contract shall be a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be easily detachable and shall contain in 10-point bold face type the information identified in the Consumer Fraud and Deceptive Business Practices Act.

These points are provided only to highlight a few of the major issues contained in this Act. If you would like to obtain a copy of this Act, contact the Illinois Department of Public Health.

#### ROSTER OF PREFERRED MAILING ADDRESSES FOR HEARING AID DISPENSER APPLICANTS

If the place of business of a certificant is changed from that address provided on the certificate and maintained on file by the Illinois Department of Public Health (IDPH), the certificant should notify IDPH in writing within 10 working days of the change. After a change in the business location, the dispenser should leave a forwarding address with the post office for one year and a forwarding telephone number for six months where the consumer can contact the dispenser.

A roster of preferred mailing addresses for Certified and Temporary Hearing Aid Dispenser applicants is now available to the general public. This list identifies each applicant's preferred mailing address and the dispenser's certification status.

The cost of the roster is 25c/page which covers duplication, postage and handling expenses.

To obtain this list, contact the HACP Action Line by calling 1-800-572-3270.

#### IDPH WORKSHOP Hearing Aid Dispensing Practices: An Overview

The Illinois Department of Public Health is offering a workshop entitled "Hearing Aid Dispensing Practices: An Overview," to orient hearing aid dispensers to the use of acceptable and appropriate dispensing practices. Especially designed for Temporary Certified Dispensers, the workshop was created to augment the skill and knowledge of dispensers. Experts from the field of medicine and the hearing aid industry will provide information regarding hearing aid selection and

fitting. The workshop will be offered at two locations:

August 1, 1985  
Holiday Inn East  
3100 S. Dirksen Parkway  
I-55 Junction By Pass 66  
Stevenson Drive  
Audiovisual Room  
Springfield, Illinois

August 2, 1985  
Holiday Inn  
4400 Frontage Road  
Churchill Room  
Hillside, Illinois

 AGENDA 

- |            |  |   |
|------------|--|---|
| 8:00 a.m.  | Registration   |   |
| 8:30 a.m.  | Consumer Protection: The Responsibilities of the Dispenser.                | James R. Nelson, Chief, Division of Health Promotion and Screening, IDPH  |
| 9:00 a.m.  | Shall I Sign the Medical Waiver?   | Leonard Rybak, M.D., Ph.D.<br>Otolaryngologist, Springfield Memorial Medical Center (Springfield)<br><br>Richard Wiet, M.D.,<br>Otolaryngologist, Hinsdale, IL (Hillside) |
| 10:00 a.m. | BREAK  |   |
| 10:15 a.m. | Hearing Aid Selection: Options and Alternatives                            | Ronald Regan, President, Argosy Electronics, Edina, Minnesota   |
| 11:45 a.m. | LUNCH  |   |
| 1:00 p.m.  | Earmolds: Making a Good Impression   | Marie Jablin, Vice President Marketing & Audiological Research, Audiovox, Bensonville, IL   |
| 2:45 p.m.  | BREAK  |   |
| 3:00 p.m.  | The Educational Testing Service (ETS): Test Preparation and Administration | Terri Strand, Ph.D., Professional Associate, ETS, Evanston, IL (Springfield)  |

3:00 p.m. (Continued)

George Elford, Director, Mid-  
western Region, Educational  
Testing Service, Evanston,  
Illinois (Hillside)

4:00 p.m. Laboratory Session: Introduction IDPH Staff  
to the Qualitone Acoustic Appraiser  
and the Bioacoustic Audiometric  
Simulator\*

5:00 p.m. CLOSURE

\* This equipment will be used in the practicum component of the  
Illinois Hearing Aid Dispenser Examination.

Those interested in attending this workshop should complete the  
following registration form.

#### REGISTRATION

Hearing Aid Dispensing Practices: An Overview

Please check the date and location you plan to attend. Advance registration  
fee is \$40.00 (includes lunch, coffee and materials). At site registration  
will be \$50.00.

\_\_\_\_ August 1, 1985 (Springfield) .      \_\_\_\_ August 2, 1985 (Hillside)

Please type or print

NAME: \_\_\_\_\_

CERTIFICATION I.D. NUMBER: \_\_\_\_\_

BUSINESS ADDRESS: \_\_\_\_\_

HOME TELEPHONE: (    ) \_\_\_\_\_ WORK TELEPHONE: (    ) \_\_\_\_\_

Please make checks payable to: IDPH/Hearing Aid Program  
(Your cancelled check is your receipt)

Mail registration to: Hearing Aid Program  
Division of Health Promotion and Screening  
Illinois Department of Public Health  
535 West Jefferson Street  
Springfield, Illinois 62761

NO REFUNDS WILL BE AVAILABLE AFTER JULY 19, 1985

such receipt in Court shall be grounds for dismissal of the action.

*For repeal of Act, see note preceding § 7001 of this chapter.*

7025.16. Penalties

§ 25.16. Any person who is found to have violated any provision of this Act is guilty of a Class A misdemeanor. On conviction of a second or subsequent offense, the violator shall be guilty of a Class 4 felony.

*For repeal of Act, see note preceding § 7001 of this chapter.*

7026. State powers and functions

§ 26. It is declared to be the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that any power or function set forth in this Act to be exercised by the State is an exclusive State power or function. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act.

*For repeal of Act, see note preceding § 7001 of this chapter.*

7027. Administrative Procedure Act

§ 27. "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended,<sup>1</sup> is hereby expressly adopted and incorporated herein as if all of the provisions of such Act were included in this Act, except that the provision of paragraph (c) of Section 16 of "The Illinois Administrative Procedure Act", as amended,<sup>2</sup> which provides that at hearings the licensee has the right to show compliance with all lawful requirements for retention, or continuation or renewal of the license, is specifically excluded, and for the purpose of this Act the notice required under Section 10 of "The Illinois Administrative Procedure Act", as amended,<sup>3</sup> is considered sufficient when mailed to the last known address of a party.

<sup>1</sup> Chapter 127, § 1001 et seq.

<sup>2</sup> Chapter 127, § 1016.

<sup>3</sup> Chapter 127, § 1010.

*For repeal of Act, see note preceding § 7001 of this chapter.*

7028. Rights under prior laws

§ 28. Rights and obligations incurred and any actions commenced under the "Veterinary Medicine and Surgery Practice Act", approved August 14, 1961, as amended,<sup>1</sup> as it existed prior to the effective date of this Act shall not be impaired by the enactment of this Act. Rules adopted under the former Act, unless clearly inconsistent with the provisions of this Act, shall remain in effect until amended or rescinded.

All licenses heretofore legally issued in this State permitting the holder thereof to practice veterinary medicine and surgery and valid and in effect on the taking effect of this Act shall have the same force, and be subject to the same authority of the Department to revoke or suspend them as licenses issued under this Act.

<sup>1</sup> Paragraph 6901 et seq. (repealed) of this chapter.

*For repeal of Act, see note preceding § 7001 of this chapter.*

HEARING AID CONSUMER PROTECTION ACT

AN ACT to regulate the selling, practice of fitting, dispensing or servicing of hearing aids in the State of Illinois. P.A. 83-928, am. veto overridden Nov. 1, 1983, eff. July 1, 1984.

Repeal of Act

*P.A. 81-999, the Regulatory Agency Sunset Act, eff. Sept. 22, 1979, which provides for the legislative review of programs and agencies which regulate professions, occupations, business, industry and trade in Illinois, as amended by P.A. 83-928, § 37, eff. July 1, 1984, provided in section 4.8 of the Act for repeal of "The Hearing Aid Consumer Protection Act", enacted by the 13rd General Assembly, as now or hereafter amended", effective Dec. 31, 1995. For complete text of the Regulatory Agency Sunset Act, see § 1901 et seq. of chapter 127.*

7401. Purpose

*Paragraph effective July 1, 1984.*

§ 1. The purpose of this Act is to protect the hearing-impaired public from incompetent and dishonest dispensers of hearing aids who could endanger the health, safety and welfare of the People of this State. The Federal Food and Drug Administration has recommended that State legislation is necessary in order to establish standards of competency and to impose stringent penalties for those who violate the public trust in this field of health care.

*For repeal of Act, see note preceding this paragraph.*

7402. Short title

*Paragraph effective July 1, 1984.*

§ 2. This Act shall be known as the Hearing Aid Consumer Protection Act.

*For repeal of Act, see note preceding § 7401 of this chapter.*

7403. Definitions

*Paragraph effective July 1, 1984.*

§ 3. As used in this Act, except as the context requires otherwise:

(a) "Department" means the Department of Public Health.

(b) "Director" means the Director of the Department of Public Health.

(c) "Certification" means a certificate issued by the State under this Act to a hearing aid dispenser.

(d) "Temporary certificate" means a certificate issued while the applicant is in training or is qualifying to become a certified hearing aid dispenser.

(e) "Clinical Audiologist" means a person with a Masters Degree in Audiology who holds a certificate of clinical competence in Audiology from the American Speech and Hearing Association or its equivalent.

(f) "Hearing Aid Audiologist" means a person who has been so certified after qualification by examination and experience by the National Board of Certification of the National Hearing Aid Society.

(g) "Licensed Physician" means a physician licensed to practice medicine in all of its branches.

*Amended 10/7/95 Act 1*

(h) "Board" means the Hearing Aid Consumer Protection Board.

(i) "Hearing aid" means any instrument or device designed, intended or offered for the purpose of effectively compensating for impaired human hearing and any parts, attachments or accessories, including earmold. However, batteries, cords and individual or group auditory training devices and any instrument or device used by a public utility in providing telephone or other communication services are excluded.

(j) "Practice of fitting, dispensing and servicing of hearing aids" means the selection, adaptation, sale and service of hearing aids and include the testing of hearing by means of an audiometer properly calibrated to American National Standard Institute standards.

(k) "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.

*For repeal of Act, see note preceding § 7401 of this chapter.*

7404. Consumer information—Medical evaluation—Waiver—Complaint procedure—Liability insurance  
Paragraph effective July 1, 1984.

§ 4. Every person fitted and sold a hearing aid shall be given, at no charge, the "User Instructional Brochure", supplied by all hearing aid manufacturers, containing advice to the user regarding requirements for evaluation by licensed physicians, specific waivers to the medical evaluation requirements, hearing aid manufacturer evaluations, purchase privileges and technical data.

Any person who fits, dispenses, services or sells hearing aids shall deliver to each person supplied with a hearing aid, which shall contain the seller's signature, the manufacturer's specifications, the model and serial number of the hearing aid furnished and the full sales terms clearly stated. If a used hearing aid is sold, the receipt and the container thereof shall be clearly marked as "used" or "reconditioned", whichever is applicable, with terms of guarantee, if any.

A hearing aid dispenser shall not sell a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician which states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the 6 months immediately preceding the time the written statement is presented by the prospective hearing aid user to the hearing aid dispenser. If the prospective hearing aid user is 18 years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement of this Section, provided that the hearing aid dispenser:

- (i) Inform the prospective user that the exercise of the waiver is not in the user's best health interest;
- (ii) Does not in any way actively encourage the prospective user to waive such a medical evaluation; and
- (iii) Affords the prospective user the opportunity to sign the following statement:

I have been advised by \_\_\_\_\_ (Hearing aid dispenser's name) that the Food and Drug Administration has determined that my best interest would be served if I had a

medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

The hearing aid dispenser shall retain such proof of medical examination or waiver for at least 4 years.

If the parent or guardian of any individual under the age of 18 years is a member of any church or religious denomination, whose tenets and practices include reliance upon spiritual means through prayer alone and objects to medical treatment and so states in writing to the hearing aid dispenser, such individual shall undergo a hearing examination as provided by this Section, but no proof, ruling out any medically treatable problem causing hearing loss, shall be required.

All persons certified under this Act shall have conspicuously displayed in their business establishment a sign indicating that formal complaints regarding hearing aid goods or services may be made to the Department. Such sign shall give the address of the Department. All persons purchasing hearing aids shall be provided with a written statement indicating that formal complaints regarding hearing aid goods or services may be made to the Department and shall give the address of the Department.

Any person wishing to make a complaint, against a hearing aid dispenser under this Act, shall file it with the Department within 3 years from the date of the action upon which the complaint is based. The Department shall investigate all such complaints.

All persons certified under this Act shall maintain liability insurance as set forth by rule and shall be responsible for the annual calibration of all audiometers in use by such persons. Such annual calibrations shall be in conformance with the standards set by American National Standard Institute.

*For repeal of Act, see note preceding § 7401 of this chapter.*

7405. Certified hearing aid dispensers

Paragraph effective July 1, 1984.

§ 5. No person shall engage in the selling, practice of fitting, dispensing or servicing hearing aids or display a sign, advertise or represent oneself as a person who practices the fitting and selling of hearing aids after January 1, 1985, unless such person holds a current certificate issued by the Department as provided in this Act. For purposes of this Act, such person shall be known as a certified hearing aid dispenser. The certificate shall be conspicuously displayed in the place of business. Duplicate certificates shall be issued by the Department to valid certificate holders operating more than one office, with such additional payment as may be required.

Nothing in this Act shall prohibit a corporation, partnership, trust, association or other organization maintaining an established business address, from engaging in the business of fitting and selling or offering for sale hearing aids at retail without a certificate, provided it employs only certified individuals in the direct fitting and dispensing of such products. Each such corporation, partnership, trust, association or other organization shall file annually, with the Department, a list of all certified hearing aid dispensers employed by it. Such organizations shall also file with the Department a statement that they comply with this Act, the rules issued pursuant to it and the regulations of the Federal Food and Drug Administration.

and the Federal Trade Commission insofar as they are applicable.

For repeal of Act, see note preceding § 7401 of this chapter.

7406. Sale of hearing aids by business organizations—Registration—Disclosure statement—Consent to service of process—Right of cancellation by consumer of mail order—Other requirements

Paragraph effective July 1, 1984.

§ 6. Nothing in this Act shall prohibit a corporation, partnership, trust, association or other organization maintaining an established business address, from engaging in the business of selling or offering for sale hearing aids at retail by mail to persons 18 years of age or older who have not been examined by a licensed physician or tested by a certified hearing aid dispenser provided that:

(a) Each such organization is registered by the Department prior to engaging in business in this State.

(b) Each such organization files with the Department, prior to registration and annually thereafter, a Disclosure Statement containing the following:

(1) the name under which the organization is doing or intends to do business and the name of any affiliated company which the organization recommends or will recommend to persons as a supplier of goods or services or in connection with other business transactions of the organization;

(2) the organization's principal business address and the name and address of its agent in this State authorized to receive process;

(3) the business form of the organization, whether corporate, partnership, or otherwise and the state of other sovereign power under which the organization is organized;

(4) the names of the directors or persons performing similar functions and names and addresses of the chief executive officer, and the financial, accounting, sales, and other principal executive officers, if the organization is a corporation, association, or other similar entity; of all general partners, if the organization is a partnership; and of the owner, if the organization is a sole proprietorship, together with a statement of the business background during the past 5 years for each such person;

(5) a statement as to whether the organization or any person identified in the disclosure statement:

(i) has during the 5 year period immediately preceding the date of the disclosure statement been convicted of a felony, pleaded nolo contendere to a felony charge, or been held liable in a civil action by final judgment, if such felony or civil action involved fraud, embezzlement, or misappropriation of property, and a description thereof; or

(ii) is subject to any currently effective injunctive or restrictive order as a result of a proceeding or pending action brought by any public agency or department, and a description thereof; or

(iii) is a defendant in any pending criminal or material civil action relating to fraud, embezzlement, misappropriation of property or violations of the antitrust or trade regulation laws of the United States or any state, and a description thereof; or

(iv) has during the 5 year period immediately preceding the date of the disclosure statement had entered against

such person or organization a final judgment in any material civil proceeding, and a description thereof; or

(v) has during the 5 year period immediately preceding the date of the disclosure statement been adjudicated a bankrupt or reorganized due to insolvency or was a principal executive officer or general partner of any company that has been adjudicated a bankrupt or reorganized due to insolvency during such 5 year period, and a description thereof;

(6) the length of time the organization and any predecessor of the organization has conducted a business dealing with hearing aid goods or services;

(7) a financial statement of the organization audited by an independent certified public accountant, as of the close of the most recent fiscal year of the organization. If the financial statement is filed later than 120 days following the close of the fiscal year of the organization it must be accompanied by a statement of the organization of any material changes in the financial condition of the organization. The Department may in its discretion waive the requirement for audited statements for organizations who have not previously had such certified audits, if the unaudited financial statement is prepared by an independent certified public accountant. If the unaudited financial statement is filed later than 120 days following the close of the fiscal year of the organization, it must be accompanied by a statement of the organization of any material changes in the financial condition of the organization;

(8) a general description of the business, including without limitation a description of the goods, training programs, supervision, advertising, promotion and other services provided by the organization;

(9) a statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from (i) the use of the public figure in the name or symbol of the organization or (ii) the endorsement or recommendation of the organization by the public figure in advertisements;

(10) a statement setting forth such additional information and such comments and explanations relative to the information contained in the disclosure statement as the organization may desire to present.

(c) Each such organization files with the Department prior to registration and annually thereafter a statement that they comply with the Act, the rules issued pursuant to it and the regulations of the Federal Food and Drug Administration and the Federal Trade Commission insofar as they are applicable.

(d) Each such organization files with the Department at the time of registration an irrevocable consent to service of process authorizing the Department and any of its successors to be served any notice of process or pleading in any action or proceeding against such organization arising out of or in connection with any violation of this Act. Such service shall have the effect of conferring personal jurisdiction over such organization in any court of competent jurisdiction.

(e) Each such organization affords the prospective user an opportunity to waive the medical evaluation requirement of Section 4 of this Act and the testing requirement of subsection (j) of Section 3 and subsection (z) of Section 18 provided that the organization:

(1) informs the prospective user that the exercise of the waiver is not in the user's best health interest;

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2) does not in any way actively encourage the prospective user to waive such a medical evaluation or test; and  
3) affords the prospective user the opportunity to sign following statement:

"I have been advised by \_\_\_\_\_ (Hearing Aid dispenser's name) that the Food and Drug Administration and the State of Illinois have determined that my best interest could be served if I had a medical evaluation by a licensed physician, preferably a physician who specialized in diseases of the ear, before purchasing a hearing aid; or a hearing aid by a certified hearing aid dispenser utilizing established procedures and instrumentation in the fitting of hearing aids. I do not wish either a medical evaluation or test before purchasing a hearing aid".

(c) Where a sale, lease, or rental of hearing aids is sold or contracted to be sold to a consumer by mail order, that consumer may avoid the contract or sale by notifying the seller within 45 full business days following that day on which the hearing aids were mailed by the seller to the consumer and by returning to the seller in its original condition, any hearing aid delivered to the consumer under the contract or sale. At the time the hearing aid is mailed the seller shall furnish the consumer with a fully completed receipt or copy of any contract pertaining to such sale containing a "Notice of Cancellation" informing the consumer that he may cancel the sale at any time within such 45 days and which shows the date of the mailing and contains the name, address and telephone number of the seller, and in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the 45th business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right".

Attached to the receipt or contract shall be a completed form in duplicate, captioned "NOTICE OF CANCELLATION" which shall be easily detachable and which shall contain in 10 point bold face type the following information and statements in the same language as that used in the contract:

**NOTICE OF CANCELLATION**

enter date of transaction

(DATE)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN 45 BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE, OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE

SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK. IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of seller), AT (address of seller's place of business) AND (seller's telephone number) NO LATER THAN MIDNIGHT OF \_\_\_\_\_ (date).

I HEREBY CANCEL THIS TRANSACTION.

(Date) \_\_\_\_\_

(Buyers Signature)

Such written "Notice of Cancellation" may be sent by the consumer to the seller to cancel the contract. The 45 day period provided for in this Section does not commence until the consumer is furnished the Notice of Cancellation, the address and phone number at which such notice to the seller can be given is furnished.

If the conditions of this Section are met, the seller must return to the consumer the full amount of any payment made or consideration given under the contract or for the merchandise.

It is an unlawful practice within the meaning of this Act for a seller to: (1) mail hearing aids to a consumer other than by certified mail; (2) fail, before furnishing copies of the "Notice of Cancellation" to the consumer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the seller's telephone number, the date of the mailing, and the date, not earlier than the 45th business day following the date of the mailing, by which the consumer may give notice of cancellation; (3) include in any contract or receipt any confession of judgment or any waiver of any of the rights to which the consumer is entitled under this Section including specifically his right to cancel the sale in accordance with the provisions of this Section; (4) misrepresent in any manner the consumer's right to cancel; (5) use any undue influence, coercion, or any other wilful act or representation to interfere with the consumer's exercise of his rights under this Section; (6) fail or refuse to honor any valid notice of cancellation by a consumer and within 10 business days after the receipt of such notice, to (i) Refund all payments made under the contract or sale, (ii) return any goods or property traded in, in substantially as good condition as when received by the person, (iii) cancel and return any negotiable instrument executed by the consumer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction; (7) negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the 50th business day following the day of the mailing; or (8) fail, within 10 business days of receipt of the consumer's notice of cancellation, to notify him whether

*20 days*

*Consumer's  
Notice of  
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ing of hearing aids for a period not to exceed one year. A temporary certificate shall not be renewable and the applicant must take the examination within a year after receiving the temporary certificate. All applicants for a temporary certificate shall be employed by a person who has a certificate as a hearing aid dispenser. Such person shall be responsible for the supervision and training of the applicant and shall maintain personal contact and records.

The Department may issue a temporary certificate to an applicant starting a hearing aid dealership as sole owner, principal of a firm, or employee-manager for a corporation if the applicant's training is provided by a manufacturer or by a person who holds a valid certificate issued under this Act and if the new dealer, not later than 5 days prior to the commencement of operation under a temporary certificate, obtains and files with the Department a surety bond in the sum of at least \$5,000, which shall be conditioned on the satisfactory performance, pursuant to and in accordance with this Act and the rules hereunder, during the period covered by the temporary certificate.

<sup>1</sup> Paragraph 7402 of this chapter.

*For repeal of Act, see note preceding § 7401 of this chapter.*

7412. Registration of person licensed or certified in another state

*Paragraph effective July 1, 1984.*

§ 12. The Department may register as a hearing aid dispenser without examination, but upon payment of the required fee, an applicant who has a certificate or license in good standing to practice in another state, if the requirements in such state are substantially equal to the requirements imposed by this Act. Applicants who meet such endorsement requirements may practice in this State pending action on their application. If the application is denied, their right to practice ceases on the date of denial.

*For repeal of Act, see note preceding § 7401 of this chapter.*

7413. Expiration and renewal of certificates

*Paragraph effective July 1, 1984.*

§ 13. The expiration date and renewal period for each certificate issued under this Act shall be set by rule. A hearing aid dispenser whose certificate has expired may have it reinstated within 5 years after the expiration thereof, by making a renewal application therefor and by paying the required fee. However, any hearing aid dispenser whose certificate expired while: (1) on active duty with the Armed Forces of the United States, or the State Militia called into service or training, or (2) in training or education under the supervision of the United States preliminary to induction into the military service, may have the certificate renewed, reinstated or restored without paying any lapsed renewal fees if, within 2 years after honorable termination of such service, training or education, except under conditions other than honorable, such person must furnish the Department with satisfactory evidence of being so engaged and that the service, training or education has been terminated.

If the hearing aid dispenser has not practiced for 5 years or more, the Board shall determine, by an evaluation program established by rule, such person's fitness to resume active status and may require the hearing aid

dispenser to complete a period of evaluated experience and may require successful completion of the examination.

Any hearing aid dispenser whose certificate has expired for more than 5 years prior to July 1, 1984 may have it restored by making application, and filing acceptable proof, to the Department of his fitness to have such certificate restored, including sworn evidence certifying to active practice in another jurisdiction and by paying the required restoration fee.

*For repeal of Act, see note preceding § 7401 of this chapter.*

7414. Powers and duties of department

*Paragraph effective July 1, 1984.*

§ 14. The powers and duties of the Department are: (a) To supervise issuance of certificates and to administer examinations to applicants. However, the Department may authorize a testing service to provide this function or it may use the test prepared by the National Institute for Hearing Instruments Studies.

(b) To certify persons who are qualified to engage in the fitting, selling and dispensing of hearing aids;

(c) To provide the equipment and facilities necessary for the examination;

(d) To issue and to renew certificates;

(e) To suspend or revoke certificates or to take such other disciplinary action as provided in this Act;

(f) To consider all recommendations of the Board and to inform it of all actions of the Department insofar as hearing aid dispensers are concerned, including any instances where the actions of the Department are contrary to the recommendations of the Board; and

(g) To promulgate rules necessary to implement this Act.

*For repeal of Act, see note preceding § 7401 of this chapter.*

7415. Fees—Disposition of fees

*Paragraph effective July 1, 1984.*

§ 15. (a) The following are fees to be charged and are not refundable:

(1) The fee for application for a certificate is \$25.

(2) In addition to the application fee, applicants for any examination shall be required to pay, either to the Department or to the designated testing service, a fee covering the actual cost of the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application and fee for the examination has been received and acknowledged by the Department or the designated testing service, shall result in the forfeiture of the fee.

(3) The fee for the renewal of a certificate shall be \$30 per year.

(4) The fee for the reinstatement of a certificate which has expired for not more than 5 years is \$10, plus payment of all lapsed renewal fees.

(5) The fee for the restoration of a certificate which has expired for more than 5 years is \$100.

(6) The fee for the issuance of a duplicate certificate, for the issuance of a replacement certificate which has been lost or destroyed or for the issuance of a certificate with a change of name or address, other than during the renewal

period is \$10. No fee is required for name and address changes on Department records when no duplicate certificate is issued.

(7) The fee for a certification of a registrant's record for any purpose is \$10.

(8) The fee to have the scoring of an examination administered by the Department reviewed and verified is \$10, plus any fee charged by the testing service.

(9) The fee for a wall certificate shall be the actual cost of such certificate.

(10) The fee for a roster of persons registered as hearing aid dispensers shall be the actual cost of such roster.

(b) The moneys received as license fees by the Department of Public Health under this Act shall be deposited in the Hearing Aid Dispenser Examining and Certification Fund, which is hereby created as a special fund in the State Treasury, and shall be used only for the administration of this Act, including: (1) costs directly related to certification of persons under this Act; and (2) by the Hearing Aid Consumer Protection Board in the exercise of its powers and performance of its duties, and such use shall be made by the Department of Public Health with full consideration of all recommendations of the Hearing Aid Consumer Protection Board.

For the fiscal year beginning July 1, 1984, the moneys deposited in the Hearing Aid Dispenser Examining and Certification Fund shall be appropriated to the Department for expenses of the Department and the Hearing Aid Consumer Protection Board in the administration of this Act.

Moneys in the Hearing Aid Dispenser Examining and Certification Fund may be invested and reinvested, with all earnings received from such investment to be deposited in the Hearing Aid Dispenser Examining and Certification Fund and used for the same purposes as fees deposited in such fund.

Upon the completion of any audit of the Department as prescribed by the Illinois State Auditing Act,<sup>1</sup> which audit includes an audit of the Hearing Aid Dispenser Examining and Certification Fund, the Department shall make a copy of the audit open to inspection by any interested person, which copy shall be submitted to the Department by the Auditor General, in addition to the copies of audit reports required to be submitted to other State officers and agencies by Section 3-14 of the Illinois State Auditing Act.<sup>2</sup>

<sup>1</sup> Chapter 15. § 301-1 et seq.

<sup>2</sup> Chapter 15. § 303-14.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7416. Hearing aid consumer protection board—Establishment—Members

*Paragraph effective July 1, 1984.*

§ 16. There shall be established a Hearing Aid Consumer Protection Board which shall assist, advise and make recommendations to the Department pursuant to this Act.

The Board shall consist of 5 members who shall be residents of Illinois. One shall be a licensed physician who specializes in otology or otolaryngology; one shall be a member of a consumer-oriented organization concerned with the hearing impaired; one shall be from the general public, preferably a senior citizen; and 2 shall be certified hearing aid dispensers. Each such certified hearing aid

dispenser shall have at least 5 years of experience, excepting those appointed to the first Board. One of the certified hearing aid dispensers shall be a Certified Clinical Audiologist, the other shall be a Certified Hearing Aid Audiologist.

Members of the Board shall be appointed by the Director. The term of office of each shall be 4 years, except for those of the first Board, 2 shall be appointed for 2 year terms. Before a member's term expires, the Director shall appoint a successor to assume member's duties at the expiration of his predecessor's term. A vacancy shall be filled by appointment for the unexpired term. The members shall annually designate one member as chairman. No member of the Board who has served 2 or more successive and full terms may be reappointed. The Director may remove members for good cause.

Members of the Board shall receive reimbursement for actual and necessary travel and for other expenses, not to exceed the limit established by the Department.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7417. Duties of board

*Paragraph effective July 1, 1984.*

§ 17. The Board shall advise the Department in all matters relating to this Act and shall assist as requested by the Director.

The Board shall respond to issues and problems relating to the improvement of services to the hearing-impaired and shall make such recommendations as it considers advisable. It shall file an annual report with the Director and shall meet at least twice a year.

The Board shall recommend specialized education programs for persons wishing to become certified as hearing aid dispensers and shall, by rule, establish minimum standards of continuing education required for certificate renewal.

The Board shall hear charges brought against hearing aid dispensers and shall recommend disciplinary action to the Director.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7418. Disciplinary actions by department—Grounds

*Paragraph effective July 1, 1984.*

§ 18. The Department may refuse to issue or renew a certificate or it may revoke, suspend, place on probation, censure or reprimand a certificate holder for any of the following:

(a) Material misstatement in furnishing information to the Department

(b) Violations of this Act, or the rules promulgated hereunder;

(c) Conviction of any crime under the laws of the United States or any state or territory thereof which is a felony or misdemeanor, an essential element of which is dishonesty, or of any crime which is directly related to the practice of the profession;

(d) Making any misrepresentation for the purpose of obtaining a certificate or renewing a certificate, including falsification of the continuing education requirement;

(e) Professional incompetence;

(f) Malpractice;

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- (g) Aiding or assisting another person in violating any provision of this Act or the rules promulgated hereunder;
- (h) Failing, within 60 days, to provide information in response to a written request made by the Department;
- (i) Engaging in dishonorable, unethical or unprofessional conduct which is likely to deceive, defraud or harm the public;
- (j) Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any services covered by this Act;
- (k) Habitual intoxication or addiction to the use of drugs:
  - (1) Discipline by another state, the District of Columbia, territory, or a foreign nation, if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth herein;
- (m) Directly or indirectly giving to or receiving from any person, firm, corporation, partnership or association any fee, commission, rebate or other form of compensation for any professional services not actually rendered;
- (n) A finding by the Board that the registrant, after having his certificate placed on probationary status has violated the terms or probation;
- (o) Willfully making or filing false records or reports;
- (p) Willfully failing to report an instance of suspected child abuse or neglect as required by the "Abused and Neglected Child Reporting Act", approved June 26, 1975, as amended;<sup>1</sup>
- (q) Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill which results in the inability to practice the profession with reasonable judgment, skill or safety;
- (r) Solicitation of professional services other than by permitted advertising;
- (s) Participating in subterfuge or misrepresentation in the fitting and servicing of a hearing aid;
- (t) Advertising a particular model or type of hearing aid for sale when prospective purchasers 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;
- (u) Representing that the services of a licensed physician will be used or made available in the fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the words "doctor", "audiologist", "clinic", "Clinical Audiologist", "Certified Hearing Aid Audiologist", "State Certified", "Certified Hearing Aid Dispenser" or any other term, abbreviation or symbol when it would give the impression that service is being provided by persons awarded that degree or title, or that the person's service who is holding the certificate has been recommended by a governmental agency, when such is not the case;
- (v) Advertising a manufacturer's product or using a manufacturer's name or trademark implying a relationship which does not exist;
- (w) Directly or indirectly giving or offering anything of value to any person who advises another in a professional capacity, as an inducement to influence the purchase of a product sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

- (x) Conducting business while suffering from a contagious disease;
- (y) Engaging in the fitting and sale of hearing aids under a name with fraudulent intent;
- (z) Dispensing a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in the fitting of hearing aids, except where there is the replacement of a hearing aid, of the same make and model:
  - (aa) Unavailability or unwillingness to adequately provide for service and repair of hearing aids fitted and sold by dispenser;
  - (bb) Violating the regulations of the Federal Food and Drug Administration or the Federal Trade Commission as they affect hearing aids;
  - (cc) Violating any provision of the "Consumer Fraud and Deceptive Business Practices Act", approved July 24, 1961, as amended.<sup>2</sup>

<sup>1</sup> Chapter 23, § 2051 et seq.  
<sup>2</sup> Chapter 121 1/2, § 261 et seq.

*For repeal of Act, see note preceding § 7401 of this chapter.*

**7419. Dispensing of hearing aids without certificate—Injunction—Costs**

*Paragraph effective July 1, 1984*

§ 19. The practice of fitting, dispensing and servicing hearing aids by any person not at that time holding a valid and current certificate under this Act is hereby declared to be inimical to the public welfare and constitutes a public nuisance. The Director of the Department, through the Attorney General or the State's Attorney of any county, may maintain an action in the name of the people of the State of Illinois and may apply for an injunction in the circuit court to enjoin any such person from engaging in such practice. Upon the filing of a verified petition in such court, the court, if satisfied by affidavit, or otherwise, that such person has been engaged in such practice without a current certificate to do so, may issue a temporary injunction without notice or bond, joining the defendant from any such further practice. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as other civil cases. If it is established that the defendant has been, or is engaged in any unlawful practice, the court may enter an order or judgment perpetually enjoining the defendant from further such practice. In all proceedings hereunder, the court, in its discretion, may apportion the costs among the parties interested in the suit, including cost of filing complaint, service of process, witness fees and expenses, court reporter charges and reasonable attorneys fees. In case of violation of any injunction issued pursuant to this Section, the court may try and punish the offender for contempt of court. Such injunction proceedings shall be in addition to all penalties and other remedies in this Act.

*For repeal of Act, see note preceding § 7401 of this chapter.*

**7420. Inactive status**

*Paragraph effective July 1, 1984*

§ 20. Any hearing aid dispenser who notifies the Department, on the prescribed forms, may place such certificate on inactive status and shall be exempt from payment of renewal fees until such person notifies the Department

*M. J. D. [Signature]*

cate to the Department and if such person fails to do so, the Department shall seize such certificate.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7427. Restoration of certificate

*Paragraph effective July 1, 1984.*

§ 27. At any time after the suspension or revocation of any certificate, the Department may restore it to the accused person, upon the written recommendation of the Board.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7428. Payment of costs—Filing or receipt

*Paragraph effective July 1, 1984.*

§ 28. The Department shall not be required to certify any record to the Court or to file any answer in court or otherwise appear in any court in a judicial review proceeding, unless there is filed in the court, with the complaint, a receipt from the Department acknowledging payment of the costs of furnishing and certifying the record, which costs shall be computed at the rate of 20 cents per page of such record. Failure on the part of the plaintiff to file such receipt in court shall be grounds for dismissal of the action.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7429. Certain orders as prima facie proof

*Paragraph effective July 1, 1984.*

§ 29. An order or a certified copy thereof, over the seal of the Department and purporting to be signed by the Director, shall be prima facie proof:

- (a) That such signature is the signature of the Director;
- (b) That the Director is duly appointed and qualified; and
- (c) That the Board, and the members thereof, are qualified to act.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7430. Determination of mental illness—Automatic suspension of certificate

*Paragraph effective July 1, 1984.*

§ 30. The determination by a circuit court that a certificate holder is subject to involuntary admission or judicial admission, as provided in the "Mental Health and Developmental Disabilities Code", approved September 5, 1978, as amended,<sup>1</sup> operates as an automatic suspension of the holder's certificate. Such suspension will end upon a finding by a court that the patient is no longer subject to involuntary admission or judicial admission and the court issues an order so finding and discharging the patient and upon the recommendation of the Board to the Director that the registrant be allowed to resume his practice.

<sup>1</sup> Chapter 91½, § 1-100 et seq.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7431. Applicability of Administrative Procedure Act—Review under Administrative Review Law

*Paragraph effective July 1, 1984.*

§ 31. The provisions of "The Illinois Administrative Procedure Act", approved September 22, 1975, as amended,<sup>1</sup> shall apply to this Act. All final administrative decisions of the Department are subject to judicial review pursuant to the provisions of Article 3 of the "Code of Civil Procedure", approved August 19, 1981, as amended.<sup>2</sup> Any circuit court, upon the application of the certificate holder or the Department, may order the attendance of witnesses and the production of relevant records in any Departmental hearing relative to the application for or refusal, recall, suspension or revocation of a certificate.

<sup>1</sup> Chapter 137, § 1001 et seq.

<sup>2</sup> Chapter 110, §§ 1-101 et seq.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7432. Public policy

*Paragraph effective July 1, 1984.*

§ 32. It is declared to be the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that any power or function set forth in this Act to be exercised by the State is an exclusive State power or function. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7433. Violations of act—Unlawful practice under Consumer Fraud and Deceptive Business Practices Act

*Paragraph effective July 1, 1984.*

§ 33. The advertising, offering for sale, sale or distribution of hearing aid goods and services to consumers by any person in violation of any of the provisions of this Act is an unlawful practice pursuant to Section 20 of the "Consumer Fraud and Deceptive Business Practices Act"; approved July 24, 1961, as amended.<sup>1</sup>

<sup>1</sup> Chapter 121½, § 262a.

*For repeal of Act, see note preceding § 7401 of this chapter.*

#### 7434. Powers of attorney general—Award of actual damages

*Paragraph effective July 1, 1984.*

§ 34. All remedies, penalties and authority granted to the Attorney General by the "Consumer Fraud and Deceptive Practices Act", approved July 24, 1961, as now or hereafter amended,<sup>1</sup> shall be available to him for the enforcement of this Act, and Sections 3, 4, 5, 6, 6.1, 7 and 10 of that Act<sup>2</sup> are hereby incorporated by reference into this Act. In addition, in any action brought by the Attorney General to enforce this Act, the court may order that persons who incurred actual damages be awarded the amount at which actual damages are assessed.

<sup>1</sup> Chapter 121½, § 261 et seq.

<sup>2</sup> Chapter 121½, §§ 263 to 267 and 170.

*For repeal of Act, see note preceding § 7401 of this chapter.*

in writing, of his intention to resume the practice of fitting, dispensing and servicing hearing aids and pays the current renewal fee. However, if such period of inactive status is more than 5 years, the hearing aid dispenser shall also provide the Department with sworn evidence certifying to active practice in another jurisdiction that is satisfactory to the Department. If such person has not practiced in any jurisdiction for 5 years or more, he shall be required to restore his certificate as provided in this Act. Any hearing aid dispenser whose certificate has an inactive status shall not practice in Illinois.

*For repeal of Act, see note preceding § 7401 of this chapter.*

**7421. Investigation by department—Notice of charges—Hearing**

*Paragraph effective July 1, 1984.*

§ 21. The Department may investigate the actions of any applicant or any person holding or claiming to hold a certificate. The Department shall, before refusing to issue a certificate or disciplining a registrant, notify, in writing, at least 10 days prior to the date set for the hearing, the applicant for, or holder of, a certificate. The notification shall set forth the charges and the date of the hearing. The hearing shall determine whether the applicant or holder is entitled to hold such certificate, and shall afford such person an opportunity to be heard in person or by counsel. Such written notice may be served by certified or registered mail to the respondent at his last known address. At the time and place fixed in the notice, the Board shall hear the charges and the parties shall be accorded opportunity to present such statements, testimony and evidence as may be pertinent to the charges or defenses. The Board may continue such hearing from time to time. Pursuant to rule, the Director may conduct informal hearings, and shall so inform the Board.

*For repeal of Act, see note preceding § 7401 of this chapter.*

**7422. Findings and recommendation of board**

*Paragraph effective July 1, 1984.*

§ 22. At the conclusion of the hearing, the Board shall present to the Director a written report of its finding and recommendation as to whether or not the accused person violated this Act or failed to comply with the conditions required in this Act or any rule promulgated pursuant hereto. The Board shall specify the nature of the violation or failure to comply and shall make its recommendations to the Director.

The report of findings and recommendation of the Board shall be the basis for the Department's action with respect to certificates or the imposition of any disciplinary action. The findings are not admissible in evidence against the person in a criminal prosecution brought for the violation of this Act, but the hearing and findings are not a bar to a criminal prosecution brought for violating this Act.

*For repeal of Act, see note preceding § 7401 of this chapter.*

**7423. Record of proceedings—Service upon respondent of copy of board's report—Motion for rehearing—Order**

*Paragraph effective July 1, 1984.*

§ 23. The Department, at its expense, shall preserve a record of all proceedings at the formal hearing of any case

involving the refusal to issue a certificate or to discipline a registrant. The notice of hearing, the complaint and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, the report of the Board and the orders of the Department shall be the record of such proceeding.

In any case involving the refusal to issue a certificate or to discipline a registrant, a copy of the Board's report shall be served upon the respondent by the Department, as provided in this Act for the service of the notice of hearing. Within 20 days after such service, the respondent may present to the Department a motion in writing for a rehearing, which motion shall specify the particular grounds therefor. If no motion for rehearing is filed, then upon the expiration of the time specified for filing such a motion, or if a motion for rehearing is denied, then upon such denial, the Director may enter an order in accordance with recommendations of the Board. If the respondent orders and pays for a transcript of the record within the time for filing a motion for rehearing, the 20-day period within which such a motion may be filed shall commence upon the delivery of the transcript to the respondent.

Whenever the Director is satisfied that substantial justice has not been done either in an examination or in the revocation, suspension or refusal to issue a certificate, the Director may order a re-examination or rehearing.

*For repeal of Act, see note preceding § 7401 of this chapter.*

**7424. Violations of act—Injunctions**

*Paragraph effective July 1, 1984.*

§ 24. If any registrant violates any provision of this Act, the Director may, through the Attorney General, petition, for an order enjoining such violation or for an order enforcing compliance with this Act or any rule issued pursuant hereto. Upon the filing of a verified petition in such court, the court may issue a temporary injunction, without notice or bond, enjoining such continued violation, and if it is established that such person has violated or is violating the injunction, the Court may punish the offender for contempt of court. Proceedings under this Section shall be in addition to all other remedies and penalties.

*For repeal of Act, see note preceding § 7401 of this chapter.*

**7425. Powers of circuit court**

*Paragraph effective July 1, 1984.*

§ 25. Any circuit court may, upon application of the prosecutor or of the applicant or registrant against whom disciplinary proceedings are pending, enter an order requiring the attendance of witnesses and their testimony, and the production of documents, papers, files, books and records in connection with any hearing or investigation. The court may compel obedience to its order by proceedings for contempt.

*For repeal of Act, see note preceding § 7401 of this chapter.*

**7426. Surrender of certificate**

*Paragraph effective July 1, 1984.*

§ 26. Upon the revocation or suspension of any certificate, the registrant shall forthwith surrender the certifi-

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*Department of Human Resources*

**HEALTH DIVISION**

Board of Examiners for Speech Pathology  
and Audiology

1400 S.W. 5th AVENUE, PORTLAND, OREGON 97201 PHONE

228-6479

November 15, 1982

TO: Oregon Licensed Audiologists

FROM: Duane Anderson, Executive Secretary, Board of Examiners  
for Speech Pathology and Audiology

SUBJECT: Law concerning use of the term "Audiologist"

On July 1, 1983 the Board mailed the attached memos to all Oregon registered hearing aid dealers. During their October 15, 1983 meeting the Board requested that we mail copies of this material to all licensed audiologists in Oregon. The Board plans to pursue legal action against any person in Oregon who uses the term "Audiologist" in any context and is not licensed as an audiologist under ORS 601.

attachment

**AN EQUAL OPPORTUNITY EMPLOYER**

Mailing Address: P.O. Box 231, Portland, Oregon 97207  
EMERGENCY PHONE (503) 229-5599

228-6479

July 1, 1983

TO: Oregon Registered Hearing Aid Dealers  
FROM: Board of Examiners for Speech Pathology and Audiology  
SUBJECT: Use of the Term "Audiologist" and Related Words

During the last few years the Board of Examiners for Speech Pathology and Audiology has made numerous attempts to discourage hearing aid dealers from using the term "audiologist" and related terms in their telephone directory and newspaper advertising. In addition, several hearing aid dealers are displaying their NHAS certificate which identifies them as a "Certified Hearing Aid Audiologist".

Recently we requested an advisory statement on this matter from the Consumer Protection Section of the Department of Justice. The attached memo from their office should resolve any misunderstandings which may currently exist. If you have any questions, please feel free to contact our office or the Consumer Protection Section of the Department of Justice.

attachment



## STATE OF OREGON

## INTEROFFICE MEMO

TO: Board of Examiners for Speech Pathology and Audiology DATE: June 15, 1983

FROM: Daryl Dodson Wilson  
Assistant Attorney General

SUBJECT: Hearing Aid Dealer's Use of the Term "Audiology" and Related Words

A review of ORS Chapter 681 and ORS Chapter 694 shows that a hearing aid dealer who falsely represents that the services of an audiologist are available, or who claims to be giving "audiological testing" when no licensed audiologist is performing the test, may be in violation of several statutes. The penalties may be cumulative.

1. Hearing aid dealers are generally governed by ORS Chapter 694.

ORS 694.015(5) anticipates that hearing aid dealers will be conducting some hearing tests in conjunction with the provision of hearing aids. These tests include evaluation or measurement of the powers or range of human hearing. In offering these tests, a dealer may not advertise that the services of either an "audiologist" or "clinical audiologist" is available for selection, fitting, adjustment, maintenance or repair of hearing aids, when no properly licensed audiologist is performing the service. A dealer may have his or her license suspended or revoked or may be put on probation for these false representations. ORS 694.136(8).

A problem may arise when a dealer offers "audiological" testing without having a licensed audiologist performing the test. Even though "audiological" and related terms may have trade or common meaning, these words should only be used in advertisements in Oregon in accordance with the definition in ORS 681.205 (see 2. below). It would seem that the Oregon statutory scheme anticipates that only licensed audiologists may conduct "audiological" tests.

ORS Chapter 694 also provides criminal sanctions for some misrepresentations. A false claim that an audiologist's services will be used, are used, or made available may be punishable by up to a \$500 fine and up to 90 days of imprisonment. ORS 694.911(1).

A hearing aid dealer should also be concerned that no false, misleading or deceptive name is used in his or her business. ORS 694.136(11). A dealer would also violate the

To: Board of Examiners for Speech Pathology and Audiology  
Page 2  
June 15, 1983

statutes by making a false, misleading or deceptive representation regarding any guarantee or services provided.  
ORS 694.136(2).

2. ORS Chapter 681 dealing with audiologists and speech pathologists may also be of concern to hearing aid dealers.

Both hearing aid dealers and audiologists measure the powers or range of human hearing. See ORS 694.015(5) and ORS 681.205(4). However, the focus and extent of the testing and evaluation are quite different. ORS Chapter 681 provides that only a licensed audiologist may represent that he or she is engaged in the practice of audiology.

Although many of the terms used in these statutes may have meanings in the hearing aid trade, the statutory definition takes precedence in Oregon. Thus, the terms "audiology" and "practice of audiology" carry a particular meaning, whether used by audiologists or by hearing aid dealers. See ORS 681.205(1) and (4). Any person holding him or herself out as a "hearing clinician", "hearing therapist" or "audiologist" or a similar title or description of service must be a licensed audiologist. ORS 681.250(2). Similar titles or descriptions of service might include "audiological testing" and "audiological service". Remember, the common meaning of these words must give way when the statute provides a definition.

It is a misdemeanor to falsely use any of these titles or descriptions of service. ORS 681.991. The District Attorney's office would prosecute the case. Class A misdemeanor carries a penalty of a maximum \$2,500 fine and a maximum one year in prison. See ORS 161.555(3) and ORS 161.615 and 161.635.

3. The Oregon Unlawful Trade Practices Act (UTPA)  
ORS 646.605 to 646.638 governs some activities of hearing aid dealers.

A variety of unconscionable tactics and unlawful trade practices are prescribed by the UTPA. A hearing aid dealer might be in conflict with the Unlawful Trade Practices Act if he or she said that "audiological testing services" were available when no licensed audiologist actually performed the services. The unlawful business practice in that case might include causing a likelihood of confusion or misunderstanding as to the affiliation, connection or association with another; or representing that services have quantities or qualities that they do not have or that a person has a status or qualification or connection that he does not have. See ORS 646.608(1)(c) and (e).

To: Board of Examiners for Speech Pathology and Audiology  
Page 3  
June 15, 1983

A hearing aid dealer who said that audiological testing was performed, when no licensed audiologist performed those tests, might be found in violation of the Unlawful Trade Practices Act for that false advertising, as well as being in violation of ORS Chapter 681 and ORS Chapter 694. The penalties for violation of the Unlawful Trade Practices Act include injunction, restitution for actual damages, possible punitive damages, attorneys fees and other relief granted by the court. The statute provides for suit by the Attorney General the District Attorney or by a private citizen. This is the area of concern to the Consumer Protection Division (Financial Fraud Unit) of the Department of Justice.

4. Other regulations are also pertinent to hearing aid dealers.

Oregon common law and statutes provide other remedies for a person who has been defrauded. Separate statutes cover home solicitations. See ORS 646.611 and 83.720. A dealer might want to take extra steps to check compliance with these laws before sales are made.

kp

You can call the Illinois Department of Public Health toll-free

**1-800-572-3270**

**(TDD OR VOICE AVAILABLE)**



**IF...**

**YOU  
PURCHASE  
WISELY**

Division of Health Promotion and Screening  
Illinois Department of Public Health  
535 West Jefferson  
Springfield, Illinois 62761

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6/85

A consumer protection service  
provided through the Hearing Aid  
Consumer Protection Program

**Illinois Department of Public Health**

# Remember these important facts:

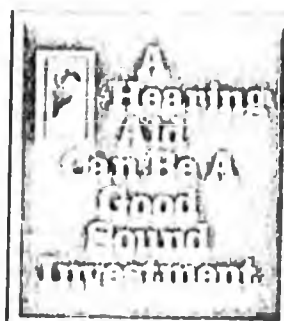
1. **MEDICAL CLEARANCE** from a licensed physician should be obtained before buying a hearing aid. This identifies medically treatable conditions which affect your hearing.
2. Obtain a **HEARING EVALUATION** from a certified dispenser or clinical audiologist before purchasing a hearing aid.
3. Be sure the hearing aid dispenser is **CERTIFIED** by the Illinois Department of Public Health.
4. Ask if a **TRIAL PERIOD OR RETURN PRIVILEGE** is offered. If so, make sure that this and the cost of this trial period are stated in the contract.
5. Ask if the hearing aid has a **MANUFACTURER'S WARRANTY** and/or **SERVICE CONTRACT**. Find out what services each provide, what costs are involved and the time period they cover.
6. Illinois Law requires a dispenser who sells hearing aids door-to-door or in a customer's home to give a **NOTICE OF CANCELLATION** to the buyer. The Notice explains the legal right of the buyer to cancel the purchase within three days of the sale.
7. Make sure that the **DELIVERY DATE** of the hearing aid is written in the contract.
8. If possible, do not pay the full price of the hearing aid in advance. Make a **DEPOSIT** and pay the balance when the hearing aid is delivered.
9. If the hearing aid is uncomfortable, causing problems or not working properly, **CONTACT YOUR DISPENSER** immediately.
10. Ask about the dispenser's **REPAIR POLICY**. Can repairs be done at the office or must hearing aids be mailed to the manufacturer? How long will these repairs take and are "loaner" aids available?
11. Keep all information received as

**RECORD OF PURCHASE**, such as receipts, warranties, etc., for future reference.

12. You may want to **BRING A FRIEND** along to assist you when you purchase a hearing aid.
13. A hearing aid is an important investment. Don't be afraid to **ASK QUESTIONS** or seek a second opinion.

There is a law to protect Illinois consumers from dishonest and incompetent hearing aid dispensing practices. The **ILLINOIS HEARING AID CONSUMER PROTECTION ACT**, administered by the Illinois Department of Public Health, requires that:

1. All dispensers must be **CERTIFIED** to dispense hearing aids, and
2. Should a consumer have an **INQUIRY** or **COMPLAINT** regarding a hearing aid and/or dispenser, the **ILLINOIS DEPARTMENT OF PUBLIC HEALTH** will investigate and offer assistance.



## Illinois Hearing Aid Consumer Protection

your hearing protection services provided through  
the Illinois Department of Public Health - IDPH

CALL TOLL FREE - 1-800-572-3270

IF YOU HAVE ANY QUESTIONS ABOUT THE HEARING AID CONSUMER PROTECTION ACT, OR WOULD LIKE A COPY OF THIS ACT, PLEASE CONTACT THE VISION/HEARING CONSULTANT AT ONE OF THE OFFICES LISTED BELOW.

Region 1

Illinois Department of Public Health  
4302 N. Main Street  
Rockford, Illinois 61105  
815/987-7511

Region 2

Illinois Department of Public Health  
5415 University  
Peoria, Illinois 61614  
309/691-2200, ext. 312

Region 3

Illinois Department of Public Health  
4500 South Sixth Street Road  
Springfield, Illinois 62706  
217/786-6345

Region 4

Illinois Department of Public Health  
Cottonwood Road  
Edwardsville, Illinois 62025  
618/288-5756

Region 5

Illinois Department of Public Health  
2209 Main Street  
Marion, Illinois 62959  
618/997-4371

Region 6

Illinois Department of Public Health  
2125 South First Street  
Champaign, Illinois 61820  
217/333-6914

Region 7

Illinois Department of Public Health  
245 West Roosevelt Road  
Bldg. 5  
West Chicago, Illinois 60185  
312/293-6842

Region 8

Illinois Department of Public Health  
160 N. LaSalle, Room 1112  
Chicago, Illinois 60601  
312/793-3880



ILLINOIS DEPARTMENT OF PUBLIC HEALTH  
DIVISION OF HEALTH PROMOTION AND SCREENING  
535 WEST JEFFERSON STREET  
SPRINGFIELD, ILLINOIS 62761

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## A SYNOPSIS OF THE HEARING AID CONSUMER PROTECTION ACT

PUBLIC ACT 83-0928

EFFECTIVE JULY 1, 1984

For more information call  
1-800-572-3270  
(Voice or TDD)

Illinois Department of Public Health  
Division of Health Promotion and Screening  
Hearing Aid Consumer Program

### HEARING AID CONSUMER PROTECTION ACT

The Illinois "Hearing Aid Consumer Protection Act" was enacted into law by the 83rd General Assembly. The purpose of the Act is to protect the hearing impaired public from incompetent and dishonest dispensers of hearing aids who could endanger the health, safety and welfare of the people of this State.

### ILLINOIS DEPARTMENT OF PUBLIC HEALTH

The Illinois Department of Public Health is mandated to supervise the issuance of certificates to hearing aid dispensers, administer examinations to applicants for the hearing aid dispenser certificate, suspend or revoke certificates or take such other disciplinary action, if the provisions of the Act are violated, and to promulgate rules necessary to implement this Act, which becomes effective July 1, 1984.

Under the direction of the Division of Health Promotion and Screening, Vision and Hearing Section, the Department will initiate a four point action plan to implement Public Act 83-0928:

1. Health Promotion - Consumer Education
2. Continuing Education for Dispenser of Hearing Aids
3. Certification of Dispensers of Hearing Aids
4. Follow-up and Investigation of Complaints

### WHAT THE CONSUMER SHOULD KNOW ABOUT THE HEARING AID CONSUMER PROTECTION ACT

1. No person shall engage in the selling, practice of fitting, dispensing or servicing hearing aids, or display signs, advertise, or represent oneself as a person who practices the fitting and selling of hearing aids after January 1, 1985, unless such holds a current certificate issued by the Department as provided in this Act.
2. The certificate shall be conspicuously displayed in the place of business. A sign must be conspicuously displayed in the dispenser's business and a written statement must be given to each hearing aid purchaser indicating that complaints regarding hearing aids may be made to the Illinois Department of Public Health.
3. Every person fitted and sold a hearing aid shall be given, at no charge, the "User Instructional Brochure" supplied by the manufacturer.
4. The dispenser shall provide a receipt to each hearing aid purchaser with the seller's signature, phone number, the manufacturer's specifications, the make, model and serial number of the hearing aid furnished, the dispenser's certification number, and the full sales term clearly stated. The receipt and container for a used hearing aid shall be clearly marked as such.
5. A hearing aid dispenser shall not sell a hearing aid unless the prospective user presents to the dispenser a written statement signed by a licensed physician which states that the patient's hearing loss has been medically evaluated.

The medical waiver requirement may only be waived by the patient when the patient is 18 years or older. The dispenser must inform the user that the exercise of the waiver is not in the user's best health interest; and the dispenser cannot in any way encourage the buyer to waive medical evaluation.