

Part 5 Unprofessional Conduct

58-46a-501 Unprofessional conduct.

"Unprofessional conduct" includes:

- (1) testing the hearing of a patient for any purpose other than to determine whether a hearing loss will be improved by the use of a hearing instrument;
- (2) failing to make an appropriate referral to a qualified health care provider with respect to a condition detected in a patient examined by a licensee under this chapter if the condition is generally recognized in the profession as one that should be referred;
- (3) designating a hearing instrument for a patient whose hearing will not be sufficiently improved to justify prescribing and selling of the hearing instrument;
- (4) making false, misleading, deceptive, fraudulent, or exaggerated claims with respect to practice under this chapter and specifically with respect to the benefits of a hearing instrument or the degree to which a hearing instrument will benefit a patient;
- (5) failing to exercise caution in providing a patient a prognosis to assure the patient is not led to expect results that cannot be accurately predicted;
- (6) failing to provide appropriate follow-up care and consultation with respect to a patient to whom a hearing instrument has been prescribed and sold upon being informed by the patient that the hearing instrument does not produce the results represented by the licensee;
- (7) failing to disclose in writing to the patient the charge for all services and hearing instruments prescribed and sold to a patient prior to providing the services or hearing instrument;
- (8) failing to refund fees paid by a patient for a hearing instrument and all accessories, upon a determination by the division in collaboration with the board that the patient has not obtained the recovery of hearing represented by the licensee in writing prior to designation and sale of the hearing instrument;
- (9) paying any professional person any consideration of any kind for referral of a patient;
- (10) failing, when acting as a supervising hearing instrument specialist, to provide supervision and training in hearing instrument sciences in accordance with Section 58-46a-302.5;
- (11) engaging in the practice as a hearing instrument intern when not under the supervision of a supervising hearing instrument specialist in accordance with Section 58-46a-302.5;
- (12) failing to describe the circuitry in any advertisement, presentation, purchase, or trial agreement as being either "digital" or "analog"; or other acceptable terms as determined by the division in collaboration with the board;
- (13) failing to follow the guidelines or policies of the United States Federal Trade Commission in any advertisement;
- (14) failing to adhere to the rules and regulations prescribed by the United States Food and Drug Administration as they pertain to the hearing instrument specialist;
- (15) failing to maintain all equipment used in the practice of a hearing instrument specialist properly calibrated and in good working condition; and
- (16) failing to comply with any of the requirements set forth in Section 58-46a-502 or 58-46a-503.

Amended by Chapter 50, 2002 General Session

58-46a-502 Additional requirements for practicing as a hearing instrument specialist.

A person engaging in the practice of a hearing instrument specialist shall:

- (1) have a regular place or places of business from which the person conducts business as a hearing instrument specialist and the place or places of business shall be represented to a patient and others with whom business is conducted by the street address at which the place of business is located;
- (2) include in all advertising or other representation the street address at which the business is located and the telephone number of the business at that street address;
- (3) provide as part of each transaction between a licensee and a patient related to testing for hearing loss and selling of a hearing instrument written documentation provided to the patient that includes:
 - (a) identification of all services and products provided to the patient by the hearing instrument specialist and the charges for each service or product;
 - (b) a statement whether any hearing instrument provided to a patient is "new," "used," or "reconditioned" and the terms and conditions of any warranty or guarantee that applies to each instrument; and
 - (c) the identity and license number of each hearing instrument specialist or hearing instrument intern who provided services or products to the patient;
- (4) before providing services or products to a patient:
 - (a) advise the patient regarding services and products offered to the patient, including the expected results of the services and products;
 - (b) inform each patient who is being offered a hearing instrument about hearing instruments that work with assistive listening systems that are compliant with the ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.; and
 - (c) obtain written informed consent from the patient regarding offered services, products, and the expected results of the services and products in a form approved by the division in collaboration with the board;
- (5) refer all individuals under the age of 18 who seek testing of hearing to a physician or surgeon, osteopathic physician, or audiologist, licensed under the provisions of Title 58, Occupations and Professions, and shall dispense a hearing aid to that individual only on prescription of a physician or surgeon, osteopathic physician, or audiologist;
- (6) obtain the patient's informed consent and agreement to purchase the hearing instrument based on that informed consent either by the hearing instrument specialist or the hearing instrument intern, before designating an appropriate hearing instrument; and
- (7) if a hearing instrument does not substantially enhance the patient's hearing consistent with the representations of the hearing instrument specialist at the time informed consent was given prior to the sale and fitting of the hearing instrument, provide:
 - (a) necessary intervention to produce satisfactory hearing recovery results consistent with representations made; or
 - (b) for the refund of fees paid by the patient for the hearing instrument to the hearing instrument specialist within a reasonable time after finding that the hearing instrument does not substantially enhance the patient's hearing.

Amended by Chapter 252, 2015 General Session

58-46a-503 Testing period for hearing aids.

- (1) Any person licensed under this chapter who sells a hearing aid to a consumer shall provide a written receipt or written contract to the consumer. The written receipt or contract shall provide the consumer with a 30-day right to cancel the purchase if the consumer finds that the hearing

aid does not function adequately for the consumer and to obtain a refund if the consumer returns the hearing aid to the seller in the same condition, ordinary wear and tear excluded, as when purchased. The written receipt or contract shall notify the consumer of the 30-day right to cancel in at least 10 point type. The 30-day right to cancel shall commence from either the date the hearing aid is originally delivered to the consumer or the date the written receipt or contract is delivered to the consumer, whichever is later. The 30-day period shall be tolled for any period during which the hearing aid seller, dealer, or fitter has possession or control of the hearing aid after its original delivery.

- (2) Upon exercise of the right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee not to exceed 15% of all fees charged to the consumer, including testing, fitting, counseling, and the purchase price of the hearing aid. The exact amount of the cancellation fee shall be stated in the written receipt or contract provided to the consumer.

Enacted by Chapter 249, 1998 General Session