

DEPARTMENT OF LABOR AND INDUSTRY

CHAPTER 150

BOARD OF HEARING AID DISPENSERS

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Subchapter 1

Organizational Rule

24.150.101 BOARD ORGANIZATION (1) The Board of Hearing Aid Dispensers hereby adopts and incorporates the organizational rules of the Department of Labor and Industry as listed in chapter 1 of this title. (History: 37-16-202, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2002 MAR p. 395.)

Subchapter 2

Procedural Rules

24.150.201 PROCEDURAL RULES (1) The Board of Hearing Aid Dispensers hereby adopts and incorporates the procedural rules of the Department of Labor and Industry as listed in chapter 2 of this title. (History: 37-16-202, MCA; IMP, 2-4-201, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2002 MAR p. 395.)

24.150.202 CITIZEN PARTICIPATION RULES (1) The Board of Hearing Aid Dispensers hereby adopts and incorporates by this reference the public participation rules of the Department of Commerce as listed in chapter 2 of Title 8. (History: 37-16-202, MCA; IMP, 2-3-103, MCA; NEW, 1978 MAR p. 75, Eff. 1/25/78; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; TRANS, from Commerce, 2002 MAR p. 395.)

Subchapter 3

Definitions

24.150.301 DEFINITIONS (1) "Related devices" means those parts, attachments or accessories that are sold with a hearing aid by a licensed hearing aid dispenser or trainee, and includes assistive devices of all types if sold by a licensee, but does not include general merchandise items, such as cleaners, cords or batteries that are commonly available at most retail stores.

(2) "Permanent place of business" means the headquarters or home office of the company, corporation or franchise offices which are considered to be permanent by the person or persons in charge of the company, corporation or franchise office, and who also have authority concerning hiring and firing of employees, as well as financial responsibility for the company, and employee liabilities.

(3) "Designated licensee in charge" means the licensed dispenser in charge of the permanent place of business.

(4) "Thirty day cancellation period" means a total of 30 days of actual possession of the hearing aid(s) by the purchaser. If the aid is returned during the 30-day time frame for service, repair or remake, the time period the aid is out of the purchaser's possession will not count against his 30-day total.

(5) "Dispensing fee" means costs associated with fitting, delivery and counseling.

(6) "Prominently display" means that the statement required pursuant to 37-16-303, MCA, be conspicuous and noticeable at once on the purchase agreement. To this end, the statement shall be as set forth in the example in ARM 24.150.510(5). The statement must appear in bold face type uppercase letters, extending the width of the page, two points larger than any other type face appearing on the document, but no smaller than 12-point type face, and quoted verbatim from the statute.

(7) "Substantially equivalent," for the purposes of 37-1-304, MCA, means the applicant has successfully completed a written and practical examination administered by or authorized by a state other than Montana. The examination shall measure basic knowledge of the fitting and dispensing of hearing aids. In addition, the applicant shall have successfully completed a training period of direct supervision for no less than 90 days. To satisfy the substantial equivalency requirement, the board shall accept formal training, in its discretion, in lieu of the traineeship. (History: 37-16-202, 37-16-303, MCA; IMP, 37-1-131, 37-1-304, 37-16-301, 37-16-303, 37-16-304, 37-16-414, MCA; NEW, 1993 MAR p. 534, Eff. 4/16/93; AMD, 1997 MAR p. 832, Eff. 5/6/97; AMD, 1997 MAR p. 2281, Eff. 12/16/97; AMD, 2000 MAR p. 2514, Eff. 9/22/00; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

Subchapter 4

General Rules

24.150.401 FEES (1) The fees shall be as follows:

(a) Application fee (includes initial written and practical examination)	\$500
(b) Application fee for licensees from other states	500
(c) Reexamination -- written	200
(d) Reexamination -- practical (includes renewal of trainee license)	550
(e) Original license	300
(f) Renewal active license	350
(g) Renewal inactive license	150
(h) Copies of law and rules	5

(2) Additional standardized fees are specified in ARM 24.101.403.

(3) All fees payable to the board are nonrefundable. (History: 37-1-131, 37-1-134, 37-1-141, 37-16-202, MCA; IMP, 37-1-131, 37-1-134, 37-1-141, 37-16-202, 37-16-402, 37-16-405, 37-16-406, MCA; Eff. 12/31/72; AMD, Eff. 2/5/76; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2175, Eff. 12/31/82; AMD, 1986 MAR p. 250, Eff. 2/27/86; AMD, 1987 MAR p. 371, Eff. 4/17/87; AMD, 1989 MAR p. 1840, Eff. 11/10/89; AMD, 1991 MAR p. 1273, Eff. 7/26/91; AMD, 1993 MAR p. 534, Eff. 4/16/93; AMD, 1994 MAR p. 2714, Eff. 10/14/94; AMD, 1999 MAR p. 1765, Eff. 8/13/99; AMD, 2001 MAR p. 781, Eff. 5/11/01; AMD, 2001 MAR p. 2422, Eff. 12/7/01; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2003 MAR p. 309, Eff. 2/28/03; AMD, 2006 MAR p. 1583, Eff. 7/1/06; AMD, 2007 MAR p. 468, Eff. 4/13/07.)

24.150.402 RECORD RETENTION (1) All licensed hearing aid dispensers shall retain the following records on all patients to whom they sell hearing aids:

- (a) dates and places patient contacted;
- (b) method of contact, whether in home, office or by telephone and the identity of the individual initiating the contact;
- (c) description of services delivered;
- (d) when applicable, a record of the return of the hearing aids for service, setting forth the date and problem, and a corresponding record of the return to the patient setting forth the corrective action taken;
- (e) a copy of the sale contract, purchase agreement or bill of sale, including a three-day cancellation notice, where applicable, signed and dated by the parties, the original delivered to the patient;
- (f) when applicable, a copy of the medical recommendation and receipt required pursuant to 37-16-303, MCA, the original delivered to the patient;
- (g) a copy of the delivery verification form, in accordance with ARM 24.150.510, the original delivered to the patient;
- (h) a copy of the receipt for refund as set forth in 37-16-304, MCA, the original delivered to the patient;
- (i) a record of hearing tests or evaluations performed on the patient, in accordance with ARM 24.150.502; and
- (j) a copy of the physician's statement regarding the patient's candidacy for a hearing aid or the medical waiver in accordance with 21 CFR 801.421 (April, 1995).

(2) Failure to keep patient records for a minimum of seven years from the last recorded service date constitutes unprofessional conduct subject to discipline pursuant to 37-1-312, MCA. Records for deceased patients must be kept for a minimum of one year.

(3) All licensed hearing aid dispensers shall maintain all copies of advertisements, including all advertisements placed on behalf of the permanent place of business, encompassing written scripts of radio and television advertisements, in compliance with 37-16-301, MCA. (History: 37-16-202, MCA; IMP, 37-16-301, 37-16-303, 37-16-304, 37-16-411, MCA; NEW, Eff. 2/5/76; AMD, Eff. 6/5/76; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1991 MAR p. 1273, Eff. 7/26/91; AMD, 1993 MAR p. 534, Eff. 4/16/93; AMD, 1997 MAR p. 832, Eff. 5/6/97; AMD, 2000 MAR p. 2514, Eff. 9/22/00; AMD, 2001 MAR p. 781, Eff. 5/11/01; TRANS, from Commerce, 2002 MAR p. 395.)

24.150.403 NOTIFICATION (1) The board shall provide copies of all proposed amendments and new rules noticed under the Montana Administrative Procedure Act to all licensed hearing aid dispensers and trainees. (History: 37-16-202, MCA; IMP, 37-16-202, MCA; NEW, 1993 MAR p. 534, Eff. 4/16/93; AMD, 1997 MAR p. 832, Eff. 5/6/97; TRANS, from Commerce, 2002 MAR p. 395.)

24.150.404 FEE ABATEMENT (1) The Board of Hearing Aid Dispensers adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301. (History: 37-1-131, MCA; IMP, 17-2-302, 17-2-303, 37-1-134, MCA; NEW, 2007 MAR p. 468, Eff. 4/13/07.)

Subchapter 5

Licensing

24.150.501 EXAMINATION - PASS/FAIL POINT (1) All applications for examination must be received in the board office 15 days prior to the examination date.

(2) The passing score on the written examination shall be 75 percent. The written examination shall include a Montana jurisprudence section.

(3) Each section of the oral and practical examination must be passed by a minimum grade of 75 percent. An applicant who fails any section only has to retake section(s) failed.

(4) All applicants, original or licensed in other states, shall be required to pass a jurisprudence examination on Montana laws and rules, administered by the board. (History: 37-1-131, 37-16-202, MCA; IMP, 37-16-405, 37-16-406, MCA; NEW, 1978 MAR p. 723, Eff. 5/26/78; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 202, Eff. 2/14/86; AMD, 1994 MAR p. 2714, Eff. 10/14/94; AMD, 1997 MAR p. 832, Eff. 5/6/97; AMD, 1997 MAR p. 2281, Eff. 12/16/97; AMD, 2001 MAR p. 781, Eff. 5/11/01; AMD, 2001 MAR p. 2422, Eff. 12/7/01; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2004 MAR p. 328, Eff. 2/13/04; AMD, 2007 MAR p. 468, Eff. 4/13/07.)

24.150.502 MINIMUM TESTING AND RECORDING PROCEDURES

(1) The following tests shall be performed as specified:

(a) air conduction tests shall be conducted bilaterally in accordance with American National Standards Institute (ANSI) standard frequencies of 250-500-1000-2000-4000-6000 hertz. Appropriate masking shall be used.

(b) bone conduction tests shall be conducted bilaterally, if appropriate, on every patient in accordance with ANSI standards at 500-1000-2000-4000 hertz. Appropriate masking shall be used.

(c) speech reception threshold and discrimination testing shall be conducted in a quiet environment, with appropriate masking used and measurement of user discomfort level.

(d) at the time of fitting or during the course of the trial period, the dispenser will verify and/or validate the hearing aid fitting and document the results.

(i) verification refers to generally accepted and appropriate established standards of practice to objectively analyze aided performance.

(ii) validation establishes the patient's perceived improvement.

(2) Reports of audiometric test results on the patient's audiogram for the purpose of fitting and dispensing hearing aids shall include the following information:

(a) name and age of the patient;

(b) date of the test;

(c) name and license number of the person performing the test; and

(d) whether the test was calibrated in SPL or HTL.

(3) All audiometers shall be calibrated to ANSI standards once a year. A copy of an electronic audiometer calibration made within the past 12 months shall be made available by the licensee upon the board's request. (History: 37-16-202, MCA; IMP, 37-16-202, 37-16-411, MCA; NEW, 1989 MAR p. 1840, Eff. 11/10/89; AMD, 1993 MAR p. 534, Eff. 4/16/93; AMD, 1997 MAR p. 832, Eff. 5/6/97; AMD, 2000 MAR p. 2514, Eff. 9/22/00; AMD, 2001 MAR p. 781, Eff. 5/11/01; AMD, 2001 MAR p. 2422, Eff. 12/7/01; AMD, 2002 MAR p. 82, Eff. 12/7/01; TRANS, from Commerce, 2002 MAR p. 395.)

24.150.503 TRAINEESHIP REQUIREMENTS AND STANDARDS (1) For the purposes of 37-16-405, MCA, a "qualified licensed hearing aid dispenser," who will serve as a sponsor of a trainee, shall meet the following criteria:

(a) have been licensed and active in the state of Montana for at least one year; and

(b) have not had a final order of disciplinary action entered against the hearing aid dispenser's license, in this or any state, in the two years preceding the request to sponsor a trainee.

(2) Both the trainee and the supervisor shall immediately notify the board in writing, and provide the reason for any break in, or termination of, the training program.

(3) A trainee who loses supervision for any reason shall immediately cease practice and shall not continue in a trainee status with a new supervisor until the trainee receives written approval from the board.

(4) Credit toward the 180-day training period will be given only during the period of time during which a trainee is on record as having a sponsor. All breaks in the training period will toll the running of the 180-day training period.

(5) A daily log, provided by the department, must be kept by the trainee, showing the date, description of job tasks, and duties. Both the trainee and the supervisor must sign the log. The log must be submitted to the board office at the end of 90 days and again at the end of 180 days and must be approved by the board prior to the trainee being allowed to take the practical examination.

(6) All written materials distributed by the trainee shall include the trainee's name and title, "trainee" and the supervisor's name, business phone number, and title "supervisor." (History: 37-1-131, 37-16-202, MCA; IMP, 37-1-101, 37-1-131, 37-16-301, 37-16-405, MCA; Eff. 12/31/72; AMD, Eff. 3/7/74; AMD, Eff. 9/4/75; AMD, Eff. 6/5/76; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1982 MAR p. 2175, Eff. 12/31/82; AMD, 1983 MAR p. 1457, Eff. 10/14/83; AMD, 1986 MAR p. 202, Eff. 2/14/86; AMD, 1987 MAR p. 371, Eff. 4/17/87; AMD, 1989 MAR p. 1840, Eff. 11/10/89; AMD, 1990 MAR p. 1698, Eff. 8/31/90; AMD, 1993 MAR p. 534, Eff. 4/16/93; AMD, 1997 MAR p. 832, Eff. 5/6/97; AMD, 1997 MAR p. 2281, Eff. 12/16/97; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2007 MAR p. 468, Eff. 4/13/07.)

24.150.504 LICENSEES FROM OTHER STATES (1) Upon receipt of a complete application, the board shall obtain information from the other state to determine whether that state's licensure requirements are substantially equivalent to the requirements of this state.

(2) The board office shall request verification of applicant's current license in good standing to be sent directly from the other state.

(3) All applicants for licensure under this rule shall be required to pass a jurisprudence examination on Montana laws and rules, administered by the board. (History: 37-1-304, 37-16-202, MCA; IMP, 37-16-406, MCA; NEW, 1994 MAR p. 2714, Eff. 10/14/94; AMD, 1997 MAR p. 832, Eff. 5/6/97; TRANS, from Commerce, 2002 MAR p. 395.)

24.150.505 INACTIVE STATUS (1) A licensed dispenser requesting inactive status shall certify his intention to the board on the annual renewal form.

(2) Inactive licensees shall not be required to meet the continuing education requirements.

(3) Inactive licensees shall keep the board office informed of their current mailing address.

(4) Inactive licensees reactivating their license shall submit a minimum of ten hours of additional formal training or continuing education to be approved by the board, which shall not include on-the-job experience. (History: 37-1-319, 37-16-202, MCA; IMP, 37-1-131, 37-1-306, MCA; NEW, 1993 MAR p. 534, Eff. 4/16/93; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

Rules 24.150.506 through 24.150.509 reserved

24.150.510 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT

(1) In addition to the requirements of 37-16-303, MCA, all bills of sale, including a three-day cancellation notice, where applicable, contracts and purchase agreements, or other written memorialization of the sale, shall be on a form no smaller than 8 1/2 x 11 inches and conform to the terms set forth in this rule.

(2) The terms of the right to cancel found at 37-16-304, MCA, must be set off from surrounding text in a bold-lined box and include the statement required by 37-16-303, MCA. The text within the box must include the heading "Right to Cancel Provided by Montana Law" and appear in bold-face type, in no less than 10-point size font. The box shall be positioned immediately above the signature line of the purchaser and seller.

(3) A delivery verification form stating the date of delivery and signed by the purchaser shall be obtained at the time of delivery by the dispenser. The delivery verification form shall also restate the terms of the 30-day refund or cancellation period. Dispensers have the option to use contracts with the required information, signed at delivery, in lieu of the separate delivery verification requirement.

(4) Any trainee, who provides service to a patient, must legibly print or type the trainee's name, the designation "trainee," and license number on the document along with the name and license number of the trainee's supervisor.

(5) Notice of cancellation must be given to the seller in writing within 30 days of the date of delivery of the hearing aid or related device. The notice of cancellation may be delivered by mail or in person, and must indicate the purchaser's intent not to be bound by the sale. The purchaser shall return the hearing aid or related device in substantially the same condition as it was received. Under this provision, the hearing aid dispenser shall refund to the purchaser the amount paid, minus a dispensing fee, within ten days of receipt of the written notice of cancellation. The dispensing fee per hearing aid or related device may not exceed 15 percent of the purchase price or \$250, whichever is less. All fees to be retained by the dispenser, in the event the hearing aid(s) is returned, shall be prominently displayed in a dollar amount on all transactional documents. (History: 37-16-202, MCA; IMP, 37-16-303, 37-16-304, MCA; NEW, 1993 MAR p. 534, Eff. 4/16/93; AMD, 1997 MAR p. 832, Eff. 5/6/97; AMD, 1997 MAR p. 2281, Eff. 12/16/97; AMD, 2000 MAR p. 2514, Eff. 9/22/00; AMD, 2001 MAR p. 781, Eff. 5/11/01; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2004 MAR p. 2816, Eff. 11/19/04; AMD, 2007 MAR p. 468, Eff. 4/13/07.)

Subchapters 6 through 20 reserved

Subchapter 21

Renewals

24.150.2101 RENEWALS (1) Renewal notices will be sent as specified in ARM 24.101.414 prior to the renewal date set by ARM 24.101.413.

(2) Licensees shall present documentation of the appropriate continuing education requirements with the renewal application.

(3) The provisions of ARM 24.101.408 apply. (History: 37-1-141, 37-1-319, 37-16-202, MCA; IMP, 37-1-131, 37-1-141, 37-1-306, MCA; Eff. 12/31/72; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 202, Eff. 2/14/86; AMD, 1997 MAR p. 832, Eff. 5/6/97; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

Subchapter 22

Continuing Education

24.150.2201 CONTINUING EDUCATIONAL REQUIREMENTS (1) The licensee must submit an affidavit, subscribed and sworn, stating that the licensee completed at least ten clock hours of continuing education. Such evidence must be presented by the date set in ARM 24.101.413.

(2) The board will conduct an audit of licensee's continuing education affidavits on an annual basis. Each year, the board will choose, at random, 30 percent of licensees to audit. Those licensees shall submit evidence of completion of continuing education courses as set forth in the affidavit. Requested evidence shall be received in the board's office within ten days of receipt of the notice to submit.

(3) Continuing education courses recognized by the board pertaining to fitting and dispensing hearing aids include those sponsored by the Montana Hearing Aid Society, the National Institute for Hearing Instruments Studies, the American Speech Language Hearing Association, the American Conference of Audioprosthology, the Montana Speech and Hearing Association, the Academy of Dispensing Audiologists, the American Academy of Audiology, college courses and other such programs approved by the board.

(4) A dispenser who is first licensed within the six months immediately preceding the annual renewal date will not be required to meet the continuing education requirements during that six month period.

(5) Four clock hours credit will be recognized for published books and articles which contribute to the professional competence of the licensee.

(6) Four clock hours will be recognized for each year of full time research by the licensee.

(7) Credit recognition will not be granted for course work which is substantially similar to course work which was successfully completed in the preceding two years and used to meet the continuing educational requirements of the board.

(8) Clock hours cannot be accumulated and transferred to another fiscal year. (History: 37-1-319, 37-16-202, MCA; IMP, 37-1-131, 37-1-306, MCA; NEW, 1986 MAR p. 202, Eff. 2/14/86; AMD, 1993 MAR p. 534, Eff. 4/16/93; AMD, 1999 MAR p. 343, Eff. 2/26/99; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2004 MAR p. 328, Eff. 2/13/04; AMD, 2006 MAR p. 1583, Eff. 7/1/06.)

24.150.2202 EXCEPTIONS (1) Licensees who have not complied with the education requirements may not be issued a renewal license unless such person is granted an exception upon written application to, and approved by, the board.

(2) The board reserves authority to make written exception for reasons of individual hardship including health, military service, foreign residence, retirement, or inaccessibility to programs.

(3) A licensee who submits medical proof from the licensee's attending physician that the licensee or a member of the licensee's immediate family suffered a serious or disabling illness or physical disability which prevented the licensee from complying with the requirements of the board during the 12 months immediately preceding the annual license renewal date, may be granted an exception. (History: 37-1-131, 37-1-319, 37-16-202, MCA; IMP, 37-1-141, 37-1-306, MCA; NEW, 1986 MAR p. 202, Eff. 2/14/86; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2007 MAR p. 468, Eff. 4/13/07.)

24.150.2203 PROOF OF ATTENDANCE (1) Licensee must provide written proof of attendance and completion of approved course for renewal of license. Proof must include a statement giving the sponsoring organization; location and dates; course name; instructor; name of licensee; number of clock hours completed.

(2) Forms must be properly signed by the course instructor, monitor and licensee verifying attendance at the particular course.

(3) Forms are available from the board office.

(a) application for course approval

(b) verification of continuing education attendance

(c) request for exception and waiver. (History: 37-16-202, MCA; IMP, 37-16-407, MCA; NEW, 1986 MAR p. 202, Eff. 2/14/86; TRANS, from Commerce, 2002 MAR p. 395.)

24.150.2204 STANDARDS FOR APPROVAL (1) Summaries of the courses and resumes of those teaching must be submitted to the board for approval.

(2) The course content shall be related to the use of hearing aids for aiding or compensating the hearing impaired and shall include subject matter related to current developments in the practice of fitting, testing or dispensing hearing aids.

(3) Teaching methods for each course or program shall be described, e.g. lecture, seminar, audiovisual, simulation, pretest, post test, etc.

(4) Each course or program shall clearly state the educational objective that can be realistically accomplished within the course and the number of clock hours which may be obtained by completion of a specified course.

(5) Instructors shall be qualified to teach the specified course content by virtue of their prior education, training and experience. A resume of each instructor's qualifications shall be forwarded with the application.

(6) New product seminars are subject to approval by the board.

(7) Sales training seminars will not be accepted for continuing education credit. (History: 37-16-202, MCA; IMP, 37-16-407, MCA; NEW, 1986 MAR p. 202, Eff. 2/14/86; TRANS, from Commerce, 2002 MAR p. 395.)

Subchapter 23

Unprofessional Conduct

24.150.2301 UNPROFESSIONAL CONDUCT For the purpose of implementing the provisions of Title 37, chapter 1, MCA, and in addition to the unprofessional conduct provisions set forth at 37-1-316, MCA, the board defines unprofessional conduct as follows:

- (1) the use in advertising or otherwise, of the words "prescribe" or "prescription" or any abbreviation, variation or derivative thereof or symbol therefore in referring to or in describing any industry product unless such product was made pursuant to a prescription given by a physician; provided, however, that the word "prescription" or words of similar meaning may be used to refer to or describe an industry product which was specifically made to compensate for the hearing loss of a particular purchaser in accordance with the directions furnished by a qualified person other than a physician when such words are accompanied by a clear and conspicuous disclosure that the "prescription" was not based on a medical examination and that the person issuing it was not a physician;
- (2) initiating contact by telephone, without the dispenser first identifying himself by name and company he represents, or making more than one such contact unless further contact is specifically requested by the patient;
- (3) contacting a person who already has a hearing aid still under warranty, more than once, unless contact is made by the original dispenser, or further contact is specifically requested by the patient;
- (4) use of a contract which does not comply with the board's rules on contract content;
- (5) engaging in a home solicitation sale without complying with the statutory requirements of the Door to Door Sales Act as set out in 30-14-501, et seq., MCA;
- (6) failing to comply with the provisions of Title 37, chapter 16, MCA, or any rule promulgated thereunder;
- (7) failing to comply with FDA regulations found at 16 CFR 429.1, 21 CFR 801.420 and 801.421;
- (8) failing to follow FDA recommendation as set forth in the warning statement in 21 CFR 801.420(c)(2);
- (9) filing a complaint with, or providing information to, the board which the licensee knows, or ought to know, is false or misleading (does not apply to any filing of a complaint or providing information to the board when done in good faith);
- (10) violating any state, federal, provincial or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;
- (11) using any dangerous drug or controlled substance illegally while providing professional services;
- (12) acting in such a manner as to present a danger to public health or safety, or to any patient including, but not limited to, incompetence, negligence or malpractice;

(13) performing services outside of the licensee's area of training, expertise, competence or scope of practice or licensure, including but not limited to:

(a) the purposeful removal of cerumen from a patient's ear is unprofessional conduct;

(14) failing to obtain an appropriate consultation or make an appropriate referral when the problem of the patient is beyond the licensee's training, experience or competence;

(15) promoting for personal gain any drug, device, treatment, procedure, product or service which is unnecessary, ineffective or unsafe;

(16) failing to render adequate supervision, management, training or control of auxiliary staff or other persons, including licensees practicing under the licensee's supervision or control, according to generally accepted standards of practice;

(17) discontinuing professional services unless services have been completed, the patient requests the discontinuation, alternative or replacement services are arranged or the patient is given reasonable opportunity to arrange alternative or replacement services;

(18) delegating a professional responsibility to a person when the licensee knows, or has reason to know, that the person is not qualified by training, experience, license or certification to perform the delegated task;

(19) accepting, directly or indirectly, employment from any person who is not licensed to practice the profession or occupation, or who is not licensed or authorized to operate a professional practice or business;

(20) failing to obtain informed consent from patient or patient's representative prior to selling a hearing aid, particularly in situations where the patient's competency is at issue;

(21) physical or verbal abuse of a client, or sexual contact with a patient;

(22) failing to account for funds received in connection with any services rendered or to be rendered;

(23) failing to supply continuing education documentation as requested by the audit procedure set forth in ARM 24.150.2201 or supplying misleading, incomplete or false information relative to continuing education taken by the licensee. (History: 37-1-131, 37-1-319, 37-16-202, MCA; IMP, 37-1-131, 37-16-202, 37-16-411, MCA; NEW, Eff. 9/4/74; AMD, Eff. 9/4/75; TRANS, from Dept. of Prof. & Occup. Lic., Ch. 274, L. 1981, Eff. 7/1/81; AMD, 1986 MAR p. 202, Eff. 2/14/86; AMD, 1989 MAR p. 1840, Eff. 11/10/89; AMD, 1993 MAR p. 534, Eff. 4/16/93; AMD, 1997 MAR p. 832, Eff. 5/6/97; AMD, 1999 MAR p. 343, Eff. 2/26/99; AMD, 2000 MAR p. 2514, Eff. 9/22/00; TRANS, from Commerce, 2002 MAR p. 395; AMD, 2004 MAR p. 328, Eff. 2/13/04.)