

4747-1-15

**Fraud and/or misrepresentation, suspension, revocation or refusal of issuance of licenses and trainee permits.****(A) Fraud and/or misrepresentation:**

- (1) No holder of a license or permit shall misrepresent the facts or commit fraudulent acts before, during or after the sale of a hearing aid, nor shall the holder of the license or permit use either means to obtain any fee.
- (2) Without limiting the scope of section 4747.09 or 4747.12 of the Revised Code, any of the following representations may be considered as fraudulent or a misrepresentation:
  - (a) That the hearing aid has sponsorship, approval performance characteristics, accessories, or uses it does not have.
  - (b) That the hearing aid will provide benefits it will not provide.
  - (c) That the hearing aid is of a particular brand model, engineering design or prescription if it is not, unless manufacturing constraints limited the original intent.
  - (d) That the hearing aid is new or reconditioned if it is not.
  - (e) The hearing aid is in need of extensive repairs and/or is in need of replacement if it is not.
  - (f) That the hearing aid is available to the purchaser for a reason that does not exist.
  - (g) That the hearing aid may be purchased below the dealer's regular price because of a special price advantage, if it does not exist.
- (3) In determining whether an act or practice is fraudulent or constitutes misrepresentation, the following circumstances shall be considered, but not exclusively. Whether the holder of a license or trainee permit:
  - (a) Took advantage of the inability of the purchaser reasonably to protect the individual's own interests because of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of an agreement either verbal or written.
  - (b) Did not fully inform the purchaser of a hearing aid with obviously poor discrimination for speech of the individual's inability to obtain reasonable benefit.

- (c) Made statements to mislead the purchaser into believing the individual's hearing will suffer if the individual does not purchase either one or two aids.
  - (d) Required the hearing aid purchaser to agree to contract terms which were substantially one-sided in favor of the dealer, fitter or trainee.
  - (e) Made false statement of fact, including, but not limited to statements made in advertising as defined in rule 4747-1-16 of the Administrative Code, on which the hearing aid purchaser was likely to rely, to the individual's detriment.
  - (f) Informed the client that the client's present hearing aid was beyond repair or inappropriate for the type or amount of loss when there was no evidence to support these statements.
- (B) By reason of the authority of section 119.061 of the Revised Code, the board may, in addition to those reasons enumerated in section 4747.12 of the Revised Code, also revoke, suspend, place on probation, or refuse to issue or renew a license or permit, or reprimand a license or permit holder if the holder thereof engages in deceptive trade practices as defined under section 4165.02 of the Revised Code; and, as provided by section 4165.02 of the Revised Code, the holder of a license or trainee permit will be considered to have engaged in a deceptive trade practice if, in the practice of dealing in or fitting of hearing aids as defined by section 4747.01 of the Revised Code, that licensee or trainee;
- (1) Passes off goods or services as those of another;
  - (2) Causes likelihood of confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.
  - (3) Causes likelihood of confusion or misunderstanding as to affiliation, connection, or association with, or certification by another;
  - (4) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, in quantities that they do not have or that a person has sponsorship, approval, status affiliation or connection that the licensee or trainee does not have;
  - (5) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;
  - (6) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

- (7) Disparages the goods, services, or business of another by false representation of fact;
- (8) Advertises goods or services with intent not to sell them as advertised;
- (9) Makes false statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (10) Advertises goods or services with intent not to supply reasonable expectable public demand, unless the advertisement discloses a limitation of quantity.

(C) Disciplinary action of a supervisor's license:

- (1) Responsibility for the compliance with this law and its attendant rules by a trainee permit holder shall rest with the licensed supervisor who is registered as, or whom the board determines is, the trainee's supervisor at the time any noncompliance may occur.
- (2) If a trainee violates any provision of section 4747.12 or 4165.02 of the Revised Code (see paragraph (B) of this rule), the board may institute formal proceeding under either or both of these sections, pursuant to Chapter 119 of the Revised Code, against the trainee's supervisor, as well as, or instead of the trainee, to determine whether the supervisor's license as a hearing aid dealer and fitter should be revoked, suspended, placed on probation, refusal to issue or renew a license or permit, or issued a reprimand against the license or permit holder.
- (3) Failure of a supervisor to supervise a trainee, either generally or as required by rule 4747-1-14 of the Administrative Code. Failure of a trainee to maintain contact and communication with a supervisor shall also constitute gross incompetence or negligence in the fitting or sale of hearing aids in violation of division (M) of section 4747.12 of the Revised Code.
- (4) The supervisor will be relieved of the responsibility for the activities of a trainee if the supervisor advises the board and the trainee in writing of the supervisor's intention to cease to supervise the trainee. The supervisor should return promptly said trainee permit certificate and wallet-size certificate replica to the board for safekeeping and shall also issue subject trainee a dated receipt for said certificate. If the certificate cannot be returned, an explanation should be included in the supervisors withdrawal notification. It shall be the responsibility of the trainee to surrender the trainee's permit and wallet-size replica to the supervisor for return to the board. Failure to do so, shall constitute negligence in violation of division (M) of section 4747.12 of the Revised Code and paragraph (C)(2) of this rule.

- (D) Disciplinary action for inadequate testing: Failure of the holder of a license or trainee permit to comply generally with the requirements of rule 4747-1-19 of the Administrative Code, or any provision thereof with respect to test procedures and the written records to be kept regarding such procedures, shall constitute the fitting or selling or the attempted fitting or selling of hearing aids without first utilizing the appropriate procedures and instruments required for the proper fitting of hearing aids in violation of division (J) of section 4747.12 of the Revised Code, gross incompetence or negligence in the fitting or sale of hearing aids in violation of division (M) of section 4747.12 of the Revised Code, and also, where appropriate, the obtaining of a fee or the making of a sale of a hearing aid by fraud or misrepresentation in violation of division (C) of section 4747.12 of the Revised Code, and the board may institute formal proceedings under one or more of these sections, pursuant to Chapter 119. of the Revised Code, against the holder of such license or trainee permit to determine whether that license or trainee permit should be revoked, suspended, placed on probation, refusal to issue or renew a license or permit, or issued a reprimand against the license or permit holder.
- (E) Disciplinary action for violation of related laws. A conviction of any provision of Ohio law, shall constitute grounds for revocation or suspension. Proven violations of sections 1345.02 and 1345.03 (part of the Ohio Consumers Sales Practices Act), sections 1345.21 to 1345.31 (the Ohio Home Solicitation Sales Act), section 4165.02 (part of the Ohio Deceptive Trade Practices Act), section 4747.02, division (B) of section 4747.05, section 4747.09 and 4747.14 of the Revised Code, by holder of a license or trainee permit while such holder of said license or trainee permit is engaged in the practice of dealing in or fitting of hearing aids as defined by section 4747.01 of the Revised Code, shall constitute gross incompetence or negligence in the fitting or sale of hearing aids in violation of division (M) of section 4747.12 of the Revised Code and shall also constitute, where appropriate, the obtaining of a fee or the making of a sale of a hearing aid by fraud or misrepresentation in violation of division (C) of section 4747.12 of the Revised Code, and the board may institute formal proceedings under either or both of these sections pursuant to Chapter 119. of the Revised Code, against the holder of such license or trainee permit to determine whether that license or trainee permit should be revoked, suspended, placed on probation, refusal to issue or renew a license or permit, or issued a reprimand against the license or permit holder.
- (F) Refusal to issue license or trainee permit. The Board may refuse to issue a license or trainee permit for falsification ~~Falsification~~ of or the commission of perjury upon any application for license under section 4747.05 of the Revised Code or for a trainee permit under section 4747.10 of the Revised Code, or violation of any provision of section 4747.02 or 4747.14 of the Revised Code, ~~shall constitute lack of good moral character within the meaning of divisions (C) and (A)(2) of section 4747.05 and~~

~~division (C) of section 4747.10 of the Revised Code, and the board may refuse to issue such license or trainee permit, for lack of good moral character under either of these sections pursuant to Chapter 119. of the Revised Code.~~

- (G) It is not intended that this rule be exhaustive, and the board may, if otherwise legally authorized, institute formal proceedings pursuant to Chapter 119. of the Revised Code for reasons other than those contained herein.

Effective: 1/1/2023

Five Year Review (FYR) Dates: 9/23/2022 and 01/01/2028

CERTIFIED ELECTRONICALLY

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Certification

12/12/2022

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Date

Promulgated Under: 119.03

Statutory Authority: 4744.28, 4747.04

Rule Amplifies: 4747.04, 4747.12

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