

1 AN ACT relating to the selling and fitting of hearing instruments.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 334.020 is amended to read as follows:

4 No person shall engage in the sale or practice of fitting hearing instruments or display a
5 sign or in any other way advertise or represent himself ***or herself*** as a person who
6 practices the sale or fitting of hearing instruments unless he ***or she*** holds:

7 ***(1)*** An unsuspended, unrevoked license issued by the board pursuant to KRS 334.080;

8 ***(2)*** ~~A[, or unless he holds a]~~ current, unsuspended, unrevoked apprentice permit
9 pursuant to KRS 334.090. The license or permit shall be conspicuously posted in
10 each office or place of business; ***or***

11 ***(3)*** ***A license to practice as an audiologist issued by the Kentucky Board of Speech-***
12 ***Language Pathology and Audiology pursuant to KRS Chapter 334A.***

13 ➔Section 2. KRS 334A.020 is amended to read as follows:

14 As used in this chapter, unless the context otherwise requires:

15 (1) "Board" means the Kentucky Board of Speech-Language Pathology and Audiology;

16 (2) "Person" means any individual, organization, or corporate body, except that only
17 individuals can be licensed under this chapter;

18 (3) "Speech-language pathologist" means one who practices speech-language
19 pathology. A speech-language pathologist may describe himself to the public by any
20 title or description of services incorporating the words "speech-language
21 pathologist," "speech-language pathology," "speech-language therapy," "speech-
22 language correction," "speech-language correctionist," "speech-language therapist,"
23 "speech clinic," "speech clinician," "speech pathologist," "language pathologist,"
24 "language pathology," "language therapist," "logopedics," "logopedist,"
25 "communicology," "communicologist," "aphasiologist," "voice therapy," "voice
26 therapist," "voice pathology," "voice pathologist," "phoniatriest," "communication
27 disorders," or "verbal therapist";

- 1 (4) "The practice of speech pathology" means the application of principles, methods,
2 and procedures for the measurement, testing, audiometric screening, identification,
3 appraisal, determination of prognosis, evaluation, consultation, remediation,
4 counseling, instruction, and research related to the development and disorders of
5 speech, voice, verbal and written language, cognition/communication, or oral and
6 pharyngeal sensori-motor competencies for the purpose of designing and
7 implementing programs for the amelioration of these disorders and conditions. Any
8 representation to the public by title or by description of services, methods, or
9 procedures for the evaluation, counseling, remediation consultation, measurement,
10 testing, audiometric screening, identification, appraisal, instruction, and research of
11 persons diagnosed with conditions or disorders affecting speech, voice, verbal and
12 written language, cognition/communication, or oral and pharyngeal sensori-motor
13 competencies shall be considered to be the practice of speech-language pathology;
- 14 (5) "Audiologist" is defined as one who practices audiology. An audiologist may
15 describe himself to the public by any title or description of services incorporating
16 the words "audiologist," "audiology," "audiological," "hearing center," "hearing
17 clinic," "hearing clinician," "hearing therapist," "audiometry," "audiometrist,"
18 "audiometrics," "otometry," "otometrist," "aural rehabilitationist," or "hearing
19 conservationist";
- 20 (6) "The practice of audiology" means the application of principles, methods, and
21 procedures of measurement, testing, appraisal, prediction, consultation, counseling,
22 and instruction related to hearing and disorders of hearing for the purpose of
23 modifying communicative disorders involving speech, language, auditory behavior,
24 or other aberrant behavior related to hearing loss; planning, directing, conducting,
25 or participating in identification and hearing conservation programs; and
26 habilitative and rehabilitative programs, including hearing aid recommendations
27 and evaluation, *selling or fitting of hearing instruments*, auditory training, or

1 speech reading;

2 (7) "Continuing professional education" in speech-language pathology and audiology
3 consists of planned learning experiences beyond a basic educational program
4 leading to a degree. These experiences are designed to promote knowledge, skills,
5 and attitudes of speech-language pathology and audiology practitioners to enable
6 them to provide professional services in their areas of training that are based on
7 current research and best practices;

8 (8) "Speech-language pathology assistant" means one who assists in the practice of
9 speech-language pathology only under the supervision and direction of an
10 appropriately qualified supervisor and only within the public school system in the
11 Commonwealth. Any speech pathology services provided without appropriate
12 supervision or outside the public school system shall be deemed to be the
13 unlicensed practice of speech pathology and shall subject the offending party to
14 penalties established pursuant to KRS 334A.990;

15 (9) "Assisting in the practice of speech pathology" means the provision of certain
16 specific components of a speech or language service program provided by a speech-
17 language pathology assistant under the supervision and direction of an appropriately
18 qualified supervisor.

19 (a) If the training, supervision, documentation, and planning are appropriate, the
20 following tasks may be delegated to a speech-language pathology assistant:

- 21 1. Conduct speech-language and hearing screenings without interpretation
22 following specified screening protocols developed by a speech-language
23 pathologist and audiologist, respectively;
- 24 2. Follow documented treatment plans or protocols as prescribed by the
25 supervisor;
- 26 3. Document student progress toward meeting established objectives as
27 stated in the treatment plan;

- 1 4. Provide direct treatment assistance to identified students under the
- 2 supervision of the supervisor;
- 3 5. Assist with clerical and other related duties as directed by the
- 4 supervisor;
- 5 6. Report to the supervisor about the treatment plan based on a student's
- 6 performance;
- 7 7. Schedule activities, prepare charts, records, graphs, or otherwise display
- 8 data. This shall not include report generation;
- 9 8. Perform simple checks and maintenance of equipment;
- 10 9. Participate with the supervisor in research projects, inservice training,
- 11 and public relations programs;
- 12 10. Assist in the development and maintenance of an appropriate schedule
- 13 for service delivery;
- 14 11. Assist in implementing collaborative activities with other professionals;
- 15 12. Assist in administering tests for diagnostic evaluations and progress
- 16 monitoring; and
- 17 13. Participate in parent conferences, case conferences, or any
- 18 interdisciplinary team in consultation with, or in the presence of, the
- 19 supervisor.
- 20 (b) The following activities shall be outside the scope of practice of the speech-
- 21 language pathology assistant:
- 22 1. Performing any activity which violates the code of ethics promulgated
- 23 by the board by administrative regulation;
- 24 2. Interpreting test results, or performing diagnostic evaluations without
- 25 supervision;
- 26 3. Conducting client or family counseling without the recommendation,
- 27 guidance, and approval of the supervisor;

- 1 4. Writing, developing, or modifying a student's individualized treatment
2 plan in any way without the recommendation, guidance, and approval of
3 the supervisor;
- 4 5. Treating students without following the individualized treatment plan
5 prepared by the supervisor or without access to supervision;
- 6 6. Signing any due process document without the co-signature of the
7 supervisor;
- 8 7. Selecting or discharging students;
- 9 8. Disclosing clinical or confidential information, either orally or in
10 writing, to anyone not designated by the supervisor;
- 11 9. Making referrals for additional services; and
- 12 10. Representing himself or herself as something other than a speech-
13 language pathology assistant;
- 14 (10) "Supervisor" means a person who holds a Kentucky license as a speech-language
15 pathologist or who holds Education Professional Standards Board master's level
16 certification as a teacher of exceptional children in the areas of speech and
17 communication disorders as established by administrative regulation;
- 18 (11) "Interim license" means a license issued by the board pursuant to KRS 334A.035 to
19 a person for the purpose of completing the supervised postgraduate professional
20 experience required under that section prior to an application for licensure as a
21 speech-language pathologist or a speech-language pathology assistant; and
- 22 (12) "Temporary license" means a license that may be issued by the board administrator
23 pursuant to KRS 334A.183 to any applicant who has met all the requirements for
24 permanent licensure in accordance with that section.

25 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO
26 READ AS FOLLOWS:

27 **(1) Any person who practices the sale or fitting of hearing instruments shall obtain**

1 from the buyer of a hearing instrument, at the time the buyer assumes any
2 financial obligation regarding the purchase, the buyer's signature on a written
3 and dated agreement, offer to purchase, or receipt. The written agreement, offer
4 to purchase, or receipt shall contain the:

5 (a) 1. Licensee's signature and printed name;

6 2. Business address; and

7 3. License number issued to the licensee by the board pursuant to this
8 chapter;

9 (b) Make, model, and serial number of the hearing instrument;

10 (c) Notice and statement of the purchaser's thirty (30) day right to cancel
11 pursuant Section 5 of this Act; and

12 (d) Immediately following the information required by paragraphs (a), (b), and
13 (c) of this subsection, the statement, in all capital letters in no smaller type
14 than the largest used in the body copy portion, that: "ANY COMPLAINTS
15 CONCERNING THE SALE OR SERVICE OF THIS HEARING
16 INSTRUMENT WHICH ARE NOT CORRECTED BY A LICENSED
17 AUDIOLOGIST SHOULD BE DIRECTED TO: KENTUCKY BOARD OF
18 SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY,
19 COMMONWEALTH OF KENTUCKY, FRANKFORT, KENTUCKY
20 40601";

21 (2) The written agreement, offer to purchase, or receipt shall bear in no smaller type
22 than the largest used in the body copy portion the following statement: "The
23 purchaser has been advised at the outset of his or her relationship with an
24 audiologist licensed under KRS Chapter 334A that any examination or
25 representation is not an examination, diagnosis, or prescription by a person
26 licensed to practice medicine in this state and therefore shall not be regarded as
27 medical opinion or advice."

1 (3) Upon delivery of a hearing instrument, the client shall be furnished a delivery
2 statement which shall include specifications as to the make, model, serial
3 number, and delivery date, with full terms of the sale clearly stated. If a hearing
4 instrument which is not new is offered for sale or is sold, that fact shall be clearly
5 stated and conspicuously disclosed and read in the oral sales presentation before
6 the buyer assumes any financial obligation regarding the purchase, and the
7 receipt shall be clearly marked as "used," "reconditioned," or "not new,"
8 whatever is applicable, with terms of guarantee, if any.

9 (4) No person who practices the selling or fitting of hearing instruments shall visit
10 the home or place of business of a potential buyer for the purpose of soliciting or
11 inducing a sale of a hearing instrument without having previously obtained the
12 express written consent of the potential buyer to such a visit. The consent
13 required by this subsection shall clearly and conspicuously state that the potential
14 buyer is aware that the licensed audiologist may attempt to sell a hearing
15 instrument during his or her visit.

16 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO
17 READ AS FOLLOWS:

18 (1) (a) Any person who desires to make a complaint against a licensee under this
19 chapter shall file a written complaint with the board.

20 (b) The board may conduct an investigation into any complaint which it feels
21 may constitute a violation of this chapter or the administrative regulations it
22 promulgates.

23 (c) The board may require that the licensee file a written statement or report
24 regarding the facts and circumstances concerning the complaint along with
25 other information, material, or data reasonably related to it.

26 (d) The board may request the assistance of the Attorney General in connection
27 with an investigation.

- 1 (e) The board may employ the services of a hearing officer to:
- 2 1. Conduct hearings and prehearing conferences;
- 3 2. Advise the board as to legal matters; and
- 4 3. Provide other legal services deemed appropriate by the board.
- 5 (2) If the board determines the charges made in the complaint are sufficient to
- 6 warrant a hearing to determine whether the license issued under this chapter
- 7 shall be suspended, revoked, or subject to reprimand or fine, it shall conduct a
- 8 hearing in accordance with KRS Chapter 13B.
- 9 (3) The provisions of this chapter shall in no way limit the jurisdiction and authority
- 10 of the Attorney General to take any necessary action under the Kentucky
- 11 Consumer Protection Act, KRS 367.110 to 367.300.
- 12 (4) The board may suspend, revoke, refuse to issue or renew any license for a fixed
- 13 period of time, place on probation, issue a written reprimand to a licensee, levy a
- 14 fine not to exceed one thousand dollars (\$1,000), or any combination thereof,
- 15 based on a finding of the board that a person licensed under this chapter has
- 16 committed any of the following acts:
- 17 (a) Change of personal name, corporate name, charter, entity, or partnership
- 18 name or composition to avoid the imposition of liens or court action;
- 19 (b) The conviction of a felony, or a misdemeanor, if in accordance with KRS
- 20 Chapter 335B, including KRS 335B.020. The record of conviction, or a copy
- 21 thereof, certified by the clerk of the court or by the judge in whose court the
- 22 conviction is had, shall be conclusive evidence of that conviction;
- 23 (c) Procuring of a license by fraud or deceit practiced upon the board;
- 24 (d) Unethical conduct as defined by the board by promulgation of an
- 25 administrative regulation;
- 26 (e) Engaging in any unfair, false, misleading, or deceptive act or practice;
- 27 (f) Incompetence or negligence in the practice of selling or fitting hearing

1 instruments; or

2 (g) Violating any provision of this chapter or the administrative regulations
3 promulgated by the board.

4 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO
5 READ AS FOLLOWS:

6 (1) The client in a hearing instrument purchase has the right to cancel the purchase
7 for any reason at any time prior to midnight of the thirtieth calendar day after
8 actual receipt of the hearing instrument.

9 (2) Cancellation occurs when the client gives written notice of cancellation to the
10 seller at the address stated in the notice and statement of the client's right to
11 cancel as provided in subsection (5) of this section.

12 (3) Notice of cancellation, if given by mail, is given when it is deposited in the mail
13 properly addressed and postage prepaid.

14 (4) Notice of cancellation given by the client need not take a particular form and is
15 sufficient if it indicates in writing the intention of the client not to be bound by
16 the hearing instrument sale.

17 (5) In the sale of a hearing instrument, the seller shall present to each client, at the
18 time the client assumes any financial obligation regarding the purchase of a
19 hearing instrument, a written notice and statement of the client's right to cancel
20 which shall:

21 (a) Appear under the conspicuous caption, "CLIENT'S RIGHT TO CANCEL
22 WITHIN 30 DAYS"; and

23 (b) Contain the following specific statement in all capital letters in no smaller
24 type than the largest used in the body copy portion of the written agreement,
25 offer to purchase, or receipt: "THE CLIENT HAS THE RIGHT TO
26 CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR
27 TO MIDNIGHT OF THE 30TH CALENDAR DAY AFTER ACTUAL

1 RECEIPT OF THE HEARING INSTRUMENT(S). YOU MAY CANCEL
2 THE PURCHASE BY NOTIFYING THE SELLER THAT YOU DO NOT
3 WANT THE HEARING INSTRUMENT(S) BY MAILING A NOTICE
4 BEFORE.....TO THE SELLER AT: UPON CANCELLATION,
5 THE SELLER MAY KEEP UP TO 10% OF THE SELLING PRICE."

6 (6) The seller shall enter on the notice and statement presented under subsection (5)
7 of this section the:

8 (a) Date which is thirty (30) calendar days after the client receives the hearing
9 instrument;

10 (b) Seller's full name and address; and

11 (c) Cancellation charges allowed by this section.

12 (7) Until the seller has complied with this section, the client may cancel the purchase
13 by notifying the seller in any manner and by any means of his or her intention to
14 cancel.

15 (8) Within fifteen (15) days after the return of the hearing instrument and any other
16 goods or property delivered by the seller pursuant to the sale by the client, the
17 seller shall tender to the client any payments made by the client, less any amount
18 retained by the seller to repair damage to the hearing instrument due to a lack of
19 reasonable care of the hearing instrument purchased, and terminate all financial
20 obligations created in connection with the purchase of the canceled hearing
21 instrument or instruments by the client.

22 (9) If payment by the client includes any goods or property traded in, the goods or
23 property shall be tendered to the client in substantially as good condition as when
24 they were received by the seller. If the seller fails to tender the goods or property
25 as provided by this subsection, the client may elect to recover an amount equal to
26 the trade-in allowance for the goods or property.

27 (10) This section shall not apply to a sale of a hearing instrument that replaces a

1 damaged or unworkable hearing instrument when the replacement hearing
 2 instrument is identical to the damaged or unworkable hearing instrument.

3 (11) Until the seller has complied with this section, the client may retain possession of
 4 all goods or property delivered to him or her by the seller and has a lien on the
 5 goods or property in his or her possession or control for any recovery to which he
 6 or she is entitled.

7 (12) The client shall take reasonable care of the goods, as defined by the board
 8 through the promulgation of administrative regulations, in his or her possession
 9 before cancellation and for a reasonable time thereafter until delivered to the
 10 seller.

11 (13) Any waiver by the client of rights provided in this section shall be void and shall
 12 not operate to relieve the seller of any obligation placed upon him or her by this
 13 section.

14 (14) Nothing in this section shall in any way limit the right to cancel home solicitation
 15 sales pursuant to KRS 367.410 to 367.460.

16 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 334A IS CREATED TO
 17 READ AS FOLLOWS:

18 Any person licensed to sell hearing instruments under this chapter shall maintain for
 19 not less than three (3) years, in a file under the name of the person to whom a hearing
 20 instrument was sold:

21 (1) A copy of the written approval for a hearing instrument;

22 (2) Recommendation for or written waiver of a hearing instrument; and

23 (3) An agreement, offer to purchase, or receipt given the person, pursuant to
 24 subsection (1) of Section 3 of this Act.

25 ➔Section 7. KRS 334A.040 is amended to read as follows:

26 (1) Nothing in this chapter shall be construed to prevent a qualified person licensed in
 27 this state under any other law from engaging in the profession for which the person

1 is licensed.

2 (2) Nothing in this chapter shall be construed to prevent qualified hearing aid
3 dispensers from engaging in those practices and procedures used solely for the
4 fitting and selling of hearing aids.

5 (3) Nothing in this chapter shall be construed as restricting or preventing activities of a
6 speech-language pathology or audiology nature or the use of the official title of the
7 position for which they were employed on the part of the following persons:

8 (a) Speech-language pathologists or audiologists employed by the federal
9 government, if they are performing such activities solely within the confines
10 or under the jurisdiction of the organization in which they are employed and
11 do not offer to render speech-language pathology or audiology services as
12 defined in subsections (4) and (6) of KRS 334A.020 to the public outside of
13 the institutions or organizations in which they are employed. However, such
14 persons may, without obtaining a license under this chapter, consult or
15 disseminate their research findings and scientific information to other such
16 accredited academic institutions or governmental agencies. They also may
17 offer lectures to the public for a fee, monetary or otherwise, without being
18 licensed under this chapter; or

19 (b) Registered and practical nurses or others trained to perform audiometric
20 testing under the direct supervision of a licensed physician or surgeon.

21 (4) Nothing in this chapter shall be construed as restricting the activities and services of
22 a student or speech-language pathology intern pursuing a course of study leading to
23 a degree in speech-language pathology at an accredited or approved college or
24 university or an approved clinical training facility, if these activities and services
25 constitute a part of the planned course of study and if such persons are designated
26 by such title as "speech-language pathology intern," "speech-language pathology
27 trainee," or other such title clearly indicating the training status appropriate to his or

1 her level of training under the supervision of a licensed speech-language
2 pathologist.

3 (5) Nothing in this chapter shall be construed as restricting the activities and services of
4 a student or audiology intern pursuing a course of study leading to a degree in
5 audiology at an accredited or approved college or university or an approved clinical
6 training facility, if these activities and services constitute a part of the planned
7 course of study and if such persons are designated by such title as "audiology
8 intern," "audiology trainee," or other such title clearly indicating the training status
9 appropriate to his or her level of training, under supervision of a licensed
10 audiologist.

11 (6) Nothing in this chapter shall be construed as restricting a speech-language
12 pathologist or audiologist from another state from offering his or her speech-
13 language pathology or audiology services in this state if the services are performed
14 for no more than five (5) days in any calendar year and if that person meets the
15 qualifications and requirements stated in the section on qualifications, except that
16 such person need not apply for licensure under this chapter.

17 **(7) This chapter shall not apply to a person while he or she is engaged in the practice**
18 **of fitting hearing instruments and assistive listening devices if his or her practice**
19 **is part of the academic curriculum of an accredited institution of higher**
20 **education or part of a program conducted by a public, charitable institution or**
21 **nonprofit organization, which is primarily supported by voluntary contributions.**

22 **(8) This chapter shall not be construed to prevent any person who is a medical or**
23 **osteopathic physician licensed to practice in the Commonwealth of Kentucky**
24 **from treating or fitting hearing instruments to the human ear, which includes the**
25 **making of ear molds, so long as he or she does not engage in the sale of hearing**
26 **instruments.**