

265 CMR: BOARD OF REGISTRATION OF HEARING INSTRUMENT SPECIALISTS

265 CMR 7.00: PROFESSIONAL COMPETENCE AND CONDUCT

Section

7.01: Grounds for Imposition of Disciplinary Sanctions

7.02: Prohibition Against Deceptive Advertising and Fee Setting Practices

7.03: Ethical Standards and Professional Conduct

7.04: Conduct of Home Visits

7.01: Grounds for Imposition of Disciplinary Sanctions

(1) Any one or combination of specified conduct set forth in M.G.L.c. 112, § 199 is considered unprofessional and improper conduct subject to Board hearing and discipline as set forth in M.G.L.c. 112, § 200.

(2) Any violation of or failure to comply with any of the laws of the Commonwealth relating to the practice of dispensing hearing instruments or a violation of or failure to comply with a rule or regulation adopted thereunder is considered unprofessional and improper conduct subject to Board hearing and discipline as set forth in M.G.L.c. 112, § 200.

(3) If a current licensee is convicted of or admits to sufficient facts or pleads nolo contendere to a crime in any jurisdiction, whether felony or misdemeanor, in the Commonwealth or outside of the Commonwealth, regardless of adjudication or sentence, which directly relates to dispensing hearing instruments or the ability to safely and effectively practice dispensing hearing instruments, including, but not limited to violations of any federal laws or regulations regarding hearing instruments, the conduct of that licensee is considered unprofessional and improper conduct subject to Board hearing and discipline as set forth in M.G.L.c. 112, § 200.

(4) The definition of “gross incompetence” contained in M.G.L.c. 112, § 199(5) shall include, but not be limited to, failure of the registrant to advise a prospective hearing instrument user prior to fitting and dispensing a hearing instrument that the user should first consult a licensed physician specializing in diseases of the ear whenever any serious conditions are found or should have been found to exist, either as a result of observations of the registrant or from information furnished by such prospective hearing instrument user, including, but not limited to, the following conditions:

- (a) visible congenital or traumatic deformity of the ear, including perforation of the eardrum;
- (b) a history of, or active drainage from the ear within the previous 90 days;
- (c) a history of sudden or rapidly progressive hearing loss within the previous 90 days;
- (d) acute or chronic dizziness;
- (e) any unilateral hearing loss;
- (f) significant air-bone gap when generally acceptable standards have been established as defined by the Food and Drug Administration (FDA);
- (g) visible evidence of significant cerumen accumulation or a foreign body in the ear canal;  
or
- (h) pain or discomfort in the ear.

7.02: Prohibition Against Deceptive Advertising and Fee Setting Practices

(1) Deceptive Advertising. The following advertising practices are considered fraudulent, false, deceptive or misleading and are prohibited:

265 CMR: BOARD OF REGISTRATION OF HEARING INSTRUMENT SPECIALISTS

- (a) advertising which contains a misrepresentation of facts or false statements regarding the registrant's professional achievements, degrees, trained skills, and qualifications in the hearing instrument profession;
- (b) advertising the content or the context of which makes only a partial disclosure of relevant facts, such as advertising which advertises a discounted price without identifying the specific product or service to which the discounted price applies and without specifying the usual price for the product or services identified,
- (c) advertising or permitting to be advertised the price of a specifically-identified hearing instrument if more than one hearing instrument appears in the same advertisement without an accompanying price;

7.02: continued

- (d) advertising which contains a representation that a product innovation is new, when in fact the product was first introduced by that manufacturer to the general public in the Commonwealth more than 12 months ago;
- (e) advertising which contains a representation that a continuing education or training program is approved by the Board, if the content of the program departs from the content approved by the Board or is not in fact approved;
- (f) advertising which contains any representation, statement or claim which the Board determines is misleading or deceptive to the public.

(2) All advertisements must include the name and license number of a licensee responsible for the content. Individuals licensed by the Board shall refer to themselves on all advertisements as licensed hearing instrument specialists.

(3) Fee Setting. Fees which are significantly greater than the usual and customary fees accepted by hearing instrument industry standards as evidenced by third party insurance payment rates, comparable market values and other industry standard indicators shall be considered unprofessional and improper and are prohibited.

7.03: Ethical Standards and Professional Conduct

(1) Requirement to Respond to Board.

- (a) A registrant shall respond to a written communication from the Board or its designee and shall make available to the Board any relevant and authorized records with respect to an inquiry or complaint about the registrant's professional conduct.
- (b) A registrant shall cooperate with any reasonable request from a Division agent or employee acting on behalf of the Board while investigating a complaint or allegation regarding the registrant's professional conduct as a hearing instrument specialist.

(2) Welfare of Persons Served.

- (a) Registrants shall not provide any services beyond the scope of their practice or for which they are not appropriately licensed.
- (b) Registrants shall not misrepresent qualifications, affiliations, educational background or experience in the profession to the public, colleagues or other individuals or institutions.
- (c) Registrants shall fully inform persons served of the nature, possible effects, and limitations of services rendered or to be rendered.
- (d) Registrants' fees must be commensurate with services rendered. Under no circumstances shall a registrant charge for services not rendered.
- (e) Registrants shall provide clients with reasonable access to their records at the request of the client. Unless required by law, the registrant shall not reveal to any unauthorized person any confidential information obtained from the individual that the registrant serves professionally without the client's permission.
- (f) Registrants shall take all reasonable precautions to avoid injuring persons in the delivery of professional services.
- (g) Services rendered should be evaluated to determine effectiveness. If not effective, and benefit cannot reasonably be expected to accrue, professional services should not be initiated or continued.
- (h) Registrants shall establish professional relationships with clients and colleagues and follow acceptable patterns of professional conduct with such persons regardless of race, religion, gender or age.

265 CMR: BOARD OF REGISTRATION OF HEARING INSTRUMENT SPECIALISTS

- (i) Activities engaged in for experimental teaching purposes should be explained in full to the person being served. Consent must be obtained for such activities.
  - (j) Registrants shall not guarantee the result of any service rendered or hearing instrument provided or state that a hearing instrument can fully restore hearing.
- (3) Professional Objectivity/Conflict of Interest.
- (a) Registrants shall maintain objectivity in all matters concerning the welfare of persons served professionally.

7.03: continued

(b) Hearing instrument products are to be dispensed to persons served as part of a program of comprehensive habilitative/rehabilitative care. Fees established for professional services must be determined independent of whether a product is dispensed. No professional shall require, directly or indirectly, that any person served should or should not obtain a service or product from a particular source. Upon request, at time of sale, price information about professional services rendered and products dispensed must be disclosed by providing to clients a complete schedule of fees and services including what services and replacement parts are included in the price and the length of time that such services and replacement parts will be available for the price paid. Products dispensed shall be evaluated to determine effectiveness.

(c) Registrants must guard against conflicts of professional interest. They shall not engage in commercial activities that conflict with responsibility to clients or to colleagues. Registrants shall not accept fees, gifts, or other forms of gratuities for recommending a particular product or use of a particular referral source.

7.04: Conduct of Home Visits

(1) Limited Authorization. A registrant is authorized to provide hearing instrument dispensing services to a client in such client's residence only if the following limited circumstances are present:

- (a) the client requests such home visit for services;
- (b) the registrant fully discloses to the customer that any services provided at a residence may be without the benefit of certain test equipment available at the registrant's place of business;
- (c) the home visit is prearranged and scheduled for an agreed upon date and time.

(2) Fees Applying to Home Visits.

- (a) A reasonable surcharge may be added to a client's bill for a home visit by a registrant.
- (b) Other than the surcharge, all fees for services rendered and products supplied shall be the same for a home visit as those assessed at the registrant's place of business.
- (c) The surcharge for home visits must be the same or comparable for all clients and shall be disclosed to the client at the time the home visit is requested and clearly noted on the customer's bill.

(3) While in a client's house, a registrant shall act in a professional and courteous manner and only enter rooms that he or she is invited into by the client, and if asked to leave the residence by the client, the registrant shall leave immediately.

REGULATORY AUTHORITY

265 CMR 7.00: M.G.L. c. 112, §§ 198 through 200.