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Title 16, Chapter 13.3

Hearing Aid Dispensers Regulations

Article 1. General Provisions

1399.100. Citation.

This chapter may be cited and referred to as the "Hearing Aid Dispenser Regulations."
NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3328, Business & Professions Code.

1399.101. Location of Offices.

The principal office of the Hearing Aid Dispensers Bureau of the Department of Consumer Affairs is located at 1625 N. Market Boulevard, Suite S-209, Sacramento, CA 95834.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3328, Business & Professions Code.
HISTORY: Amendment of Section 1399.101 filed 4/27/01; approved 6/11/01. Amendment of Section 1399.101 filed 3/21/07; approved 4/03/07

1399.102. Definitions.

For the purpose of the regulations contained in this chapter, the term:

- (a) "Code" means the Business and Professions Code.
- (b) "Supervisor" means a person who holds a license issued pursuant to the provisions of Sections 3354 and 3356 of the code and who accepts responsibility for the supervision and training of a person issued a temporary license under Section 3357 of the code.
- (c) "Trainee-applicant" means a person holding a temporary license issued pursuant to Section 3357 of the code.
- (d) "Supervision" means adequate direction and inspection by a supervisor.
- (e) "Training" means the instruction of a trainee-applicant in the fitting or selling of hearing aids.
- (f) "Trainee-applicant" means a temporary licensee authorized to fit or sell hearing aids under Section 3357 of the code under the supervision of a licensed hearing aid dispenser.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3328 and 3357, Business & Professions Code.

HISTORY: Amendment of Section 1399.102 filed 4/27/01; approved 6/11/01.

1399.103. Rules of Order.

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5/6/83; effective thirtieth day thereafter (Register 83, No. 19).

1399.104. Delegation of Functions.

HISTORY:

1. Repealer filed 4/27/01; approved 6/11/01.

1399.105. Filing of Addresses.

Each person holding a license shall file with the bureau his or her proper and current business address, and shall report immediately to the bureau at its principal office any and all changes of address, giving both his or her old and new address.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3326, 3362, and 3451, Business & Professions Code.

HISTORY: Amendment of Section 1399.105 filed 4/27/01; approved 6/11/01.

1399.106. Regular Subcommittees.

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

1399.107. Chairmanship.

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

Article 2. Applications

1399.110. Applications.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3357, Business & Professions Code.

HISTORY:

1. Renumbering and amendment of Section 1399.110 to Section 1399.115 filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

1399.111. Abandonment of Application.

(a) An applicant whose application for license is incomplete shall be deemed to have abandoned the application if he/she does not submit all required documents, data and information within one year from the date of the letter notifying the applicant that the application is incomplete.

(b) An applicant whose application for examination has been accepted shall be deemed to have abandoned the application if the applicant:

(1) does not take the written examination within one year from the date an eligibility letter was issued or does not take the practical examination within one year from the date the applicant passed the written examination; or

(2) after failing any examination, fails to take a re-examination within one year of the date of the letter notifying the applicant of such failure.

(c) An application submitted subsequent to the abandonment of a former application shall be treated as a new application.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3326 and 3352, Business & Professions Code.

HISTORY:

1. Repealer of Section 1399.111 and adding new Section 1399.111 filed 3-20-96; effective thirtieth day thereafter.

1399.112. Petition for Hearing.

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

1399.113. Review of Hearing Aid Dispenser Applications; Processing Time.

(a) The bureau shall inform in writing an applicant for licensure as a hearing aid dispenser within 17 days of receipt of the initial application form whether the application is complete and accepted for filing or is deficient and what specific information is required.

(b) The bureau shall inform an applicant for licensure as a hearing aid dispenser within 189 days after completion of the application of its decision whether the applicant meets the requirements for licensure. "Completion of the application" means that a completed application form together with all required information, documentation and fees have been filed by the applicant. This period may be extended by that time necessary for retaking or rescheduling an examination.

(c) The minimum, median and maximum processing times for an application for licensure as a hearing aid dispenser from the time of receipt of the initial application until the bureau makes a final decision on the application are:

(1)	Minimum	--	68 days
(2)	Median	--	236 days
(3)	Maximum	--	437 days

These processing times apply to those applicants who take and pass the first available licensing examination.

NOTE: Authority cited: Section 3328, Business & Professions Code; and Section 15376, Government Code. Reference: Section 3352, Business & Professions Code; Section 15376, Government Code.

HISTORY: Amendment of Section 1399.113 filed 4/27/01; approved 6/11/01.

Article 3. Temporary Licenses

1399.114. Temporary License Applications.

(a) Any applicant for a temporary license under Section 3357 of the code shall provide the following information to the bureau in order to show satisfactory supervision and training:

(1) Name, address, license number and the signature of his or her supervisor.

(2) Identification of the supervisory facility by proprietary name and address.

(b) The supervisor shall file as an addendum to the application the following statements and information:

(1) A general description of the supervisor's facility which shall include the:

(A) Equipment used in the fitting of hearing aids.

(B) Training material.

(C) Training space.

(D) Area in which hearing tests are given.

(2) A description of the portable equipment and tools used outside the supervisory facility in the fitting or selling of hearing aids.

(3) Information that demonstrates adequate supervision and training will be provided in compliance with Section 1399.118.

(c) Any person holding a temporary license issued pursuant to sections 3356 or 3357 shall, upon passing the examination and receiving a license, surrender the temporary license to the bureau.

(d) An excessive number of trainee-applicants under the supervisor may preclude a finding by the bureau that the trainee-applicants will be adequately supervised and trained.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3352 and 3357, Business & Professions Code.

HISTORY:

1. Renumbering of Section 1399.115 to Section 1399.114 filed 1-24-91; effective thirtieth day thereafter.

2. Amendment of Section 1399.114 filed 4/27/01; approved 6/11/01.

1399.115 Denial, Suspension, or Revocation of Authority to Supervise

(a) The bureau may refuse to approve or approve subject to terms and conditions a hearing aid dispenser's authority to supervise a trainee-applicant, or may suspend, revoke, or impose probationary conditions on a hearing aid dispenser's authority to supervise a trainee-applicant for any of the following causes:

(1) The failure to comply with Section 3357 of the code or any of the regulations contained in this article which is a prima facie violation, or is confirmed by an internal investigation report signed by the chief, or by formal investigation by the Division of Investigation of the department within the preceding 36 months. "Confirmed by formal investigation" means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

(2) The violation of any provision of the Hearing Aid Dispensers Licensing Law or the regulations contained in this chapter which is confirmed by an internal investigation report signed by the chief, or by a formal investigation by the Division of Investigation of the department within the preceding 36 months.

"Confirmed by formal investigation" means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

(3) The dispenser's license has been revoked, suspended, or subject to any restrictions within the preceding 36 months.

(4) An Accusation has been filed against the dispenser under the Administrative Procedure Act by the Attorney General's office and the charges are pending.

(5) The provision of false or misleading information during the application process.

(6) The conviction of a crime involving fiscal dishonesty for which the dispenser has been on probation or parole within the preceding 36 months.

(b) The bureau shall refuse to approve a hearing aid dispenser's authority to supervise a trainee-applicant if the hearing aid dispenser has not possessed a valid, active license as a hearing aid dispenser in California for at least three (3) years preceding the date on which the application for approval was received by the bureau.

(c) A hearing aid dispenser may appeal the denial, suspension, revocation, or imposition of probationary conditions upon his or her authority to supervise a trainee-applicant by filing such an appeal in writing with the bureau's office in Sacramento within 60 days of denial, suspension, revocation or imposition of probationary conditions. The appeal will be considered by the bureau within 45 days of receipt of the appeal in the bureau's office. If action under this section results in the termination of supervision and training of a trainee-applicant, then the supervising hearing aid dispenser shall so notify the bureau in accordance with Section 1399.118, subsection (g).

NOTE: Authority Cited: Section 3328, Business and Professions Code. Reference: Sections 3330 and 3357, Business and Professions Code.

HISTORY:

1. Renumbering of Section 1399.114 to Section 1399.115 and adding new Section 1399.115 filed 1-24-91; effective thirtieth day thereafter.

2. Amendment of Section 1399.115 filed 11-2-98; effective thirtieth day thereafter.

3. Amendment of Section 1399.115 filed 4/27/01; approved 6/11/01.

1399.116. Supervision of Trainee-Applicants.

(a) A licensed hearing aid dispenser shall not supervise more than one trainee-applicant at any one time unless a specific waiver has been granted by the bureau. Criteria for such a waiver shall be:

(1) the supervising dispenser shall have possessed a valid license as a hearing aid dispenser and engaged in the practice of fitting and selling hearing aids for at least three (3) years;

(2) the supervising dispenser has not been the subject of successful disciplinary action or of a complaint which has been investigated and verified by internal investigation report or the department's Division of Investigation within the preceding three (3) years; and

(3) the supervising dispenser shall not have been found to be in violation of any of the regulations contained in this article within the preceding three (3) years.

(b) A licensed hearing aid dispenser shall not in any circumstance supervise more than three (3) trainee-applicants at any one time.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3330 and 3357, Business & Professions Code.

HISTORY: Amendment of Section 1399.116 filed 4/27/01; approved 6/11/01.

1399.117. Representation of Trainee-Applicant.

A trainee-applicant shall, when engaged in the fitting or selling of hearing aids, present himself or herself to the public as a hearing aid dispenser trainee. Trainee-applicants may not refer to themselves in any advertising or promotional literature as anything but a hearing aid dispenser trainee.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 3357 and 3401, Business & Professions Code.

1399.118. Supervision and Training Required.

The supervision and training of a trainee-applicant under Section 3357 of the code engaged in the fitting or selling of hearing aids shall include the following:

(a) Intervention into the fitting and selling process by the supervisor.

(b) Inspection of the fitting and selling process by the supervisor.

(c) Training consisting of the following:

- (1) Review of the results of each fitting and sale of a hearing aid;
- (2) Reevaluation of the fitting and selling techniques of the trainee-applicant at least weekly;
- (3) Being readily available to the trainee-applicant to render advice and give instruction and assistance in the fitting and selling of hearing aids;
- (d) Instruction in the procedures for the fitting and selling of hearing aids required by Chapter 7.5, Division 2 of the code.
- (e) Training with instruments and equipment generally considered to produce valid hearing measurements necessary to the fitting and selling of hearing aids.
- (f) A statement that the supervisor has agreed to accept the responsibility for the supervision and training of the applicant as required by Section 3357 of the code.
- (g) The supervisor shall be responsible for providing supervision until whichever of the following first occurs:
 - (1) The trainee-applicant obtains a permanent license.
 - (2) The supervisor or trainee-applicant gives written notification to the bureau that he or she is terminating supervision and training.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3357, Business & Professions Code.
 HISTORY: Amendment of Section 1399.118 filed 4/27/01; approved 6/11/01.

1399.119. Direct Supervision.

A trainee-applicant under Section 3357 of the code shall fit or sell hearing aids only under the direct supervision of the supervising licensed hearing aid dispenser. "Direct supervision" as used in this section means all of the following:

- (a) The supervising dispenser is present within the same work setting a minimum of 20 percent of the time in which the trainee-applicant is providing services.
- (b) The supervising dispenser shall approve the selection of a hearing aid by a trainee-applicant.
- (c) The supervising dispenser shall countersign the audiogram and all sales documents prepared and consummated by a trainee-applicant.
- (d) If a trainee-applicant fails the license examination, the supervising dispenser is required to be physically present at all fittings and sales made by the trainee-applicant regardless of whether these occur in or outside the supervising dispenser's business location.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3357, Business & Professions Code.

Article 4. Examinations

1399.120. Examinations.

- (a) Either essay type or objective type examinations or both may be used in any one or more of the subject areas in which an applicant is to be examined.
- (b) Each applicant is forbidden to place any identification marks on or in any of the answer sheet or to reveal his or her name to any examiner.
- (c) The applicant is forbidden to take the questions from the examination room or make any record of the questions.
- (d) Anyone cheating will be removed from the examination room.
- (e) An applicant who wishes to take the practical examination shall file a completed application with the bureau not sooner than 51 days nor later than 30 days prior to the date set for the examination for which application is made. Applications will be accepted in the order received by the bureau, provided, however, that a maximum of fifty applicants will be scheduled for any administration of the practical examination. Applications will be returned to all those who are not within the first fifty applicants.
- (f) The practical examination shall cover the procedures and use of instruments and equipment commonly employed in the fitting and selling of hearing aids, including but not limited to:
 - (1) Otoloscope for the visual examination of the entire ear canal;
 - (2) Pure tone discreet or sweep frequency threshold type audiometer with air and bone conduction and appropriate masking circuitry;
 - (3) Appropriate equipment for establishing speech reception threshold and speech discrimination scores through headphones and/or sound field media by recorded or live voice;
 - (4) Calibrated sound pressure instruments, master hearing aids, and any and all types of hearing aid simulators; and
 - (5) Equipment designed for the evaluation and testing of hearing aid performance;

(6) Stethoscope or other listening device.

(g) An applicant shall furnish all equipment and materials necessary for the practical examination, and shall either bring a subject for the ear impression and audiometric assessment portions of the practical examination, or shall serve as such a subject for a subsequent examinee.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3353, Business & Professions Code.

HISTORY:

1. Amendment of Section 1399.120 filed 3-20-96; effective thirtieth day thereafter.
2. Amendment of Section 1399.120 filed 6-19-98; effective thirtieth day thereafter.
3. Amendment of Section 1399.120 filed 7-28-99; effective thirtieth day thereafter
4. Amendment of Section 1399.120 filed 4/27/01; approved 6/11/01.

1399.121. Inspection of Examination Papers.

All written examination papers shall be retained by the bureau for a period of two years after the date of the examination.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3353, Business & Professions Code.

HISTORY: Amendment of Section 1399.121 filed 4/27/01; approved 6/11/01.

1399.122. Practical Examination Appeals.

(a) An applicant who has failed the practical examination may appeal to the bureau within sixty (60) days following receipt of his/her examination results. The bases for appeal are:

- (1) examiner misconduct, which means prejudice or bias as evidenced by the statements and/or actions of an examiner; and
- (2) significant procedural error in the examination process.

(b) The appeal shall be in writing and shall specify the grounds upon which the appeal is based.

(c) An applicant will be notified in writing of the results of the appeal. In acting on appeals, the bureau may take such action as it deems appropriate.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3353, Business & Professions Code.

HISTORY:

1. Addition of Section 1399.122 filed 3-20-96; effective thirtieth day thereafter.
2. Amendment of Section 1399.122 filed 4/27/01; approved 6/11/01.

Article 5. Miscellaneous

1399.125. Annual Reports.

NOTE: Authority cited: Section 3321, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).

1399.126. Significant Air-Bone Gap.

(a) For purposes of Section 3365.5 of the code, a significant air-bone gap is defined as a difference of 15 decibels or more between the higher air conduction and the lower bone conduction pure tone thresholds at 2 or more succeeding octave frequencies of 500 Hertz through and including 4000 Hertz.

(b) Tests for significant air-bone gap shall be performed in a suitable environment using appropriate equipment to establish threshold values and with appropriate masking procedures employed.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Section 3365.5, Business & Professions Code.

1399.127. Advertising.

(a) A licensed hearing aid dispenser may advertise any goods or services authorized to be provided by such license in a manner authorized by Section 651 of the code so long as such advertising does not promote the unnecessary or excessive use of such goods or services.

(b) An advertisement violates Section 651 of the code when it:

(1) Is not exact, and any conditions or other variables to an advertised price are not disclosed.

(2) Includes a statement of price comparison that is not based upon verifiable data.

(3) Advertises a discount in a false or misleading manner, including but not limited to, failing to disclose the dates on which the sale or discount price will be in effect if the sale or discount price is a limited time offer.

When advertising a specific hearing aid model:

Correct: 50% off Acme Model 12
Regularly \$1000, Now \$500

Incorrect: 50% off Acme hearing aid

When advertising a category of hearing aids (e.g. all models from one manufacturer, or all BTE models):

Correct: 50% off Manufacturer's Suggested Retail Price
All Acme Hearing Aids

Incorrect: Acme Hearing Aids - 50% Off

Correct: 50% off Manufacturer's Suggested Retail Price, All Hearing Aids
Offer good January 1-7, 1998 (or Offer expires January 7, 1998)

Incorrect: 50% off Manufacturer's Suggested Retail Price, All Hearing Aids

(4) Utilizes a business name that is so broad as to connote comprehensive and diagnostic hearing services, unless the dispenser is also licensed as a physician or audiologist.

Correct: Delta Hearing Aid Center

Incorrect: Delta Hearing Center

(5) Advertises hearing tests without qualification as to the nature of the hearing testing that may be performed by a hearing aid dispenser.

Correct: Test to determine if you could be helped by a hearing aid

Incorrect: Hearing test

(6) Includes sending to a consumer preset appointment information or "rebate coupons" that resemble checks as part of a direct mail solicitation.

(7) Includes an educational degree but does not list the degree and field, or includes the title "Dr." where the degree is a non-medical doctorate and the advertisement does not disclose that fact.

Correct: John Doe, Ph.D. in Audiology Jane Doe, M.A. in Audiology
John Doe, Ph.D. (Audiology) Jack Doe, B.A. (Audiology)

Incorrect: Dr. John Doe Jane Doe, M.A.
Dr. John Doe (Audiology) Jack Doe, B.A.

(8) Includes abbreviations for job titles or job certifications as letters after a name where those letters do not represent an academic degree or credential.

(9) Refers to a dispenser's certification by a professional organization but either does not include the name of the certifying organization or, includes the name written in a manner not easily understood by consumers.

Correct: John Doe, Hearing Aid Dispenser Lic. No. HA-xxxx
NB-HIS, Certified by the National Board of Certification in Hearing
Instrument Sciences

Incorrect: John Doe, NB-HIS

(10) Includes the term "specialist" when referencing licensure without including the title "hearing aid dispenser."

Correct: Jane Doe, Hearing Aid Dispenser Lic. No. HA-xxxx
Jack Doe, Licensed Hearing Aid Dispenser
John Doe, Hearing Instrument Specialist
Hearing Aid Dispenser Lic. No. HA-xxxx

Incorrect: Jane Doe, Hearing Aid Specialist Lic. No. HA-xxxx
Jack Doe, Licensed Hearing Aid Specialist

(c) Any national advertisement run in California shall comply with California laws and regulations.

NOTE: Authority Cited: Section 3328, Business and Professions Code. Reference: Sections 651, 651.3 and 3401, Business and Professions Code.

HISTORY:

1. Amendment of Section 1399.127 filed 3-10-00; effective thirtieth day thereafter.

1399.129. Application and Certificate Fees.

HISTORY:

1. Repealer filed 3-20-96; effective thirtieth day thereafter.

Article 6. Enforcement

1399.130. Petition for Reinstatement or Reduction of Penalty.

NOTE: Authority cited: Section 3328, Business & Professions Code.

HISTORY:

1. Repealer filed 5-6-83, effective thirtieth day thereafter (Register 83, No. 19).

1399.131. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the director shall consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders" Sixth Edition, June 1997 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the director in his or her sole discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority Cited: Section 3328, Business and Professions Code, Sections 11400.20 and 11425.50(e), Government Code. Reference: Sections 3400, 3401, 3402, and 3403, Business and Professions Code, Sections 11400.20 and 11425.50(e), Government Code.

HISTORY:

1. Repealer filed 5-6-83; effective thirtieth day thereafter (Register 83, No. 19).
2. Addition of Section 1399.131 filed 6-17-98; effective thirtieth day thereafter.
3. Amendment of Section 1399.131 filed 4/27/01; approved 6/11/01.

1399.132. Substantial Relationship Criteria.

For the purpose of denial, suspension, or revocation of a hearing aid dispenser's license pursuant to Division 1.5 (commencing with Section 475) of the Business & Professions Code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a hearing aid dispenser to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to those involving the following:

- (a) Any violation of the provisions of Sections 650, 651, 651.3 and 655.2 of the code.
- (b) Any violation of the provisions of Chapter 7.5, Division 2 of the Business & Professions Code.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 481, 3401 and 3403, Business & Professions Code.

1399.133. Criteria for Rehabilitation--Denials and Reinstatements.

(a) When considering the denial of a license or a temporary license under Section 480 of the code, or the reinstatement of a license, the bureau, in evaluating the rehabilitation of the applicant and his or her present eligibility for licensing, shall consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business & Professions Code.

- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 482, 3401 and 3403, Business & Professions Code.

HISTORY: Amendment of Section 1399.133 filed 4/27/01; approved 6/11/01.

1399.134. Criteria for Rehabilitation--Suspensions and Revocations.

When considering the suspension or revocation of a license or a temporary license on the grounds that the licensee has been convicted of a crime, the bureau, in evaluating the rehabilitation of such person and his present eligibility for a license or temporary license, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) Extent of time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

NOTE: Authority cited: Section 3328, Business & Professions Code. Reference: Sections 482, 3401 and 3403, Business & Professions Code.

HISTORY: Amendment of Section 1399.134 filed 4/27/01; approved 6/11/01.

1399.135. Issuance of Citations

(a) The chief of the bureau is authorized to determine after due and reasonable examination of the alleged violation when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensed hearing aid dispenser of the statutes and regulations referred to in this article. As used in this article "licensed hearing aid dispenser" also includes one who holds a temporary license as a hearing aid dispenser.

(b) A citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

NOTE: Authority cited: Sections 125.9, 125.95 and 3328, Business and Professions Code. Reference: Sections 125.9 and 125.95, Business and Professions Code.

HISTORY: Amendment of Section 1399.135 filed 4/27/01; approved 6/11/01.

1399.136 Amount of Fines

The amount of any fine to be levied by the chief shall take into consideration the factors listed in subdivision (b)(3) of Section 125.9 of the code and shall be within the range set forth in each subsection below.

- (a) The fine for a violation of the following provisions shall be from \$1100 to \$2500:
 - (1) Business and Professions Code section 3350
 - (2) Business and Professions Code section 3359, subdivision (a)
 - (3) Business and Professions Code section 3364, subdivision (b)
 - (4) Business and Professions Code section 3365.5
 - (5) Business and Professions Code section 3365.6
 - (6) Business and Professions Code section 3401, subdivision (f)
 - (7) Business and Professions Code section 3401, subdivision (h)

(8) Civil Code 1689.6

(9) Civil Code 1793.02

(b) The fine for a violation of the following provisions shall be from \$100 to \$1000:

(1) Business and Professions Code section 651

(2) Business and Professions Code section 3357

(3) Business and Professions Code section 3359, subdivision (b)

(4) Business and Professions Code section 3362

(5) Business and Professions Code section 3363

(6) Business and Professions Code section 3364, subdivision (a)

(7) Business and Professions Code section 3364, subdivision (c)

(8) Business and Professions Code section 3365

(9) Business and Professions Code section 3366

(10) Business and Professions Code section 3401, subdivision (i)

(11) Title 16 California Code of Regulation section 1399.116, subsection (a)

(12) Title 16 California Code of Regulation section 1399.116, subsection (b)

(13) Title 16 California Code of Regulation section 1399.117

(14) Title 16 California Code of Regulation section 1399.119

(15) Title 16 California Code of Regulation section 1399.142

(c) In her or his discretion, the chief may issue an order of abatement without levying a fine for the first violation of any provision set forth in subsection (b).

NOTE: Authority cited: Sections 125.9, and 3328, Business and Professions Code. Reference: Sections 125.9 and 3401, Business and Professions Code.

HISTORY:

1. Amendment of Section 1399.136 filed 8-19-98; effective thirtieth day thereafter.

2. Amendment of Section 1399.136 filed 4/27/01; approved 6/11/01.

1399.137. Compliance with Orders of Abatement.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the chief in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement. An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. The time allowed for the abatement of a violation shall begin when the order of abatement is final and has been served or received. Such failure may result in disciplinary action being taken by the bureau or other appropriate judicial relief being taken against the person cited.

NOTE: Authority cited: Sections 125.9, 125.95 and 3328, Business and Professions Code. Reference: Sections 125.9 and 125.95, Business and Professions Code.

HISTORY: Amendment of Section 1399.137 filed 4/27/01; approved 6/11/01.

1399.138. Citations for Unlicensed Practice.

The chief of the bureau is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as a hearing aid dispenser is required under the Hearing Aid Dispensers Licensing Law. Each citation issued shall contain an order of abatement. Where appropriate, the chief shall levy a fine for such unlicensed activity in accordance with subdivision (b) (3) of section 125.9 of the Code. The provisions of sections 1399.135 and 1399.137 shall apply to the issuance of citations for unlicensed activity under this subsection. The sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, 125.95 and 3328, Business and Professions Code. Reference: Sections 125.9 and 125.95, Business and Professions Code.

HISTORY: Amendment of Section 1399.138 filed 4/27/01; approved 6/11/01.

1399.139. Contest of Citations.

(a) In addition to requesting a hearing provided for in subdivision (b) (4) of section 125.9 of the code, the person cited may, within ten (10) days after service or receipt of the citation, notify the chief in writing of his or her request for an informal conference with the chief regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received.

(b) The chief shall hold, within 30 days from the receipt of the request, an informal conference with the person cited or his or her legal counsel or authorized representative. At the conclusion of the informal conference the chief may affirm, modify or dismiss the citation, including any fine levied or order of abatement issued. The chief shall state in writing the reasons for his or her action and serve or mail, as provided in subsection (b) of section 1399.137, a copy of his or her findings and decision to the person cited within ten days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person cited does not waive his or her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the chief. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and new citation issued. If a hearing is requested for the subsequent citation, it shall be requested within 30 days in accordance with subdivision (b) (4) of section 125.9.

NOTE: Authority cited: Sections 125.9, 125.95 and 3328, Business and Professions Code. Reference: Sections 125.9 and 125.95, Business and Professions Code.

HISTORY: 1. Addition of Sections 1399.135 - 1399.139 filed 4-19-91; effective thirtieth day thereafter.
2. Amendment of Section 1399.139 filed 4/27/01; approved 6/11/01.

Article 7. Continuing Education

1399.140. Continuing Education Required.

(a) Each dispenser is required to complete at least six (6) hours of continuing education from a provider approved under Section 1399.141 below during each calendar year. For all licenses which expire on and after January 1, 1997, all holders of licenses shall complete nine (9) hours of continuing education per year, and not more than three (3) hours of continuing education may be credited in any of the following areas related to hearing aids: ethics (including the ethics of advertising and marketing) or business practices.

(b) Each dispenser renewing his or her license under the provisions of Section 3451 of the code shall be required to submit proof satisfactory to the bureau of compliance with the provisions of this article.

(c) Such proof shall be submitted at the time of license renewal on a form provided by the bureau.

(d) Any dispenser who cannot complete the minimum hours required under subsection (a) may have his or her license renewed, but shall make up any deficiency during the following year. If the dispenser does not complete the deficient hours in addition to the minimum hours for the current year, he or she shall be ineligible for the next renewal of his or her license unless such dispenser applies for and obtains a waiver pursuant to Section 1399.144 below.

(e) This article shall not apply to any dispenser who was issued a permanent license for the first time within the preceding calendar year.

(f) Any person whose hearing aid dispenser's license has been expired for two years or more shall complete the required hours of approved continuing education for the prior two years before such license may be restored.

NOTE: Authority and reference cited: Section 3327.5, Business & Professions Code.

HISTORY:

1. Amendment of Section 1399.140 filed 3-20-96; effective thirtieth day thereafter.
2. Amendment of Section 1399.116 filed 4/27/01; approved 6/11/01.

1399.141. Approval of Continuing Education Providers.

(a) In order to be approved by the bureau as a continuing education provider the following information shall be submitted with an application provided by the bureau:

- (1) Description of course content of all courses to be offered. The course content shall be current

practices related to the fitting of hearing aids for aiding or compensating for impaired human hearing or any of the subjects listed in subsection (a) of section 1399.140. The course content shall be information related to the fitting of hearing aids, and this information shall be at a level above that basic knowledge required for licensure as set forth in Section 3353 of the Code, except that basic knowledge which would serve as a brief introduction to the course. The phrase "at a level above that basic knowledge" means any subjects, issues, topics, theories, or findings that are more advanced than the entry level of knowledge described in those basic subjects listed in subdivision (b) of Section 3353.

(2) Method of instruction for course(s) offered. Teaching methods for each course of program shall be described, e.g., lecture, seminar, audiovisual, simulation, etc.

(3) Education objectives. Each course or program shall clearly state the educational objective that can be realistically accomplished within the framework of the course or program, and the number of hours of continuing education credit which may be obtained by completion of a specified course.

(4) Qualifications of instructors. Instructors shall be qualified to teach the specified course content by virtue of their prior education, training and experience. A resume of each instructor shall be forwarded with the application for approval.

(5) Evaluation. Each course or program shall include an evaluation method which documents that educational objectives have been met, such as, but not limited to, a written evaluation or written examination by each participant.

(6) Open to licensees. Only those courses or programs which are open to all licensed hearing aid dispensers shall be approved by the bureau.

(b) Providers shall maintain a record of attendance of each participant who is licensed as a hearing aid dispenser and submit that record to the bureau no later than December 31 of each calendar year. The record shall indicate those dispensers who have complied with the requirements of the course or program offered.

(c) Applications for approval of a continuing education provider shall be submitted to the bureau at its Sacramento office at least 45 days before the date of the first course or program offering to be approved.

(d) Any change in the course content or instructor shall be reported to the bureau on a timely basis.

(e) The bureau may withdraw the approval of any provider for failure to comply with the provisions of this section.

(f) Each provider shall submit to the bureau on an annual basis a description or outline of each approved course to be offered the following year and a resume of any new instructor who will be presenting the course. This information shall be submitted prior to the re-offering of the course within the time limit set forth in subsection (c).

NOTE: Authority cited: Section 3327.5, Business & Professions Code. Reference: Section 3327.5, Business & Professions Code.

HISTORY:

1. Amendment of Section 1399.141 filed 3-20-96; effective thirtieth day thereafter.
2. Amendment of Section 1399.141 filed 6-15-98; effective thirtieth day thereafter.
3. Amendment of Section 1399.141 filed 4/27/01; approved 6/11/01.

1399.142. Sanctions for Noncompliance.

(a) Any dispenser who does not complete the required number of hours of continuing education will be required to make up any deficiency during the next calendar year and renewal cycle. Such dispenser shall document to the bureau the completion of any deficient hours. Any dispenser who fails to make up the deficient hours and the hours of required continuing education for the current year shall be ineligible for the next renewal of his or her license to dispense hearing aids until such time as the deficient hours of continuing education are documented to the bureau.

(b) Fraudulently misrepresenting compliance with the continuing education requirements of Section 3327.5 of the code and this article shall constitute "obtaining a license by fraud or deceit" as those terms are used in Section 3401, subd. (c), of the code.

NOTE: Authority cited: Sections 3327.5 and 3328, Business & Professions Code. Reference: Section 3327.5, Business & Professions Code.

HISTORY: Amendment of Section 1399.142 filed 4/27/01; approved 6/11/01.

1399.143. Repetition of Courses.

Credit will not be given toward approved continuing education coursework which is substantially similar to coursework which was successfully completed within the preceding three (3) years and used to

meet the continuing education requirements of this article and Section 3327.5 of the code.

NOTE: Authority and reference cited: Section 3327.5, Business & Professions Code.

1399.144. Waiver of Requirement.

(a) The bureau, may, in its discretion exempt from the continuing education requirements, any dispenser who for reasons of health, military service, or undue hardship cannot meet those requirements. Applications for waivers shall be submitted to the bureau for its consideration.

(b) Any dispenser who submits an application for a waiver which is denied by the bureau, shall otherwise comply with the provisions of this article or be subject to the sanctions for noncompliance set forth in Section 1399.142.

NOTE: Authority and reference cited: Section 3327.5, Business & Professions Code.

HISTORY: Amendment of Section 1399.144 filed 4/27/01; approved 6/11/01.

(Revised 9/2001)

