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General Business Law Article 37-A

Registration of Hearing Aid Dispensers

§ 788. Legislative intent. The legislature recognizes and acknowledges the value of hearing aids to many individuals with hearing loss and recognizes the valuable service provided by hearing aid dispensers and dispensing audiologists to such individuals by providing access to appropriate amplification devices and other valuable services related to their use. Due to the large number of individuals with hearing loss who do not use hearing aids, the legislature furthermore recognizes the positive benefits of the increased use of hearing aids. It is the intent of the legislature and this article to protect the hearing-impaired public by ensuring competent, honest and accountable dispensers of hearing aids who will protect the health, safety and welfare of the people of this state.

The legislature finds and declares that existing laws regulating the dispensing of hearing aids have been ineffective in providing adequate protection. To ensure against consumer abuses and thereby protect the public, the legislature determines that more rigorous education, training and business practice standards should be applied to those persons registered to dispense hearing aids pursuant to this article. It is the intention of the legislature to apply standards to more fully protect the general public, and to ensure continued consumer access to safe, reliable and appropriate hearing aid dispensing services.

§ 789. Definitions. As used in this article:

1. "Account" shall mean the hearing aid dispensing account.
2. "Audiologist" means an individual who is licensed under article one hundred fifty-nine of the education law to evaluate hearing, and hearing and communication disorders and to engage in those practices defined in section eighty-two hundred three of the education law.
3. "Board" shall mean the hearing aid dispensing advisory board.
4. "Business" means any individual, partnership, trust, association, organization or corporation.
5. "Department" means the department of state.
6. "Dispensing of hearing aids" means the act of fitting, selecting, selling, renting, adapting or servicing of hearing aids or any other instrument to compensate for impaired hearing; provided that such term shall include testing of hearing, solely for the purpose of fitting, selecting, selling, distribution, renting, adapting or servicing hearing aids or any instrument to compensate for impaired hearing, the making of impressions, castings and shells and appropriate counseling and instructions pertaining to the selection, adaptation and sale or rental of hearing aids and further provided that such term shall include any tasks, procedures, acts, or practices that are necessary (a) for the non-diagnostic testing of hearing solely for the purpose of fitting a hearing aid; (b) for training in the use of amplification including hearing aids; (c) for the making of ear molds for hearing aids; (d) for the fitting, dispensing, and sale of hearing aids; or (e) for otoscopic observation of solely the ear canal for the purposes of fitting, dispensing or sale of hearing aids; provided, however, that nothing contained in this subdivision shall be deemed to permit the performance of or reference to an otoscopic evaluation for medical diagnosis; and (f) for those other procedures necessary to determine proper amplification needs and the specific hearing aid which will be of maximum benefit to aid or to compensate for the impaired ear. Testing for the purpose of fitting a hearing aid shall include only such tests meeting

standards acceptable to the secretary as needed to verify the optimum fitting characteristics and circuitry of any hearing aids or amplification devices needed and shall not be for the purposes of, make any reference to, or include any medical diagnosis whatsoever. No hearing aid dispenser shall verbally or in writing make a statement or reference to a prospective hearing aid user regarding any medical condition or diagnosis except such communications required pursuant to paragraph (c) of subdivision eight of section seven hundred ninety-eight of this article. Nothing in this subdivision shall restrict or limit any person licensed under article one hundred fifty-nine of the education law from performing any activity authorized thereunder; provided, however, that every such person shall be registered as a hearing aid dispenser pursuant to the requirements of this article in order to dispense hearing aids.

7. "Hearing aid" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories but excluding batteries and cords or accessories thereto.

8. "Hearing aid dispenser" means any person twenty-one years of age or older or an audiologist licensed under article one hundred fifty-nine of the education law who is engaged in the dispensing of hearing aids who is registered and dispensing hearing aids in accordance with this article.

9. "Otolaryngologist" means a physician licensed under article one hundred thirty-one of the education law, who practices that branch of medicine which treats diseases of the ear, nose and throat.

10. "Secretary" means the secretary of state.

11. "Sell" or "sale" means any transfer of title or of the right of use by sale, conditional sales contract, lease bailments, including rentals of hearing aids hire-purchase, or any other means; excluding wholesale transactions of dealers and distributors.

12. "Trainee" means a person twenty-one years of age or older, who upon receiving a temporary certificate of registration, is studying hearing aid dispensing full-time for the purpose of qualifying to sit for the registration examination.

§ 790. Certificate of registration required; qualifications and application. 1. Any person desiring to be engaged in the dispensing of hearing aids in this state shall be registered biennially pursuant to this article. Such person shall file with the secretary an application to be registered as a hearing aid dispenser. The secretary shall examine each application and issue a certificate of registration if either of the following criteria are satisfied:

- (a) (i) the applicant is twenty-one years of age or older;
- (ii) is of good moral character;
- (iii) has received a high school diploma or its equivalent;
- (iv) has two years college accredited coursework or its equivalent;
- (v) has fully completed the required training program;
- (vi) has achieved a passing score on the required examination;
- (vii) has not had a registration, license or other authorization to dispense hearing aids suspended or revoked;
- (viii) has paid the appropriate fees according to the provisions of section seven hundred ninety-seven of this article; and
- (ix) on or after January first, two thousand three, the applicant shall demonstrate the successful completion of post-secondary coursework approved by the secretary in conjunction with the advisory board; or
- (b) (i) the applicant has submitted proof of licensure under article one hundred fifty-nine of the education law as a licensed audiologist;
- (ii) has paid the appropriate fees according to the provisions of section seven hundred ninety-seven of this article;

(iii) has achieved a passing score on the practical test of proficiency required pursuant to subdivision six of section seven hundred ninety-six of this article or who submits evidence satisfactory to the secretary of experience in dispensing hearing aids; and

(iv) has not had a registration, license or other authorization to dispense hearing aids suspended or revoked according to the provisions of section seven hundred ninety-nine of this article.

2. An application for a certificate of registration as a hearing aid dispenser shall be filed with the secretary in such form and detail as the secretary shall prescribe, duly signed and verified, setting forth:

- (a) the name and address of the applicant;
- (b) the name and business address or addresses at which the individual will be employed;
- (c) the information contained in subdivision one of this section; and
- (d) any further information deemed necessary and prescribed by rule or regulation by the secretary.

3. (a) Any person who has been continuously registered as a hearing aid dealer pursuant to the former article thirty-seven-A of this chapter for the three years immediately preceding January first, two thousand or who submits evidence satisfactory to the secretary of experience in the business of dispensing hearing aids in this state for the three years immediately preceding January first, two thousand, upon payment of applicable fees, shall be registered as a hearing aid dispenser and shall be exempt from requirements set forth in subparagraphs (iv), (v), (vi) and (ix) of paragraph (a) of subdivision one of this section.

(b) Any person who has been continuously registered as a hearing aid dealer pursuant to the former article thirty-seven-A of this chapter for less than three years but more than one year immediately preceding January first, two thousand, or who submits evidence satisfactory to the secretary of less than three years but more than one year's continuous experience in the business of dispensing hearing aids in this state immediately preceding January first, two thousand, may pay the applicable fees and register as a hearing aid dispenser. Such registrant shall be exempt from the requirements set forth in subparagraphs (iv), (v) and (ix) of paragraph (a) of subdivision one of this section. Such registrant shall achieve a passing score on the required registration examination by December thirty-first, two thousand; provided further that, upon failing to achieve a passing score such person shall continue under the supervision of a registered hearing aid dispenser until such time as a passing score is achieved, provided that such passing score is achieved on an examination administered within twelve months of the first examination.

(c) Any individual who has been continuously registered as a hearing aid dealer pursuant to the former article thirty-seven-A of this chapter for less than twelve months immediately preceding January first, two thousand or any individual with less than twelve months experience in the business of dispensing hearing aids in this state immediately preceding January first, two thousand shall be required to comply with all the requirements set forth in subdivision one of this section.

(d) Any person licensed pursuant to article one hundred fifty-nine of the education law, who submits evidence satisfactory to the secretary of experience of dispensing hearing aids in this state for the period immediately preceding January first, two thousand, upon payment of applicable fees shall be registered as a hearing aid dispenser and shall be exempt from requirements set forth in subparagraph (iii) of paragraph (b) of subdivision one of this section.

4. Upon application to the secretary, a temporary certificate of registration authorized under section seven hundred ninety-five of this article shall be issued to: (i) individuals who prove to the satisfaction of the secretary that he or she will be supervised and trained by one or more registered hearing aid dispensers for a period of twelve months or (ii) individuals who are candidates for licensure under article one hundred fifty-nine of the education law, have satisfied the educational requirement in subdivision two of section eighty-two hundred six of the education law, and are actively engaged in completing the experience requirement in subdivision three of section eighty-two hundred six of the education law. A temporary certificate of registration may be renewed only once.

(a) A person holding a temporary certificate of registration shall not be the sole proprietor of, manage, or independently operate a business which engages in the business of dispensing hearing aids unless such business employs a registered hearing aid dispenser.

(b) A person holding a temporary certificate of registration shall not advertise or otherwise represent that he or she holds a certificate of registration as a hearing aid dispenser.

(c) A person holding a temporary certificate of registration who is a candidate for licensure under article one hundred fifty-nine of the education law shall be exempt from the requirement to complete the course of instruction prescribed by section seven hundred ninety-six of this article.

5. (a) Any individual, corporation, partnership, trust, association or other organization maintaining an established New York state business address desiring to engage in the business of dispensing hearing aids at retail, shall register with the department and submit the following information:

(i) name and address or addresses of each permanent business location;

(ii) names and addresses of the principal owner or manager of the business and if such owner is a corporation the names and titles of the corporate officers; if a partnership, the name and title of the general partners, if a limited liability company the name of the members or managers, if a limited liability partnership, the names of the partners, if a trust, the name of the trustee, if an association, the principal officers; and

(iii) the appropriate fees.

(b) No such individual, corporation, partnership, trust, association or other organization maintaining an established New York state business address shall engage in the business of dispensing hearing aids unless such organization:

(i) has obtained a valid business certificate of registration from the secretary;

(ii) employs at least one registered hearing aid dispenser at each business location who regularly dispenses hearing aids at that location;

(iii) files annually with the secretary a list of registered hearing aid dispensers currently employed; and

(iv) files a statement with the secretary that such organization is in compliance with the provisions of this article and rules and regulations promulgated pursuant thereto and the regulations of the federal food and drug administration and the federal trade commission.

6. The secretary may grant a certificate of registration upon submission of an application and appropriate fees where such application contains satisfactory proof that the applicant holds a valid hearing aid dispenser's license or registration in another state, where the secretary has determined such state has requirements equivalent to or higher than those in effect pursuant to this article.

7. Notwithstanding the provisions of any law to the contrary, on or after the first day of January first, two thousand, no person shall engage in the dispensing of hearing aids in this state unless such person is registered as a hearing aid dispenser in accordance with the provisions of this article.

8. Notwithstanding the requirements of this section, the secretary shall take steps necessary to provide for the immediate and orderly registration of applicants qualified pursuant to this article. Persons seeking to qualify for registration pursuant to paragraphs (b) and (c) of subdivision three of this section shall be immediately entitled to a temporary certificate of registration. Within one hundred twenty days of the effective date of this subdivision, the secretary shall approve an examination for completed registration pursuant to section seven hundred ninety-six of this article.

9. Anyone registered as a hearing aid dealer on the effective date of this article or who possesses the requisite experience for registration pursuant to paragraphs (a) and (b) of subdivision three of this section shall register on or before January first, two thousand and may continue to dispense hearing aids as if registered if an application for registration is submitted to the department within thirty days of the effective date of this article.

§ 791. Hearing aid dispensing advisory board. 1. There is created within the department a hearing aid dispensing advisory board which shall consist of thirteen members to be appointed by the secretary: four of whom shall be non-audiologist hearing aid dispensers who shall have been engaged in the business of dispensing hearing aids primarily in this state for at

least five years immediately preceding their appointment, two to be appointed upon the recommendation of the governor, one to be appointed upon the recommendation of the temporary president of the senate and one to be appointed upon the recommendation of the speaker of the assembly; four members shall be audiologists who are engaged in the dispensing of hearing aids for at least five years immediately preceding their appointment, two to be appointed upon the recommendation of the governor, one to be appointed upon the recommendation of the temporary president of the senate and one to be appointed upon the recommendation of the speaker of the assembly; two shall be otolaryngologists; and the remaining three members, none of whom shall derive nor have derived in the past economic benefit from the business of dispensing hearing aids, shall be from the resident lay public of this state who are knowledgeable about issues related to hearing loss. At least one lay member shall be an individual representing adults over the age of fifty. At least one of the lay members shall be a hearing aid user. Of the otolaryngologists and lay members, one shall be appointed by the secretary on the recommendation of the minority leader of the senate and one shall be appointed by the secretary on the recommendation of the minority leader of the assembly and three shall be appointed by the secretary on the recommendation of the governor. Each member of the board shall be appointed for a term of two years. Any member may be appointed for additional terms. In the event that any member shall die or resign during his or her term, a successor shall be appointed in the same manner and with the same qualifications as set forth in this section. A member may be reappointed for successive terms but no member shall serve more than a total of ten years. The secretary or the designee of the secretary shall serve in an ex officio non-voting position. The secretary shall serve as chairperson. The commissioner of education, the commissioner of health, and the attorney general or their designees shall serve as non-voting ex officio members.

2. The board shall advise and make recommendations regarding, and the secretary, upon consideration of such advice, shall promulgate rules and regulations, governing the implementation of the provisions of this article and the development of such rules and regulations as are required. In addition to other advice, the board shall advise the secretary with respect to the promulgation of rules and regulations governing:

(a) the rights of consumers of hearing aids including but not limited to (i) procedures whereby a consumer may file a complaint against those in violation of this article; and (ii) requirements for hearing aid dispensers to provide consumers with printed educational information on the general use of hearing aids and assistive listening devices and on the advantages and disadvantages of binaural hearing aid use and (iii) the training of individuals in the use and maintenance of such instruments;

(b) continuing education including but not limited to (i) the content of such course of study, (ii) the procedures for approval of such course of study and (iii) those individuals and organizations who may permissibly offer such continuing education course or courses provided for in section seven hundred ninety-four of this article;

(c) the content, delivery and evaluation of any examination required as a condition of registration;

(d) the standards for advertisements, including but not limited to, proscriptions against misleading advertising relating to the scope of hearing aid dispensing practices, credentials of individual hearing aid dispensers, and the function, use and reliability of a particular hearing instrument;

(e) requirements for the secretary to regularly examine compliance with this article;

(f) requirements pertaining to the non-diagnostic testing of hearing and sale of hearing aids at office, residential and other out of office settings and the development of environmental standards for testing at office, residential and other out of office settings; requirements pertaining to telemarketing; and

(g) procedures that the secretary could use to increase public awareness of how to properly purchase, fit, adjust and use a hearing aid, as well as the rights of hearing aid purchasers under state law. In addition to such duties and other duties which may be assigned by the secretary, the board shall consult with the secretary, the commissioner of education and such other persons as may be appropriate to determine the proper level and degree of education for a hearing aid dispenser, the type of degree and the proper educational institution to offer such education and all other related issues.

3. Meetings of the board shall be set at such times as determined by the secretary but in no event fewer than four times annually.

4. The members of the board shall serve without compensation, however, they shall receive reimbursement for their actual and necessary expenses incurred in the performance of their duties.

5. The secretary shall keep a record of all proceedings of the board and such record shall be open to public examination.

§ 792. Hearing aid dispensers account. There is hereby established in the custody of the state comptroller and the secretary a hearing aid dispensers account into which all fees collected pursuant to this article shall be deposited. The money in such account shall be utilized solely for the purpose of administering and enforcing the provisions of this article.

§ 793. Registry. The secretary shall establish a state registry which shall list and identify on a county-by-county basis all registered hearing aid dispensers, trainees, audiologists engaged in the business of dispensing hearing aids and businesses registered pursuant to subdivision five of section seven hundred ninety of this article. The registry shall contain all information relevant to the status of their registration including their standing, location of practice and telephone number.

§ 794. Continuing education requirements. 1. Prior to the expiration of a certificate of registration and as a condition of renewal, each hearing aid dispenser registered pursuant to subdivision one of section seven hundred ninety of this article shall submit documentation showing successful completion of twenty continuing education credits through a course or courses approved by the secretary in consultation with the advisory board, or, in relation to audiologists licensed pursuant to article one hundred fifty-nine of the education law, the office of the professions in the education department. Such formal courses of learning shall include, but not be limited to, collegiate level of credit in non-credit courses, professional development programs and technical sessions offered by national, state and local professional associations and other organizations acceptable to the secretary and any other organized educational and technical programs acceptable to the secretary. The secretary may, in his or her discretion, and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement. Courses shall be taken from a sponsor approved by the secretary pursuant to regulations promulgated pursuant to this section.

2. A hearing aid dispenser registered under paragraph (b) of subdivision one of section seven hundred ninety of this article may satisfy the requirements of subdivision one of this section by demonstrating to the secretary compliance with such continuing competency requirements as are prescribed by article one hundred fifty-nine of the education law, provided, however, that, such persons shall submit documentation showing the successful completion of four continuing education credits relating to the dispensing of hearing aids.

3. (a) Within one year of the effective date of this article, the secretary shall promulgate rules and regulations establishing the method, content and supervision requirements for the continuing education course or courses provided for in this section. Properly prepared written materials of the subject matter of each course shall be distributed and each course shall be taught by an instructor who meets requirements established by the secretary upon the recommendation of the board. Any person or organization offering a course shall apply to the secretary for authorization to offer such course or courses pursuant to said rules and regulations.

(b) Credits shall be awarded based on one hour of credit for each sixty minutes of participation. The secretary may prescribe the form or forms on which participation and credits are documented. At the conclusion of each approved course, a certificate of completion shall be transmitted to the secretary.

§ 795. Renewal of certificate of registration or temporary certificate of registration. 1. The secretary shall provide a method for the biennial review of a certificate of registration and temporary certificate of registration.

2. The department shall reissue a certificate of registration upon receipt of a renewal application, the renewal fee, and a written statement affirming compliance with all other requirements set forth in this article including evidence of compliance with section seven hundred ninety-four of this article. A registrant shall retain, if applicable, a certificate from a manufacturer or independent testing agent certifying that the testing room utilized by such registrant meets the requirements of section seven hundred ninety-eight of this article and, if applicable, a certificate from a manufacturer or independent testing agent stating that all audiometric testing equipment used by the registrant has been calibrated on an annual basis according to rules

and regulations promulgated by the secretary, consistent with ANSI requirements or in accordance with standards promulgated under article one hundred fifty-nine of the education law.

3. Any certificate of registration which is not renewed at the end of the biennial period of registration as prescribed by the secretary shall automatically revert to an inactive status. If the certificate of registration has not been renewed within thirty days subsequent to the biennial expiration date, the secretary shall send notice by mail to the last known address of the registrant. Such notice shall advise the registrant of the inactive status and the procedures required to reactivate a valid certificate of registration. Such notice shall detail the criteria and fees to be satisfied for reactivation. If such registration is not reactivated, on the ninetieth day after the end of the biennial registration period, such registration shall lapse.

4. The department shall reissue a temporary certificate of registration valid for a period of one year upon the receipt of a renewal application, the renewal fee and a written statement verifying continued supervision by a registered hearing aid dispenser.

§ 796. Training program; requirements; examination and re-examination. 1. The secretary, in consultation with the board, shall establish a full-time, twelve month training program for those persons wishing to apply for registration as a hearing aid dispenser, except those hearing aid dispensers otherwise licensed pursuant to article one hundred fifty-nine of the education law. For the purposes of this section, "full-time" shall mean seven hours per day for five days a week. Such program shall be conducted by a registered hearing aid dispenser or taught by appropriate faculty with credentials to verify substantial educational knowledge in the topics outlined below. Any trainee entering such a program shall operate under the direct supervision of a registered hearing aid dispenser for the first three months of such program. In addition, during such period, the trainee shall satisfactorily complete a course of instruction, which includes, but is not limited to, the following topics:

- (a) acoustics: general principles.
- (b) acoustics: hearing and speech.
- (c) the human ear.
- (d) disorders of hearing.
- (e) puretone audiometry.
- (f) speech audiometry.
- (g) hearing analysis.
- (h) hearing aids and instruments.

2. (a) During the first three months of such program, no trainee shall perform any activity directly related to the dispensing of a particular hearing aid or hearing aids unless such activity is conducted under the direct supervision of a registered hearing aid dispenser. For purposes of this section, "direct supervision" shall mean activity under the immediate observation and control of a registered hearing aid dispenser and shall require the registered hearing aid dispenser to be physically present during all dispensing activities of the trainee.

(b) For the next three months, no trainee shall perform any activity directly related to the dispensing of a particular hearing aid or hearing aids unless such activity is conducted with the immediate consent, review and approval of a registered hearing aid dispenser. For such purposes, the registered hearing aid dispenser shall be located on the premises and immediately available to the trainee but shall not be required to be physically present at all times.

3. For the entire twelve month training period, the registered hearing aid dispenser shall be held fully responsible for all actions of the trainee. Any aspect of the dispensing of hearing aids performed by a trainee shall be reviewed and approved by the registered hearing aid dispenser prior to the final disposition of any contractual agreement. The signatures of both the trainee and the registered hearing aid dispenser shall be required on all contracts in which a trainee has participated.

4. Upon application, payment of the required registration fee to the secretary, and satisfaction of all applicable registration requirements, the applicant shall receive a temporary certificate of registration and shall enter a training program. The twelve

month program shall commence from the date of issuance of the temporary certificate of registration. No individual may begin a training program or otherwise engage in the dispensing of hearing aids without a valid temporary certificate of registration.

5. (a) A trainee may take the required course of instruction under the supervision of a registered hearing aid dispenser provided that such course of instruction has been approved by the secretary.

(b) A trainee may take the required course of instruction from any other provider offering a course of instruction approved by the secretary.

(c) At the conclusion of each component, the performance of the trainee shall be evaluated by the registered hearing aid dispenser or offeror of such approved course. Upon satisfactory completion of all components of the course of instruction, the trainee and the registered hearing aid dispenser or offeror shall transmit to the secretary proof of the satisfactory completion of each component which shall have been signed and affirmed as true under the penalties of perjury.

6. Upon satisfactory completion of the course of instruction required by this section and successful completion of at least six months of the training program, the trainee may take the written examination and practical test of proficiency offered by the secretary.

7. (a) Each applicant shall be required to pass a written examination covering the following areas, including but not limited to areas of required instruction in the training program, as they pertain to the dispensing of hearing aids:

(i) basic physics of sound;

(ii) the anatomy and physiology of the ear; and the pathology of the ear as it relates to hearing aid fitting;

(iii) the function of hearing aids;

(iv) hearing aid evaluation; and

(v) knowledge and understanding of this article and the regulations adopted pursuant to it.

(b) in addition, the trainee shall also pass a practical test of proficiency in techniques that pertain to the fitting of hearing aids.

8. (a) If a trainee fails to pass the written examination or practical test of proficiency, he or she may request, and be given the opportunity to review the score of the exam according to the rules and regulations of the secretary.

(b) During the period of registration and the renewal thereof, a trainee may sit for the written exam and the practical test of proficiency exam or any combination thereof up to three times. The exam shall include both the written and practical components. A trainee who has passed any component of the examination within the prior six months need not re-take that component for final passage. A trainee who takes the exam three times but does not pass the entire exam or remaining individual component of the exam shall be terminated and shall be required to commence the training program including direct supervision and courses of study as if he or she is a new applicant. No trainee who fails such examination three times during such period shall be eligible for permanent registration until he or she has repeated the traineeship and passed the examination as required.

9. The examination shall be given at convenient times and places during the calendar year but in no event fewer than four times per year. The secretary shall prescribe the content and format of such examination.

§ 797. Fees. The secretary shall receive the following fees to be deposited into a special revenue fund - other entitled the "hearing aid dispensers account" for the implementation, operation and enforcement of this article:

1. a nonrefundable fee of fifty dollars from each person who takes the required examination or any component thereof pursuant to this article;

2. for an individual certificate of registration, one hundred fifty dollars and for the renewal of such registration, one hundred dollars;

3. for a business certificate of registration and renewal thereof:

(a) for a business certificate of registration for each permanent business location with ten or less employees, one hundred fifty dollars and for the renewal of such registration, one hundred dollars;

(b) for a business certificate of registration for each permanent business location with more than ten employees, two hundred dollars and for the renewal of such registration, one hundred fifty dollars;

4. for a temporary certificate of registration, thirty dollars and for the renewal of such registration, thirty dollars;

5. for filing a change of business address or change of name of the registrant whether individual or business, ten dollars;

6. for a duplicate certificate of registration, ten dollars;

7. except fees associated with a temporary certificate of registration the fees set forth shall be those for registrations issued for a period of two years; and

8. employees of a not-for-profit corporation doing business in this state who are required to register pursuant to this article who are not otherwise engaged in the dispensing of hearing aids for profit shall be exempt from payment of the registration fee required by this section.

§ 798. Business practice; requirements. 1. Every registrant who engages in the dispensing of hearing aids shall have and maintain a principal office or place of business. Each registrant shall report to the secretary the address of each such office or place of business at which he or she engages in such dispensing. Changes in address shall be reported within thirty days.

2. Except as limited by the provisions of this article, each registrant shall conspicuously post a valid individual certificate of registration in open view within his or her office or place of business at all times.

3. A hearing aid dispenser who is the owner, manager, or franchisee at a location where hearing aids are dispensed, shall be responsible for the dispensing of any hearing aid at that location.

4. The secretary shall in consultation with the hearing aid advisory board prescribe the minimum criteria, procedures and equipment which shall be used in the dispensing of hearing aids, including but not limited to:

(a) a relevant personal history questionnaire;

(b) a disclosure statement;

(c) requirements for a testing room, if applicable;

(d) requirements for the annual calibration and maintenance of audiometric equipment;

(e) requirements for out of office dispensing of hearing aids; and

(f) if applicable, requirements otherwise provided under article one hundred fifty-nine of the education law.

5. (a) Unless otherwise authorized by federal law, rule or regulation, no hearing aid shall be sold by a hearing aid dispenser under this article, to any person, unless that person provides the dispenser with a written statement from an otolaryngologist, or if none is available by another licensed physician stating that the prospective user's hearing loss has been medically evaluated and that the prospective user is a candidate for a hearing aid.

(b) A replacement of an identical hearing aid within one year shall be an exception to such requirement.

(c) This subdivision shall not apply to any individual over the age of sixteen who has within the preceding three years been examined by an otolaryngologist, or if none was available by another licensed physician who issued a medical evaluation of their hearing loss for such individual.

6. If it is required by federal law or regulation, a hearing aid dispenser shall afford to an individual, who is eighteen years of age or older, the opportunity to waive the medical evaluation requirement of this section, provided however, the hearing aid dispenser shall:

- (a) take no action to encourage, in any way, the prospective user to waive such a medical or audiological evaluation;
- (b) prior to the performance of any activity required pursuant to subdivision eight of this section and prior to the performance of any hearing test the hearing aid dispenser shall inform the prospective user that, "Federal law requires a medical evaluation of their hearing loss. Medical evaluation shall be conducted by an otolaryngologist, or if none is available, by another licensed physician. You have the right to waive this requirement. You must sign a statement of waiver of your rights if you elect to do so";
- (c) provide the prospective user with a copy of the manufacture's user instructional brochure for a hearing aid that has been or may be selected for the prospective user;
- (d) review the contents of such brochure with the prospective user orally;
- (e) conspicuously post a sign in at least forty point bold-faced type which states: "Federal law requires a medical evaluation of your hearing loss by an otolaryngologist, or if none is available, by another licensed physician. You have the right to waive this requirement. If you waive this requirement, you must sign a statement of waiver of your rights". Such sign shall also indicate the toll-free number required under section eight hundred three of this article that individuals wishing to register a complaint can call; and
- (f) should the prospective user elect to waive his or her rights, the prospective user shall sign the following advisory statement:

"I have been advised by (hearing aid dispenser's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician specializing in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid. I have also been advised that although the examination conducted by (hearing aid dispenser's name) reveals no indicators mandating referral to a licensed physician, preferably one specializing in diseases of the ear, for medical evaluation as required by law, it is in my best health interest to be examined by a physician specializing in diseases of the ear for any medical condition or disease at least once every three years."

If the prospective user is or the parent or guardian of any person under the age of eighteen years is a member of any church or religious denomination whose tenets and practices include reliance upon spiritual means through prayer alone and objects to medical treatment and so states in writing to the hearing aid dispenser or hearing aid trainee, such individual shall undergo a hearing examination as provided by this section, but no proof, ruling out any medically treatable problem causing hearing loss, shall be required.

7. No hearing aid dispenser shall verbally or in writing make a statement or reference to a prospective hearing aid user regarding any medical condition or medical diagnosis.

8. It is unlawful for a registered hearing aid dispenser to dispense a hearing aid unless he or she has first:

- (a) conducted a direct observation of the purchaser's ear canals;
- (b) inquired and made general observations for any of the following conditions:
 - (i) visible congenital or traumatic deformity of the ear;
 - (ii) history of, or active drainage from the ear within the previous ninety days;
 - (iii) history of sudden or rapidly progressive hearing loss within the previous ninety days;
 - (iv) acute or chronic dizziness;
 - (v) unilateral hearing loss of sudden or recent onset within the previous ninety days;
 - (vi) audiometric air-bone gap equal to or greater than fifteen decibels at 500, 1000, and 2,000 hertz (hz);
 - (vii) visible evidence of bleeding, significant cerumen accumulation, or a foreign body in the ear canal; and
 - (viii) pain or discomfort in the ear.

(c) Whenever any of the conditions listed in paragraph (b) of this subdivision is found to exist, no hearing aid dispenser shall dispense a hearing aid to such prospective user. The hearing aid dispenser shall advise the prospective user of the observed condition and shall advise him or her to promptly consult a licensed physician, preferably a specialist in diseases of the ear. The prospective user shall be advised that he or she may consult with another licensed physician, if no otolaryngologist is available. A hearing aid dispenser may dispense a hearing aid to such prospective user after such user has obtained a medical clearance. No prospective user may waive medical evaluation under this subdivision if any of the conditions listed in paragraph (b) of this subdivision is found to exist except that a prospective user or the parent or guardian thereof may request a waiver on the basis that medical treatment violates his or her religious tenets or beliefs. A hearing aid dispenser shall read to and then present a waiver to such prospective user or parent or guardian thereof which shall provide: "at my request, (name of hearing aid dispenser) has informed me that I may waive medical evaluation of my hearing due to my personal religious beliefs, signed (name of prospective user or parent or guardian)." No hearing aid dispenser shall seek to induce a prospective user or parent or guardian of a prospective user to execute a waiver in order to effect the sale of a hearing aid.

9. It is unlawful for a registered hearing aid dispenser to dispense a hearing aid unless he or she has first:

(a) complied with all provisions of state laws and regulations relating to the dispensing of hearing aids; and

(b) has informed the purchaser of the address and office hours at which the registrant shall be available for fitting or post-fitting adjustments and servicing of the hearing aid or aids sold.

10. (a) A hearing aid dispenser, not otherwise licensed pursuant to article one hundred fifty-nine of the education law, shall provide any prospective hearing aid users with a copy of their audiogram which shall include puretone (air and bone conduction) and speech audiometry test results, upon completion of such audiometric tests. Such audiogram shall clearly and conspicuously contain the following statement: "This information is intended for the sole purpose of fitting or selecting a hearing aid and is not a medical examination or audiological evaluation".

(b) Hearing aid dispensers licensed under article one hundred fifty-nine of the education law shall comply with the provisions of such article in the conduct of audiological evaluations and shall further provide a copy of the results of any audiological evaluation to any prospective hearing aid users with the following statement: "This is an audiological evaluation and is not a medical examination".

11. A registrant shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser a written receipt or purchase agreement, signed by the purchaser, the registrant and if applicable, the trainee, containing all of the following:

(a) the date of consummation of the sale;

(b) specifications as to the make, serial number, and model number of the hearing aid or aids sold;

(c) the address of the principal place of business of the registrant, and the office hours available for fitting or post-fitting adjustments and servicing of the hearing aid or aids sold;

(d) a statement to the effect that the hearing aid or aids delivered to the purchaser are used or reconditioned, as the case may be;

(e) the number of the registrant's certificate and the name and registration number of any other hearing aid dispenser or trainee who provided any recommendation or consultation regarding the purchase of the hearing aid;

(f) the terms of any written warranty, as required by this article;

(g) such receipt shall bear, or have attached to it in no smaller than fourteen point type, the following: "The purchaser has been verbally advised at the outset of his or her relationship with the registered hearing aid dispenser that any examination or representation made by a hearing aid dispenser in connection with the business of dispensing this hearing aid, or hearing aids, is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state, and therefore, must not be regarded as medical opinion.";

(h) such written receipt or purchase agreement shall also outline the purchaser's right to return as required by subdivision twelve of this section. (i) The receipt shall include, in immediate proximity to the space reserved for the signature of the buyer,

the following statement in all capital letters of no less than twelve point bold-faced type: "IN ADDITION TO OTHER RIGHTS, THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO TWELVE MIDNIGHT OF THE 45TH CALENDAR DAY () AFTER RECEIPT OF THE HEARING AID AND RETURN THE HEARING AID IN THE SAME CONDITION, ORDINARY WEAR AND TEAR EXCLUDED. BY LAW, THE SELLER IS ALLOWED TO RETAIN AN AMOUNT UP TO TEN PERCENT OF THE TOTAL PURCHASE PRICE OF THE CANCELLED HEARING AID, INCLUDING BATTERIES AND CORDS OR ACCESSORIES THERETO, INCLUSIVE OF ALL FEES RELATED TO THE HEARING AID".

(ii) If the dispenser is a not-for-profit hospital or facility licensed or certified pursuant to article twenty-eight of the public health law, the receipt shall include, in immediate proximity to the space reserved for the signature of the buyer, the following statement in all capital letters of no less than twelve point bold-faced type: "IN ADDITION TO OTHER RIGHTS, THE BUYER HAS THE RIGHT TO CANCEL THIS PURCHASE FOR ANY REASON AT ANY TIME PRIOR TO TWELVE MIDNIGHT OF THE 45TH CALENDAR DAY () AFTER RECEIPT OF THE HEARING AID AND RETURN THE HEARING AID IN THE SAME CONDITION, ORDINARY WEAR AND TEAR EXCLUDED. BY LAW, THE DISPENSER IS ALLOWED TO RETAIN AN AMOUNT UP TO FIVE PERCENT OF THE TOTAL PURCHASE PRICE OF THE CANCELLED HEARING AID, INCLUDING BATTERIES AND CORDS OR ACCESSORIES THERETO, INCLUSIVE OF ALL FEES RELATED TO THE DISPENSING OF THE HEARING AID, PLUS A SERVICE FEE OF NOT MORE THAN TWO HUNDRED DOLLARS, UNLESS A SECOND HEARING AID WAS FITTED AND DISPENSED AT THE SAME TIME AS THE FIRST, THEN SUCH FEE SHALL NOT EXCEED THREE HUNDRED DOLLARS FOR BOTH HEARING AIDS."

12. No hearing aid shall be sold to any person unless accompanied by a forty-five calendar day money-back written guarantee.

(a) If an individual returns a hearing aid in the same condition, ordinary wear and tear excluded, within the guarantee period, the customer shall be entitled to the return of the cost of the hearing aid and accessories as itemized on the receipt provided pursuant to subdivision eleven of this section; provided however that any hearing aid that has been used for a forty-five calendar day period as described in this subdivision, when refinished and totally reconditioned by the manufacturer or by the manufacturer's agent and such manufacturer or manufacturer's agent certifies that such hearing aid meets all the acoustical standards of a new hearing aid and is in all other respects the equivalent of a new hearing aid and with all warranties and guarantees that accompany a new hearing aid, shall be considered a new hearing aid and so designated; and further provided, however, that a hearing aid dispenser shall retain as a cancellation fee for return of the hearing aid, including batteries and cords or accessories thereto, a charge not in excess of ten per centum of the total purchase price of the cancelled hearing aid, including batteries and cords or accessories thereto, inclusive of all fees related to dispensing of hearing aids, as defined in subdivision six of section seven hundred eighty-nine of this article. Provided, however, if the hearing aid dispenser is a not-for-profit hospital or facility licensed or certified pursuant to article twenty-eight of the public health law, such dispenser is allowed to retain an amount up to five per centum of the total purchase price of the cancelled hearing aid, including batteries and cords or accessories thereto, inclusive of all fees related to the dispensing of the hearing aid, plus a service fee of not more than two hundred dollars, unless a second hearing aid was fitted and dispensed at the same time as the first, then such fee shall not exceed three hundred dollars for both hearing aids. Such money-back guarantee as provided in this subdivision shall not be in lieu of or in any way affect the right of the purchaser to recover the full amount paid and for any damages sustained for a breach of guarantee of fitness for use.

(c) The forty-five calendar day return period shall be tolled for any period during which a hearing aid dispenser takes possession or control of a hearing aid after its original delivery.

13. (a) Within one year from the date of purchase, in addition to any other rights and remedies the purchaser of a hearing aid may have, the purchaser shall have the right to rescind the transaction if: (i) the purchaser consults a licensed otolaryngologist, or if no such licensed otolaryngologist is available then another licensed physician qualified to diagnose diseases of the ear, subsequent to purchasing a hearing aid, (ii) and the physician certifies in writing that, in his or her professional judgement, at the time the dispensing occurred the purchaser had either a diagnosis of deafness or being hard of hearing for which a hearing aid provides no benefit or had a medical condition which contraindicates the use of a hearing aid, and (iii) as the result of either condition, the purchaser experienced no improvement in the quality of hearing.

(b) If the conditions of paragraph (a) of this subdivision are met, the seller shall refund to the purchaser, within ten days of the receipt of notice to rescind, a full and complete refund of all moneys received, in compliance with paragraph (a) of this subdivision. The purchaser shall incur no additional liability for rescinding the transaction.

(c) Any dispute over a purchaser's right to rescind the transaction as provided in this subdivision that is not resolved administratively by the department shall be determined by a court of competent jurisdiction.

14. A registrant shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his or her office or place of business at all times and each such record shall be kept and maintained for a six year period. These records shall include:

(a) results of the hearing test, fitting, selection, sales, rental and adaptation or service practices as required under this article;

(b) a copy of the written receipt required by subdivision eleven of this section;

(c) a copy of the signed written waiver, if any; and

(d) any other material which the secretary may feel is necessary.

15. A registrant shall comply with applicable statutes, rules and regulations regarding advertising of his or her services. In addition:

(a) no hearing aid dispenser shall, through advertisement, indicate or imply that any type of medical examination or audiological evaluation will be provided or that the dispenser has been recommended by anyone other than an individual licensed to perform such examination or evaluation; provided, however, that nothing in this paragraph shall restrict or limit any person licensed under article one hundred fifty-nine of the education law from performing any activity thereunder or from stating in an advertisement that an audiological evaluation will be provided where an audiological evaluation is to be provided;

(b) no hearing aid device, part or accessory thereof shall be advertised as a new invention or involving a new mechanical or scientific principle unless such claim is true; and

(c) except for those hearing aid dispensers licensed as audiologists under article one hundred fifty-nine of the education law, no hearing aid dispenser shall, through advertisement, indicate or imply that he or she may perform a hearing test, examination, evaluation or consultation unless he or she includes the statement, "unless administered by an audiologist or physician, this test is for the purpose of amplification only. It is not a medical test."

16. No registered hearing aid dispenser, trainee or an employee of the registered hearing aid dispenser or trainee, shall canvass from house to house for the purpose of selling or renting a hearing aid. No registered hearing aid dispenser or trainee shall personally visit the home of a prospective customer for the purpose of selling or renting a hearing aid without the prior request of the prospective customer.

17. No registered hearing aid dispenser, manufacturer, organization or distributor shall sell or rent a hearing aid to a resident of this state through direct mail order sales.

18. No registered hearing aid dispenser or trainee shall conduct or consummate the sale of a hearing aid over the telephone unless the prospective user has been tested by that dispenser within the previous thirty days or a hearing aid user has initiated a request for a replacement of a specific hearing aid.

19. If a registered hearing aid dispenser utilizes telemarketing techniques or telephone contact, he or she shall comply with all applicable provisions of federal and state law. Any initial telephone contact undertaken by a registered hearing aid dispenser or trainee shall include the following information:

(a) a hearing aid will not restore normal hearing;

(b) any hearing test or examination is not a medical test or examination and is solely for the purposes of fitting a hearing aid;

(c) if there are indications of potential medical conditions, as defined by law, the prospective user will be referred to an otolaryngologist or if none is available to a physician; and

(d) the costs of testing or office visits; and, the range of costs of hearing aids available from the registered hearing aid dispenser.

20. A registered hearing aid dispenser shall distribute printed educational information approved by the secretary to prospective hearing aid purchasers about the general use of hearing aids and assistive listening devices and on the advantages and disadvantages of binaural hearing aids, as well as rights and remedies available to the consumer pursuant to this article.

§ 799. Administration; suspension and revocation of registrations; fines; reprimands. 1. (a) The secretary shall refer each complaint which alleges conduct constituting a violation of article one hundred fifty-nine of the education law committed by an individual licensed pursuant to article one hundred fifty-nine of the education law to the office of professional discipline within the education department. Such complaints shall be processed pursuant to article one hundred thirty of the education law.

(b) Any order to suspend, revoke or refuse to issue a certificate of registration for hearing aid dispensing of a licensed audiologist shall be issued by the commissioner of education. Where such complaints allege violation of the provisions of this article relating to the dispensing of hearing aids by a registrant who is also subject to the provisions of article one hundred fifty-nine of the education law, the secretary shall have the powers as provided in this section. Such powers relate exclusively to the registration as a hearing aid dispenser.

2. Except as provided in subdivision one of this section, the secretary may suspend or revoke any registration issued pursuant to this article, and/or impose a fine of up to one thousand dollars per violation payable to the secretary. Such penalties may be imposed for the following reasons:

(a) engaging in the business of dispensing hearing aids unless the person is a registered hearing aid dispenser or a holder of a temporary certificate of registration.

(b) incompetency which includes, but is not limited to, the improper or unnecessary dispensing of a hearing aid.

(c) negligence and/or repeated negligent acts.

(d) conviction of any crime substantially related to the qualifications, functions and duties of a hearing aid dispenser.

(e) obtaining a certificate of registration by fraud or deceit; or presenting as his or her own the certificate of registration of another.

(f) use of the term "doctor" or "physician" or "clinic" or "hearing specialist" or "audiologist," or any derivation thereof, unless authorized by law; or any terms which suggest or imply medical board certification, medical training, competency or expertise. Any reference to certification or other professional training shall specify the grantor of such credential.

(g) fraud or misrepresentation in the dispensing of a hearing aid or aids.

(h) the employment, to perform any act covered by the provisions of this article, of any person whose certificate of registration has been suspended, revoked, or who does not possess a valid certificate of registration or temporary certificate of registration issued under this article.

(i) the use or causing the use, of any advertising or promotional literature in such manner as to have the capacity or tendency to mislead or deceive purchasers or prospective purchasers including any reference to "hearing consultation", unless permitted pursuant to article one hundred fifty-nine of the education law for those hearing aid dispensers licensed under such article, or medical consultation, diagnosis or treatment.

(j) the registrant's permitting another to use his or her certificate of registration for any purpose.

(k) failure to display the certificate of registration as provided in this article.

(l) violation of any provision of this article, other applicable federal or state law, rule or regulation, or of any existing applicable sanitary code.

(m) failure or refusal to perform repairs or service on any hearing aid sold by such trainee and/or registrant.

(n) no hearing aid dispenser, registrant or hearing aid trainee shall state or imply that the use of any hearing aid will restore hearing to normal, or preserve hearing, or prevent or retard the progression of deafness or being hard of hearing or any false or misleading or medically or audiologically unsupportable claims regarding the efficacy or benefits of hearing aids.

(o) fraud or bribery in securing a certificate of registration or permission to take an examination therefor.

(p) violation of a lawful order of the department previously entered in a disciplinary hearing or failure to comply with investigations or a lawfully issued subpoena of the department.

(q) making any predictions or prognostications as to the future course of deafness or being hard of hearing, either in general terms or with reference to an individual person, except where such predictions and prognostications are made by a hearing aid dispenser licensed pursuant to the provisions of article one hundred fifty-nine of the education law and consistent with such law.

(r) exerting influence on a client in such a manner as to exploit the client for financial gain for the registrant or for a third party.

(s) sale of a hearing aid by telephone or telemarketing. Such prohibition shall not limit the scheduling of appointments, offering of services or the sale of a hearing aid to a person whom has been tested by that dispenser or dispensing audiologist within the previous thirty days or is a hearing aid user who has initiated or specifically requested the telephone sale or offer of sale.

(t) inducing a prospective user or the parent or guardian of a prospective user to execute a religious waiver through the use of a false or misleading statement to effect the sale of a hearing aid.

(u) performing an otoscopic observation or testing of hearing for medical diagnostic purposes.

3. Whenever a certificate of registration is revoked, such certificate of registration shall not be reinstated or reissued until after the expiration of a period of five years from the date of such revocation.

4. The secretary may issue an order directing the cessation of any activity for which registration is required by this article upon a finding that a person, including a partnership, limited liability company, corporation, trust or other business organization has engaged in or acted as a hearing aid dispenser or a hearing aid dispensing business within this state without a valid registration. The department shall, before making such determination and order, afford such person including a partnership, limited liability company, corporation, trust, association or business organization, an opportunity to be heard in person or by counsel in reference to an adjudicatory proceeding held pursuant to this article.

6. Upon the suspension or revocation of a certificate of registration by the secretary and the issuance of a notice thereof, the registrant shall within five business days deliver to the secretary the certificate of registration. If surrendered by mail, the certificate of registration shall be sent by registered or certified mail, postmarked no later than three business days following notice of suspension or revocation. Failure to return a certificate of registration which has been revoked or suspended pursuant to this section within the prescribed time shall constitute a violation punishable by the payment of a fine of up to five hundred dollars.

7. In the event that the registrant shall contest the charge of the violation, a hearing on the charge shall be conducted in accordance with the provisions of subdivisions one and two of section eight hundred of this article.

§ 800. Denial of registration; complaints; notice of hearing. 1. Denial of registration. The secretary shall, before making a final determination to deny an application for a registration, notify the applicant in writing of the reasons for such denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to the denial of the application. Such notification shall be served personally or by mail or in any manner authorized by the civil practice law and rules for service of a summons. If a hearing is requested, such hearing shall be held at such time and place as the secretary shall prescribe. If the applicant

fails to make a written request for a hearing within thirty days after receipt of such notification, then the notification shall become the final determination of the secretary. If, after hearing, the registration is denied, written notice of such denial shall be served upon the registrant personally or by certified mail or in any manner authorized by the civil practice law and rules.

2. Revocation, suspension, reprimands, fines. The secretary shall, before revoking or suspending any registration or imposing any fine or reprimand on the holder of such registration, or before issuing any order directing the cessation of unregistered activity shall send notification of such action to the holder. Such notice shall be provided at least ten days prior to the date set for the hearing, notify the registrant or the person deemed to have engaged in such unregistered activities, of any charges made and shall afford the person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served upon the registrant in person or by mailing the notice by certified mail to the registrant to the last known business address of such person, or by any method authorized by the civil practice law and rules for the service of a summons. The hearing shall be at such time and place as the secretary shall prescribe. After the applicant is notified of such denial, in the event a certificate of registration or temporary certificate of registration or an application is denied, no such registration shall be issued to such former registrant or applicant for at least six months, nor thereafter, except at the discretion of the secretary. The applicant or registrant may be heard in person or by counsel. Such hearing shall be at such time and place as the secretary shall prescribe.

3. In any hearing held pursuant to the provisions of this article, the secretary acting by such officer or person in the department as he or she may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, or document, record or relevant evidence, and administer an oath to and take the testimony of any such person or cause his or her deposition to be taken. A subpoena issued under this section shall be regulated by the civil practice law and rules.

§ 801. Judicial review. The action of the secretary pursuant to a hearing in refusing to grant or to renew a certificate of registration or a temporary certificate of registration, in revoking or suspending such registration or imposing a civil penalty, shall be subject to review by the supreme court in the manner provided in article seventy-eight of the civil practice law and rules.

§ 802. Special provisions; not-for-profit sales. 1. No otolaryngologist or other licensed physician who has conducted a medical evaluation of hearing loss shall engage in the business of dispensing hearing aids for a profit. No otolaryngologist or other licensed physician who has dispensed a hearing aid shall refuse or fail to perform repairs or service on any hearing aid that they have dispensed.

2. Every licensed physician who engages in the dispensing of hearing aids in compliance with the provisions of this section shall be required to comply with sections seven hundred ninety-one, seven hundred ninety-eight and eight hundred three of this article, in addition to compliance with this section.

§ 803. Powers of the secretary. 1. The secretary shall promulgate such rules and regulations as are deemed necessary to effectuate the purposes of this article, and shall provide written notification of the provisions of this article and a copy of the registration application within ninety days of the effective date of this article to all dealers as were registered under former article thirty-seven-a of this chapter prior to such effective date and to audiologists licensed pursuant to article one hundred fifty-nine of the education law. Such notification shall inform all such dealers, their dispensing employees and audiologists of the obligation to register pursuant to subdivision nine of section seven hundred ninety of this article.

2. The secretary shall review implementation of the provisions of this article in consultation with the board and shall vigorously and proactively ensure the enforcement of its provisions through site visits, regular examination of compliance with this article, public outreach and education, promulgation of regulations, delivery of technical assistance, and such other forms as would increase awareness of and adherence to the protections and process prescribed in this article. The secretary shall examine compliance with this article for each business registered pursuant to subdivision one of section seven hundred ninety of this article at least once every four years.

3. In addition to the powers and duties specified elsewhere in this article, the secretary, upon the complaint of any individual or upon the secretary's initiative, shall have the power to make and to conduct such investigations as are deemed necessary

to effectuate the purposes of this article. The secretary shall have the power to require the attendance of witnesses and issue subpoenas in accordance with the provisions of this section, in the conduct of such investigations.

4. In conjunction with the board, the secretary shall:

- (a) develop procedures for promptly investigating all complaints regarding violations of this article;
- (b) develop procedures for assisting consumers in resolving a dispute with those persons registered pursuant to this article and mediating on behalf of consumers when needed;
- (c) establish a toll-free number at which consumers, including persons who are hard of hearing or deaf, can register a complaint; and
- (d) develop other procedures as necessary to increase public awareness of how to properly purchase, fit, adjust and use a hearing aid, as well as the rights of hearing aid consumers pursuant to this article, which shall include the distribution of written information concerning this subject matter and the toll-free number to those subject to this article, the media, and the general public.

5. The secretary, in conjunction with the board shall cause to be prepared and distributed printed educational information to registered hearing aid dispensers and others about the general use of hearing aids and assistive listening devices and on the advantages and disadvantages of hearing aids as well as rights and remedies available to the consumer pursuant to this article.

6. The secretary shall regularly communicate with the commissioner of education regarding the discipline and/or prosecution of violations of this article by audiologists licensed pursuant to article one hundred fifty-nine of the education law.

7. On or before January thirty-first of each year, the secretary shall develop and distribute a report to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the assembly, the minority leader of the senate, the chair of the assembly ways and means committee, and the chair of the senate finance committee, and make it available for public examination. Such report shall entail specific efforts made by the secretary, the board and hearing aid dispensers to comply with the provisions of this article, a compilation of actions taken in response to recommendations submitted to the secretary from the board, a summary of the results of compliance efforts and anticipated efforts to improve public education, compliance and enforcement during the subsequent year, as well as recommendations, if any, to amend this article.

§ 804. Penalties. Any person found to have engaged in the dispensing of hearing aides or in the business of dispensing hearing aids without being registered pursuant to this article shall be guilty of a class A misdemeanor.

§ 805. Separability. If any section or provision of this article shall be adjudged by any court of competent jurisdiction to be invalid or inapplicable to any person or situation, such judgment shall not affect, impair or invalidate any other section or provision of this article or the applicability of such section or provision to other persons or other situations.