LEGISLATIVE GENERAL COUNSEL
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H.B. 78

TESTING PERIOD FOR HEARING AIDS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Loraine T. Pace

AN ACT RELATING TO THE UNIFORM COMMERCIAL CODE AND OCCUPATIONS AND PROFESSIONS; PROVIDING A 30-DAY TESTING PERIOD FOR HEARING AIDS; REQUIRING NOTICE TO CONSUMERS; PROVIDING PENALTIES; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-41-2, as last amended by Chapter 297, Laws of Utah 1993

58-46a-501, as enacted by Chapter 28, Laws of Utah 1994

ENACTS:

70A-2-806.1, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-41-2** is amended to read:

58-41-2. Definitions.

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

(1) "ASHA" means the American Speech and Hearing Association.

(2) "Association" means the Utah Speech and Hearing Association.

(3) "Audiologist" means a person who practices audiology or who holds himself out to the public directly or indirectly by any means, act, title, identification, performance, method, or procedure as one who nonmedically examines, measures, tests, interprets, evaluates, assesses, diagnoses, directs, instructs, treats, counsels, prescribes, and recommends for persons affected by or suspected of having disorders of or conditions of impaired hearing, or assists persons in achieving the reception, communication, and perception of sound and determines the range, nature, and degree of hearing function related to communication needs, or provides audiology services and

uses audio electronic equipment and provides audiology services and consultation regarding noise control and hearing conservation, conducts tests and interpretation of vestibular function and nystagmus, prepares ear impressions and provides ear molds, aids, accessories, prescriptions, and prostheses for hearing, evaluates sound environment and equipment, and calibrates instruments used in testing and supplementing auditory function. A person is [~~deemed~~] considered to be an audiologist if he directly or indirectly provides or offers to provide these services or functions set forth in Subsection (4) or any related function.

(4) "Audiology" means the application of principles, methods, and procedures, and measuring, testing, examining, interpreting, diagnosing, predicting, evaluating, prescribing, consulting, treating, instructing, and researching, which is related to hearing, vestibular function, and the disorders of hearing, to related language and speech disorders and to aberrant behavior related to loss of hearing or vestibular function, for the purpose of preventing and modifying disorders related to loss of hearing or vestibular function, and planning, directing, managing, conducting, and participating in hearing conservation, evoked potentials evaluation, nonmedical tinnitus evaluation or treatment, noise control, habilitation, and rehabilitation programs, including hearing aid evaluation, assistive listening device evaluation, prescription, preparation, and dispensing, and auditory training and lip reading.

(5) "Audiology aide" means an individual who:

(a) meets the minimum qualifications established by the board for audiology aides. Those qualifications shall be substantial but less than those established by this chapter for licensing an audiologist;

(b) does not act independently; and

(c) works under the personal direction and direct supervision of a licensed audiologist who accepts responsibility for the acts and performance of that audiology aide under this chapter.

(6) "Board" means the Speech-language Pathology and Audiology Licensing Board created under Section 58-41-6.

(7) "CCC" means the certificate of clinical competence awarded by the American Speech and Hearing Association.

(8) "CFY" means the clinical fellowship year prescribed by ASHA.

(9) "Disorder" means the condition of decreased, absent, or impaired auditory, speech, voice, or language function.

(10) "Hearing aid dealer" means one who sells, repairs, and adjusts hearing aids.

(11) "Licensed audiologist" means any individual to whom a license has been issued under this chapter if that license is in force and has not been suspended or revoked.

(12) "Licensed speech-language pathologist" means any individual licensed under this chapter whose license is in force and has not been suspended or revoked.

(13) "Person" means any individual, group, organization, partnership, or corporate body, except that only an individual may be licensed under this chapter.

(14) "Practice of audiology" means rendering or offering to render to individuals, groups, agencies, organizations, industries, or the public any performance or service in audiology.

(15) "Practice of speech-language pathology" means rendering, prescribing, or offering to render to individuals, groups, agencies, organizations, industries or the public any service in speech-language pathology.

(16) "Prescribe" means to:

(a) determine, specify, and give the directions, procedures, or rules for a person to follow in determining and ordering the preparation, delivery, and use of specific mechanical, acoustic, or electronic aids to hearing or speech; and

(b) determine or designate a remedy for a person.

(17) "Prescription" means a written or oral order for the delivery or execution of that which has been prescribed.

(18) "Speech-language pathologist" means:

(a) a person who practices speech-language pathology or who holds himself out to the public by any means, or by any service or function he performs, directly or indirectly, or by using the terms "speech-language pathologist," "speech-language therapist," "language disability specialist," or any variation, derivation, synonym, coinage, or whatever expresses, employs, or implies these terms, names, or functions; or

(b) a person who performs any of the functions described in Subsection (19) or any related functions.

(19) "Speech-language pathology" means the application of principles, methods, and procedures for the examination, measurement, prevention, testing, identification, evaluation, diagnosis, treatment, instruction, modification, prescription, restoration, counseling, habilitation, prediction, management, and research related to the development and the disorders or disabilities

of human communication, speech, voice, language, cognitive communication, or oral, pharyngeal, or laryngeal sensorimotor competencies, for the purpose of identifying, evaluating, diagnosing, prescribing, preventing, managing, correcting, ameliorating, or modifying those disorders and their effects in individuals or groups of individuals.

(20) "Speech-language pathology aide" means an individual who:

(a) meets the minimum qualifications established by the board for speech-language pathology aides. Those qualifications shall be substantial but less than those established by this chapter for licensing a speech-language pathologist;

(b) does not act independently; and

(c) works under the personal direction and direct supervision of a licensed speech-language pathologist who accepts the responsibility for the acts and performances of that speech-language pathology aide while working under this chapter.

(21) "Treatment" means the services of a speech-language pathologist or audiologist to examine, diagnose, correct, or ameliorate speech or hearing disorders, abnormalities, behavior, or their effects.

(22) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further defined by rule includes:

(a) failing to maintain a level of professional practice consistent with all initial and subsequent requirements by which a license is achieved or maintained under this chapter;

(b) utilizing substandard or inappropriate facilities or equipment; [~~or~~]

(c) treating any disorder for which the licensee has not had the necessary training and experience; or

(d) failing to comply with the requirements of Section 70A-2-806.1.

Section 2. Section **58-46a-501** is amended to read:

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 direct supervision to a hearing instrument intern during the first 1,000 hours the intern is engaged in the practice as a hearing instrument intern and indirect or direct supervision during the remaining hours;

(11) engaging in the practice as a hearing instrument intern when not under the direct supervision of a supervising hearing instrument specialist during the first 1,000 hours as a hearing instrument intern and engaging in the practice as a hearing instrument intern when not under the indirect or direct supervision of a supervising hearing instrument specialist during the remaining hours;

(12) failing to maintain all equipment used in the practice of a hearing instrument specialist properly calibrated and in good working condition; [~~and~~]

(13) failing to comply with the requirements of Section 70A-2-806.1; and

[~~(13)~~] (14) failing to comply with any of the requirements set forth in Section 58-46a-502.

Section 3. Section **70A-2-806.1** is enacted to read:

70A-2-806.1. Testing period for hearing aids.

(1) As used in this section:

(a) "Hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories thereto.

(b) "Hearing aid" does not include any type of device which is surgically implanted in the cochlea or under the skin near the ear.

(2) Any person 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 for any reason 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 ten 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.

ĥ **[~~(3) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the hearing aid is entitled to a cancellation fee of 5% of the purchase price of the hearing aid.~~]** ĥ

Legislative Review Note
as of 1-7-98 1:50 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel