

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. _____ Department or Agency Board of Hearing Instrument Dealers

Rule No. 445-X-1-.08

Rule Title: Investigations and Hearings

_____ New XX Amend _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? NA

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Marilyn Fletcher

Date 5/20/16

(DATE FILED)
(STAMP)

Alabama Board of Hearing Instrument Dealers

NOTICE OF INTENDED ACTION

AGENCY NAME: The Alabama Board of Hearing Instrument Dealers

RULE NO. & TITLE: 445-X-1-.02 Definitions
445-X-1-.03 Licensing and Administration
445-X-1-.04 Examination for Licensure
445-X-1-.05 Continuing Education
445-X-1-.06 Requirements for Businesses
445-X-1-.07 Prohibited Acts
445-X-1-.08 Investigations and Hearings

INTENDED ACTION: The Alabama Board of Hearing Instrument Dealers proposes to amend rule 445-X-1-.02 Definitions, 445-X-1-.03 Licensing and Administration, 445-X-1-.04 Examination for Licensure, 445-X-1-.05 Continuing Education, 445-X-1-.06 Requirements for Businesses, 445-X-1-.07 Prohibited Acts, and 445-X-1-.08 Investigations and Hearings

SUBSTANCE OF PROPOSED ACTION:

The proposed action of rule 445-X-1-.02 Definitions is to update the code to define the new definitions listed in Title 34-14, specifically defining an Apprentice, Direct Supervision, Indirect supervision and Hearing Aids which were either not defined earlier or required updating. This rule also changes all previous titles of dispensers, dealers and fitters to the current titles.

The proposed action of rule 445-X-1-.03 Licensing and Administration is to list all fees originally listed in Title 34, Chapter 14. The original law was written in 1975 and updated in 1991, 1994 and 2009. Fees charged to applicants for testing and annual licenses renewal were originally written into the legislation. Although initially adequate, the fees currently charged to the board to purchase standardized tests used for initial licensure and practical examinations exceed the amount we are allowed to charge individuals submitting applications for initial licensure or renewal. This rule establishes the rate for all fees allowed to be charged in Title 34-14. References were also made to a test that is no longer used. The Alabama Board originally wrote the licensure test for applicants. Neither a national or international standardized exam existed at that time. We, along with the majority of other states, have adopted and began using the International Studies for Hearing Instrument Science standardized test and practical for individuals submitting for initial licensure. Alabama adopted both for use in 2008. This change removes reference to the old test and correctly identifies the standards in the test currently used.

The proposed action of rule 445-X-1-.04 Examination for Licensure is to align the titles for Hearing Instrument Dealer, Dispenser and Fitter to the current title. Technical corrections and antiquated language used in the original code were updated.

The proposed action of rule 445-X-1-.05 Continuing Education is to align the titles for Hearing Instrument Dealer, Dispenser and Fitter to the current title. Technical corrections and antiquated language used in the original code were updated.

The proposed action of rule 445-X-1-.06 Requirements for Businesses is to align the titles for Hearing Instrument Dealer, Dispenser and Fitter to the current title. Technical corrections and antiquated language used in the original code were updated.

The proposed action of rule 445-X-1-.07 Prohibited Acts is to align the titles for Hearing Instrument Dealer, Dispenser and Fitter to the current title. Technical corrections and antiquated language used in the original code were updated.

The proposed action of rule 445-X-1-.08 Investigations and Hearings is to align the titles for Hearing Instrument Dealer, Dispenser and Fitter to the current title. Technical corrections and antiquated language used in the original code were updated.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

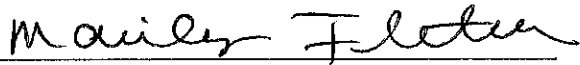
Comments may be submitted in writing or orally at Alabama Board of Hearing Instrument Dealers, 400 S. Union Street, Suite 235B, Montgomery, AL 36104, (334) 593-3777.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

July 6, 2016

CONTACT PERSON AT AGENCY:

Marilyn Fletcher
Executive Secretary
334-593-3777


Marilyn Fletcher
Executive Secretary

445-X-1-.08 Investigations And Hearings

(1) Investigations

(a) The board shall investigate alleged unethical and prohibited conduct; fraudulent, deceptive, and misleading activities; and any irregularities violating any portion of Code of Ala. 1975, §§34-14, et seq. or the rules promulgated herein.

(2) If the board shall have cause to believe that a violation occurred, or may have occurred, then the board may give notice to such persons, or arrange a conference with such persons, for the purpose of ascertaining the facts, and to arrive at a means for resolving the violation or potential violation.

(a) Such conferences shall not be governed by formal hearing procedures and may be conducted as the board deems appropriate.

(b) Where the violation or potential violation is the subject of a complaint by any individual, then the licensee who is the subject of the complaint and the complaining individual or individuals may agree to either binding or non-binding arbitration of the complaint by the staff of the board. Such an offer of arbitration shall be made by the staff of the board before the commencement of an informal conference. If both parties agree to binding arbitration, then the decision of the board staff member, based on an informal conference, shall be final and binding on both parties. Neither party shall be permitted to appeal from the decision, nor shall the matter be considered by the board under its formal hearing provisions. If both parties agree upon non-binding arbitration, then the decision of the board staff member shall be in the form of a recommendation, which may be accepted or rejected by the parties, or which may be subject to further negotiation under the supervision of the staff member. If the parties fail to reach agreement under non-binding arbitration, then each is free to pursue any other remedies available under law or these regulations, and the board may further consider the matter under its formal hearing procedures.

(3) The board may issue an order directing any business or individual to cease and desist from engaging in any act or practice which is in violation of the law and rules.

(a) Within 30 days after date of notice to cease and desist or notice to levy an administrative penalty, the individual or business may request, in writing, a formal hearing.

1. Failure to request a hearing within 30 days shall constitute full acceptance of any order or penalty imposed.

(4) Hearings

(a) If the board determines as a result of any investigation, that the charges are sufficient to warrant a hearing, or if an individual or business shall request a hearing as a result of any cease and desist order or notice of administrative penalty, the board shall schedule a hearing.

1. Hearings shall be conducted in accordance with the Administrative Procedures Act and procedures as established and directed by the board.

(b) The board shall take all necessary and proper action to hold hearings, determine and assess penalties, or prosecute licensees as required, based on the nature of the complaint or prohibited act, and in accordance with Code of Ala. 1975, §§34-14-9, et seq., and the Administrative Procedures Act.

1. The licensee shall be notified, by mail, not less than 20 days in advance, of the time and place of the hearing.

2. The licensee may be present during the hearing and/or be represented by legal counsel.

3. The board reserves the right to issue subpoenas to insure attendance of witnesses for either party.

4. The administrative hearing officer designated by the board shall hear the case.

5. The board shall have the authority to exclude all persons during deliberation on disciplinary matters and to meet in private with a licensee and/or his legal counsel.

(c) The administrative hearing officer shall recommend any disciplinary action or penalty.

(d) The board and hearing officer shall may take into consideration the following factors in determining the appropriate disciplinary action or administrative penalty to be imposed:

1. the severity of the offense;
2. the danger to the public;
3. the number of specific offenses;
4. the actual damage, physical or otherwise, to the consumer;
5. the length of time since the date of the last violation(s);
6. the length of time the licensee has practiced his or her profession;
7. efforts of licensee to correct or stop violations or failure of the licensee to correct or stop violations;
8. related violations against a licensee in another state, including findings of guilt or innocence, penalties imposed and penalties served;
9. the actual negligence of the licensee pertaining to any violation;

10. any other mitigating or aggravating circumstances.

(a) The board may carry out on-site inspections and investigations, pursuant to resolution of a complaint and in conjunction with determinations of violations.

An administrative penalty not to exceed \$1000 may be imposed by the board for each failure to comply with orders of the board concerning each violation of law or regulation governing hearing instrument dealers, aid dispensers, fitters hearing aid specialist, and apprentices.

(5) The board may reprimand, suspend, limit or restrict any licensee or suspend, limit, or revoke any license as necessary to carry out the provisions of the law.

(6) The board shall issue a formal order after any hearing and shall enumerate each violation of each count of the statute or rules and the penalty imposed.

(a) ~~here~~ When the board chooses to impose an administrative fine, the penalty shall be paid to the board within 30 days of notice of the imposition.

(b) failure to promptly pay administrative penalties may result in additional disciplinary action or rejection of licensure renewal application.

(7) Appeals

(a) The board may bring action in any circuit court in the State of Alabama to recover the amount of administrative penalties and court costs.

(b) The licensee may appeal any contested decision to the circuit court in the State of Alabama.

Author: Hearing Instrument Dealers Board

Statutory Authority: Code of Ala. 1975, §34-14-11(4).

History: New Rule: Filed November 17, 1994; effective December 22, 1994;

Amended: May 20, 2016