

## CHAPTER 244

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**PROFESSIONS AND OCCUPATIONS**

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**HOUSE BILL 00-1300**

BY REPRESENTATIVES Tochtrop, Alexander, Clarke, Hagedorn, Hefley, Lawrence, Morrison, Witwer, Coleman, Gagliardi, Keller, Leyba, Mace, Ragsdale, Tapia, Tupa, Veiga, S. Williams, and Zimmerman;  
also SENATORS Rupert, Blickensderfer, Epps, Evans, Hernandez, Martinez, Pascoe, Powers, and Tanner.

**AN ACT**

CONCERNING THE REGULATION OF PERSONS WHO TREAT THE HEARING IMPAIRED, AND, IN CONNECTION THEREWITH, CONTINUING THE REGULATION OF AUDIOLOGISTS AND REGISTERED HEARING AID PROVIDERS BY THE DIRECTOR OF THE DIVISION OF REGISTRATIONS AND CLARIFYING PROVISIONS OF THE "COLORADO CONSUMER PROTECTION ACT" RELATING TO AUDIOLOGISTS AND REGISTERED HEARING AID PROVIDERS.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 12-5.5-105 (1) (b) (X), Colorado Revised Statutes, is amended to read:

**12-5.5-105. Grounds for discipline - disciplinary actions.** (1) (b) The following acts shall constitute grounds for discipline:

(X) Failing to adequately supervise a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER trainee OR ASSOCIATE.

**SECTION 2.** Part 1 of article 5.5 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**12-5.5-107. Cease and desist orders.** (1) IF, AS THE RESULT OF AN INVESTIGATION OF A WRITTEN COMPLAINT BY ANY PERSON OR ON THE DIRECTOR'S OWN MOTION, THE DIRECTOR DETERMINES THAT ANY PERSON WHO IS ACTING OR HAS ACTED WITHOUT THE REQUIRED REGISTRATION, OR IS OTHERWISE IN VIOLATION OF THIS ARTICLE, OR IS ACTING IN A MANNER THAT IS A THREAT TO THE HEALTH AND SAFETY OF THE PUBLIC, THE DIRECTOR MAY ISSUE AN ORDER TO CEASE AND DESIST SUCH ACTIVITY. THE ORDER SHALL SET FORTH THE STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

VIOLATION, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS CEASE IMMEDIATELY.

(2) WITHIN THIRTY DAYS AFTER SERVICE OF THE ORDER TO CEASE AND DESIST, THE RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE HAVE OCCURRED. SUCH HEARINGS SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S.

(3) IN THE EVENT THAT ANY PERSON FAILS TO COMPLY WITH A CEASE AND DESIST ORDER, THE DIRECTOR MAY REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING, AND IF SO REQUESTED SUCH ATTORNEY SHALL BRING, A SUIT FOR A TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE ORDER.

(4) MATTERS BROUGHT BEFORE A COURT PURSUANT TO THIS SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON THE COURT'S CALENDAR.

**SECTION 3.** 12-5.5-201 (3) and (4), Colorado Revised Statutes, are amended to read:

**12-5.5-201. Definitions.** As used in this part 2, unless the context otherwise requires:

(3) "~~Hearing aid dealer~~" "REGISTERED HEARING AID PROVIDER" means a person engaged in the practice of dispensing, fitting, or dealing in hearing aids, who has passed an examination conducted under the auspices of the national board for certification in hearing instrument sciences (~~NBCHHS~~) (NBC-HIS) or an equivalent examination as determined by the director; except that a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER who is engaged in the practice of dispensing, fitting, or dealing in hearing aids on or before July 1, 1995, shall demonstrate, not later than July 1, 1997, that he or she has passed such an examination.

(4) "Registrant" means a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER who holds a current certificate of registration from the division of registrations pursuant to this part 2.

**SECTION 4.** 12-5.5-202 (1), (2) (a), (2) (b) (I), (2) (b) (III), and (2) (b) (IV), Colorado Revised Statutes, are amended to read:

**12-5.5-202. Registration required - application - bond.** (1) A ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER shall register pursuant to this part 2 before selling or negotiating to sell, directly or indirectly, any hearing device for the hearing impaired unless such ~~dealer~~ PROVIDER holds a current registration pursuant to part 1 of this article. Upon registering, the ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER shall be given a certificate of registration bearing a unique registration number. The ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER shall include the registration number on all written contracts and receipts, as required pursuant to section 6-1-701 (2) (a), C.R.S. A ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER who is also an audiologist and is registered only under part 1 of this article shall include the registration number issued pursuant to such part 1 on all written contracts and receipts.

(2) (a) A ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER desiring to register pursuant to this section shall submit to the director an application containing the information described in this subsection (2) and shall pay a fee to be determined and collected pursuant to section 24-34-105, C.R.S. The director may deny an application for registration if the required information is not submitted or if an applicant's trainee registration certificate, issued pursuant to section 12-5.5-202.5, has been revoked. If an applicant or registrant does not notify the director of a change in the submitted information within thirty days after such change, such failure shall be cause for disciplinary action.

(b) The following information shall be included in every application for registration under this section:

(I) The name, business address, and business telephone number of the ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER;

(III) Proof of having obtained a surety bond or an alternative, as authorized in section 11-35-101, C.R.S., in an amount not to exceed ~~five~~ TEN thousand dollars. SUCH SURETY BOND SHALL REQUIRE THE SURETY TO PROVIDE NOTICE TO THE DIRECTOR WITHIN THIRTY DAYS AFTER RECEIPT OF A CLAIM OR PAYMENT MADE FROM SUCH SURETY BOND OR IF THE BOND IS CANCELLED FOR ANY REASON.

(IV) A statement indicating whether any ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER license, certificate, or registration was issued to the ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER by a local, state, or national health care agency, whether any such license, certificate, or registration was suspended or revoked, whether charges or complaints are pending against such license, certificate, or registration, and whether disciplinary action was taken.

**SECTION 5.** 12-5.5-202.5 (1), (2) (b), (3) (a), (3) (c), (4) (b), and (5), Colorado Revised Statutes, are amended to read:

**12-5.5-202.5. Registration - trainees and associates.** (1) A person training to be a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER shall submit to the director an application containing the information described in subsection (2) of this section and shall pay a trainee OR ASSOCIATE registration fee to be determined and collected pursuant to section 24-34-105, C.R.S.

(2) The director shall issue a trainee registration certificate to any applicant who provides the following to the director's satisfaction:

(b) Verification of training to become a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER, which training is under the direct and personal supervision of an audiologist or a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER whose registration is in good standing. For the purposes of this section, "audiologist" has the same meaning as set forth in section 12-5.5-101 (1).

(3) During the training period:

(a) A trainee OR ASSOCIATE shall not sell hearing aids independently of the supervising ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER or audiologist;

(c) A supervising ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER or audiologist shall retain ultimate responsibility for the care provided by the trainee OR ASSOCIATE and shall be subject to disciplinary action by the director for failure to provide adequate supervision.

(4) The director shall promulgate all rules necessary for the enforcement and administration of this section, including rules that:

(b) Specify the components of the training required to be completed by trainees AND ASSOCIATES.

(5) Any person issued a trainee registration certificate, INCLUDING AN ASSOCIATE, under this section is subject to the disciplinary provisions of section 12-5.5-205.

**SECTION 6.** 12-5.5-203 (1), Colorado Revised Statutes, is amended to read:

**12-5.5-203. Registration procedure.** (1) The director shall register all applicants who meet the requirements of this part 2 and shall provide each registrant with a certificate indicating that the person named in such certificate is registered in the state of Colorado as a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER.

**SECTION 7.** 12-5.5-205 (1) (a) (V), (1) (b) (XI), and (2), Colorado Revised Statutes, are amended, and the said 12-5.5-205 (1) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

**12-5.5-205. Grounds for discipline - disciplinary action.** (1) (a) If, after investigation, notice, and the opportunity for hearing in accordance with article 4 of title 24, C.R.S., the director determines that an applicant, registrant, ~~or~~ trainee, OR ASSOCIATE has committed any of the acts specified in paragraph (b) of this subsection (1), the director may:

(V) Deny, revoke, or suspend the certificate of a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER trainee OR ASSOCIATE.

(b) The following acts shall constitute grounds for discipline:

(XI) Failing to adequately supervise a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER trainee OR ASSOCIATE;

(XII) CONVICTION OR ACCEPTANCE OF A PLEA OF GUILTY OR NOLO CONTENDERE OR RECEIPT OF A DEFERRED SENTENCE IN ANY COURT TO A FELONY.

(2) Any disciplinary action taken with respect to a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER by another state or local jurisdiction or the federal government shall be deemed prima facie evidence of grounds for disciplinary action, including denial of registration under this part 2; except that this subsection (2) shall apply only to disciplinary actions that are substantially similar to those set out as grounds for disciplinary action under this part 2.

**SECTION 8.** Part 2 of article 5.5 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**12-5.5-205.5. Cease and desist orders.** (1) IF, AS THE RESULT OF AN INVESTIGATION OF A WRITTEN COMPLAINT BY ANY PERSON OR ON THE DIRECTOR'S OWN MOTION, THE DIRECTOR DETERMINES THAT ANY PERSON WHO IS ACTING OR HAS ACTED WITHOUT THE REQUIRED REGISTRATION, OR IS OTHERWISE IN VIOLATION OF THIS ARTICLE, OR IS ACTING IN A MANNER THAT IS A THREAT TO THE HEALTH AND SAFETY OF THE PUBLIC, THE DIRECTOR MAY ISSUE AN ORDER TO CEASE AND DESIST SUCH ACTIVITY. THE ORDER SHALL SET FORTH THE STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED, THE FACTS ALLEGED TO HAVE CONSTITUTED THE VIOLATION, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS CEASE IMMEDIATELY.

(2) WITHIN THIRTY DAYS AFTER SERVICE OF THE ORDER TO CEASE AND DESIST, THE RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE HAVE OCCURRED. SUCH HEARINGS SHALL BE CONDUCTED PURSUANT TO THE PROVISIONS OF ARTICLE 4 OF TITLE 24, C.R.S.

(3) IN THE EVENT THAT ANY PERSON FAILS TO COMPLY WITH A CEASE AND DESIST ORDER, THE DIRECTOR MAY REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING, AND IF SO REQUESTED SUCH ATTORNEY SHALL BRING, A SUIT FOR A TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE ORDER.

(4) MATTERS BROUGHT BEFORE A COURT PURSUANT TO THIS SECTION SHALL HAVE PREFERENCE OVER OTHER MATTERS ON THE COURT'S CALENDAR.

**SECTION 9.** 12-5.5-206 (4) (b) and (5), Colorado Revised Statutes, are amended to read:

**12-5.5-206. Director - powers - duties.** (4) The director shall adopt all rules necessary for the enforcement or administration of this part 2, including, but not limited to, rules that require:

(b) That SUPERVISING registrants OR REGISTRANTS DESIGNATED BY SUCH REGISTRANTS' EMPLOYERS maintain for at least seven years records identifying customers by name, the goods or services provided to each customer, and the date and price of each transaction.

(5) The director may require ~~hearing aid dealers~~ REGISTERED HEARING AID PROVIDERS to make disclosures to purchasers in their written contracts of sale or in separate written documents if the director finds that such disclosures are necessary for the protection of purchasers.

**SECTION 10.** 12-5.5-207 (1), Colorado Revised Statutes, is amended to read:

**12-5.5-207. Repeal of part.** (1) This article is repealed, effective July 1, 2000 2007.

**SECTION 11.** 6-1-701 (1) (d) and (1) (f), the introductory portion to 6-1-701 (2), and 6-1-701 (2) (a) (I), (2) (a) (II), (2) (a) (III), (2) (c) (I), (2) (c) (II), (2) (e) (I), (2) (e) (II), (2) (e) (III), (2) (g), and (2) (j), Colorado Revised Statutes, are amended, and the said 6-1-701 (1) is further amended BY THE ADDITION OF A NEW

PARAGRAPH, to read:

**6-1-701. Registered hearing aid providers - deceptive trade practices.** (1) As used in this section, unless the context otherwise requires:

(d) ~~"Hearing aid dealer" means an individual who is registered as a hearing aid dealer pursuant to part 2 of article 5.5 of title 12, C.R.S.~~

(e.5) "REGISTERED HEARING AID PROVIDER" MEANS AN INDIVIDUAL WHO IS REGISTERED AS A HEARING AID PROVIDER PURSUANT TO PART 2 OF ARTICLE 5.5 OF TITLE 12, C.R.S.

(f) "Trial period" means the first thirty days the buyer has the hearing aid or aids in such buyer's possession. Any such trial period shall be extended by mutual agreement of the buyer and the ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER.

(2) In addition to any other deceptive trade practices under section 6-1-105 or this part 7, a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER or, with respect to only paragraph (a) of this subsection (2), an audiologist engages in a deceptive trade practice when such ~~dealer~~ PROVIDER:

(a) Fails to deliver to each person supplied with a hearing aid a receipt that:

(I) Bears the business address of the ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER together with specifications as to the make and serial number of the hearing aid furnished and the full terms of the sale clearly stated. If a hearing aid that is not new is sold, the container thereof and the receipt shall be clearly marked as "used" or "reconditioned", whichever is applicable, within the terms of the guarantee, if any.

(II) Bears, in no smaller type than the largest used in the body of the receipt, in substance, a provision that the purchaser has been advised at the outset of the purchaser's relationship with the ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER that any examination or representation made by a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER in connection with the practice of dispensing, fitting, or dealing in hearing aids is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice;

(III) Bears, in no smaller type than the largest used in the body of the receipt, a provision indicating that consumer complaints that cannot be resolved with the ~~dealer~~ REGISTERED HEARING AID PROVIDER may be filed initially with the office of the district attorney for the jurisdiction where the device was sold or with the state attorney general's office and the address and telephone number of the district attorney's office or attorney general's office where such complaints may be filed;

(c) (I) Fails to receive from a licensed physician, prior to dispensing, fitting, or dealing in a hearing aid to any person, a written prescription or recommendation that specifies that the person is in fact in need of a hearing aid; except that any person eighteen years of age or older who objects to medical evaluation for religious or

personal beliefs may waive the requirement ~~in such person's own handwriting~~ BY DELIVERING TO THE REGISTERED HEARING AID PROVIDER A WRITTEN WAIVER;

(II) Sells, provides, dispenses, adjusts, provides training or teaching in regard to, or otherwise services cochlear implants unless such ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER is an audiologist or a physician;

(e) Fails to provide a thirty-day rescission period with the following terms:

(I) The buyer shall have the right to cancel the purchase for any reason before the expiration of the rescission period by giving or mailing written notice of cancellation to the seller. The thirty-day rescission period shall be tolled for any period during which a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER takes possession or control of a hearing aid after its original delivery.

(II) The buyer, upon cancellation, is entitled to receive a full refund of any payment made for the hearing aid within thirty days of return of the hearing aid to the seller; except that, if the hearing aid is returned for any reason other than a defect in such hearing aid, the seller may retain an itemized amount to cover the minimum costs of materials used by the ~~dealer~~ REGISTERED HEARING AID PROVIDER and a manufacturer's return fee, but such amount may not be greater than five percent of the total charge for the hearing aid.

(III) (A) The seller shall provide a written receipt or contract to the buyer that includes, in immediate proximity to the space reserved for the signature of the buyer, the following specific statement in all capital letters of no less than ten-point bold-faced type:

**"THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO 12 MIDNIGHT OF THE 30TH CALENDAR DAY AFTER RECEIPT OF THE HEARING AID BY GIVING OR MAILING THE SELLER WRITTEN NOTICE OF CANCELLATION AND BY RETURNING THE HEARING AID. BY LAW, THE SELLER IS ALLOWED TO RETAIN AN ITEMIZED AMOUNT, NOT TO EXCEED FIVE PERCENT OF THE TOTAL CHARGE FOR THE HEARING AID, TO COVER THE COSTS OF A MANUFACTURER'S RETURN FEE AND THE MINIMUM COSTS OF MATERIALS USED BY THE ~~DEALER~~ REGISTERED HEARING AID PROVIDER, UNLESS THE HEARING AID IS RETURNED BECAUSE IT IS DEFECTIVE."**

(B) The written contract or receipt provided to the buyer shall also contain a statement, in print size no smaller than ten-point type, that the sale is void and unenforceable if the hearing aid being purchased is not delivered to the consumer within thirty days after the date the written contract is signed or the receipt is issued, whichever occurs later. The written contract or receipt shall also include the ~~hearing aid dealer's~~ REGISTERED HEARING AID PROVIDER'S registration number and a statement that the ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER shall

promptly refund all moneys paid for the purchase of a hearing aid if it is not delivered to the consumer within such thirty-day period. Such statement is not subject to waiver by the buyer.

(g) Directly or indirectly gives or offers to give or permits or causes to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence such person or have such person influence others to purchase or contract to purchase products sold or offered for sale by a ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER or influences persons to refrain from dealing in the products of competitors;

(j) Charges, collects, or recovers any cost or fee for any good or service that has been represented by the ~~hearing aid dealer~~ REGISTERED HEARING AID PROVIDER as free.

**SECTION 12. Repeal.** 24-34-104 (29.1) (b), Colorado Revised Statutes, is repealed as follows:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (29.1) The following functions of the specified agencies shall terminate on July 1, 2000:

(b) ~~The registration of audiologists and hearing aid dealers by the division of registrations, pursuant to article 5.5 of title 12, C.R.S.~~

**SECTION 13.** 24-34-104 (38), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (38) The following agencies, functions, or both, shall terminate on July 1, 2007:

(c) THE REGISTRATION OF AUDIOLOGISTS AND REGISTERED HEARING AID PROVIDERS BY THE DIVISION OF REGISTRATIONS, PURSUANT TO ARTICLE 5.5 OF TITLE 12, C.R.S.

**SECTION 14. Effective date.** This act shall take effect July 1, 2000.

**SECTION 15. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 26, 2000