

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 13-0806.01 Kristen Forrestal x4217

SENATE BILL 13-238

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Ryden,

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF HEARING AID PROVIDERS BY THE**
102 **DIVISION OF PROFESSIONS AND OCCUPATIONS WITHIN THE**
103 **DEPARTMENT OF REGULATORY AGENCIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado has regulated hearing aid providers since 1995. The regulation and subsequent licensure of hearing aid providers has been renewed through sunset reviews as recommended by the department of regulatory agencies (department). Notwithstanding the recommendation

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

by the department in the 2011 sunset report, the general assembly did not enact legislation to continue the licensure of hearing aid providers, and the state regulation of hearing aid providers expired on July 1, 2012.

The bill:

- ! Authorizes the division of professions and occupations within the department to regulate hearing aid providers;
- ! Requires hearing aid providers to obtain a license to practice as hearing aid providers in this state and sets forth the requirements for obtaining a license;
- ! Establishes requirements relating to the sale and delivery of hearing aids by hearing aid providers; and
- ! Establishes grounds and procedures for disciplining hearing aid providers.

The regulation of hearing aid providers is subject to sunset review and repeal on September 1, 2020.

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

2 **SECTION 1.** In Colorado Revised Statutes, **recreate and**
3 **reenact, with amendments,** article 5.5 of title 12 as follows:

4 **ARTICLE 5.5**

5 **Hearing Aid Providers**

6 **PART 1**

7 **GENERAL PROVISIONS**

8 **12-5.5-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "APPLICANT" MEANS A PERSON APPLYING FOR LICENSURE
11 UNDER THIS ARTICLE.

12 (2) "APPRENTICE" MEANS A PERSON WHO HOLDS A CURRENT
13 LICENSE AS AN APPRENTICE PURSUANT TO THIS ARTICLE.

14 (3) "COCHLEAR IMPLANT" OR "COCHLEAR PROSTHESIS" MEANS AN
15 ELECTRODE OR ELECTRODES SURGICALLY IMPLANTED IN THE COCHLEA
16 THAT ARE ATTACHED TO AN INDUCTION COIL BURIED UNDER THE SKIN
17 NEAR THE EAR, AND THE ASSOCIATED UNIT THAT IS WORN ON THE BODY.

1 (4) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OR THE
2 DIRECTOR'S DESIGNEE.

3 (5) "DISPENSE" MEANS TO TRANSFER TITLE, POSSESSION, OR THE
4 RIGHT TO USE BY LEASE, BAILMENT, OR ANY OTHER METHOD. "DISPENSE"
5 DOES NOT MEAN SALES TO DISTRIBUTORS OR DEALERS OF HEARING AIDS.

6 (6) "DIVISION" MEANS THE DIVISION OF PROFESSIONS AND
7 OCCUPATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.

8 (7) "HEARING AID" MEANS A WEARABLE INSTRUMENT OR DEVICE
9 DESIGNED OR OFFERED FOR THE PURPOSE OF AIDING OR COMPENSATING
10 FOR IMPAIRED HUMAN HEARING. "HEARING AID" DOES NOT INCLUDE A
11 COCHLEAR IMPLANT OR COCHLEAR PROSTHESIS.

12 (8) "HEARING AID PROVIDER" MEANS A PERSON ENGAGED IN THE
13 PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS.

14 (9) "LICENSEE" MEANS A PERSON WHO HOLDS A CURRENT LICENSE
15 AS A HEARING AID PROVIDER PURSUANT TO THIS ARTICLE.

16 (10) "PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING
17 AIDS" MEANS SELLING A HEARING AID. THE TERM INCLUDES THE TESTING
18 OF HEARING FOR THIS PURPOSE, THE MAKING OF IMPRESSIONS FOR EAR
19 MOLDS, AND THE FITTING OF HEARING AIDS.

20 (11) "SELLER" MEANS LICENSEE, OR IF THE LICENSEE IS AN
21 EMPLOYEE OF A BUSINESS SELLING HEARING AIDS, "SELLER" MEANS THE
22 BUSINESS THAT EMPLOYS THE LICENSEE.

23 **12-5.5-102. Scope of article - exemption.** (1) THIS ARTICLE DOES
24 NOT APPLY TO PERSONS WHO ARE:

25 (a) LICENSED PURSUANT TO SECTION 22-60.5-210, C.R.S., AND
26 WHO ARE NOT LICENSED UNDER THIS ARTICLE FOR WORK UNDERTAKEN AS
27 PART OF THEIR EMPLOYMENT BY, OR CONTRACTUAL AGREEMENT WITH,

1 THE PUBLIC SCHOOLS; OR

2 (b) ENGAGED IN THE PRACTICE OF AUDIOLOGY OR THE PRACTICE
3 OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS IN THE DISCHARGE
4 OF THEIR OFFICIAL DUTIES IN THE SERVICE OF THE UNITED STATES ARMED
5 FORCES, PUBLIC HEALTH SERVICE, COAST GUARD, OR VETERANS
6 ADMINISTRATION.

7 (2) THIS ARTICLE DOES NOT APPLY TO THE WHOLESALE SALES OF
8 HEARING AIDS.

9 (3) NOTHING IN THIS ARTICLE AUTHORIZES A HEARING AID
10 PROVIDER TO ENGAGE IN THE PRACTICE OF MEDICINE AS DEFINED IN
11 SECTION 12-36-106.

12 (4) NOTHING IN THIS ARTICLE PROHIBITS A BUSINESS OR LICENSEE
13 FROM:

14 (a) HIRING AND EMPLOYING UNLICENSED STAFF TO ASSIST WITH
15 CONDUCTING BUSINESS PRACTICES AND TO ASSIST IN DISPENSING HEARING
16 AIDS IF THE UNLICENSED STAFF ARE PROPERLY SUPERVISED BY A LICENSEE;
17 EXCEPT THAT THE EMPLOYEES MAY NOT CONDUCT HEARING TESTS OR
18 PERFORM THE INITIAL FITTING OF HEARING AIDS; OR

19 (b) PERFORMING TASKS THAT WOULD BE PERMISSIBLE IF THE
20 LICENSEE WAS NOT LICENSED.

21 (5) THIS ARTICLE DOES NOT APPLY TO THE DISPENSING OF HEARING
22 AIDS OUTSIDE OF THIS STATE.

23 (6) AN AUDIOLOGIST LICENSED PURSUANT TO ARTICLE 29.9 OF THIS
24 TITLE IS NOT REQUIRED TO OBTAIN A LICENSE PURSUANT TO THIS ARTICLE.

25 **12-5.5-103. Scope of practice.** (1) THE SCOPE OF PRACTICE FOR
26 A HEARING AID PROVIDER INCLUDES:

27 (a) ELICITING PATIENT CASE HISTORIES, INCLUDING MEDICAL,

1 OTOLOGICAL, PHARMACOLOGICAL, OCCUPATIONAL, AND PREVIOUS
2 AMPLIFICATION HISTORY AND PATIENT ATTITUDES AND EXPECTATIONS;

3 (b) ADMINISTERING OTOSCOPY FOR THE PURPOSE OF IDENTIFYING
4 POSSIBLE OTOLOGICAL CONDITIONS, INCLUDING CONDITIONS DESCRIBED
5 IN SECTION 12-5.5-301 (1) (b), THAT MAY INDICATE THE NEED FOR
6 MEDICAL REFERRAL OR THAT MAY HAVE A BEARING ON NEEDED
7 REHABILITATIVE MEASURES, OUTCOMES, OR RECOMMENDATIONS;

8 (c) ADMINISTERING AND INTERPRETING TESTS OF HUMAN HEARING,
9 INCLUDING APPROPRIATE OBJECTIVE AND SUBJECTIVE METHODOLOGY AND
10 MEASURES;

11 (d) DETERMINING A PERSON'S CANDIDACY FOR HEARING AIDS OR
12 HEARING ASSISTIVE DEVICES, REFERRING THE PERSON FOR COCHLEAR
13 IMPLANT EVALUATION, OR RECOMMENDING OTHER CLINICAL,
14 REHABILITATIVE, OR MEDICAL INTERVENTIONS;

15 (e) PRESCRIBING, SELECTING, AND FITTING APPROPRIATE HEARING
16 INSTRUMENTS AND ASSISTIVE DEVICES, INCLUDING APPROPRIATE
17 TECHNOLOGY, ELECTROACOUSTIC TARGETS, PROGRAMMING PARAMETERS,
18 AND SPECIAL APPLICATIONS, AS INDICATED;

19 (f) ASSESSING HEARING INSTRUMENT EFFICACY USING
20 APPROPRIATE FITTING VERIFICATION METHODOLOGY, INCLUDING
21 AVAILABLE FITTING VALIDATION METHODS;

22 (g) TAKING EAR IMPRESSIONS AND PREPARING EAR MOLDS FOR
23 HEARING INSTRUMENTS, ASSISTIVE DEVICES, TELECOMMUNICATIONS
24 APPLICATIONS, EAR PROTECTION, AND OTHER RELATED APPLICATIONS;

25 (h) DESIGNING AND MODIFYING EAR MOLDS AND AUDITORY
26 EQUIPMENT TO MEET INDIVIDUAL PATIENT NEEDS;

27 (i) PROVIDING COUNSELING AND AURAL REHABILITATIVE SERVICES

1 IN THE USE AND CARE OF HEARING INSTRUMENTS AND ASSISTIVE DEVICES
2 AND FOR EFFECTIVELY USING COMMUNICATION COPING STRATEGIES AND
3 OTHER APPROACHES TO FOSTER OPTIMAL PATIENT REHABILITATION; AND
4 (j) PROVIDING SUPERVISION AND TRAINING OF THOSE ENTERING
5 THE DISPENSING PROFESSION.

6 **12-5.5-104. Equal Reimbursement -**
7 **nondiscrimination.** EXCEPT AS OTHERWISE NOTED IN THIS ARTICLE, AN
8 AGENCY OR DEPARTMENT OF THE STATE, AN INSURANCE COMPANY, OR A
9 THIRD-PARTY REIMBURSEMENT ENTITY MUST NOT DISCRIMINATE IN AN
10 AGREEMENT TO PERFORM SERVICES; IN AN AGREEMENT FOR PAYMENT OR
11 REIMBURSEMENT FOR HEARING AIDS, HEARING EXAMS, OR HEARING AID
12 FITTING SERVICES; OR BASED ON WHETHER THE PROVIDER IS A LICENSED
13 AUDIOLOGIST OR A LICENSED HEARING AID PROVIDER.

14 **12-5.5-105. Title protection - use of title.** IT IS UNLAWFUL FOR
15 ANY PERSON TO USE THE TITLE "HEARING AID PROVIDER" OR "HEARING AID
16 DISPENSER" UNLESS HE OR SHE IS LICENSED AS A HEARING AID PROVIDER
17 PURSUANT TO THIS ARTICLE.

18 **12-5.5-106. Repeal of article.** (1) THIS ARTICLE IS REPEALED,
19 EFFECTIVE SEPTEMBER 1, 2020.

20 (2) PRIOR TO THIS REPEAL, THE DEPARTMENT OF REGULATORY
21 AGENCIES SHALL REVIEW THE LICENSING AND SUPERVISORY FUNCTIONS OF
22 THE DIRECTOR AS PROVIDED IN SECTION 24-34-104, C.R.S.

23 PART 2

24 LICENSING

25 **12-5.5-201. License required - application - qualifications.**
26 (1) A HEARING AID PROVIDER SHALL OBTAIN A LICENSE PURSUANT TO THIS
27 SECTION BEFORE ENGAGING IN THE PRACTICE OF DISPENSING, FITTING, OR

1 DEALING IN HEARING AIDS.

2 (2) (a) AN APPLICANT SHALL SUBMIT AN APPLICATION TO THE
3 DIRECTOR CONTAINING THE INFORMATION DESCRIBED IN THIS SUBSECTION
4 (2) AND SHALL PAY A FEE DETERMINED AND COLLECTED PURSUANT TO
5 SECTION 24-34-105, C.R.S. THE DIRECTOR MAY DENY AN APPLICATION
6 FOR LICENSURE IF THE REQUIRED INFORMATION IS NOT SUBMITTED OR IF
7 AN APPLICANT'S APPRENTICE LICENSE, ISSUED PURSUANT TO SECTION
8 12-5.5-204, HAS BEEN REVOKED. IF AN APPLICANT OR LICENSEE FAILS TO
9 NOTIFY THE DIRECTOR OF A CHANGE IN THE SUBMITTED INFORMATION
10 WITHIN THIRTY DAYS AFTER THE CHANGE, THE FAILURE IS CAUSE FOR
11 DISCIPLINARY ACTION.

12 (b) AN APPLICANT SHALL INCLUDE THE FOLLOWING INFORMATION
13 IN EVERY APPLICATION FOR LICENSURE PURSUANT TO THIS SECTION:

14 (I) THE APPLICANT'S NAME, BUSINESS ADDRESS, AND BUSINESS
15 TELEPHONE NUMBER;

16 (II) A STATEMENT INDICATING WHETHER:

17 (A) A HEARING AID PROVIDER LICENSE, CERTIFICATE, OR
18 REGISTRATION WAS ISSUED TO THE APPLICANT BY A LOCAL, STATE, OR
19 NATIONAL HEALTH CARE AGENCY;

20 (B) THE LICENSE, CERTIFICATE, OR REGISTRATION WAS SUSPENDED
21 OR REVOKED;

22 (C) CHARGES OR COMPLAINTS ARE PENDING AGAINST THE
23 APPLICANT; AND

24 (D) DISCIPLINARY ACTION WAS TAKEN.

25 (3) IN ORDER TO QUALIFY FOR LICENSURE PURSUANT TO THIS
26 SECTION, AN APPLICANT MUST EITHER:

27 (a) HAVE PASSED THE NATIONAL COMPETENCY EXAMINATION OF

1 THE NATIONAL BOARD FOR CERTIFICATION IN HEARING INSTRUMENT
2 SCIENCES (NBC-HIS), UNLESS THE DIRECTOR DETERMINES, BY RULE, THAT
3 THIS EXAMINATION NO LONGER MEETS THE MINIMUM STANDARDS
4 NECESSARY FOR LICENSURE, IN WHICH CASE, ONLY AN EXAMINATION THAT
5 THE APPLICANT PASSED PRIOR TO THE DATE OF THE RULING WILL BE
6 ACCEPTABLE; OR

7 (b) HAVE PASSED AN APPROPRIATE ENTRY-LEVEL EXAMINATION,
8 AS DETERMINED BY THE DIRECTOR, AND:

9 (I) COMPLETED AT LEAST SIX MONTHS OF TRAINING WITH AN
10 AUDIOLOGIST OR LICENSED HEARING AID PROVIDER, PURSUANT TO
11 SECTION 12-5.5-204; OR

12 (II) HAVE AN ASSOCIATE'S DEGREE IN HEARING AID FITTING AND
13 DISPENSING THAT, AT THE TIME THE APPLICANT WAS ENROLLED AND
14 GRADUATED, WAS OFFERED BY AN INSTITUTION OF HIGHER EDUCATION OR
15 A POST-SECONDARY EDUCATION PROGRAM ACCREDITED BY A NATIONAL,
16 REGIONAL, OR STATE AGENCY RECOGNIZED BY THE UNITED STATES
17 DEPARTMENT OF EDUCATION, OR A PROGRAM APPROVED BY THE
18 DIRECTOR.

19 **12-5.5-202. Licensure - certificate - expiration - renewal -**
20 **reinstatement - fees.** (1) (a) THE DIRECTOR SHALL LICENSE ALL
21 APPLICANTS WHO MEET THE REQUIREMENTS FOR LICENSURE IN THIS
22 ARTICLE AND SHALL ISSUE A CERTIFICATE TO EACH LICENSEE INDICATING
23 THAT THE PERSON NAMED IN THE CERTIFICATE IS LICENSED IN THE STATE
24 OF COLORADO AS A HEARING AID PROVIDER.

25 (b) THE DIRECTOR SHALL ISSUE OR DENY A LICENSE WITHIN THIRTY
26 DAYS AFTER THE DATE THE APPLICATION IS RECEIVED.

27 (c) THE DIRECTOR SHALL GIVE EACH LICENSEE A LICENSE BEARING

1 A UNIQUE LICENSE NUMBER. THE LICENSEE SHALL INCLUDE THE LICENSE
2 NUMBER ON ALL WRITTEN CONTRACTS AND RECEIPTS.

3 (2) LICENSES ISSUED PURSUANT TO THIS ARTICLE EXPIRE
4 PURSUANT TO A SCHEDULE ESTABLISHED BY THE DIRECTOR AND MUST BE
5 RENEWED OR REINSTATED PURSUANT TO SECTION 24-34-102 (8), C.R.S.
6 THE DIRECTOR SHALL ESTABLISH RENEWAL FEES AND DELINQUENCY FEES
7 FOR REINSTATEMENT PURSUANT TO SECTION 24-34-105, C.R.S. IF A
8 PERSON FAILS TO RENEW HIS OR HER LICENSE PURSUANT TO THE SCHEDULE
9 ESTABLISHED BY THE DIRECTOR, THE LICENSE EXPIRES. A PERSON WHOSE
10 LICENSE HAS EXPIRED IS SUBJECT TO THE PENALTIES SET FORTH IN THIS
11 ARTICLE OR IN SECTION 24-34-102 (8), C.R.S.

12 **12-5.5-203. Licensure by endorsement - rules.** (1) THE
13 DIRECTOR SHALL ISSUE A LICENSE BY ENDORSEMENT TO PRACTICE AS A
14 HEARING AID PROVIDER IN THIS STATE TO AN INDIVIDUAL WHO POSSESSES
15 AN ACTIVE LICENSE IN GOOD STANDING TO PRACTICE IN THAT PROFESSION
16 IN ANOTHER STATE OR TERRITORY OF THE UNITED STATES OR IN A
17 FOREIGN COUNTRY IF THE APPLICANT:

18 (a) PRESENTS PROOF SATISFACTORY TO THE DIRECTOR THAT THE
19 INDIVIDUAL POSSESSES A VALID LICENSE FROM ANOTHER STATE OR
20 JURISDICTION THAT REQUIRES QUALIFICATIONS SUBSTANTIALLY
21 EQUIVALENT TO THE QUALIFICATIONS FOR LICENSURE IN THIS STATE AND
22 MEETS ALL OTHER REQUIREMENTS FOR LICENSURE PURSUANT TO THIS
23 ARTICLE; AND

24 (b) PAYS THE LICENSURE FEE ESTABLISHED UNDER SECTION
25 12-5.5-201.

26 (2) THE DIRECTOR MAY SPECIFY BY RULE WHAT CONSTITUTES
27 SUBSTANTIALLY EQUIVALENT QUALIFICATIONS FOR THE PURPOSES OF THIS

1 SECTION.

2 **12-5.5-204. Apprentice license - expiration - rules.** (1) A
3 PERSON TRAINING TO BE A LICENSED HEARING AID PROVIDER SHALL
4 SUBMIT TO THE DIRECTOR AN APPLICATION CONTAINING THE INFORMATION
5 DESCRIBED IN SUBSECTION (2) OF THIS SECTION AND SHALL PAY AN
6 APPRENTICE LICENSE FEE DETERMINED AND COLLECTED PURSUANT TO
7 SECTION 12-5.5-201.

8 (2) THE DIRECTOR SHALL ISSUE AN APPRENTICE LICENSE TO A
9 PERSON WHO PROVIDES, TO THE DIRECTOR'S SATISFACTION, VERIFICATION
10 OF TRAINING TO BECOME A LICENSED HEARING AID PROVIDER, WHICH
11 TRAINING IS UNDER THE DIRECT SUPERVISION OF A LICENSED HEARING AID
12 PROVIDER WHOSE LICENSE IS IN GOOD STANDING.

13 (3) DURING THE TRAINING PERIOD:

14 (a) AN APPRENTICE IS NOT PERMITTED TO SELL HEARING AIDS
15 INDEPENDENTLY OF THE SUPERVISING LICENSED HEARING AID PROVIDER;

16 (b) A SUPERVISING LICENSED HEARING AID PROVIDER RETAINS
17 ULTIMATE RESPONSIBILITY FOR THE CARE PROVIDED BY THE APPRENTICE
18 AND IS SUBJECT TO DISCIPLINARY ACTION BY THE DIRECTOR FOR FAILURE
19 TO PROVIDE ADEQUATE SUPERVISION.

20 (4) ANY PERSON ISSUED AN APPRENTICE LICENSE UNDER THIS
21 SECTION IS SUBJECT TO:

22 (a) DISCIPLINE UNDER SECTION 12-5.5-402 FOR ENGAGING IN AN
23 ACT THAT CONSTITUTES GROUNDS FOR DISCIPLINE UNDER SECTION
24 12-5.5-501; AND

25 (b) A CEASE-AND-DESIST ORDER UNDER SECTION 12-5.5-403 FOR
26 ENGAGING IN BEHAVIOR SET FORTH IN SECTION 12-5.5-403.

27 (5) AN APPRENTICE LICENSE ISSUED UNDER THIS SECTION EXPIRES

1 TWO YEARS AFTER THE DATE OF ISSUANCE.

2 (6) AN ASSOCIATE LICENSE ISSUED PURSUANT TO SECTION
3 12-5.5-202.5 AS IT EXISTED PRIOR TO ITS REPEAL IN 2012 REMAINS VALID
4 UNTIL THE EXPIRATION DATE ON THE LICENSE. THE DIRECTOR SHALL NOT
5 RENEW, OR ISSUE NEW, ASSOCIATE LICENSES.

6 **12-5.5-205. Disposition of fees - legislative intent.** IT IS THE
7 INTENT OF THE GENERAL ASSEMBLY TO FUND ALL DIRECT AND INDIRECT
8 COSTS INCURRED IN THE IMPLEMENTATION OF THIS ARTICLE WITH ANNUAL
9 LICENSE AND RENEWAL FEES. THE DIRECTOR SHALL TRANSMIT ALL FEES
10 COLLECTED UNDER THIS ARTICLE TO THE STATE TREASURER, WHO SHALL
11 CREDIT THEM TO THE DIVISION OF PROFESSIONS AND OCCUPATIONS CASH
12 FUND CREATED IN SECTION 24-34-105, C.R.S.

13 PART 3

14 SALE OF HEARING AIDS

15 **12-5.5-301. Requirements.** (1) BEFORE SELLING A HEARING AID
16 TO AN INDIVIDUAL, A LICENSEE SHALL:

17 (a) RECEIVE FROM A LICENSED PHYSICIAN A WRITTEN
18 PRESCRIPTION OR RECOMMENDATION THAT SPECIFIES THE PERSON IS IN
19 NEED OF A HEARING AID; EXCEPT THAT ANY PERSON EIGHTEEN YEARS OF
20 AGE OR OLDER WHO OBJECTS TO MEDICAL EVALUATION ON THE BASIS OF
21 RELIGIOUS OR PERSONAL BELIEFS MAY WAIVE THE REQUIREMENT BY
22 DELIVERING TO THE LICENSED HEARING AID PROVIDER A WRITTEN WAIVER;

23 (b) RECOMMEND IN WRITING, PRIOR TO FITTING OR DISPENSING A
24 HEARING AID, THAT THE BEST INTERESTS OF THE PROSPECTIVE USER
25 WOULD BE SERVED BY CONSULTING A LICENSED PHYSICIAN SPECIALIZING
26 IN DISEASES OF THE EAR, OR ANY LICENSED PHYSICIAN, IF ANY OF THE
27 FOLLOWING CONDITIONS EXIST:

1 (I) VISIBLE CONGENITAL OR TRAUMATIC DEFORMITY OF THE EAR;

2 (II) HISTORY OF OR ACTIVE DRAINAGE OF THE EAR WITHIN THE
3 PREVIOUS NINETY DAYS;

4 (III) HISTORY OF SUDDEN OR RAPIDLY PROGRESSIVE HEARING
5 LOSS;

6 (IV) ACUTE OR CHRONIC DIZZINESS;

7 (V) UNILATERAL HEARING LOSS OF SUDDEN ONSET WITHIN THE
8 PREVIOUS NINETY DAYS;

9 (VI) AUDIOMETRIC AIR-BONE GAP EQUAL TO OR GREATER THAN
10 FIFTEEN DECIBELS AT 500 HERTZ (Hz), 1,000 Hz, AND 2,000 Hz;

11 (VII) VISIBLE EVIDENCE OF SIGNIFICANT CERUMEN
12 ACCUMULATION OR A FOREIGN BODY IN THE EAR CANAL;

13 (VIII) PAIN OR DISCOMFORT IN THE EAR.

14 (2) EACH LICENSEE SHALL PROVIDE EACH PURCHASER OF A
15 HEARING AID A RECEIPT THAT:

16 (a) BEARS THE BUSINESS ADDRESS AND TELEPHONE NUMBER OF
17 THE SELLER;

18 (b) CONTAINS THE MAKE AND SERIAL NUMBER OF THE HEARING
19 AID FURNISHED AND THE FULL TERMS OF THE SALE CLEARLY STATED. IF A
20 HEARING AID THAT IS NOT NEW IS SOLD, THE RECEIPT MUST BE CLEARLY
21 MARKED AS "USED" OR "RECONDITIONED", WHICHEVER IS APPLICABLE,
22 WITH THE TERMS OF THE GUARANTEE, IF ANY.

23 (c) BEARS, IN NO SMALLER THAN TEN-POINT TYPE, IN SUBSTANCE,
24 A PROVISION THAT THE PURCHASER HAS BEEN ADVISED AT THE OUTSET OF
25 THE PURCHASER'S RELATIONSHIP WITH THE SELLER THAT ANY
26 EXAMINATION OR REPRESENTATION MADE BY A SELLER IN CONNECTION
27 WITH THE PRACTICE OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS

1 IS NOT AN EXAMINATION, DIAGNOSIS, OR PRESCRIPTION BY A PERSON
2 LICENSED TO PRACTICE MEDICINE IN THIS STATE AND, THEREFORE, MUST
3 NOT BE REGARDED AS MEDICAL OPINION OR ADVICE;

4 (d) BEARS, IN NO SMALLER THAN TEN-POINT TYPE, A PROVISION
5 INDICATING THAT HEARING AID PROVIDERS ARE REGULATED BY THE
6 DIVISION OF PROFESSIONS AND OCCUPATIONS WITHIN THE DEPARTMENT OF
7 REGULATORY AGENCIES;

8 (e) BEARS A PROVISION LABELED "WARRANTY" IN WHICH THE
9 WARRANTY TERMS AND PERIODS AVAILABLE FROM THE MANUFACTURER
10 ARE DOCUMENTED, OR INCLUDES AN ORIGINAL OR PHOTOCOPY OF THE
11 ORIGINAL MANUFACTURER'S WARRANTY WITH THE RECEIPT;

12 (f) CONTAINS A STATEMENT, IN NO SMALLER THAN TEN-POINT
13 TYPE, THAT THE SALE IS VOID AND UNENFORCEABLE IF THE HEARING AID
14 BEING PURCHASED IS NOT DELIVERED TO THE CONSUMER WITHIN THIRTY
15 DAYS AFTER THE DATE THE WRITTEN CONTRACT IS SIGNED OR THE RECEIPT
16 IS ISSUED, WHICHEVER OCCURS LATER. THE WRITTEN CONTRACT OR
17 RECEIPT SHALL ALSO INCLUDE THE LICENSEE'S LICENSE NUMBER AND A
18 STATEMENT THAT THE SELLER WILL PROMPTLY REFUND ALL MONEYS PAID
19 FOR THE PURCHASE OF A HEARING AID IF IT IS NOT DELIVERED TO THE
20 CONSUMER WITHIN THE THIRTY-DAY PERIOD. THIS STATEMENT MAY NOT
21 BE WAIVED BY THE BUYER.

22 (g) PROVIDES A MINIMUM THIRTY-DAY RESCISSION PERIOD WITH
23 THE FOLLOWING TERMS:

24 (I) THE BUYER HAS THE RIGHT TO CANCEL THE PURCHASE FOR ANY
25 REASON BEFORE THE EXPIRATION OF THE RESCISSION PERIOD BY GIVING OR
26 MAILING WRITTEN NOTICE OF CANCELLATION TO THE SELLER AND
27 PRESENTING THE HEARING AID TO THE SELLER, UNLESS THE HEARING AID

1 HAS BEEN LOST OR SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE IN
2 THE BUYER'S POSSESSION AND CONTROL. THE RESCISSION PERIOD SHALL
3 BE TOLLED FOR ANY PERIOD DURING WHICH THE SELLER TAKES
4 POSSESSION OR CONTROL OF A HEARING AID AFTER ITS ORIGINAL
5 DELIVERY. THE RECEIPT SHALL INCLUDE, IN IMMEDIATE PROXIMITY TO THE
6 SPACE RESERVED FOR THE SIGNATURE OF THE BUYER, THE FOLLOWING
7 SPECIFIC STATEMENT IN ALL CAPITAL LETTERS OF NO LESS THAN
8 TEN-POINT, BOLD-FACED TYPE:

9 **THE BUYER HAS THE RIGHT TO CANCEL**
10 **THIS PURCHASE FOR ANY REASON AT ANY**
11 **TIME PRIOR TO 12 MIDNIGHT _____(NUMBER**
12 **OF DAYS TO BE FILLED IN, BUT NOT LESS THAN**
13 **30) CALENDAR DAYS AFTER RECEIPT OF THE**
14 **HEARING AID BY GIVING OR MAILING THE**
15 **SELLER WRITTEN NOTICE OF CANCELLATION**
16 **AND BY RETURNING THE HEARING AID,**
17 **UNLESS THE HEARING AID HAS BEEN**
18 **SIGNIFICANTLY DAMAGED BEYOND REPAIR**
19 **WHILE THE HEARING AID WAS IN THE BUYER'S**
20 **CONTROL.**

21 (II) THE BUYER, UPON CANCELLATION, IS ENTITLED TO RECEIVE A
22 FULL REFUND OF ANY PAYMENT MADE FOR THE HEARING AID WITHIN
23 THIRTY DAYS AFTER RETURN OF THE HEARING AID TO THE SELLER, UNLESS
24 THE HEARING AID WAS SIGNIFICANTLY DAMAGED BEYOND REPAIR WHILE
25 THE HEARING AID WAS IN THE BUYER'S POSSESSION AND CONTROL.

26 (h) INCLUDES A REFUND REQUEST FORM RECEIPT THAT CONTAINS
27 THE BUSINESS ADDRESS AND PHONE NUMBER OF THE SELLER AND THE

1 FOLLOWING STATEMENT, IN ALL CAPITAL LETTERS OF NO LESS THAN
2 TEN-POINT, BOLD-FACED TYPE: "**REFUND REQUEST - THIS FORM**
3 **MUST BE POSTMARKED BY _____(DATE TO BE FILLED IN).**
4 **NO REFUND WILL BE GIVEN UNTIL THE HEARING AID OR**
5 **HEARING AIDS ARE RETURNED TO THE SELLER.**" THE FORM
6 MUST INCLUDE A SPACE FOR THE BUYER'S ADDRESS, TELEPHONE NUMBER,
7 AND SIGNATURE, WHICH THE BUYER MUST PROVIDE. THE BUYER IS
8 REQUIRED ONLY TO SIGN AND LIST THE BUYER'S CURRENT ADDRESS AND
9 TELEPHONE NUMBER ON THE FORM AND MAIL THE REFUND REQUEST FORM
10 TO THE SELLER.

11 (3) A SELLER SHALL MAINTAIN FOR AT LEAST SEVEN YEARS
12 RECORDS IDENTIFYING CUSTOMERS BY NAME; THE GOODS OR SERVICES,
13 EXCEPT BATTERIES, MINOR PARTS, AND ACCESSORIES, PROVIDED TO EACH
14 CUSTOMER; AND THE DATE AND PRICE OF EACH TRANSACTION.

15 (4) A SELLER OR LICENSEE WHO FAILS TO COMPLY WITH THIS
16 SECTION ENGAGES IN A DECEPTIVE TRADE PRACTICE UNDER THE
17 "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S.

18 PART 4

19 DIRECTOR: POWERS, DUTIES, AND RULES

20 **12-5.5-401. Director - powers - duties - rules.** (1) THE
21 DIRECTOR MAY MAKE INVESTIGATIONS AND INSPECTIONS AS NECESSARY
22 TO DETERMINE WHETHER AN APPLICANT OR LICENSEE HAS VIOLATED THIS
23 ARTICLE OR ANY RULE ADOPTED BY THE DIRECTOR.

24 (2) THE DIRECTOR MAY APPLY TO A COURT OF COMPETENT
25 JURISDICTION FOR AN ORDER ENJOINING ANY ACT OR PRACTICE THAT
26 CONSTITUTES A VIOLATION OF THIS ARTICLE. UPON A SHOWING THAT A
27 PERSON IS ENGAGING IN OR INTENDS TO ENGAGE IN THE ACT OR PRACTICE,

1 THE COURT SHALL GRANT AN INJUNCTION, RESTRAINING ORDER, OR OTHER
2 APPROPRIATE ORDER, REGARDLESS OF THE EXISTENCE OF ANOTHER
3 REMEDY. ALL PROCEEDINGS RELATED TO SUCH ORDERS ARE GOVERNED BY
4 THE COLORADO RULES OF CIVIL PROCEDURE.

5 (3) (a) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE HAS THE
6 POWER TO ADMINISTER OATHS, TAKE AFFIRMATIONS OF WITNESSES, AND
7 ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF WITNESSES AND THE
8 PRODUCTION OF ALL RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY
9 EVIDENCE, AND MATERIALS IN ANY HEARING, INVESTIGATION,
10 ACCUSATION, OR OTHER MATTER COMING BEFORE THE DIRECTOR
11 PURSUANT TO THIS ARTICLE. THE DIRECTOR MAY APPOINT AN
12 ADMINISTRATIVE LAW JUDGE PURSUANT TO PART 10 OF ARTICLE 30 OF
13 TITLE 24, C.R.S., TO TAKE EVIDENCE AND TO MAKE FINDINGS AND REPORT
14 THEM TO THE DIRECTOR.

15 (b) UPON FAILURE OF ANY WITNESS TO COMPLY WITH A SUBPOENA
16 OR PROCESS, THE DISTRICT COURT OF THE COUNTY IN WHICH THE
17 SUBPOENAED PERSON OR LICENSEE RESIDES OR CONDUCTS BUSINESS, UPON
18 APPLICATION BY THE DIRECTOR WITH NOTICE TO THE SUBPOENAED PERSON
19 OR LICENSEE, MAY ISSUE TO THE PERSON OR LICENSEE AN ORDER
20 REQUIRING THAT PERSON OR LICENSEE TO APPEAR BEFORE THE DIRECTOR;
21 TO PRODUCE THE RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY
22 EVIDENCE, OR MATERIALS IF SO ORDERED; OR TO GIVE EVIDENCE
23 TOUCHING THE MATTER UNDER INVESTIGATION OR IN QUESTION. THE
24 COURT MAY PUNISH A FAILURE TO OBEY THE ORDER OF THE COURT AS A
25 CONTEMPT OF COURT.

26 (4) NO LATER THAN DECEMBER 31, 2013, AND THEREAFTER AS
27 NECESSARY, THE DIRECTOR SHALL ADOPT RULES NECESSARY FOR THE

1 ENFORCEMENT OR ADMINISTRATION OF PART 2 OF THIS ARTICLE AND THIS
2 PART 4. ALL RULES ADOPTED UNDER THIS ARTICLE MUST:

3 (a) BE CONSISTENT WITH ALL APPLICABLE FEDERAL LAWS AND
4 REGULATIONS, INCLUDING RULES PROMULGATED BY THE UNITED STATES
5 FOOD AND DRUG ADMINISTRATION;

6 (b) NOT HAVE THE EFFECT OF LIMITING ACCESS OR INCREASING
7 COSTS TO CONSUMERS FOR SERVICES AND PRODUCTS REGULATED BY THIS
8 ARTICLE, EXCEPT AS DETERMINED NECESSARY BY THE DIRECTOR FOR THE
9 PROTECTION OF CONSUMERS;

10 (c) NOT HAVE THE EFFECT OF INCREASING THE REGULATORY,
11 FINANCIAL, OR OPERATIONAL BURDEN TO SMALL BUSINESSES, EXCEPT AS
12 DETERMINED NECESSARY BY THE DIRECTOR FOR THE PROTECTION OF
13 CONSUMERS; AND

14 (d) BALANCE THE INCREASE OF COSTS TO CONSUMERS AS A WHOLE
15 WITH THE PROTECTION OF AN INDIVIDUAL CONSUMER.

16 **12-5.5-402. Disciplinary actions.** (1) IF, AFTER INVESTIGATION,
17 NOTICE, AND THE OPPORTUNITY FOR HEARING IN ACCORDANCE WITH
18 ARTICLE 4 OF TITLE 24, C.R.S., THE DIRECTOR DETERMINES AN APPLICANT
19 OR LICENSEE HAS COMMITTED ANY OF THE ACTS SPECIFIED IN PART 5 OF
20 THIS ARTICLE, THE DIRECTOR MAY:

21 (a) ISSUE A LETTER OF ADMONITION;

22 (b) PLACE A LICENSEE ON PROBATION;

23 (c) IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED FIVE
24 HUNDRED DOLLARS FOR EACH SEPARATE OFFENSE; OR

25 (d) DENY, REFUSE TO RENEW, REVOKE, OR SUSPEND THE LICENSE
26 OF AN APPLICANT OR LICENSEE.

27 (2) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN

1 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR,
2 WARRANTS FORMAL ACTION, THE COMPLAINT SHALL NOT BE RESOLVED BY
3 A DEFERRED SETTLEMENT, ACTION, JUDGMENT, OR PROSECUTION.

4 (3) A PERSON WHOSE LICENSE TO PRACTICE AS A HEARING AID
5 PROVIDER OR APPRENTICE UNDER THIS ARTICLE IS REVOKED, OR WHO
6 SURRENDERS HIS OR HER LICENSE TO AVOID DISCIPLINE, IS INELIGIBLE TO
7 APPLY FOR ANY NEW LICENSE UNDER THIS ARTICLE FOR TWO YEARS AFTER
8 THE DATE OF REVOCATION OR SURRENDER OF HIS OR HER LICENSE.

9 (4) (a) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
10 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES
11 NOT WARRANT FORMAL ACTION BY THE DIRECTOR BUT THAT SHOULD NOT
12 BE DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY ISSUE AND
13 SEND A LETTER OF ADMONITION TO THE LICENSEE.

14 (b) (I) WHEN THE DIRECTOR SENDS A LETTER OF ADMONITION TO
15 A LICENSEE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4), THE
16 DIRECTOR SHALL ALSO ADVISE THE LICENSEE THAT HE OR SHE HAS THE
17 RIGHT TO REQUEST IN WRITING, WITHIN TWENTY DAYS AFTER SERVICE OF
18 THE LETTER, THAT THE DIRECTOR INITIATE FORMAL DISCIPLINARY
19 PROCEEDINGS TO ADJUDICATE THE PROPRIETY OF THE CONDUCT UPON
20 WHICH THE LETTER OF ADMONITION IS BASED.

21 (II) IF THE LICENSEE MAKES THE REQUEST FOR ADJUDICATION, THE
22 DIRECTOR SHALL VACATE THE LETTER OF ADMONITION AND SHALL
23 PROCESS THE MATTER BY MEANS OF FORMAL DISCIPLINARY PROCEEDINGS.

24 (5) (a) WHEN A COMPLAINT OR INVESTIGATION DISCLOSES AN
25 INSTANCE OF CONDUCT THAT DOES NOT WARRANT FORMAL ACTION BY THE
26 DIRECTOR AND, IN THE OPINION OF THE DIRECTOR, SHOULD BE DISMISSED,
27 BUT THE DIRECTOR HAS NOTICED INDICATIONS OF POSSIBLE ERRANT

1 CONDUCT BY THE LICENSEE THAT COULD LEAD TO SERIOUS CONSEQUENCES
2 IF NOT CORRECTED, THE DIRECTOR MAY SEND THE LICENSEE A
3 CONFIDENTIAL LETTER OF CONCERN.

4 (b) WHEN THE DIRECTOR RECEIVES A COMPLAINT ANONYMOUSLY
5 OR FROM A COMPETITOR OF THE LICENSEE, THE MAXIMUM INITIAL ACTION
6 THE DIRECTOR MAY TAKE IS TO SEND THE LICENSEE A CONFIDENTIAL
7 LETTER OF CONCERN UNLESS THE DIRECTOR DETERMINES:

8 (I) A CONSUMER HAS BEEN PHYSICALLY HARMED;

9 (II) A CONSUMER HAS EXPERIENCED MEANINGFUL FINANCIAL
10 HARM; OR

11 (III) THE LICENSEE IS UNLIKELY TO MODIFY HIS OR HER PRACTICES
12 TO COMPLY WITH THIS ARTICLE IN A MANNER SATISFACTORY TO THE
13 DIRECTOR UNLESS OTHER DISCIPLINARY ACTION IS TAKEN.

14 (6) THE DIRECTOR SHALL NOT ENFORCE ANY PROVISIONS OF THIS
15 ARTICLE OR RULES PROMULGATED PURSUANT TO THIS ARTICLE THAT ARE
16 HELD UNCONSTITUTIONAL, INVALID, OR INCONSISTENT WITH FEDERAL
17 LAWS OR REGULATIONS, INCLUDING RULES PROMULGATED BY THE UNITED
18 STATES FOOD AND DRUG ADMINISTRATION.

19 (7) ALL FINES COLLECTED PURSUANT TO THIS SECTION SHALL BE
20 TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO
21 THE GENERAL FUND.

22 **12-5.5-403. Cease-and-desist orders - unauthorized practice -**
23 **penalties.** (1) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
24 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
25 A LICENSEE IS ACTING IN A MANNER THAT IS A THREAT TO THE HEALTH
26 AND SAFETY OF THE PUBLIC, OR A PERSON IS ACTING OR HAS ACTED
27 WITHOUT THE REQUIRED LICENSE, THE DIRECTOR MAY ISSUE AN ORDER TO

1 CEASE AND DESIST THE ACTIVITY. THE ORDER MUST SET FORTH THE
2 STATUTES AND RULES ALLEGED TO HAVE BEEN VIOLATED, THE FACTS
3 ALLEGED TO HAVE CONSTITUTED THE VIOLATION, THE SPECIFIC HARM
4 THAT THREATENS THE HEALTH AND SAFETY OF THE PUBLIC, AND THE
5 REQUIREMENT THAT ALL UNLAWFUL ACTS OR UNLICENSED PRACTICES
6 IMMEDIATELY CEASE.

7 (b) WITHIN TEN DAYS AFTER SERVICE OF THE ORDER TO CEASE AND
8 DESIST PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1), THE
9 RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER
10 ACTS OR PRACTICES IN VIOLATION OF THIS ARTICLE HAVE OCCURRED. THE
11 HEARING MUST BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND
12 24-4-105, C.R.S.

13 (2) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
14 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
15 A PERSON HAS VIOLATED ANY OTHER PORTION OF THIS ARTICLE, THEN, IN
16 ADDITION TO ANY SPECIFIC POWERS GRANTED PURSUANT TO THIS ARTICLE,
17 THE DIRECTOR MAY ISSUE TO THE PERSON AN ORDER TO SHOW CAUSE AS
18 TO WHY THE DIRECTOR SHOULD NOT ISSUE A FINAL ORDER DIRECTING THE
19 PERSON TO CEASE AND DESIST FROM THE UNLAWFUL ACT OR PRACTICE.

20 (b) THE DIRECTOR SHALL PROMPTLY NOTIFY THE PERSON OF THE
21 ISSUANCE OF THE ORDER AND SHALL INCLUDE IN THE NOTICE A COPY OF
22 THE ORDER, THE FACTUAL AND LEGAL BASIS FOR THE ORDER, AND THE
23 DATE SET BY THE DIRECTOR FOR A HEARING ON THE ORDER. THE DIRECTOR
24 MAY SERVE THE NOTICE BY PERSONAL SERVICE, BY FIRST-CLASS UNITED
25 STATES MAIL, POSTAGE PREPAID, OR AS MAY BE PRACTICABLE UPON ANY
26 PERSON AGAINST WHOM THE ORDER IS ISSUED. PERSONAL SERVICE OR
27 PROOF OF RECEIPT OF MAILING OF AN ORDER OR DOCUMENT PURSUANT TO

1 THIS PARAGRAPH (b) CONSTITUTES NOTICE TO THE PERSON OF THE
2 EXISTENCE AND CONTENTS OF THE ORDER OR DOCUMENT.

3 (c) (I) THE DIRECTOR MUST COMMENCE THE HEARING ON AN
4 ORDER TO SHOW CAUSE NO SOONER THAN TEN, AND NO LATER THAN
5 FORTY-FIVE, CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR
6 SERVICE OF THE NOTIFICATION BY THE DIRECTOR AS PROVIDED IN
7 PARAGRAPH (b) OF THIS SUBSECTION (2). THE DIRECTOR MAY CONTINUE
8 THE HEARING BY AGREEMENT OF ALL PARTIES BASED UPON THE
9 COMPLEXITY OF THE MATTER, NUMBER OF PARTIES TO THE MATTER, AND
10 LEGAL ISSUES PRESENTED IN THE MATTER, BUT IN NO EVENT MAY THE
11 DIRECTOR COMMENCE THE HEARING LATER THAN SIXTY CALENDAR DAYS
12 AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE NOTIFICATION.

13 (II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS
14 BEEN ISSUED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2) DOES
15 NOT APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE
16 THAT NOTIFICATION WAS PROPERLY SENT OR SERVED UPON THE PERSON
17 PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (2) AND ANY OTHER
18 EVIDENCE RELATED TO THE MATTER AS THE DIRECTOR DEEMS
19 APPROPRIATE. THE DIRECTOR SHALL ISSUE THE ORDER WITHIN TEN DAYS
20 AFTER THE DIRECTOR'S DETERMINATION RELATED TO REASONABLE
21 ATTEMPTS TO NOTIFY THE RESPONDENT, AND THE ORDER BECOMES FINAL
22 AS TO THAT PERSON BY OPERATION OF LAW. THE CONDUCT OF THE
23 HEARING IS GOVERNED BY SECTIONS 24-4-104 AND 24-4-105, C.R.S.

24 (III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON
25 AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR
26 HAS ACTED WITHOUT THE REQUIRED LICENSE OR HAS OR IS ABOUT TO
27 ENGAGE IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS OF THIS

1 ARTICLE OR RULES ADOPTED UNDER THIS ARTICLE, THE DIRECTOR MAY
2 ISSUE A FINAL CEASE-AND-DESIST ORDER DIRECTING THE PERSON TO
3 CEASE AND DESIST FROM FURTHER UNLAWFUL ACTS OR UNLICENSED
4 PRACTICES.

5 (IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET
6 FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2), OF THE FINAL
7 CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE
8 HEARING CONDUCTED PURSUANT TO THIS PARAGRAPH (c) TO EACH PERSON
9 AGAINST WHOM THE FINAL ORDER HAS BEEN ISSUED. THE FINAL ORDER
10 ISSUED PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (c) IS
11 EFFECTIVE WHEN ISSUED AND CONSTITUTES A FINAL ORDER FOR PURPOSES
12 OF JUDICIAL REVIEW.

13 (3) THE DIRECTOR MAY ENTER INTO A STIPULATION WITH A PERSON
14 IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE EVIDENCE
15 PRESENTED TO THE DIRECTOR, THAT THE PERSON HAS ENGAGED IN OR IS
16 ABOUT TO ENGAGE IN:

17 (a) AN UNLICENSED ACT OR PRACTICE;

18 (b) AN ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS
19 ARTICLE, A RULE PROMULGATED PURSUANT TO THIS ARTICLE, OR AN
20 ORDER ISSUED PURSUANT TO THIS ARTICLE; OR

21 (c) AN ACT OR PRACTICE CONSTITUTING GROUNDS FOR
22 ADMINISTRATIVE SANCTION PURSUANT TO THIS ARTICLE.

23 (4) IF ANY PERSON FAILS TO COMPLY WITH A FINAL
24 CEASE-AND-DESIST ORDER OR A STIPULATION, THE DIRECTOR MAY
25 REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE
26 JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING,
27 AND IF SO REQUESTED THE ATTORNEY SHALL BRING, SUIT FOR A

1 TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO
2 PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

3 (5) A PERSON AGGRIEVED BY THE FINAL CEASE-AND-DESIST ORDER
4 MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF
5 THE DIRECTOR'S FINAL ORDER IN A COURT OF COMPETENT JURISDICTION.

6 (6) A PERSON WHO PRACTICES OR OFFERS OR ATTEMPTS TO
7 PRACTICE AS A HEARING AID PROVIDER OR WHO ENGAGES IN THE PRACTICE
8 OF DISPENSING, FITTING, OR DEALING IN HEARING AIDS WITHOUT AN
9 ACTIVE HEARING AID PROVIDER LICENSE ISSUED UNDER THIS ARTICLE
10 COMMITS A CLASS 2 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED
11 IN SECTION 18-1.3-501, C.R.S., FOR THE FIRST OFFENSE, AND, FOR THE
12 SECOND OR ANY SUBSEQUENT OFFENSE, THE PERSON COMMITS A CLASS 6
13 FELONY AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-401,
14 C.R.S.

15 **12-5.5-404. Immunity.** THE DIRECTOR, THE DIRECTOR'S STAFF, A
16 PERSON ACTING AS A WITNESS OR CONSULTANT TO THE DIRECTOR, AND A
17 WITNESS TESTIFYING IN A PROCEEDING AUTHORIZED UNDER THIS ARTICLE,
18 IS IMMUNE FROM LIABILITY IN ANY CIVIL ACTION BROUGHT AGAINST HIM
19 OR HER FOR ACTS OCCURRING WHILE ACTING IN HIS OR HER CAPACITY AS
20 DIRECTOR, STAFF, CONSULTANT, OR WITNESS, RESPECTIVELY, IF THE
21 INDIVIDUAL WAS ACTING IN GOOD FAITH WITHIN THE SCOPE OF HIS OR HER
22 RESPECTIVE CAPACITY, MADE A REASONABLE EFFORT TO OBTAIN THE
23 FACTS OF THE MATTER AS TO WHICH HE OR SHE ACTED, AND ACTED IN THE
24 REASONABLE BELIEF THAT THE ACTION TAKEN BY HIM OR HER WAS
25 WARRANTED BY THE FACTS. ANY PERSON PARTICIPATING IN GOOD FAITH
26 IN LODGING A COMPLAINT OR PARTICIPATING IN ANY INVESTIGATIVE OR
27 ADMINISTRATIVE PROCEEDING PURSUANT TO THIS ARTICLE IS IMMUNE

1 FROM ANY CIVIL OR CRIMINAL LIABILITY THAT MAY RESULT FROM THAT
2 PARTICIPATION.

3 PART 5

4 GROUNDS FOR DISCIPLINE

5 **12-5.5-501. Grounds for discipline.** (1) THE FOLLOWING ACTS
6 CONSTITUTE GROUNDS FOR DISCIPLINE:

7 (a) MAKING A FALSE OR MISLEADING STATEMENT OR OMISSION IN
8 AN APPLICATION FOR LICENSURE;

9 (b) VIOLATING ANY PROVISION OF THIS ARTICLE, A RULE
10 PROMULGATED BY THE DIRECTOR UNDER THIS ARTICLE, OR AN ORDER
11 ISSUED BY THE DIRECTOR UNDER THIS ARTICLE;

12 (c) USING FALSE OR MISLEADING ADVERTISING;

13 (d) REPRESENTING THAT THE SERVICE OR ADVICE OF A PERSON
14 LICENSED TO PRACTICE MEDICINE WILL BE USED OR MADE AVAILABLE IN
15 THE SELECTION, FITTING, ADJUSTMENT, MAINTENANCE, OR REPAIR OF
16 HEARING AIDS WHEN THAT IS NOT TRUE OR USING THE TERMS "DOCTOR",
17 "CLINIC", "STATE-LICENSED CLINIC", "STATE-REGISTERED",
18 "STATE-CERTIFIED", "STATE-APPROVED", OR ANY OTHER TERM,
19 ABBREVIATION, OR SYMBOL WHEN IT WOULD GIVE THE FALSE IMPRESSION
20 THAT SERVICE IS BEING PROVIDED BY PERSONS TRAINED IN MEDICINE OR
21 THAT THE LICENSEE'S SERVICE HAS BEEN RECOMMENDED BY THE STATE
22 WHEN THAT IS NOT THE CASE, OR WHEN IT WOULD BE FALSE OR
23 MISLEADING;

24 (e) DIRECTLY OR INDIRECTLY GIVING OR OFFERING TO GIVE MONEY
25 OR ANYTHING OF VALUE TO ANY PERSON WHO ADVISES ANOTHER IN A
26 PROFESSIONAL CAPACITY AS AN INDUCEMENT TO INFLUENCE THE PERSON
27 OR HAVE THE PERSON INFLUENCE OTHERS TO PURCHASE OR CONTRACT TO

1 PURCHASE PRODUCTS SOLD OR OFFERED FOR SALE BY A LICENSEE OR
2 INFLUENCING PERSONS TO REFRAIN FROM DEALING IN THE PRODUCTS OF
3 COMPETITORS;

4 (f) EMPLOYING A DEVICE, A SCHEME, OR ARTIFICE WITH THE
5 INTENT TO DEFRAUD A PURCHASER OF A HEARING AID;

6 (g) SELLING A HEARING AID TO A CHILD UNDER EIGHTEEN YEARS
7 OF AGE WITHOUT RECEIVING DOCUMENTATION THAT THE CHILD HAS BEEN
8 EXAMINED BY A LICENSED PHYSICIAN AND AN AUDIOLOGIST WITHIN SIX
9 MONTHS PRIOR TO THE FITTING;

10 (h) INTENTIONALLY DISPOSING OF, CONCEALING, DIVERTING,
11 CONVERTING, OR OTHERWISE FAILING TO ACCOUNT FOR ANY FUNDS OR
12 ASSETS OF A PURCHASER OF A HEARING AID THAT IS UNDER THE
13 APPLICANT'S, LICENSEE'S, OR APPRENTICE'S CONTROL;

14 (i) MAKING A FALSE OR MISLEADING STATEMENT OF FACT
15 CONCERNING GOODS OR SERVICES OR THE BUYER'S RIGHT TO CANCEL WITH
16 THE INTENTION OR EFFECT OF DETERRING OR PREVENTING THE BUYER
17 FROM EXERCISING THE BUYER'S RIGHT TO CANCEL, OR REFUSING TO HONOR
18 A BUYER'S REQUEST TO CANCEL A CONTRACT FOR THE PURCHASE OF A
19 HEARING AID, IF THE REQUEST WAS MADE DURING THE RESCISSION PERIOD
20 SET FORTH IN SECTION 12-5.5-301 (2) (g);

21 (j) CHARGING, COLLECTING, OR RECOVERING ANY COST OR FEE FOR
22 ANY GOOD OR SERVICE THAT HAS BEEN REPRESENTED BY THE LICENSEE AS
23 FREE;

24 (k) FAILING TO ADEQUATELY SUPERVISE A LICENSED HEARING AID
25 PROVIDER APPRENTICE OR ANY EMPLOYEE PURSUANT TO SECTION
26 12-5.5-204 OR SECTION 12-5.5-102 (4) (a);

27 (l) EMPLOYING A SALES AGENT OR EMPLOYEE WHO VIOLATES ANY

1 PROVISION OF THIS ARTICLE, A RULE PROMULGATED BY THE DIRECTOR
2 UNDER THIS ARTICLE, OR AN ORDER ISSUED BY THE DIRECTOR UNDER THIS
3 ARTICLE;

4 (m) FAILING TO COMPLY WITH A STIPULATION OR AGREEMENT
5 MADE WITH THE DIRECTOR OR WITH A FINAL AGENCY ORDER;

6 (n) FAILING TO RESPOND IN AN HONEST, MATERIALLY RESPONSIVE,
7 AND TIMELY MANNER TO A COMPLAINT ISSUED PURSUANT TO SECTION
8 12-5.5-402 (4);

9 (o) BEING CONVICTED OF, ACCEPTING A PLEA OF GUILTY OR NOLO
10 CONTENDERE TO, OR RECEIPT OF A DEFERRED SENTENCE IN ANY COURT
11 FOR A FELONY OR FOR ANY CRIME INVOLVING FRAUD, DECEPTION, FALSE
12 PRETENSE, THEFT, MISREPRESENTATION, FALSE ADVERTISING, OR
13 DISHONEST DEALING;

14 (p) SELLING, DISPENSING, ADJUSTING, PROVIDING TRAINING OR
15 TEACHING IN REGARD TO, OR OTHERWISE SERVICING COCHLEAR IMPLANTS
16 UNLESS THE HEARING AID PROVIDER IS AN AUDIOLOGIST OR A PHYSICIAN;
17 AND

18 (q) VIOLATING THE "COLORADO CONSUMER PROTECTION ACT",
19 ARTICLE 1, OF TITLE 6, C.R.S.

20 **SECTION 2.** In Colorado Revised Statutes, **amend** 6-1-114 as
21 follows:

22 **6-1-114. Criminal penalties.** Upon a first conviction, any person
23 who promotes a pyramid promotional scheme in this state or who violates
24 any provision of part 3 of article 5.5 of title 12, C.R.S., or section 6-1-717
25 is guilty of a class 1 misdemeanor, as defined in section 18-1.3-501,
26 C.R.S., and, upon a second or subsequent conviction of ~~part 3~~ of article
27 5.5 of title 12, C.R.S., is guilty of a class 6 felony, as defined in section

1 18-1.3-401, C.R.S.

2 **SECTION 3.** In Colorado Revised Statutes, 24-34-104 **amend**
3 (51.5) introductory portion; and **add** (51.5) (d) as follows:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for termination, continuation, or reestablishment.**

6 (51.5) The following agencies, functions, or both, ~~shall~~ terminate on
7 September 1, 2020:

8 (d) THE LICENSING OF HEARING AID PROVIDERS BY THE DIVISION
9 OF PROFESSIONS AND OCCUPATIONS, PURSUANT TO ARTICLE 5.5 OF TITLE
10 12, C.R.S.

11 **SECTION 4. Effective date.** (1) Except as provided in
12 subsection (2) of this section, this act takes effect July 1, 2013.

13 (2) Section 12-5.5-201 (1) (b), Colorado Revised Statutes, as
14 enacted in section 1 of this act, takes effect:

15 (a) Only if Senate Bill 13-039 becomes law; and

16 (b) On the effective date of this act or of Senate Bill 13-039,
17 whichever is later.

18 **SECTION 5. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.