

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO
UNOFFICIAL PREAMENDED VERSION

Attachment E

LLS NO. 13-0806.01 Kristen Forrestal x4217

SENATE BILL 13-238

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Ryden,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF HEARING AID PROVIDERS BY THE
102 DIVISION OF PROFESSIONS AND OCCUPATIONS WITHIN THE
103 DEPARTMENT OF REGULATORY AGENCIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado has regulated hearing aid providers since 1995. The regulation and subsequent licensure of hearing aid providers has been renewed through sunset reviews as recommended by the department of regulatory agencies (department). Notwithstanding the recommendation

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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1 OR TRANSFER TITLE, POSSESSION, OR THE RIGHT TO USE BY LEASE,
2 BAILMENT, OR ANY OTHER METHOD. THE TERM DOES NOT APPLY TO
3 WHOLESALE TRANSACTIONS WITH DISTRIBUTORS OR DEALERS.

4 (5) "DIVISION" MEANS THE DIVISION OF PROFESSIONS AND
5 OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.

6 (6) (a) "HEARING AID" MEANS A WEARABLE DEVICE DESIGNED OR
7 OFFERED TO BE CUSTOMIZED FOR THE PURPOSE OF COMPENSATING FOR
8 IMPAIRED HUMAN HEARING AND INCLUDES:

9 (I) ANY PARTS, ATTACHMENTS, OR ACCESSORIES TO THE
10 INSTRUMENT OR DEVICE, AS DEFINED IN RULES ADOPTED BY THE
11 DIRECTOR; AND

12 (II) EAR MOLDS, EXCLUDING BATTERIES AND CORDS.

13 (b) THE TERM DOES NOT INCLUDE A SURGICALLY IMPLANTED
14 HEARING DEVICE.

15 (7) "HEARING AID PROVIDER" MEANS A PERSON ENGAGED IN THE
16 PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS.

17 (8) "LICENSEE" MEANS A PERSON WHO HOLDS A CURRENT LICENSE
18 AS A HEARING AID PROVIDER PURSUANT TO THIS ARTICLE.

19 (9) "PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING
20 AIDS" INCLUDES:

21 (a) SELECTING AND ADAPTING HEARING AIDS FOR SALE;

22 (b) TESTING HUMAN HEARING FOR PURPOSES OF SELECTING AND
23 ADAPTING HEARING AIDS FOR SALE; AND

24 (c) MAKING IMPRESSIONS FOR EAR MOLDS AND COUNSELING AND
25 INSTRUCTING PROSPECTIVE USERS FOR PURPOSES OF SELECTING, FITTING,
26 ADAPTING, OR SELLING HEARING AIDS.

27 (10) "SURGICALLY IMPLANTED HEARING DEVICE" MEANS A DEVICE

1 THAT IS DESIGNED TO PRODUCE USEFUL HEARING SENSATIONS TO A
2 PERSON WITH A HEARING IMPAIRMENT AND THAT HAS, AS ONE OR MORE
3 COMPONENTS, A UNIT THAT IS SURGICALLY IMPLANTED INTO THE EAR,
4 SKULL, OR OTHER INTERIOR PART OF THE BODY. THE TERM INCLUDES ANY
5 ASSOCIATED UNIT THAT MAY BE WORN ON THE BODY.

6

7 **12-5.5-102. Scope of article - exemption.** (1) THIS ARTICLE DOES
8 NOT APPLY TO PERSONS WHO ARE:

9 (a) LICENSED PURSUANT TO SECTION 22-60.5-210, C.R.S., AND
10 WHO ARE NOT LICENSED UNDER THIS ARTICLE FOR WORK UNDERTAKEN AS
11 PART OF THEIR EMPLOYMENT BY, OR CONTRACTUAL AGREEMENT WITH,
12 THE PUBLIC SCHOOLS; OR

13 (b) ENGAGED IN THE PRACTICE OF AUDIOLOGY OR THE PRACTICE
14 OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS IN THE DISCHARGE
15 OF THEIR OFFICIAL DUTIES IN THE SERVICE OF THE UNITED STATES ARMED
16 FORCES, PUBLIC HEALTH SERVICE, COAST GUARD, OR VETERANS
17 ADMINISTRATION.

18 (2) THIS ARTICLE DOES NOT APPLY TO THE WHOLESALE SALES OF
19 HEARING AIDS.

20 (3) NOTHING IN THIS ARTICLE AUTHORIZES A HEARING AID
21 PROVIDER TO ENGAGE IN THE PRACTICE OF MEDICINE AS DEFINED IN
22 SECTION 12-36-106.

23 (4) NOTHING IN THIS ARTICLE PROHIBITS A BUSINESS OR LICENSEE
24 FROM:

25 (a) HIRING AND EMPLOYING UNLICENSED STAFF TO ASSIST WITH
26 CONDUCTING BUSINESS PRACTICES AND TO ASSIST IN DISPENSING HEARING
27 AIDS IF THE UNLICENSED STAFF ARE PROPERLY SUPERVISED BY A LICENSEE;

1 EXCEPT THAT THE EMPLOYEES MAY NOT CONDUCT HEARING TESTS OR
2 PERFORM THE INITIAL FITTING OF HEARING AIDS; OR

3 (b) PERFORMING TASKS THAT WOULD BE PERMISSIBLE IF THE
4 LICENSEE WAS NOT LICENSED.

5 (5) THIS ARTICLE DOES NOT APPLY TO THE DISPENSING OF HEARING
6 AIDS OUTSIDE OF THIS STATE.

7 (6) AN AUDIOLOGIST LICENSED PURSUANT TO ARTICLE 29.9 OF THIS
8 TITLE IS NOT REQUIRED TO OBTAIN A LICENSE PURSUANT TO THIS ARTICLE.

9 **12-5.5-103. Scope of practice.** (1) THE SCOPE OF PRACTICE FOR
10 A HEARING AID PROVIDER INCLUDES:

11 (a) ELICITING PATIENT CASE HISTORIES, INCLUDING MEDICAL,
12 OTOLOGICAL, PHARMACOLOGICAL, OCCUPATIONAL, AND PREVIOUS
13 AMPLIFICATION HISTORY AND PATIENT ATTITUDES AND EXPECTATIONS;

14 (b) ADMINISTERING OTOSCOPY FOR THE PURPOSE OF IDENTIFYING
15 POSSIBLE OTOLOGICAL CONDITIONS, INCLUDING CONDITIONS DESCRIBED
16 IN SECTION 12-5.5-301 (1) (b), THAT MAY INDICATE THE NEED FOR
17 MEDICAL REFERRAL OR THAT MAY HAVE A BEARING ON NEEDED
18 REHABILITATIVE MEASURES, OUTCOMES, OR RECOMMENDATIONS;

19 (c) ADMINISTERING AND INTERPRETING TESTS OF HUMAN HEARING,
20 INCLUDING APPROPRIATE OBJECTIVE AND SUBJECTIVE METHODOLOGY AND
21 MEASURES;

22 (d) DETERMINING A PERSON'S CANDIDACY FOR HEARING AIDS OR
23 HEARING ASSISTIVE DEVICES, REFERRING THE PERSON FOR SURGICALLY
24 IMPLANTED HEARING DEVICE EVALUATION, OR RECOMMENDING OTHER
25 CLINICAL, REHABILITATIVE, OR MEDICAL INTERVENTIONS;

26 (e) PRESCRIBING, SELECTING, AND FITTING APPROPRIATE HEARING
27 INSTRUMENTS AND ASSISTIVE DEVICES, INCLUDING APPROPRIATE

1 TECHNOLOGY, ELECTROACOUSTIC TARGETS, PROGRAMMING PARAMETERS,
2 AND SPECIAL APPLICATIONS, AS INDICATED;

3 (f) ASSESSING HEARING INSTRUMENT EFFICACY USING
4 APPROPRIATE FITTING VERIFICATION METHODOLOGY, INCLUDING
5 AVAILABLE FITTING VALIDATION METHODS;

6 (g) TAKING EAR IMPRESSIONS AND PREPARING EAR MOLDS FOR
7 HEARING INSTRUMENTS, ASSISTIVE DEVICES, TELECOMMUNICATIONS
8 APPLICATIONS, EAR PROTECTION, AND OTHER RELATED APPLICATIONS;

9 (h) DESIGNING AND MODIFYING EAR MOLDS AND AUDITORY
10 EQUIPMENT TO MEET INDIVIDUAL PATIENT NEEDS;

11 (i) PROVIDING COUNSELING AND AURAL REHABILITATIVE SERVICES
12 IN THE USE AND CARE OF HEARING INSTRUMENTS AND ASSISTIVE DEVICES
13 AND FOR EFFECTIVELY USING COMMUNICATION COPING STRATEGIES AND
14 OTHER APPROACHES TO FOSTER OPTIMAL PATIENT REHABILITATION; AND

15 (j) PROVIDING SUPERVISION AND TRAINING OF THOSE ENTERING
16 THE DISPENSING PROFESSION.

17

18 **12-5.5-104. Title protection - use of title.** IT IS UNLAWFUL FOR
19 ANY PERSON TO USE THE TITLE "HEARING AID PROVIDER" OR "HEARING AID
20 DISPENSER" UNLESS HE OR SHE IS LICENSED AS A HEARING AID PROVIDER
21 PURSUANT TO THIS ARTICLE.

22 **12-5.5-105. Repeal of article.** (1) THIS ARTICLE IS REPEALED,
23 EFFECTIVE SEPTEMBER 1, 2020.

24 (2) PRIOR TO THIS REPEAL, THE DEPARTMENT OF REGULATORY
25 AGENCIES SHALL REVIEW THE LICENSING AND SUPERVISORY FUNCTIONS OF
26 THE DIRECTOR AS PROVIDED IN SECTION 24-34-104, C.R.S.

27

PART 2

1 LICENSING

2 **12-5.5-201. License required - application - qualifications.**

3 (1) A HEARING AID PROVIDER SHALL OBTAIN A LICENSE PURSUANT TO THIS
4 SECTION BEFORE ENGAGING IN THE PRACTICE OF DISPENSING, FITTING, OR
5 DEALING IN HEARING AIDS.

6 (2) (a) AN APPLICANT SHALL SUBMIT AN APPLICATION TO THE
7 DIRECTOR CONTAINING THE INFORMATION DESCRIBED IN THIS SUBSECTION
8 (2) AND SHALL PAY A FEE DETERMINED AND COLLECTED PURSUANT TO
9 SECTION 24-34-105, C.R.S. THE DIRECTOR MAY DENY AN APPLICATION
10 FOR LICENSURE IF THE REQUIRED INFORMATION IS NOT SUBMITTED OR IF
11 AN APPLICANT'S APPRENTICE LICENSE, ISSUED PURSUANT TO SECTION
12 12-5.5-204, HAS BEEN REVOKED. IF AN APPLICANT OR LICENSEE FAILS TO
13 NOTIFY THE DIRECTOR OF A CHANGE IN THE SUBMITTED INFORMATION
14 WITHIN THIRTY DAYS AFTER THE CHANGE, THE FAILURE IS CAUSE FOR
15 DISCIPLINARY ACTION.

16 (b) AN APPLICANT SHALL INCLUDE THE FOLLOWING INFORMATION
17 IN EVERY APPLICATION FOR LICENSURE PURSUANT TO THIS SECTION:

18 (I) THE APPLICANT'S NAME, BUSINESS ADDRESS, AND BUSINESS
19 TELEPHONE NUMBER AND OTHER CONTACT INFORMATION AS DETERMINED
20 BY THE DIRECTOR;

21 (II) A STATEMENT INDICATING WHETHER:

22 (A) A HEARING AID PROVIDER LICENSE, CERTIFICATE, OR
23 REGISTRATION WAS ISSUED TO THE APPLICANT BY A LOCAL, STATE, OR
24 NATIONAL HEALTH CARE AGENCY;

25 (B) THE LICENSE, CERTIFICATE, OR REGISTRATION WAS SUSPENDED
26 OR REVOKED;

27 (C) CHARGES OR COMPLAINTS ARE PENDING AGAINST THE

1 APPLICANT; AND

2 (D) DISCIPLINARY ACTION WAS TAKEN.

3 (3) IN ORDER TO QUALIFY FOR LICENSURE PURSUANT TO THIS
4 SECTION, AN APPLICANT MUST EITHER:

5 (a) HAVE PASSED THE NATIONAL COMPETENCY EXAMINATION OF
6 THE NATIONAL BOARD FOR CERTIFICATION IN HEARING INSTRUMENT
7 SCIENCES (NBC-HIS), UNLESS THE DIRECTOR DETERMINES, BY RULE, THAT
8 THIS EXAMINATION NO LONGER MEETS THE MINIMUM STANDARDS
9 NECESSARY FOR LICENSURE, IN WHICH CASE, ONLY AN EXAMINATION THAT
10 THE APPLICANT PASSED PRIOR TO THE DATE OF THE RULING WILL BE
11 ACCEPTABLE; OR

12 (b) HAVE PASSED AN APPROPRIATE ENTRY-LEVEL EXAMINATION,
13 AS DETERMINED BY THE DIRECTOR, AND:

14 (I) COMPLETED AT LEAST SIX MONTHS OF TRAINING WITH AN
15 AUDIOLOGIST OR LICENSED HEARING AID PROVIDER, PURSUANT TO
16 SECTION 12-5.5-204; OR

17 (II) HAVE AN ASSOCIATE'S DEGREE IN HEARING AID FITTING AND
18 DISPENSING THAT, AT THE TIME THE APPLICANT WAS ENROLLED AND
19 GRADUATED, WAS OFFERED BY AN INSTITUTION OF HIGHER EDUCATION OR
20 A POST-SECONDARY EDUCATION PROGRAM ACCREDITED BY A NATIONAL,
21 REGIONAL, OR STATE AGENCY RECOGNIZED BY THE UNITED STATES
22 DEPARTMENT OF EDUCATION, OR A PROGRAM APPROVED BY THE
23 DIRECTOR.

24 **12-5.5-202. Licensure - certificate - expiration - renewal -**
25 **reinstatement - fees.** (1) (a) THE DIRECTOR SHALL LICENSE ALL
26 APPLICANTS WHO MEET THE REQUIREMENTS FOR LICENSURE IN THIS
27 ARTICLE _____.

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1 (b) THE DIRECTOR SHALL ISSUE OR DENY A LICENSE WITHIN SIXTY
2 DAYS AFTER THE DATE THE APPLICATION IS RECEIVED.

3 (c) THE DIRECTOR SHALL GIVE EACH LICENSEE A LICENSE BEARING
4 A UNIQUE LICENSE NUMBER. THE LICENSEE SHALL INCLUDE THE LICENSE
5 NUMBER ON ALL WRITTEN CONTRACTS AND RECEIPTS.

6 (2) LICENSES ISSUED PURSUANT TO THIS ARTICLE EXPIRE
7 PURSUANT TO A SCHEDULE ESTABLISHED BY THE DIRECTOR AND MUST BE
8 RENEWED OR REINSTATED PURSUANT TO SECTION 24-34-102 (8), C.R.S.
9 THE DIRECTOR SHALL ESTABLISH RENEWAL FEES AND DELINQUENCY FEES
10 FOR REINSTATEMENT PURSUANT TO SECTION 24-34-105, C.R.S. IF A
11 PERSON FAILS TO RENEW HIS OR HER LICENSE PURSUANT TO THE SCHEDULE
12 ESTABLISHED BY THE DIRECTOR, THE LICENSE EXPIRES. A PERSON WHOSE
13 LICENSE HAS EXPIRED IS SUBJECT TO THE PENALTIES SET FORTH IN THIS
14 ARTICLE OR IN SECTION 24-34-102 (8), C.R.S.

15 **12-5.5-203. Licensure by endorsement - rules.** (1) THE
16 DIRECTOR SHALL ISSUE A LICENSE BY ENDORSEMENT TO PRACTICE AS A
17 HEARING AID PROVIDER IN THIS STATE TO AN INDIVIDUAL WHO POSSESSES
18 AN ACTIVE LICENSE IN GOOD STANDING TO PRACTICE IN THAT PROFESSION
19 IN ANOTHER STATE OR TERRITORY OF THE UNITED STATES OR IN A
20 FOREIGN COUNTRY IF THE APPLICANT:

21 (a) PRESENTS PROOF SATISFACTORY TO THE DIRECTOR THAT THE
22 INDIVIDUAL POSSESSES A VALID LICENSE FROM ANOTHER STATE OR
23 JURISDICTION THAT REQUIRES QUALIFICATIONS SUBSTANTIALLY
24 EQUIVALENT TO THE QUALIFICATIONS FOR LICENSURE IN THIS STATE AND
25 MEETS ALL OTHER REQUIREMENTS FOR LICENSURE PURSUANT TO THIS
26 ARTICLE; AND

27 (b) PAYS THE LICENSURE FEE ESTABLISHED UNDER SECTION

1 12-5.5-201.

2 (2) THE DIRECTOR MAY SPECIFY BY RULE WHAT CONSTITUTES
3 SUBSTANTIALLY EQUIVALENT QUALIFICATIONS FOR THE PURPOSES OF THIS
4 SECTION.

5 **12-5.5-204. Apprentice license - expiration - rules.** (1) A
6 PERSON TRAINING TO BE A LICENSED HEARING AID PROVIDER SHALL
7 SUBMIT TO THE DIRECTOR AN APPLICATION CONTAINING THE INFORMATION
8 DESCRIBED IN SUBSECTION (2) OF THIS SECTION AND SHALL PAY AN
9 APPRENTICE LICENSE FEE DETERMINED AND COLLECTED PURSUANT TO
10 SECTION 12-5.5-201.

11 (2) ON AND AFTER JUNE 1, 2014, THE DIRECTOR SHALL ISSUE AN
12 APPRENTICE LICENSE TO A PERSON WHO PROVIDES, TO THE DIRECTOR'S
13 SATISFACTION, VERIFICATION OF TRAINING TO BECOME A LICENSED
14 HEARING AID PROVIDER, WHICH TRAINING IS UNDER THE DIRECT
15 SUPERVISION OF A LICENSED HEARING AID PROVIDER WHOSE LICENSE IS IN
16 GOOD STANDING.

17 (3) DURING THE TRAINING PERIOD:

18 (a) AN APPRENTICE IS NOT PERMITTED TO SELL HEARING AIDS
19 INDEPENDENTLY OF THE SUPERVISING LICENSED HEARING AID PROVIDER;

20 (b) A SUPERVISING LICENSED HEARING AID PROVIDER RETAINS
21 ULTIMATE RESPONSIBILITY FOR THE CARE PROVIDED BY THE APPRENTICE
22 AND IS SUBJECT TO DISCIPLINARY ACTION BY THE DIRECTOR FOR FAILURE
23 TO PROVIDE ADEQUATE SUPERVISION.

24 (4) ANY PERSON ISSUED AN APPRENTICE LICENSE UNDER THIS
25 SECTION IS SUBJECT TO:

26 (a) DISCIPLINE UNDER SECTION 12-5.5-402 FOR ENGAGING IN AN
27 ACT THAT CONSTITUTES GROUNDS FOR DISCIPLINE UNDER SECTION

1 12-5.5-501; AND

2 (b) A CEASE-AND-DESIST ORDER UNDER SECTION 12-5.5-403 FOR
3 ENGAGING IN BEHAVIOR SET FORTH IN SECTION 12-5.5-403.

4 (5) AN APPRENTICE LICENSE ISSUED UNDER THIS SECTION IS
5 RENEWABLE AND IS SUBJECT TO SECTION 12-5.5-202 (2), C.R.S.

6 (6) AN ASSOCIATE LICENSE ISSUED PURSUANT TO SECTION
7 12-5.5-202.5 AS IT EXISTED PRIOR TO ITS REPEAL IN 2012 REMAINS VALID
8 UNTIL THE EXPIRATION DATE ON THE LICENSE. THE DIRECTOR SHALL NOT
9 RENEW, OR ISSUE NEW, ASSOCIATE LICENSES.

10 (7) ON AND AFTER JUNE 1, 2014, A PERSON IN THIS STATE
11 TRAINING TO BE A LICENSED HEARING AID PROVIDER MUST POSSESS A
12 VALID APPRENTICE LICENSE ISSUED BY THE DIRECTOR PURSUANT TO THIS
13 ARTICLE AND RULES PROMULGATED PURSUANT TO THIS ARTICLE.

14 **12-5.5-205. Disposition of fees - legislative intent.** IT IS THE
15 INTENT OF THE GENERAL ASSEMBLY TO FUND ALL DIRECT AND INDIRECT
16 COSTS INCURRED IN THE IMPLEMENTATION OF THIS ARTICLE WITH ANNUAL
17 LICENSE AND RENEWAL FEES. THE DIRECTOR SHALL TRANSMIT ALL FEES
18 COLLECTED UNDER THIS ARTICLE TO THE STATE TREASURER, WHO SHALL
19 CREDIT THEM TO THE DIVISION OF PROFESSIONS AND OCCUPATIONS CASH
20 FUND CREATED IN SECTION 24-34-105, C.R.S.

21 **12-5.5-206. Retention of records - licensee's obligation.** EACH
22 LICENSEE WHO SELLS A HEARING AID OR PROVIDES GOODS OR SERVICES TO
23 A CUSTOMER SHALL DEVELOP A WRITTEN PLAN TO ENSURE THE
24 MAINTENANCE OF CUSTOMER RECORDS. THE RECORDS MUST BE RETAINED
25 FOR AT LEAST SEVEN YEARS AND IDENTIFY THE CUSTOMER BY NAME; THE
26 GOODS OR SERVICES, EXCEPT BATTERIES, MINOR PARTS, AND ACCESSORIES,
27 PROVIDED TO EACH CUSTOMER; AND THE DATE AND PRICE OF EACH

1 TRANSACTION.

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PART 3

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DIRECTOR: POWERS, DUTIES, AND RULES

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12-5.5-401. Director - powers - duties - rules. (1) THE

6

DIRECTOR MAY MAKE INVESTIGATIONS AND INSPECTIONS AS NECESSARY

7

TO DETERMINE WHETHER AN APPLICANT OR LICENSEE HAS VIOLATED THIS

8

ARTICLE OR ANY RULE ADOPTED BY THE DIRECTOR.

9

(2) THE DIRECTOR MAY APPLY TO A COURT OF COMPETENT

10

JURISDICTION FOR AN ORDER ENJOINING ANY ACT OR PRACTICE THAT

11

CONSTITUTES A VIOLATION OF THIS ARTICLE. UPON A SHOWING THAT A

12

PERSON IS ENGAGING IN OR INTENDS TO ENGAGE IN THE ACT OR PRACTICE,

13

THE COURT SHALL GRANT AN INJUNCTION, RESTRAINING ORDER, OR OTHER

14

APPROPRIATE ORDER, REGARDLESS OF THE EXISTENCE OF ANOTHER

15

REMEDY. ALL PROCEEDINGS RELATED TO SUCH ORDERS ARE GOVERNED BY

16

THE COLORADO RULES OF CIVIL PROCEDURE.

17

(3)(a) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE HAS THE

18

POWER TO ADMINISTER OATHS, TAKE AFFIRMATIONS OF WITNESSES, AND

19

ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF WITNESSES AND THE

20

PRODUCTION OF ALL RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY

21

EVIDENCE, AND MATERIALS IN ANY HEARING, INVESTIGATION,

22

ACCUSATION, OR OTHER MATTER COMING BEFORE THE DIRECTOR

23

PURSUANT TO THIS ARTICLE. THE DIRECTOR MAY APPOINT AN

24

ADMINISTRATIVE LAW JUDGE PURSUANT TO PART 10 OF ARTICLE 30 OF

25

TITLE 24, C.R.S., TO TAKE EVIDENCE AND TO MAKE FINDINGS AND REPORT

26

THEM TO THE DIRECTOR.

27

(b) UPON FAILURE OF ANY WITNESS TO COMPLY WITH A SUBPOENA

1 OR PROCESS, THE DISTRICT COURT OF THE COUNTY IN WHICH THE
2 SUBPOENAED PERSON OR LICENSEE RESIDES OR CONDUCTS BUSINESS, UPON
3 APPLICATION BY THE DIRECTOR WITH NOTICE TO THE SUBPOENAED PERSON
4 OR LICENSEE, MAY ISSUE TO THE PERSON OR LICENSEE AN ORDER
5 REQUIRING THAT PERSON OR LICENSEE TO APPEAR BEFORE THE DIRECTOR;
6 TO PRODUCE THE RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY
7 EVIDENCE, OR MATERIALS IF SO ORDERED; OR TO GIVE EVIDENCE
8 TOUCHING THE MATTER UNDER INVESTIGATION OR IN QUESTION. THE
9 COURT MAY PUNISH A FAILURE TO OBEY THE ORDER OF THE COURT AS A
10 CONTEMPT OF COURT.

11 (4) NO LATER THAN DECEMBER 31, 2013, AND THEREAFTER AS
12 NECESSARY, THE DIRECTOR SHALL ADOPT RULES NECESSARY FOR THE
13 ENFORCEMENT OR ADMINISTRATION OF THIS ARTICLE.

14 **12-5.5-402. Disciplinary actions.** (1) IF _____ THE DIRECTOR
15 DETERMINES THAT AN APPLICANT OR LICENSEE HAS COMMITTED ANY OF
16 THE ACTS SPECIFIED IN PART 5 OF THIS ARTICLE, THE DIRECTOR MAY:

- 17 (a) ISSUE A LETTER OF ADMONITION;
18 (b) PLACE A LICENSEE ON PROBATION;
19 (c) IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED TWO
20 THOUSAND FIVE HUNDRED DOLLARS FOR EACH SEPARATE OFFENSE; OR
21 (d) DENY, REFUSE TO RENEW, REVOKE, OR SUSPEND THE LICENSE
22 OF AN APPLICANT OR LICENSEE.

23 (2) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
24 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR,
25 WARRANTS FORMAL ACTION, THE COMPLAINT SHALL NOT BE RESOLVED BY
26 A DEFERRED SETTLEMENT, ACTION, JUDGMENT, OR PROSECUTION.

27 (3) A PERSON WHOSE LICENSE TO PRACTICE AS A HEARING AID

1 (III) THE LICENSEE IS UNLIKELY TO MODIFY HIS OR HER PRACTICES
2 TO COMPLY WITH THIS ARTICLE IN A MANNER SATISFACTORY TO THE
3 DIRECTOR UNLESS OTHER DISCIPLINARY ACTION IS TAKEN.

4 (6) THE DIRECTOR SHALL NOT ENFORCE ANY PROVISIONS OF THIS
5 ARTICLE OR RULES PROMULGATED PURSUANT TO THIS ARTICLE THAT ARE
6 HELD UNCONSTITUTIONAL, INVALID, OR INCONSISTENT WITH FEDERAL
7 LAWS OR REGULATIONS, INCLUDING RULES PROMULGATED BY THE UNITED
8 STATES FOOD AND DRUG ADMINISTRATION.

9 (7) ALL FINES COLLECTED PURSUANT TO THIS SECTION SHALL BE
10 TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO
11 THE GENERAL FUND.

12 **12-5.5-403. Cease-and-desist orders - unauthorized practice -**
13 **penalties.** (1) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
14 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
15 A LICENSEE IS ACTING IN A MANNER THAT IS A THREAT TO THE HEALTH
16 AND SAFETY OF THE PUBLIC, OR A PERSON IS ACTING OR HAS ACTED
17 WITHOUT THE REQUIRED LICENSE, THE DIRECTOR MAY ISSUE AN ORDER TO
18 CEASE AND DESIST THE ACTIVITY. THE ORDER MUST SET FORTH THE
19 STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED, THE FACTS
20 ALLEGED TO HAVE CONSTITUTED THE VIOLATION, THE SPECIFIC HARM
21 THAT THREATENS THE HEALTH AND SAFETY OF THE PUBLIC, AND THE
22 REQUIREMENT THAT ALL UNLAWFUL ACTS OR UNLICENSED PRACTICES
23 IMMEDIATELY CEASE.

24 (b) WITHIN TEN DAYS AFTER SERVICE OF THE ORDER TO CEASE AND
25 DESIST PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THE
26 RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER
27 ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE HAVE OCCURRED. THE

1 HEARING MUST BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND
2 24-4-105, C.R.S.

3 (2) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
4 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
5 A PERSON HAS VIOLATED ANY OTHER PORTION OF THIS ARTICLE, THEN, IN
6 ADDITION TO ANY SPECIFIC POWERS GRANTED PURSUANT TO THIS ARTICLE,
7 THE DIRECTOR MAY ISSUE TO THE PERSON AN ORDER TO SHOW CAUSE AS
8 TO WHY THE DIRECTOR SHOULD NOT ISSUE A FINAL ORDER DIRECTING THE
9 PERSON TO CEASE AND DESIST FROM THE UNLAWFUL ACT OR PRACTICE.

10 (b) THE DIRECTOR SHALL PROMPTLY NOTIFY THE PERSON OF THE
11 ISSUANCE OF THE ORDER AND SHALL INCLUDE IN THE NOTICE A COPY OF
12 THE ORDER, THE FACTUAL AND LEGAL BASIS FOR THE ORDER, AND THE
13 DATE SET BY THE DIRECTOR FOR A HEARING ON THE ORDER. THE DIRECTOR
14 MAY SERVE THE NOTICE BY PERSONAL SERVICE, BY FIRST-CLASS UNITED
15 STATES MAIL, POSTAGE PREPAID, OR AS MAY BE PRACTICABLE UPON ANY
16 PERSON AGAINST WHOM THE ORDER IS ISSUED. PERSONAL SERVICE OR
17 PROOF OF RECEIPT OF MAILING OF AN ORDER OR DOCUMENT PURSUANT TO
18 THIS PARAGRAPH (b) CONSTITUTES NOTICE TO THE PERSON OF THE
19 EXISTENCE AND CONTENTS OF THE ORDER OR DOCUMENT.

20 (c) (I) THE DIRECTOR MUST COMMENCE THE HEARING ON AN
21 ORDER TO SHOW CAUSE NO SOONER THAN TEN, AND NO LATER THAN
22 FORTY-FIVE, CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR
23 SERVICE OF THE NOTIFICATION BY THE DIRECTOR AS PROVIDED IN
24 PARAGRAPH (b) OF THIS SUBSECTION (2). THE DIRECTOR MAY CONTINUE
25 THE HEARING BY AGREEMENT OF ALL PARTIES BASED UPON THE
26 COMPLEXITY OF THE MATTER, NUMBER OF PARTIES TO THE MATTER, AND
27 LEGAL ISSUES PRESENTED IN THE MATTER, BUT IN NO EVENT MAY THE

1 DIRECTOR COMMENCE THE HEARING LATER THAN SIXTY CALENDAR DAYS
2 AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION.

3 (II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS
4 BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) DOES
5 NOT APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE
6 THAT NOTIFICATION WAS PROPERLY SENT OR SERVED UPON THE PERSON
7 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) AND ANY OTHER
8 EVIDENCE RELATED TO THE MATTER AS THE DIRECTOR DEEMS
9 APPROPRIATE. THE DIRECTOR SHALL ISSUE THE ORDER WITHIN TEN DAYS
10 AFTER THE DIRECTOR'S DETERMINATION RELATED TO REASONABLE
11 ATTEMPTS TO NOTIFY THE RESPONDENT, AND THE ORDER BECOMES FINAL
12 AS TO THAT PERSON BY OPERATION OF LAW. THE CONDUCT OF THE
13 HEARING IS GOVERNED BY SECTIONS 24-4-104 AND 24-4-105, C.R.S.

14 (III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON
15 AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR
16 HAS ACTED WITHOUT THE REQUIRED LICENSE OR HAS OR IS ABOUT TO
17 ENGAGE IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS OF THIS
18 ARTICLE OR RULES ADOPTED UNDER THIS ARTICLE, THE DIRECTOR MAY
19 ISSUE A FINAL CEASE-AND-DESIST ORDER DIRECTING THE PERSON TO
20 CEASE AND DESIST FROM FURTHER UNLAWFUL ACTS OR UNLICENSED
21 PRACTICES.

22 (IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET
23 FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2), OF THE FINAL
24 CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE
25 HEARING CONDUCTED PURSUANT TO THIS PARAGRAPH (c) TO EACH PERSON
26 AGAINST WHOM THE FINAL ORDER HAS BEEN ISSUED. THE FINAL ORDER
27 ISSUED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) IS

1 EFFECTIVE WHEN ISSUED AND CONSTITUTES A FINAL ORDER FOR PURPOSES
2 OF JUDICIAL REVIEW.

3 (3) THE DIRECTOR MAY ENTER INTO A STIPULATION WITH A PERSON
4 IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE
5 PRESENTED TO THE DIRECTOR, THAT THE PERSON HAS ENGAGED IN OR IS
6 ABOUT TO ENGAGE IN:

7 (a) AN UNLICENSED ACT OR PRACTICE;

8 (b) AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS
9 ARTICLE, A RULE PROMULGATED PURSUANT TO THIS ARTICLE, OR AN
10 ORDER ISSUED PURSUANT TO THIS ARTICLE; OR

11 (c) AN ACT OR PRACTICE CONSTITUTING GROUNDS FOR
12 ADMINISTRATIVE SANCTION PURSUANT TO THIS ARTICLE.

13 (4) IF ANY PERSON FAILS TO COMPLY WITH A FINAL
14 CEASE-AND-DESIST ORDER OR A STIPULATION, THE DIRECTOR MAY
15 REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE
16 JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING,
17 AND IF SO REQUESTED THE ATTORNEY SHALL BRING, SUIT FOR A
18 TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO
19 PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

20 (5) A PERSON AGGRIEVED BY THE FINAL CEASE-AND-DESIST ORDER
21 MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF
22 THE DIRECTOR'S FINAL ORDER IN A COURT OF COMPETENT JURISDICTION.

23 (6) A PERSON WHO PRACTICES OR OFFERS OR ATTEMPTS TO
24 PRACTICE AS A HEARING AID PROVIDER OR WHO ENGAGES IN THE PRACTICE
25 OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS WITHOUT AN
26 ACTIVE HEARING AID PROVIDER LICENSE ISSUED UNDER THIS ARTICLE
27 COMMITS A CLASS 2 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED

1 IN SECTION 18-1.3-501, C.R.S., FOR THE FIRST OFFENSE, AND, FOR THE
2 SECOND OR ANY SUBSEQUENT OFFENSE, THE PERSON COMMITS A CLASS 6
3 FELONY AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-401,
4 C.R.S.

5 **12-5.5-404. Immunity.** THE DIRECTOR, THE DIRECTOR'S STAFF, A
6 PERSON ACTING AS A WITNESS OR CONSULTANT TO THE DIRECTOR, AND A
7 WITNESS TESTIFYING IN A PROCEEDING AUTHORIZED UNDER THIS ARTICLE,
8 IS IMMUNE FROM LIABILITY IN ANY CIVIL ACTION BROUGHT AGAINST HIM
9 OR HER FOR ACTS OCCURRING WHILE ACTING IN HIS OR HER CAPACITY AS
10 DIRECTOR, STAFF, CONSULTANT, OR WITNESS, RESPECTIVELY, IF THE
11 INDIVIDUAL WAS ACTING IN GOOD FAITH WITHIN THE SCOPE OF HIS OR HER
12 RESPECTIVE CAPACITY, MADE A REASONABLE EFFORT TO OBTAIN THE
13 FACTS OF THE MATTER AS TO WHICH HE OR SHE ACTED, AND ACTED IN THE
14 REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM OR HER WAS
15 WARRANTED BY THE FACTS. ANY PERSON PARTICIPATING IN GOOD FAITH
16 IN LODGING A COMPLAINT OR PARTICIPATING IN ANY INVESTIGATIVE OR
17 ADMINISTRATIVE PROCEEDING PURSUANT TO THIS ARTICLE IS IMMUNE
18 FROM ANY CIVIL OR CRIMINAL LIABILITY THAT MAY RESULT FROM THAT
19 PARTICIPATION.

20 **PART 4**

21 **GROUND FOR DISCIPLINE**

22 **12-5.5-501. Grounds for discipline.** (1) THE FOLLOWING ACTS
23 CONSTITUTE GROUNDS FOR DISCIPLINE:

24 (a) MAKING A FALSE OR MISLEADING STATEMENT OR OMISSION IN
25 AN APPLICATION FOR LICENSURE;

26 (b) VIOLATING ANY PROVISION OF THIS ARTICLE, A RULE
27 PROMULGATED BY THE DIRECTOR UNDER THIS ARTICLE, OR AN ORDER

- 1 ISSUED BY THE DIRECTOR UNDER THIS ARTICLE;
- 2 (c) USING FALSE OR MISLEADING ADVERTISING;
- 3 (d) REPRESENTING THAT THE SERVICE OR ADVICE OF A PERSON
4 LICENSED TO PRACTICE MEDICINE WILL BE USED OR MADE AVAILABLE IN
5 THE SELECTION, FITTING, ADJUSTMENT, MAINTENANCE, OR REPAIR OF
6 HEARING AIDS WHEN THAT IS NOT TRUE OR USING THE TERMS "DOCTOR",
7 "CLINIC", "STATE-LICENSED CLINIC", "STATE-REGISTERED",
8 "STATE-CERTIFIED", "STATE-APPROVED", OR ANY OTHER TERM,
9 ABBREVIATION, OR SYMBOL WHEN IT WOULD GIVE THE FALSE IMPRESSION
10 THAT SERVICE IS BEING PROVIDED BY PERSONS TRAINED IN MEDICINE OR
11 THAT THE LICENSEE'S SERVICE HAS BEEN RECOMMENDED BY THE STATE
12 WHEN THAT IS NOT THE CASE, OR WHEN IT WOULD BE FALSE OR
13 MISLEADING;
- 14 (e) DIRECTLY OR INDIRECTLY GIVING OR OFFERING TO GIVE MONEY
15 OR ANYTHING OF VALUE TO ANY PERSON WHO ADVISES ANOTHER IN A
16 PROFESSIONAL CAPACITY AS AN INDUCEMENT TO INFLUENCE THE PERSON
17 OR HAVE THE PERSON INFLUENCE OTHERS TO PURCHASE OR CONTRACT TO
18 PURCHASE PRODUCTS SOLD OR OFFERED FOR SALE BY A LICENSEE OR
19 INFLUENCING PERSONS TO REFRAIN FROM DEALING IN THE PRODUCTS OF
20 COMPETITORS;
- 21 (f) EMPLOYING A DEVICE, A SCHEME, OR ARTIFICE WITH THE
22 INTENT TO DEFRAUD A PURCHASER OF A HEARING AID;
- 23 (g) SELLING A HEARING AID TO A CHILD UNDER EIGHTEEN YEARS
24 OF AGE WITHOUT RECEIVING DOCUMENTATION THAT THE CHILD HAS BEEN
25 EXAMINED BY A LICENSED PHYSICIAN AND AN AUDIOLOGIST WITHIN SIX
26 MONTHS PRIOR TO THE FITTING;
- 27 (h) INTENTIONALLY DISPOSING OF, CONCEALING, DIVERTING,

1 CONVERTING, OR OTHERWISE FAILING TO ACCOUNT FOR ANY FUNDS OR
2 ASSETS OF A PURCHASER OF A HEARING AID THAT IS UNDER THE
3 APPLICANT'S, LICENSEE'S, OR APPRENTICE'S CONTROL;

4 (i) MAKING A FALSE OR MISLEADING STATEMENT OF FACT
5 CONCERNING GOODS OR SERVICES OR THE BUYER'S RIGHT TO CANCEL WITH
6 THE INTENTION OR EFFECT OF DETERRING OR PREVENTING THE BUYER
7 FROM EXERCISING THE BUYER'S RIGHT TO CANCEL, OR REFUSING TO HONOR
8 A BUYER'S REQUEST TO CANCEL A CONTRACT FOR THE PURCHASE OF A
9 HEARING AID, IF THE REQUEST WAS MADE DURING THE RESCISSION PERIOD
10 SET FORTH IN SECTION 12-5.5-301 (2) (g);

11 (j) CHARGING, COLLECTING, OR RECOVERING ANY COST OR FEE FOR
12 ANY GOOD OR SERVICE THAT HAS BEEN REPRESENTED BY THE LICENSEE AS
13 FREE;

14 (k) FAILING TO ADEQUATELY SUPERVISE A LICENSED HEARING AID
15 PROVIDER APPRENTICE OR ANY EMPLOYEE PURSUANT TO SECTION
16 12-5.5-204 OR SECTION 12-5.5-102 (4) (a);

17 (l) EMPLOYING A SALES AGENT OR EMPLOYEE WHO VIOLATES ANY
18 PROVISION OF THIS ARTICLE, A RULE PROMULGATED BY THE DIRECTOR
19 UNDER THIS ARTICLE, OR AN ORDER ISSUED BY THE DIRECTOR UNDER THIS
20 ARTICLE;

21 (m) FAILING TO COMPLY WITH A STIPULATION OR AGREEMENT
22 MADE WITH THE DIRECTOR OR WITH A FINAL AGENCY ORDER;

23 (n) FAILING TO RESPOND IN AN HONEST, MATERIALLY RESPONSIVE,
24 AND TIMELY MANNER TO A COMPLAINT ISSUED PURSUANT TO SECTION
25 12-5.5-402 (4);

26 (o) BEING CONVICTED OF, ACCEPTING A PLEA OF GUILTY OR NOLO
27 CONTENDERE TO, OR RECEIPT OF A DEFERRED SENTENCE IN ANY COURT

1 FOR A FELONY OR FOR ANY CRIME INVOLVING FRAUD, DECEPTION, FALSE
2 PRETENSE, THEFT, MISREPRESENTATION, FALSE ADVERTISING, OR
3 DISHONEST DEALING;

4 (p) SELLING, DISPENSING, ADJUSTING, PROVIDING TRAINING OR
5 TEACHING IN REGARD TO, OR OTHERWISE SERVICING SURGICALLY
6 IMPLANTED HEARING DEVICES UNLESS THE HEARING AID PROVIDER IS AN
7 AUDIOLOGIST OR A PHYSICIAN; AND

8 (q) VIOLATING THE "COLORADO CONSUMER PROTECTION ACT",
9 ARTICLE 1, OF TITLE 6, C.R.S.

10

11 SECTION 2. In Colorado Revised Statutes, 24-34-104 **amend**
12 (51.5) introductory portion; and **add** (51.5) (d) as follows:

13 **24-34-104. General assembly review of regulatory agencies**
14 **and functions for termination, continuation, or reestablishment.**

15 (51.5) The following agencies, functions, or both, shall terminate on
16 September 1, 2020:

17 (d) THE LICENSING OF HEARING AID PROVIDERS BY THE DIVISION
18 OF PROFESSIONS AND OCCUPATIONS, PURSUANT TO ARTICLE 5.5 OF TITLE
19 12, C.R.S.

20 SECTION 3. **Effective date.** This act takes effect July 1, 2013.

21

22 SECTION 4. **Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.