2024 South Dakota Legislature

House Bill 1029

Introduced by: The Chair of the Committee on Health and Human Services at the request of the Board of Hearing Aid Dispensers and Audiologists

An Act to modify and repeal provisions related to the licensure of hearing aid dispensers and audiologists.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-24-1 be AMENDED:

36-24-1. Terms used in this chapter mean:

(1) "Audiogram," a graphic summary of the measurements of hearing loss showing number of decibels loss at each frequency tested;

(2) "Audiologist," any person who is engaged in the practice of audiology and licensed pursuant to this chapter;

(3) "Audiology," the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders;

~~(3)~~(4) "Auditory brain stem implant," a surgically implanted device that provides perception of sound via stimulation to the brainstem to a person who has significant sensorineural hearing loss in which stimulation at the auditory nerve is no longer a viable option;

(5) "Auditory osseointegrated device," a device, including surgical and non-surgical wearing options, that delivers sound to the inner ear by bypassing the outer and middle ear via bone conduction;

(6) "Board," the ~~South Dakota~~ Board of Licensed Hearing Aid Dispensers and Audiologists;

~~(4)~~(7) "Cochlear implant," a surgically implanted device that provides perception of sound via stimulation to the cochlea to a person who has sensorineural hearing loss and to whom benefits from a hearing aid are limited;

(8) "Disorders of human hearing, balance, and other neural systems," any condition or auditory sensitivity, acuity, function, or processing disorder, whether of organic or nonorganic origin, peripheral or central, that impedes the normal function of

balance or normal process of human communication ~~including disorders of auditory sensitivity, acuity, function, or processing~~;

~~(5)~~(9) "Dispense," any transfer of title, possession, or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with a distributor or dealer;

(10) "Hearing aid," a wearable instrument, device, or ear mold, and any of its parts, attachments, or accessories, designed for, offered for the purpose of, or represented as aiding a person with, or compensating for, impaired hearing. The term does not include:

(a) Batteries or cords; or

(b) Cochlear implants or cochlear prosthesis;

~~(6)~~(11) "Licensed hearing aid dispenser," any person, other than an audiologist, who is engaged in the practice of hearing aid dispensing and who is licensed pursuant to this chapter;

~~"License," any license issued by the board to dispense hearing aids or practice audiology;~~ and

~~(7)~~(12) "Provisional license," any license ~~issued to an applicant who is practicing audiology while completing the postgraduate professional experience as required by this chapter or a license~~ issued to ~~an applicant as~~ a person who is training to be a licensed hearing aid dispenser ~~trainee~~ and who is supervised by a person who holds a valid hearing aid dispensing license or audiology license~~;~~

~~(8) "Supervisor," any person who is licensed and accepts the responsibility of overseeing the training of provisional licensees in their respective professions~~.

Section 2. That § 36-24-1.6 be AMENDED:

36-24-1.6. The scope of practice of audiology ~~includes~~ involves:

(1) Activities that identify, assess, diagnose, manage, and interpret test results related to disorders of human hearing, balance, and other neural systems;

(2) ~~Otoscopic examination and external ear canal management for removal~~Management of cerumen in order to evaluate hearing or balance, make ear impressions, fit hearing protection or prosthetic devices, and monitor the continuous use of hearing aids;

(3) The conduct and interpretation of behavioral, electroacoustic, or electrophysiologic methods used to assess hearing, balance, and neural system function;

(4) Evaluation and ~~management~~ treatment of children and adults with central auditory processing disorders;

(5) Supervision and conduct of newborn hearing screening programs;

(6) Measurement and interpretation of sensory and motor evoked potentials, electromyography, and other electrodiagnostic tests for purposes of neurophysiologic intraoperative monitoring and cranial nerve assessment;

(7) Provision of hearing care by selecting, evaluating, fitting, facilitating adjustment to, and dispensing prosthetic devices ~~for hearing loss, including~~, hearing aids, sensory aids, hearing assistive devices, alerting and telecommunication systems, and captioning devices for hearing loss;

(8) Assessment of the candidacy of persons with hearing loss for a cochlear ~~implants and~~ implant, auditory osseointegreated device, or auditory brainstem implant, the provision of fitting~~,~~ and programming the device or implant, and the provision of audiological rehabilitation to optimize device or implant use;

(9) Provision of audiological rehabilitation, including speech reading, communication management, language development, auditory skill development, and counseling for psychosocial adjustment to hearing loss for persons with hearing loss and their families or caregivers;

(10) Consultation to educators as members of interdisciplinary teams about communication management, educational implications of hearing loss, educational programming, classroom acoustics, and large-area amplification systems for children with hearing loss;

(11) Prevention of hearing loss and conservation of hearing function by designing, implementing, and coordinating occupational, school, and community hearing conservation and identification programs;

(12) Consultation and provision of rehabilitation to persons with balance disorders using habituation, exercise therapy, and balance retraining;

(13) Design and conduct of basic and applied audiologic research to increase the knowledge base, to develop new methods and programs, and to determine the efficacy of assessment and treatment paradigms~~,~~; and the dissemination of research findings to other professionals and to the public. For the purpose of this chapter, the term "research" does not include activities that take place under the auspices of a recognized institutional review board;

(14) Education and administration in audiology graduate and professional education programs;

(15) Measurement of functional outcomes, consumer satisfaction, effectiveness, efficiency, and cost-benefit of practices and programs to maintain and improve the quality of audiological services;

(16) Administration and supervision of professional and technical personnel who provide support functions to the practice of audiology;

(17) Screening of ~~speech-language, use of sign language, and other~~ factors affecting communication function for the purposes of an audiological evaluation or initial identification of individuals with other communication disorders;

(18) Consultation about accessibility for persons with hearing loss in public and private buildings, programs, and services;

(19) Assessment and nonmedical management of tinnitus ~~using biofeedback, masking, hearing aids, education, and counseling~~;

(20) Consultation to individuals, public and private agencies, and governmental bodies, or as an expert witness, regarding legal interpretations of audiology findings, effects of hearing loss and balance system disorders, and relevant noise-related considerations;

(21) Case management and service as a liaison for consumers, families, and agencies in order to monitor audiologic status and management and to make recommendations about educational and vocational programming;

(22) Consultation to industry on the development of products and instrumentation related to the measurement and management of auditory or balance function; and

(23) Participation in the development of professional and technical standards.

Section 3. That chapter 34-24 be amended with a NEW SECTION:

The scope of practice of licensed hearing aid dispensing involves:

(1) The evaluation or measurement of hearing in a patient eighteen years or older, by means of an audiometer, for the sole purpose of determining whether a hearing loss will be sufficiently improved by the use of a hearing aid or other hearing instrument to justify prescribing and selling the hearing aid or instrument, and whether that hearing aid or instrument will be in the best interest of the patient;

(2) The prescribing and fitting of an appropriate hearing aid or other hearing instrument based on a patient's hearing loss, ear anatomy, and physical considerations;

(3) The removal of cerumen only as needed when cerumen is impeding the fitting, verification, or function of a hearing aid or other hearing instrument;

(4) The making of impressions or earmolds for the fitting of a hearing aid or other hearing instrument or hearing protection;

(5) The sale and professional placement of the hearing aid or other hearing instrument on a patient;

(6) Intervention necessary to ensure the optimum improvement in hearing ability when utilizing a hearing aid or other hearing instrument;

(7) The education of a patient on the use and care of the hearing aid or other hearing instrument; and

(8) Referring a patient to an appropriate medical professionals for any ear-related condition that is observed beyond recognized sensorineural hearing loss.

Section 4. That § 36-24-2 be AMENDED:

36-24-2. There is ~~hereby~~ created the ~~South Dakota~~ Board of Licensed Hearing Aid Dispensers and Audiologists ~~with the duties and powers as provided in this chapter~~. The board consists of:

(1) Two audiologists with at least two years of experience practicing audiology;

(2) Two licensed hearing aid dispensers with at least two years of experience in the practice of fitting and dispensing hearing aids; and

(3) One person who is a representative of the public and who is not associated with or financially interested in the practice or business of licensed hearing aid dispensing or audiology and who is not a member of a related profession or occupation.

The Governor shall appoint each member of the board.

Section 5. That § 36-24-5 be AMENDED:

36-24-5. ~~Board members shall be appointed for a~~ The term of office for each member of the board is three years. Each member shall serve until a successor has been appointed.

The ~~terms of members begin~~ term of a member begins on October thirty-first of the calendar year in which the Governor appoints the member, unless otherwise designated by the Governor. The ~~appointee's~~ term expires on October thirtieth in the third year of appointment.

~~Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in the year the term is to expire~~

A member may not serve more than three consecutive, full terms. If a member's office is vacant, the Governor must appoint a new member to complete the unexpired

term. A member who is appointed to fill an unexpired term is not considered to have served a full term.

Section 6. That § 36-24-8 be AMENDED:

36-24-8. The ~~members of the~~ board shall annually elect ~~one such member as chairman and another~~ one member to serve as ~~secretary-treasurer of the board~~ president and one member to serve as vice-president.

Section 7. That § 36-24-9 be AMENDED:

36-24-9. The board shall ~~meet at least once in each fiscal year to conduct business~~ hold at least two meetings annually at a place and time ~~it determines~~ set by the board. ~~Additional meetings may be convened at the call of the chair to carry out the purposes of this chapter. Four members of the board constitute a quorum to conduct business~~ The board may hold other meetings at a time and place set by the president or a majority of the board.

A majority of the board constitutes a quorum. Except as provided in § 36-24-41, a majority vote of members present constitutes a decision of the board.

Section 8. That § 36-24-9.1 be AMENDED:

36-24-9.1. Each board member shall receive a per diem set pursuant to § 4-7-10.4 and ~~expenses at the same rate as other state employees~~ may be reimbursed for expenses as provided by law while ~~actually~~ engaged in official duties. ~~The board, pursuant to chapter 3-6D, may hire office personnel necessary to perform the board's official duties.~~

Section 9. That § 36-24-10.1 be AMENDED:

36-24-10.1. The ~~South Dakota Board of Hearing Aid Dispensers and Audiologists~~ board shall continue within the Department of Health~~,~~ and shall retain all its prescribed functions, including administrative functions. The board shall submit ~~such~~ records, information, and reports in the form and at ~~such~~ the times ~~as~~ required by the secretary of health. ~~However, the~~ The board shall report to the secretary at least annually.

Section 10. That § 36-24-11 be AMENDED:

36-24-11. All moneys coming into the custody of the board~~, including license fees, renewal fees, penalty fees, reciprocity fees, late fees, and any other payments, shall~~ must

be paid by the board to the state treasurer ~~on or before the tenth day of each month, and shall consist of all moneys received by the board during the preceding calendar month~~. The state treasurer shall credit the moneys to the ~~South Dakota~~ Board of Licensed Hearing Aid Dispensers and Audiologists account of the general fund, which account is hereby created. The moneys in the account are hereby continuously appropriated to the board for the purpose of paying the expense of administering and enforcing the provisions of this chapter. The total expenses incurred by the board may not exceed the total moneys collected.

Section 11. That § 36-24-12.1 be AMENDED:

36-24-12.1. The board may:

(1) ~~Authorize all disbursements necessary to carry out the provisions of this chapter;~~

~~(2) Administer, coordinate, and enforce the provisions of this chapter, establish licensure fees, evaluate the qualifications of applicants, and issue and renew licenses;~~

~~(3) Prepare, administer, conduct, and supervise the qualifying examinations to test the knowledge and proficiency of hearing aid dispensers, and provide facilities necessary to carry out these examinations;~~

~~(4) Revoke, suspend, refuse to issue or renew a license, issue a letter of reprimand or concern, require restitution of fees, or impose probationary conditions in the manner provided in this chapter;~~

~~(5) Issue subpoenas, examine witnesses, administer oaths, conduct hearings and, at its discretion, investigate allegations of violations of this chapter and impose penalties if such violations of this chapter have occurred;~~

~~(6) Maintain a list of persons currently licensed and registered under the provision of this chapter and the clock hours of continuing education submitted by each person;~~

~~(7) Employ personnel as determined by its needs and budget;~~

~~(8) Request legal advice and assistance, as needed, from the Attorney General's Office;~~

~~(9) Enter into contracts as necessary to carry out its responsibilities under this chapter;~~

~~(10) Hire legal counsel, if necessary;~~

~~(11) Establish a budget;~~

~~(12) Submit reports of its operations and finances as requested by the Department of Health;~~

~~(13) Adopt an official seal by which it may authenticate its proceedings, copies of proceedings, records, acts of the board, and licenses;~~

~~(14) Communicate disciplinary actions to relevant state and federal authorities and to other state audiology licensing authorities as necessary;~~

~~(15) Establish continuing education requirements;~~

~~(16) Establish peer review committees within each discipline for review purposes~~ Establish educational, training, and competency standards governing the examination and practice of licensees using board-approved national accrediting agencies and accepted nationally established standards, if applicable;

(2) Examine an eligible applicant for a hearing aid dispensing license;

(3) Issue a license to an applicant who has met the licensure requirements of this chapter and renew the licenses of audiologists and hearing aid dispensers who meet the renewal requirements for licensure of this chapter;

(4) Establish continuing education requirements;

(5) Establish a budget;

(6) Establish peer review committees for audiologists and licensed hearing aid dispensers for review purposes;

(7) Employ personnel in accordance with the needs and budget of the board;

(8) Establish and collect fees as provided for by this chapter;

(9) Enter into contracts as necessary to carry out the board's responsibilities pursuant to the provisions of this chapter;

(10) Revoke, suspend, refuse to issue or renew a license, issue a letter of reprimand or concern, require restitution of fees, or impose probationary conditions in the manner provided in this chapter;

(11) Issue subpoenas, examine witnesses, administer oaths, conduct hearings, and investigate allegations, in accordance with chapter 36-1C, of violations of this chapter and impose penalties if such violations of this chapter have occurred;

(12) Communicate disciplinary actions and licensure status to relevant state and federal governing bodies as may be required, including the National Practitioner Data Bank; and

(13) Carry out the purposes and enforce the provisions of this chapter.

Section 12. That § 36-24-17.2 be AMENDED:

36-24-17.2. ~~Any applicant for licensure~~ To be eligible for a license to practice hearing aid dispensing ~~shall~~, a person must:

(1) ~~Be of good moral character~~Submit an application on a form prescribed by the board;

(2) Submit an application fee, in an amount established by the board in rule promulgated pursuant to chapter 1-26, but not exceeding three hundred fifty dollars;

(3) Be eighteen years of age or older;

~~(3)~~(4) Be a high school graduate or the equivalent; ~~and~~

~~(4)~~(5) Pass ~~an~~ a national examination approved by the board;

(6) Pass a practicum examination approved by the board; and

(7) Have not committed an act for which disciplinary action may be justified.

~~The applicant may not be the holder of an audiology license.~~

Section 13. That § 36-24-17.3 be AMENDED:

36-24-17.3. To be eligible for licensure by the board as an audiologist, ~~the applicant shall~~ a person must:

(1) ~~Be of good moral character~~Submit an application on a form prescribed by the board;

(2) Submit an application fee, in an amount established by the board in rule promulgated pursuant to chapter 1-26, but not exceeding three hundred fifty dollars;

(3) Possess a ~~master's or~~ doctorate degree in audiology from a regionally accredited educational institution;

~~(3)~~(4) Complete the supervised clinical practicum experience from a regionally accredited educational institution or its cooperating programs;

~~(4) Complete a period of supervised graduate professional experience in audiology as recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology; and~~

(5) Pass a national standardized examination in audiology as recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology; and

(5) Have not committed an act for which disciplinary action may be justified.

An applicant for an audiology license who completed training prior to August 30, 2007, and who possesses a master's degree in audiology, is exempt from the requirements of subdivisions (3) and (4) upon proof of completion of a period of supervised graduate

professional experience in audiology recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology.

Section 14. That § 36-24-20 be AMENDED:

36-24-20. ~~Any applicant who otherwise qualifies for a license to practice hearing aid dispensing is entitled to be examined.~~ The practicum examination ~~shall~~ required by subdivision 36-24-17.2(6) must include ~~the following~~:

(1) Tests of knowledge in the following areas as they pertain to the fitting and dispensing of hearing aids:

(a) Basic physics of sound;

(b) The human hearing mechanism, including the science of hearing and the rehabilitation of abnormal hearing disorders; and

(c) Structure and function of hearing aids; and

(2) Tests of proficiency in the following techniques as they pertain to the fitting and dispensing of hearing aids:

(a) Pure tone audiometry, including air conduction and bone conduction testing;

(b) Live voice and recorded voice speech audiometry, including speech threshold testing and speech discrimination testing;

(c) Effective masking;

(d) Recording and evaluation of audiograms and speech audiometry tests to determine hearing aid candidacy;

(e) Selection and adaptation of hearing aids and testing of hearing aids;

(f) Taking earmold impressions~~,~~; and ~~proficiency in any~~

(g) Any other skills as they pertain to the fitting and dispensing of hearing aids.

~~No test under this section~~ The practicum examination may not include any questions requiring a medical or surgical education.

Section 15. That § 36-24-24.1 be AMENDED:

36-24-24.1. Nothing in this chapter may be construed as preventing or restricting:

(1) A person licensed ~~or~~, certified, registered, or otherwise credentialed by this state in another profession from practicing within the scope of the profession for which the person is licensed ~~or~~, certified, registered, or otherwise credentialed;

(2) A person credentialed by this state as a teacher of deaf or hard of hearing students ~~providing instruction to persons who are deaf or hard of hearing~~ from:

(a) Providing audiology services or teaching in an infant or toddler program, a preschool, an elementary school, a secondary school, or a developmental disability program; or

(b) Teaching students in institutions of higher education;

(3) A physician or surgeon licensed by this state from performing tasks directly related to a disorder being treated;

(4) Any person possessing a valid certificate as a certified industrial audiometric technician or occupational hearing conservationist recognized by the board as meeting Council for Accreditation in Occupational Hearing Conservation ~~Standards~~ standards if ~~such~~ the service is performed in cooperation with either an audiologist licensed under this chapter or a licensed physician of this state;

(5) The activities and services of a person pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university if:

(a) The activities and services constitute a part of a planned course of study at that institution;

(b) The person is designated by the title of intern, trainee, student, volunteer, or other title clearly indicating the status appropriate to the person's level of education; and

(c) The person works under the supervision of an audiologist;

(6) The provision of over-the-counter hearing aids or devices available without the supervision, prescription, or other order, involvement, or intervention of a licensed person, to consumers through in-person transactions, by mail, or online; or

(7) Any commercial activity involving over-the-counter hearing aids or devices, including servicing, marketing, sale, dispensing, use, customer support, or distribution of over-the-counter hearing aids or devices through in-person transactions, by-mail, or online.

Section 16. That § 36-24-24.2 be AMENDED:

36-24-24.2. ~~The board shall issue a provisional hearing aid dispensing license, valid until the board receives the results from the next available administration of the examination following a submission of application of license, to an applicant to provide hearing aid services to a person who is waiting to take the hearing aid dispensing examination under this chapter.~~ The board may issue a provisional ~~hearing aid dispensing~~

license ~~valid until the board receives the results from the next available administration of the examination, not to exceed a one year period, to provide hearing aid services only~~ to a person who:

(1) Except for ~~taking and~~ passing an examination under this chapter, otherwise qualifies for a hearing aid dispensing license;

(2) Submits an application on the form prescribed by the board; and

(3) Pays the application fee set by the board, pursuant to rules promulgated pursuant to chapter 1-26, not to exceed one hundred fifty dollars.

~~If a person who holds a provisional hearing aid dispensing license issued under this section after the date of issue is unable to be present at the board specified examination, the~~ A provisional ~~hearing aid dispensing~~ license ~~may not be renewed~~ is valid until the board receives the results of the qualifying examination. The board may not renew a provisional license except for good cause shown to the satisfaction of the board.

~~While the provisional hearing aid dispensing license is in effect, the holder~~ A person who holds a provisional license pursuant to this section may provide hearing aid services only ~~while being trained~~ under the supervision of a licensed hearing aid dispenser or licensed audiologist.

Section 17. That § 36-24-25.1 be AMENDED:

36-24-25.1. ~~Pending board approval, the~~ The board may issue a hearing aid dispensing license or audiology license to ~~an applicant holding~~ a person who holds a valid license from another state in the ~~applicant's~~ person's respective professional area who:

(1) Applies to the board on a form prescribed by the board;

(2) Pays ~~to the board~~ the application fee, not to exceed three hundred fifty dollars, set by the board by rule promulgated pursuant to chapter 1-26; and

(3) Shows proof of a current valid ~~professional licensure;~~

~~(4) Holds a license from a state with equivalent licensure standards; and~~

~~(5) Is practicing audiology or hearing aid dispensing in the state in which the license was issued~~ license from a state with equivalent licensure standards.

An applicant for a hearing aid dispensing license who holds a current license to practice hearing aid dispensing in another state is exempt from the requirement of subdivision 36-24-17.2(5) upon furnishing proof of a current, valid license and passage of a board-approved national examination.

Section 18. That § 36-24-25.2 be AMENDED:

36-24-25.2. The board shall waive the education, practicum, and professional experience requirements for ~~applicants~~ an applicant who received a professional education in another country if ~~the~~:

(1) The board is satisfied that equivalent education and practicum requirements have been met; and ~~the~~

(2) The applicant passes the national examination in audiology.

Section 19. That § 36-24-29.1 be AMENDED:

36-24-29.1. ~~A licensee~~ The board may reinstate the license of a person who fails to renew the license by the end of the thirty-day grace period ~~may have the license reinstated~~ if:

(1) The person submits an application for reinstatement to the board within ~~three years~~ twenty-four months after the expiration date of the license;

(2) The person meets the requirements established by the board as conditions for license renewal; and

(3) The person pays to the board a reinstatement fee that equals the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee, not to exceed one hundred dollars, set by the board~~,~~ by rule promulgated pursuant to chapter 1-26.

~~Any~~ The board may not reinstate the license of a person who fails to renew ~~a~~ the license within ~~three years~~ twenty-four months from the expiration date ~~may not have the license reinstated~~. The person may apply for and obtain a new license ~~on conditions of~~ in accordance with the requirements of this chapter ~~and pay to the board the appropriate fees~~.

Section 20. That § 36-24-29.2 be AMENDED:

36-24-29.2. A suspended license is subject to expiration and may be renewed as provided in this chapter, but such renewal does not entitle the licensee, while the license remains suspended and until the license is reinstated, to engage in the licensed activity or in any other conduct or activity in violation of the order of judgment by which the license was suspended.

~~A license revoked on~~ If, after disciplinary ~~grounds~~ action, a license is ~~subject to~~ reinstated after its expiration ~~as provided in this chapter, and the license may not be renewed. If such license is reinstated after its expiration~~, the licensee, as a condition of reinstatement, ~~shall~~ must pay a reinstatement fee equal to the renewal fee in effect on

the last regular renewal date immediately preceding the date of reinstatement, plus any late fee set by the board by rule, promulgated pursuant to chapter 1-26, not to exceed one hundred dollars~~ set by the board, by rule promulgated pursuant to chapter 1-26~~. A licensee who seeks to reinstate a license after disciplinary action must apply to the board.

If a licensee is placed on probation, the board may require the license holder to:

(1) Report regularly to the board on matters that are the basis of the probation;

(2) Limit practice to areas prescribed by the board; or

(3) Order or review continuing education until the licensee attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Section 21. That § 36-24-31 be AMENDED:

36-24-31. ~~Any person who holds a hearing aid dispensing license or an audiology license shall notify the board in writing of the town and street address of the place where the licensee engages or intends to engage in the practice of the dispensing of hearing aids or audiology. If the place of business is located in, or in connection with, a place of residence, the room to be used as an office shall be clearly designated and identified for the convenience of the public. The board shall keep an up-to-date record of these addresses~~Each licensee, upon changing a name, place of employment, or place of business, must, within ninety days thereafter, provide the board with updated information. A post office box number may not be the address of the place of business.

The board may provide any notice required to be given by the board to a licensee by mailing the notice to the licensee's place of business on file with the board.

Section 22. That § 36-24-33 be AMENDED:

36-24-33. ~~Any person who practices the dispensing of hearing aids in the State of South Dakota shall deliver~~ A licensed hearing aid dispenser must provide, to each person sold a hearing aid, a receipt~~ which~~ that contains the~~ seller's~~:

(1) Seller's signature~~, the business~~;

(2) Business address of the seller~~, specification~~;

(3) Specifications of the hearing aid furnished, including whether it is new, used, or rebuilt~~, serial~~;

(4) Serial number of the aid~~, date~~;

(5) Date of sale~~, and the total~~;

(6) Total purchase price charged for the aid, less any allowance for a trade-in~~, if any,~~; and~~ the net~~

(7) Net amount paid by the purchaser.

A copy of the original sales order constitutes a valid receipt and a legal bill of sale, and the purchaser's signature constitutes full acknowledgment of the terms of the sale. Any purchaser of a hearing aid is entitled to a refund of the full purchase price advanced by the purchaser for the hearing aid, less a maximum of ten percent, upon the return of the hearing aid by the purchaser to the ~~licensee~~ licensed hearing aid dispenser within thirty days from the date of delivery unless set by contract for more than thirty days. Any refund ~~shall~~ must be paid within thirty days of the return date. A violation of this section is a Class 2 misdemeanor.

Section 23. That § 36-24-39.1 be AMENDED:

36-24-39.1. ~~Conduct which endangers or is likely to endanger the health, welfare, or safety of the public is grounds for~~ The board may take disciplinary action ~~and includes~~ for the following conduct:

(1) ~~Aiding or abetting unlicensed practice;~~

~~(2) Using or promoting or causing the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation;~~

~~(3) Falsely representing the use or availability or services or advice of a physician;~~

~~(4) Misrepresenting the applicant, licensee, or holder by using the word, doctor, or any similar word, abbreviation, or symbol if the use is not accurate or if the degree was not obtained from a regionally accredited institution;~~

~~(5) Committing any act of dishonorable or unprofessional conduct while engaging in the practice of audiology or hearing aid dispensing;~~

~~(6) Engaging in illegal, incompetent, or habitually negligent practice;~~

~~(7) Providing professional services while mentally incompetent, under the influence of alcohol, using any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication or having a serious infectious or contagious disease;~~

~~(8) Providing services or promoting the sale of devices, appliances, or products to a person who cannot reasonably be expected to benefit from such services, devices, appliances, or products;~~

~~(9) Violating any provision of this chapter, any order given by the board, or rule adopted by the board;~~

~~(10) Being convicted of or pleading guilty or nolo contendere to a felony, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;~~

~~(11) Being disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;~~

~~(12) Obtaining any fee or making any sale by fraud or misrepresentation;~~

~~(13) Advertising a particular model, type, or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;~~

~~(14) Permitting another person to use the hearing aid dispensing license or audiology license;~~

~~(15) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies, or services;~~

~~(16) Displaying competitive products in a show window, shop, or advertisement in such manner as to falsely disparage them;~~

~~(17) Quoting prices of competitive hearing aids or devices without disclosing that they are not the present current prices, or to show, demonstrate, or represent competitive models as being current models when such is not the fact;~~

~~(18) Imitating or simulating the trademarks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers;~~

~~(19) Using any trade name, corporate name, trademark, or other designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature, or origin of any product of the industry, or of any material used in the product, or which is false, deceptive, or misleading in any other material effect;~~

~~(20) Obtaining information concerning the business of a competitor by bribery of an employee or agent of a competitor, by false or misleading statements or representations, impersonation of one in authority, or by any other unfair means;~~

~~(21) Giving, or offering to give money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have~~

~~them influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or audiologist, or to influence persons to refrain from dealing in the products of competitors;~~

~~(22) Use of a false name or alias in the practice of the business~~

Fraudulently or deceptively obtaining or attempting to obtain a license or provisional license;

(2) Fraudulently or deceptively using a license or provisional license;

(3) Altering a license or provisional license;

(4) Aiding or abetting unlicensed practice;

(5) Selling, bartering, or offering to sell or barter a license or provisional license;

(6) Committing fraud or deceit in the practice of audiology or licensed hearing aid dispensing, including:

(a) Willfully making or filing a false report or record in the practice of audiology or licensed hearing aid dispensing;

(b) Submitting a false statement to collect a fee; or

(c) Obtaining a fee through fraud or misrepresentation;

(7) Using or promoting or causing the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand insignia, or any other representation;

(8) Falsely representing the use or availability of services or advice of a physician;

(9) Misrepresenting the applicant or licensee by use of the term, doctor, or any similar word, abbreviation, or symbol, if the use is not accurate or if the degree was not obtained from a regionally accredited institution;

(10) Committing any act of dishonesty or unprofessional conduct while engaging in the practice of audiology or licensed hearing aid dispensing;

(11) Engaging in illegal, incompetent, or negligent practice;

(12) Providing services or promoting the sale of devices, appliances, or products to a person who cannot reasonably be expected to benefit from the services, devices, appliances, or products as supported by relevant published literature;

(13) Violating any provision of this chapter, or any lawful order given, or rule adopted, by the board;

(14) Being convicted or pleading guilty or nolo contendere to a felony or to a crime involving moral turpitude, as defined by subdivision 22-1-2(25), whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

(15) Being disciplined or convicted by a disciplinary authority or court of any state or country, or nationally recognized professional organization, for an act that would be grounds for disciplinary action under this section;

(16) Failing to report any conviction or discipline referenced in subdivision (15);

(17) Failing to report suspected cases of child abuse or vulnerable adult abuse; or

(18) Violating federal, state, or local laws relating to the licensee's profession.

Section 24. That § 36-24-39.2 be AMENDED:

36-24-39.2. Any person licensed under this chapter is subject to the disciplinary actions of this section. Disciplinary actions are subject to contested case procedure in chapter 1-26. The board may impose, separately or in combination, any of the following disciplinary actions ~~if an applicant for a license or a licensee is found guilty of conduct which endangered or is likely to endanger the health, welfare, or safety of the public~~:

(1) Refuse to issue or renew a license;

(2) Issue a letter of reprimand or concern;

(3) Require ~~restitution of fees~~ the licensee to reimburse the board for the costs of an investigation and proceedings;

(4) Impose probationary conditions;

(5) Suspend or revoke a license;

(6) Impose practice or supervision requirements, or both; or

(7) Require the licensee to attend continuing education programs specified by the board.

Section 25. That § 36-24-41 be AMENDED:

36-24-41. ~~No hearing aid dispensing license or audiology~~ The board may suspend, revoke, deny, or deny the renewal of a license issued pursuant to this chapter ~~may be suspended, revoked, or denied, and no renewal may be denied, except~~ in compliance with chapter 1-26 and chapter 36-1C.

Any decision of the board to discipline a licensee, or to suspend, revoke, or reinstate a license requires a majority vote of the board membership.

Any party aggrieved by the acts, rulings, or decision of the board relating to refusal to grant, renew, or reinstate a license, or to revoke or suspend a license, has the right to appeal the same under the provisions of chapter 1-26.

Section 26. That § 36-24-42 be AMENDED:

36-24-42. ~~The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding~~Any person violating the provisions of this chapter may be enjoined from further violation upon application by the board for an injunction in any court of competent jurisdiction to restrain the person from continuing to practice. No proceeding may be barred by any proceeding ~~which~~ that occurred or is pending pursuant to § 36-24-39.2. However, an action for injunction is ~~alternate~~ an alternative to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

Section 27. That a NEW SECTION be added to chapter 36-24:

The board shall promulgate rules, pursuant to chapter 1-26, to:

(1) Delineate qualifications for licensure;

(2) Specify requirements for the renewal of licensure;

(3) Establish standards of professional conduct;

(4) Establish a schedule of disciplinary actions for violations of professional conduct;

(5) Establishment requirements for inactive licenses;

(6) Establish procedures for the collection and management of fees and payments; and

(7) Establish requirements for license application and renewal.

Section 28. That chapter 36-24 be amended with a NEW SECTION:

A licensed hearing aid dispenser or audiologist may provide services via telehealth pursuant to chapter 34-52. Any service delivered via telehealth must be equivalent to the quality of services delivered face-to-face.

Section 29. That § 36-24-1.1 be REPEALED:

~~For the purposes of this chapter, a hearing aid is any wearable instrument or device offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories to the instrument or device, including ear molds, but excluding batteries and cords. The term, hearing aid, does not include cochlear implant or cochlear prosthesis.~~

Section 30. That § 36-24-1.2 be REPEALED:

~~For the purposes of this chapter, an audiologist is any person who engages in the practice of audiology and who meets the qualifications set forth in this chapter. A person represents oneself to be an audiologist if that person holds out to the public by any means, or by any service or function performed, directly or indirectly, or by using the terms audiology, audiologist, audiometrist, audiological, hearing therapy, hearing therapist, hearing clinic, hearing clinician, hearing aid audiologist, or any variation that expresses these terms.~~

Section 31. That § 36-24-1.3 be REPEALED:

~~For the purposes of this chapter, a hearing aid dispenser is any person, other than an audiologist, engaged in the evaluation or measurement of the powers or range of human hearing by means of an audiometer, or by any other means devised, and the consequent selection or adaptation or sale of a hearing aid intended to compensate for hearing loss, including the making of an ear impression.~~

Section 32. That § 36-24-1.4 be REPEALED:

~~For the purposes of this chapter, instruction is either of the following:~~

~~(1) Providing audiology services or teaching in an infant or toddler program, a preschool, an elementary school, a secondary school, or a developmental disability program; or~~

~~(2) Teaching students in institutions of higher education.~~

Section 33. That § 36-24-1.5 be REPEALED:

~~For the purposes of this chapter, research is the systematic investigation designed to develop or contribute to generalizable knowledge about human communication, human communication disorders, and evaluation or treatment strategies. Activities which meet this definition constitute research. However, research does not include activities that take place under the auspices of a recognized institutional review board which reviews, approves, and monitors proposals and activities involving human subjects to ensure that the rights and welfare of such subjects are protected.~~

Section 34. That § 36-24-3 be REPEALED:

~~The board shall consist of five members who have been residents of this state for at least one year prior to their appointment. Two members of the board shall be~~

~~audiologists who are currently practicing audiology or who have two years of experience practicing audiology and who hold active licensure for the practice of audiology in this state. The first audiologist appointed to the board shall meet the eligibility requirements for licensure as specified in this chapter. Two members of the board shall be persons with at least two years of experience in the practice of fitting and dispensing hearing aids and who hold an active hearing aid dispensing license. One member of the board shall be a representative of the public who is not associated with or financially interested in the practice or business of hearing aid dispensing or audiology or who is not a member of a related profession or occupation.~~

Section 35. That § 36-24-4 be REPEALED:

~~The members of the board enumerated in § 36-24-3 shall be appointed by the Governor. No member of the board may concurrently serve in an elected, appointed, or employed position in any state professional association or governmental regulatory agency which presents a conflict of interest.~~

Section 36. That § 36-24-4.1 be REPEALED:

~~The membership of the board shall include one lay member who shall be appointed by the Governor and shall have the same term of office as other members of the board. The lay member of the board shall be a member of the general public who:~~

~~(1) Is not and has never been an audiologist or hearing aid dispenser;~~

~~(2) Has no household member who is an audiologist or hearing aid dispenser;~~

~~(3) Is not and has never been a participant in a commercial or professional field related to audiology or the provisions of hearing aid services;~~

~~(4) Has no household member who participates in a commercial or professional field related to audiology or the provisions of hearing aid services; and~~

~~(5) Has not had, within two years before appointment, a financial interest in a person regulated by the board.~~

Section 37. That § 36-24-6 be REPEALED:

~~No member of the board may serve more than three consecutive full terms or be reappointed to the board until at least one year after the expiration of the member's third term of office. The appointment to an unexpired term is not considered a full term. The~~

~~Governor may remove a member of the board for dishonorable conduct, incompetence, or neglect of duty.~~

Section 38. That § 36-24-7 be REPEALED:

~~In the event of a vacancy on the board caused by the death of a member, resignation, removal from the state, or for any other reason, the Governor shall appoint a new member to serve out the unexpired term.~~

Section 39. That § 36-24-13.4 be REPEALED:

~~Nothing in this chapter may be construed as preventing or restricting the activities and services of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university if these activities and services constitute a part of a planned course of study at that institution and these persons are designated by a title such as intern, trainee, student, volunteer, occupational hearing conservationist, industrial audiometric technician, or by other such title clearly indicating the status appropriate to their level of education and these persons work under the supervision of a person licensed by the state to practice audiology.~~

Section 40. That § 36-24-14 be REPEALED:

~~This chapter shall not apply to a physician licensed by the State Board of Medical and Osteopathic Examiners.~~

Section 41. That § 36-24-17.1 be REPEALED:

~~Any applicant pursuant to this chapter shall apply on a form prescribed by the board and pay any applicable fees. The applicant shall also meet all other qualifications specified within this chapter for each respective profession for which the person seeks licensure.~~

Section 42. That § 36-24-17.4 be REPEALED:

~~An applicant who does not meet the provisions of subdivision 36-24-17.3(4) or (5) may be issued a license to practice as an audiologist pending board approval if the applicant demonstrates the following:~~

~~(1) Has formally and consistently represented oneself to the public as an audiologist;~~

~~(2) Has a master's or doctorate degree in audiology from a regionally accredited educational institution;~~

~~(3) Has spent the majority of working hours in the practice of audiology;~~

~~(4) Passed any board designated written or oral exam for applicants who have not met subdivision 36-24-17.3(5);~~

~~(5) Submits an application on a form prescribed by the board by January 1, 1998; and~~

~~(6) Pays the application fee set by the board not to exceed three hundred fifty dollars.~~

Section 43. That § 36-24-18 be REPEALED:

~~An applicant for a hearing aid dispensing license having been notified by the board that the applicant has fulfilled the requirements of §§ 36-24-17.1 and 36-24-17.2 shall appear at a time, place, and before such persons as the board may designate, to be examined by written and oral tests to determine that the applicant is qualified to practice the fitting and dispensing of hearing aids.~~

Section 44. That § 36-24-19 be REPEALED:

~~As the volume of applications may make appropriate, the board shall administer the qualifying examinations throughout the year as the board may designate.~~

Section 45. That § 36-24-21.1 be REPEALED:

~~The board shall issue a license to any applicant who meets the requirements of this section and pays the application fee set by the board, by rule promulgated pursuant to chapter 1-26, not to exceed three hundred fifty dollars.~~

Section 46. That § 36-24-24.3 be REPEALED:

~~The board shall issue a provisional audiology license to any applicant who:~~

~~(1) Except for the postgraduate professional experience, meets the academic, practicum, and examination requirements of this chapter;~~

~~(2) Applies to the board on a form prescribed by the board, with a plan for the content of the postgraduate professional experience; and~~

~~(3) Pays to the board the application fee for a provisional license not to exceed one hundred fifty dollars set by the board by rule promulgated pursuant to chapter 1-26.~~

~~A person holding a provisional audiology license is authorized to practice audiology only while working under the supervision of a licensed audiologist under the provisions of this chapter. The term for provisional audiology licenses and the conditions for renewal shall be determined by the board by rules promulgated pursuant to chapter 1-26.~~

Section 47. That § 36-24-34 be REPEALED:

~~No person may sell, barter, or offer to sell or barter any hearing aid dispensing license or audiology license. A violation of this section is a Class 2 misdemeanor.~~

Section 48. That § 36-24-35 be REPEALED:

~~No person may purchase a hearing aid dispensing license or an audiology license or procure either license by barter with the intent to use it as evidence of the holder's qualifications to practice the dispensing of hearing aids or to practice audiology. A violation of this section is a Class 2 misdemeanor.~~

Section 49. That § 36-24-36 be REPEALED:

~~No person may alter a hearing aid dispensing license or an audiology license with fraudulent intent. A violation of this section is a Class 2 misdemeanor.~~

Section 50. That § 36-24-37 be REPEALED:

~~No person may use or attempt to use a valid hearing aid dispensing license or audiology license which has been purchased, fraudulently obtained, counterfeited, or altered. A violation of this section is a Class 2 misdemeanor.~~

Section 51. That § 36-24-38 be REPEALED:

~~No person may intentionally make a false statement in an application for a hearing aid dispensing license or an audiology license or for a renewal of either license. A violation of this section is a Class 2 misdemeanor.~~

Section 52. That § 36-24-45 be REPEALED:

~~An applicant shall be issued a South Dakota hearing aid dispensing license if the applicant holds a current and valid South Dakota hearing aid dispenser's license and is not eligible for a South Dakota audiology license prior to July 1, 1997.~~

Section 53. That § 36-24-46 be REPEALED:

~~The board may promulgate rules pursuant to chapter 1-26 to establish application fees, license fees, provisional license fees, renewal fees, penalty fees, reciprocity fees, and late fees. All fees provided under this chapter are nonrefundable. No fee may exceed three hundred fifty dollars.~~

~~The board may also promulgate rules pursuant to chapter 1-26 for the qualification of applicants, issuance and renewal of licenses, and requirements for continuing education.~~