Chapter 46a
Hearing Instrument Specialist Licensing Act

Part 1
General Provisions

58-46a-101 Title.

This chapter is known as the "Hearing Instrument Specialist Licensing Act."

Enacted by Chapter 28, 1994 General Session

58-46a-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Direct supervision" means that the supervising hearing instrument specialist is present in the same facility as is the person being supervised and is available for immediate in person consultation.

(2) "Hearing instrument" or "hearing aid" means any device designed or offered to be worn on or by an individual to enhance human hearing, including the device's specialized parts, attachments, or accessories.

(3) "Hearing instrument intern" means a person licensed under this chapter who is obtaining education and experience in the practice of a hearing instrument specialist under the supervision of a supervising hearing instrument specialist.

(4) "Indirect supervision" means that the supervising hearing instrument specialist is not required to be present in the same facility as is the person being supervised, but is available for voice to voice contact by telephone, radio, or other means at the initiation of the person being supervised.

(5) "Practice of a hearing instrument specialist" means:

(a) establishing a place of business to practice as a hearing instrument specialist;

(b) testing the hearing of a human patient over the age of 17 for the sole purpose of determining whether a hearing loss will be sufficiently improved by the use of a hearing instrument to justify prescribing and selling the hearing instrument and whether that hearing instrument will be in the best interest of the patient;

(c) providing the patient a written statement of prognosis regarding the need for or usefulness of a hearing instrument for the patient's condition;

(d) prescribing an appropriate hearing instrument;

(e) making impressions or earmolds for the fitting of a hearing instrument;

(f) sale and professional placement of the hearing instrument on a patient;

(g) evaluating the hearing loss overcome by the installation of the hearing instrument and evaluating the hearing recovery against the representations made to the patient by the hearing instrument specialist;

(h) necessary intervention to produce satisfactory hearing recovery results from a hearing instrument; or

(i) instructing the patient on the use and care of the hearing instrument.

(6) "Supervising hearing instrument specialist" means a hearing instrument specialist who:

(a) is licensed by and in good standing with the division;

(b) has practiced full-time as a hearing instrument specialist for not less than two years; and

(c) is approved as a supervisor by the division.

(7) "Unlawful conduct" means the same as that term is defined in Section 58-1-501.
(8) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-46a-501.

Amended by Chapter 154, 2020 General Session

Part 3
Licensing

58-46a-301 License required -- License classifications.
(1) A license is required to engage in the practice of hearing instrument specialist or hearing instrument intern, except as specifically provided in Section 58-1-307 or 58-46a-305.
(2) The division shall issue to an individual qualified under the provisions of this chapter a license in the classification of:
  (a) hearing instrument specialist; or
  (b) hearing instrument intern.

Enacted by Chapter 28, 1994 General Session

58-46a-302 Qualifications for licensure.
(1) Each applicant for licensure as a hearing instrument specialist shall:
  (a) submit to the division an application in a form prescribed by the division;
  (b) pay a fee as determined by the division pursuant to Section 63J-1-504;
  (c) have qualified for and currently hold board certification by the National Board for Certification - Hearing Instrument Sciences, or an equivalent certification approved by the division;
  (d) have passed the Utah Law and Rules Examination for Hearing Instrument Specialists; and
  (e) if the applicant holds a hearing instrument intern license, surrender the hearing instrument intern license at the time of licensure as a hearing instrument specialist.
(2) Each applicant for licensure as a hearing instrument intern shall:
  (a) submit to the division an application in a form prescribed by the division;
  (b) pay a fee as determined by the division pursuant to Section 63J-1-504;
  (c) have passed the Utah Law and Rules Examination for Hearing Instrument Specialists; and
  (d) present evidence acceptable to the division that the applicant, when licensed, will practice as a hearing instrument intern only under the supervision of a supervising hearing instrument specialist in accordance with:
    (i) Section 58-46a-302.5; and
    (ii) the supervision requirements for obtaining board certification by the National Board for Certification - Hearing Instrument Sciences, or an equivalent certification approved by the division.

Amended by Chapter 154, 2020 General Session
Amended by Chapter 339, 2020 General Session

58-46a-302.5 Supervision requirements -- Hearing instrument interns.
(1) A hearing instrument intern shall practice as a hearing instrument intern only under the direct supervision of a licensed hearing instrument specialist, until the intern:

(a) receives a passing score on a practical examination demonstrating acceptable skills in the area of hearing testing as approved by the division; and
(b) completes the National Institute for Hearing instrument studies education and examination program, or an equivalent college level program as approved by the division.
(2) Upon satisfaction of the direct supervision requirement of Subsection (1) the intern shall:
(a) practice as a hearing instrument intern only under the indirect supervision of a licensed hearing instrument specialist; and
(b) receive a passing score on the International Licensing Examination of the hearing instrument dispenser or other tests approved by the division prior to applying for licensure as a hearing instrument specialist.

Amended by Chapter 154, 2020 General Session

58-46a-303 Term of license -- Expiration -- Renewal of specialist license -- Limitation on renewal of intern license.
(1) The division shall issue each license for a hearing instrument specialist in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
(2) Each license as a hearing instrument intern shall be issued for a term of three years and may not be renewed.
(3) At the time of renewal, the licensed hearing instrument specialist shall demonstrate satisfactory evidence of each of the following:
(a) current certification by the National Board for Certification Hearing Instrument Sciences, or other acceptable certification approved by the division;
(b) calibration of all appropriate technical instruments used in practice; and
(c) completion of continuing professional education required in Section 58-46a-304.
(4) Each license automatically expires on the expiration date shown on the license unless renewed by the licensee in accordance with the provisions of Section 58-1-308, or unless surrendered in accordance with the provisions of Section 58-1-306.

Amended by Chapter 154, 2020 General Session

58-46a-304 Continuing professional education.
As a condition precedent for license renewal each individual licensed under this chapter as a hearing instrument specialist shall complete qualified continuing professional education related to practice of hearing instrument specialist as established by division rule.

Enacted by Chapter 28, 1994 General Session

58-46a-305 Exemptions from licensure.
In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts and practices included within the definition of practice as a hearing instrument specialist or hearing instrument intern, subject to their professional licensure authorization and restrictions, without being licensed under this chapter:
(1) an audiologist licensed under the provisions of Chapter 41, Speech-Language Pathology and Audiology Licensing Act;

(2) a physician and surgeon licensed under the provisions of Chapter 67, Utah Medical Practice Act, or osteopathic physician licensed under the provisions of Chapter 68, Utah Osteopathic Medical Practice Act; and
(3) a physician assistant licensed under the provisions of Chapter 70a, Utah Physician Assistant Act.

Amended by Chapter 349, 2019 General Session

58-46a-307 Licensee required to prove licensure to commence or maintain action.

A person may not commence or maintain an action in any court of the state for collection or compensation in any amount resulting from performance of acts or practices for which a license is required under this chapter unless that person was properly licensed under this chapter as a hearing instrument specialist at the time there was an agreement made to perform the regulated acts and practices, when the regulated acts and practices were performed, and when the alleged cause of action arose.

Enacted by Chapter 28, 1994 General Session

Part 4
License Denial and Discipline

58-46a-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 28, 1994 General Session

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 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;
(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 154, 2020 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;
(5) refer all individuals under the age of 18 who seek testing of hearing to a physician or surgeon, osteopathic physician, physician assistant, or audiologist, licensed under the provisions of this title, and shall dispense a hearing aid to that individual only on prescription of a physician or surgeon, osteopathic physician, physician assistant, 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 154, 2020 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