
Sunset Evaluation Update: Hearing Aid Dealers and Fitters

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 94-7
September 1994



THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

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3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
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THE AUDITOR STATE OF HAWAII

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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunset Evaluation Update: Hearing Aid Dealers and Fitters

Summary

We evaluated the regulation of hearing aid dealers and fitters under Chapter 451A, Hawaii Revised Statutes, and conclude that the public interest is best served by repeal of the statute.

Hearing aid dealers and fitters measure the hearing of customers for the selection, adaptation, or sale of hearing aids; they make impressions of ears for laboratories to manufacture ear molds; they adjust hearing aids to fit customers; and they provide information on their use and care. Those wishing to practice must be licensed by the Board of Hearing Aid Dealers and Fitters, which is administratively attached to the Department of Commerce and Consumer Affairs.

Regulation of an occupation should be undertaken only when necessary to protect the health, safety, and welfare of consumers. We find no evidence that the State should regulate hearing aid dealers and fitters under Chapter 451A, HRS. Few consumers have complained. The risk to the public is primarily financial and not significant. Other state and federal laws—enforced by the federal Food and Drug Administration, the Federal Trade Commission, and the state Office of Consumer Protection—help ensure product safety, proper care, and fair business practices.

We also found that if regulation is continued, it should be simplified by eliminating the examinations of the board. The licensing examinations are unnecessary because the need to screen potential hearing aid dealers for competency has not been demonstrated and the examinations have not been validated. The requirement is serving only to restrict entry into the occupation. The Board of Hearing Aid Dealers and Fitters is also unnecessary because its activities are minimal, and it seeks to expand regulation without sufficient reason. Regulation could be streamlined by assigning administration of the program to the director of the Department of Commerce and Consumer Affairs.

In addition, we found that the department could improve its operations with regard to site inspection policies, the consistency of legal requirements, and the reliability of licensing documents.

Recommendations and Response

We recommend that the Legislature repeal Chapter 451A, HRS, to leave regulation of hearing aid dealers and fitters to the federal Food and Drug Administration, Federal Trade Commission, and state Office of Consumer Protection. If the statute is continued, the Legislature should consider amending it to delete the examination requirements and terminate the Board of Hearing Aid Dealers and Fitters. We also recommend improvements in the site inspection policy, consistency of legal requirements, and reliability of licensing documents.

The board does not agree with our recommendation that the Legislature repeal Chapter 451A. It believes that regulation and licensure of hearing aid dealers and fitters is necessary to ensure competent and trained professionals. We believe that the potential harm is minimal and that Chapter 451A is not needed. The board also does not agree with our recommendation that if the statute is continued the Legislature should consider amending it to delete the examination requirements. It believes the examination ensures the minimal competency of practitioners. However, the examinations have not been validated. In addition, competency is not an issue because we found no evidence that hearing aid dealers and fitters have caused physical harm.

The board says it would concede termination of the board provided the director of the department is able to appoint an advisory committee to aid in the administration of the program when expertise is required. It agrees with our recommendation that the department amend the board's operational manual to eliminate the policy of periodic inspections of medical authorization and waiver records.

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State Auditor
State of Hawaii

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Sunset Evaluation Update: Hearing Aid Dealers and Fitters

A Report to the
Governor
and the
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the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 94-7
September 1994

Foreword

This report evaluates the regulation of hearing aid dealers and fitters under Chapter 451A, Hawaii Revised Statutes. This evaluation and repeal of the chapter had been scheduled under the Sunset Law. Subsequently, Act 279 of 1994 removed the repeal date and with it the evaluation requirement. Nevertheless, since the work had already been done, we are issuing the report to help decision makers in assessing the regulatory program.

The report presents our findings as to whether the regulatory program complies with policies in the Sunset Law and whether there is a reasonable need to regulate hearing aid dealers and fitters to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. The report incorporates in Appendix A the draft legislation to repeal the program. In accordance with Section 26H-5, HRS, Appendix B incorporates the draft legislation to improve the program.

We acknowledge the cooperation of the Board of Hearing Aid Dealers and Fitters, the Department of Commerce and Consumer Affairs, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing. The law directs the State Auditor to evaluate licensing statutes scheduled for repeal to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of hearing aid dealers and fitters under Chapter 451A, HRS, complies with policies for occupational licensing in the Sunset Law. After our work was substantially completed, Act 279 of 1994 removed the December 31, 1995, repeal date for Chapter 451A and made the chapter permanent. However, we are still issuing the report to assist decision makers in assessing the regulatory program.

Background on Hearing Aid Dealers and Fitters

A hearing aid is an instrument used to transmit sound to the ears of a person with impaired hearing. The main components of a hearing aid are a microphone to pick up sound, an amplifier to increase loudness, a receiver to deliver the sound, and a battery for power. Another component of most hearing aids is an ear mold, a plastic insert that amplifies sound from the receiver into the ear canal.

Hearing aid dealers and fitters measure the hearing of customers for the selection, adaptation, or sale of hearing aids; they make impressions of ears for laboratories to manufacture ear molds; they adjust hearing aids to fit customers; and they provide instructions on their use and care.

Hearing aids are usually sold in independent retail outlets. Most hearing aid dealers and fitters learn the business by training under the supervision of an experienced dealer. No formal educational programs exist for prospective dealers and fitters.

Hawaii had 52 licensed hearing aid dealers and fitters as of February 1994, with 37 living in the state.¹ An estimated 1,800 to 2,100 hearing aids are sold each year in Hawaii at retail prices ranging from \$550 to \$1,800. These prices include the cost of the ear mold and examinations to fit and adjust the hearing aid.²

Regulatory Program

Chapter 451A, HRS, enacted in 1969, governs the regulatory program for hearing aid dealers and fitters. Those wishing to practice must be licensed by the Board of Hearing Aid Dealers and Fitters, which is administratively attached to the Department of Commerce and Consumer Affairs.

The board consists of seven members, appointed by the governor, who serve without compensation. At least one member must be a hearing aid dealer and fitter, one an otolaryngologist (ear, nose, and throat specialist), and one an audiologist (therapist of persons with impaired hearing). An executive officer in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations.

Chapter 451A requires that license applicants be high school graduates. They may qualify by examination (the board requires both written and practical exams) or by holding a license from another state whose requirements are equivalent to or higher than Hawaii's. Temporary permits allow individuals who have not yet passed the examinations to work under a licensee's supervision. Audiologists who wish to dispense hearing aids must be licensed by the board. Also, all audiologists must be licensed by the Board of Speech Pathology and Audiology under Chapter 468E, HRS.

The law requires hearing aid dealers and fitters to provide customers with a receipt that includes the make and model of the hearing aid, the terms of the sale, and, when applicable, a statement that the hearing aid is used or reconditioned. Deceptive advertising, gross incompetence, and door-to-door sales are prohibited. Before selling a hearing aid, the dealer and fitter must obtain written authorization from a physician (or otorhinolaryngologist for children 10 or under). Adults may waive the authorization under certain circumstances. Licensees must make the authorizations and waivers available for inspection by the board and law enforcement agencies.

The department's Regulated Industries Complaints Office (RICO) mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against unlicensed persons. Final disciplinary decisions are made by the board following a recommended decision from the department's Office of Administrative Hearings.

Previous Sunset Report

Our 1985 sunset evaluation of hearing aid dealers and fitters recommended that Chapter 451A be repealed, since the potential danger to the health and safety of consumers was minimal.³ The manufacture and sale of hearing aids would still be regulated by the federal Food and Drug Administration (FDA) and by state statutes on fraudulent practices. If Chapter 451A were reenacted, we recommended that the board seek amendments to comply with federal regulations, and amend certain rules that had no statutory basis.

We found no evidence that the written and practical examinations were of any value in determining competency and recommended that the board concentrate on which skills should be tested and on developing systematic and uniform testing. We found potential conflicts of interest in board operations and recommended that the board work with the State Ethics Commission to create policies and procedures for such situations.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of hearing aid dealers and fitters complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate hearing aid dealers and fitters to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on hearing aid dealers and fitters and their regulation. We reviewed statutes and rules on the occupation in Hawaii and any changes in these since our 1985 sunset evaluation.

We also reviewed complaints and other evidence of harm to consumers. We interviewed the members of the Board of Hearing Aid Dealers and Fitters, personnel from the Department of Commerce and Consumer Affairs, and practitioners in the field. We also obtained information from the federal Food and Drug Administration and professional

organizations. At the Department of Commerce and Consumer Affairs, we reviewed files on board operations, licensing, enforcement, and correspondence. Finally, we reviewed the administration and results of the licensing examinations.

Our work was performed from December 1993 through June 1994 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

We recommend that Hawaii cease regulating hearing aid dealers and fitters. If regulation is continued, improvements should be made.

Summary of Findings

1. State regulation of hearing aid dealers and fitters is not necessary to protect the public health and safety. Other state and federal laws protect consumers from financial harm.
2. If regulation of hearing aid dealers and fitters in Hawaii is continued, it should be simplified by deleting the licensing examinations and the Board of Hearing Aid Dealers and Fitters.
3. The Department of Commerce and Consumer Affairs (DCCA) needs to review inspection policies, legal requirements, and requirements on licensing documents.

Regulation Is Not Needed

Regulation of an occupation by the State should be undertaken only where necessary to protect the health, safety, and welfare of consumers. We still find no evidence that the State should regulate hearing aid dealers and fitters under Chapter 451A, Hawaii Revised Statutes. Few consumers have complained; the risk to the public is primarily financial and not significant; and other state and federal laws help ensure product safety, proper care, and fair business practices.

Potential harm is minimal

As we had determined in our sunset evaluation in 1985, the potential danger to the physical health and safety of consumers from hearing aids or incompetent hearing aid dealers and fitters is minimal. Increased hearing loss is a risk only if the fitted hearing aid exceeds acceptable decibel levels. Physical harm may occur if the hearing aid dealer and fitter fails to detect an ear problem and refer the afflicted consumer to a physician. However, we found no indications that these problems have occurred in Hawaii.

Since January 1990, only 12 complaints have been filed against five hearing aid dealers and fitters with DCCA's Regulated Industries Complaints Office (RICO). One of the licensees accounted for 50 percent of the cases. None of the complaints involved physical harm. Most complaints alleged financial loss due to refund problems or misrepresentation in advertising. The amounts ranged from \$17.90 to \$1,872.

Other regulation is available

Other laws and regulations govern the manufacture, sale, and fitting of hearing aids. *First*, the federal Food and Drug Administration (FDA) has regulated hearing aid devices since 1977. The FDA requires manufacturers to provide dealers and fitters with instructions for safe and effective use of the hearing aid. Dealers must provide the instructional brochure to potential users as well. Purchasers must have had a medical evaluation within the past six months. (As in Hawaii, they may waive this.)

Second, the Federal Trade Commission (FTC) regulates advertising and sales activities of businesses including hearing aid dealers through its broad jurisdiction over deceptive claims and practices. The FTC recently sued a major national hearing aid manufacturer for misrepresentation in advertising.

Third, the State regulates unfair and deceptive trade practices. For example, Chapter 481C, HRS, on door-to-door sales, requires proper contracts and receipts, notice of the right to cancel the transaction within three days, and other protections. The Office of Consumer Protection (OCP) can seek fines up to \$2,500 for each violation.

Since the potential harm is minimal and other protections exist, Chapter 451A, HRS, should be repealed. This would leave regulation of hearing aid dealers and fitters to the FDA, FTC, and OCP.

If Regulation Is Continued It Should Be Simplified

Licensing examinations are not warranted

If Chapter 451A, HRS, is continued, the Legislature should consider modifying it to delete the examinations and the Board of Hearing Aid Dealers and Fitters.

Chapter 451A requires license applicants to demonstrate knowledge of the basic physics of sound, the anatomy and physiology of the ear, the function of hearing aids, audiometry, the taking of ear mold impressions, and related subjects. To meet this requirement, applicants must pass both written and practical examinations.

The examinations, however, are not necessary. The purpose of licensing examinations is to ensure the minimal competency of practitioners of the occupation. But competency is not an issue since there has been no evidence that hearing aid dealers and fitters have caused physical harm. The need to screen potential hearing aid dealers and fitters for competency has not been demonstrated, and the examinations have not been validated. The examination requirement is serving only to restrict entry into the occupation.

Hawaii uses the written examination offered by the National Institute for Hearing Instruments Studies (NIHIS) to test the applicant's basic knowledge. Although used in 32 states, this examination has not been validated.¹ Thus, it is not clear what the examination is attempting to measure. The American Association of Retired Persons (AARP) has recently questioned the adequacy of the examination.

Hawaii also uses a practical examination consisting of making an ear mold and taking a related, short written examination that was developed by the board. The practical examination has also not been validated. Furthermore, we found no evidence of physical harm from deficient earmold impressions.

The examinations also appear to be restrictive. While the practical examination is offered five times a year, the written examination is offered only semi-annually. This limits the opportunities for licensure. In addition, between 1990 and 1994, only 22 percent of applicants for a license in Hawaii passed both examinations. The examinations may be too difficult, particularly since the only way for Hawaii residents to prepare for them is an NIHIS self-study guide.

Board is unnecessary and restrictive

Our 1985 sunset report found that the Board of Hearing Aid Dealers and Fitters was not necessary. This is still so whether or not regulation is continued. The board's activities are minimal, and it seeks to expand regulation without sufficient reason. Regulation could be streamlined by assigning administration of the program to the director of DCCA.

Board activity is limited

The board has little reason to meet and serves little purpose. The board deals with few applicants for licensure and only an occasional consumer complaint. Since January 1991, the number of applicants for temporary permits, licensure by examination, and licensure by endorsement averaged a total of 11 per year. Only one complaint came before the board for disciplinary action; the board dismissed the case.

The board even has difficulty getting a quorum. A quorum—four of the board's seven members—is needed for valid board actions. In 1993, the board had to reschedule three and cancel three of its six scheduled meetings because it was unable to obtain a quorum. The board was scheduled to meet only four times in 1994.

The board is now largely irrelevant to the regulatory program. Because the board meets infrequently, it adopted rules delegating to the executive officer or a special committee the authority to review applicants for examination and make recommendations for action by the board. The DCCA director explained that "this policy was adopted by the board so

as not to unduly burden the applicant because the board meets infrequently and because the verification of the board's requirements does not generally require the board's expertise."²² Another rule amendment allows the board to delegate to the executive officer the power to issue temporary permits.

Board initiative is restrictive

State regulation should extend only as far as necessary to protect the public. The board, however, wants to add requirements for temporary permit holders that would increase regulation and further restrict entry without adding protection for consumers.

Currently, the law requires temporary permit holders to work under the direct supervision of a licensed hearing aid dealer and fitter. The board wants to add a requirement specifying the number and type of hours of training and work experience of permit holders. No evidence exists that the existing temporary permit system does not work or that the new requirements are needed to protect the public. In addition, tracking and recording the hours would burden licensees, permit holders, the board, and DCCA. Increasing the regulation of temporary permit holders would restrict entry into the profession and raise program costs—with no demonstrable benefits.

DCCA could manage the program

If Chapter 451A is continued, the Legislature should consider amending it to terminate the board and assign its responsibilities to the DCCA director. DCCA could then administer the entire regulatory program.

In practice, DCCA staff have reviewed license applications and related documents for completeness, then submitted them to the board for approval. Recent rule changes also allow the board to delegate additional responsibilities to DCCA relating to license applications and temporary permits. Shifting all board duties to DCCA would be the natural next step.

If licensing continues, DCCA could continue to examine applicants and the director could issue licenses. The director could conduct disciplinary adjudications, as the director already does with many other regulatory programs. The director could also assume the board's function of approving or rejecting settlement agreements proposed by RICO.

DCCA Should Improve Operations

Site inspection requirement is unnecessary

If the regulation of hearing aid dealers and fitters is continued, DCCA could improve site inspection policies, the consistency of legal requirements, and the reliability of licensing documents.

Chapter 451A requires that customers of a hearing aid dealer and fitter have written authorization from a physician who has examined the purchaser and prescribed or approved a hearing device. For children 10 or under, the authorization must be from an otorhinolaryngologist. In both cases, the authorization must have been signed within the previous six months unless the medical practitioner states that a return visit is not necessary.

Persons 18 or older may waive the medical examination if the dealer (1) informs them that the waiver is not in their best health interest, (2) does not actively encourage them to exercise the waiver, and (3) offers them the opportunity to sign a statement specifically acknowledging that the board advises a medical examination but the individual does not wish to have it.

To ensure appropriate medical diagnosis and care, the law requires hearing aid dealers to keep records of all completed authorizations and waivers for at least five years. Also, these records must be open to inspection by the board and law enforcement agencies.

In our 1985 sunset report, we had recommended that procedures be developed to monitor the authorizations and waivers. In response to our recommendation, the department established a program of periodic monitoring. The board's operational manual says that the DCCA "should" inspect these records at least on a regular biennial basis. The board can also request RICO to perform inspections as part of a complaint investigation.

RICO conducted inspections in 1990 only. The inspections revealed some minor violations that RICO followed up with advisory letters. But neither the 1990 inspections nor subsequent complaints to RICO showed abuse of the medical authorization and waiver system.

Since there is no evidence that the periodic inspection is necessary, the requirement should be removed. Records inspections conducted by RICO in response to complaints should sufficiently protect the consumer. DCCA should amend the board's operational manual to delete the periodic inspection requirement.

Legal requirements are inconsistent

The FDA requires states with regulations more stringent than federal regulations to obtain a waiver from the FDA. Our 1985 sunset report noted that Chapter 451A requires the itemized receipt to show whether a hearing aid is used or reconditioned. Federal regulations do not contain such a requirement. Hawaii applied for a waiver concerning the requirement in 1983, but the FDA did not respond. The department needs to resolve this situation by reapplying for a waiver or amending the law to delete the disclosure requirement.

In addition, the board is proposing a rule to require pre-purchase medical evaluations of children 17 years of age or under to be performed by an otorhinolaryngologist.³ This is inconsistent with the statute which requires this only for children 10 years of age or under. The FDA had given the state a waiver for this provision because the requirement does not exist in the federal regulations.⁴ To resolve the inconsistencies, the department should drop the proposed rule.

Licensing documents may be unreliable

Currently, DCCA allows applicants for licensure to submit a photocopy of a diploma (high school or college). Furthermore, applicants may submit transcripts and out-of-state verification letters directly to DCCA. DCCA does not verify the authenticity of documentation submitted. DCCA should ensure the reliability of applicant files by requiring original documents from the source whenever possible.

Recommendations

1. Chapter 451A, Hawaii Revised Statutes, should be repealed to leave regulation of hearing aid dealers and fitters to the federal Food and Drug Administration, Federal Trade Commission, and state Office of Consumer Protection.
2. If the statute is continued, the Legislature should consider amending it to:
 - a. Delete the examination requirements and
 - b. Terminate the Board of Hearing Aid Dealers and Fitters.
3. The Department of Commerce and Consumer Affairs should:
 - a. Amend the board's operational manual to eliminate the policy of periodic inspections of medical authorization and waiver records;
 - b. Either seek an FDA waiver for the state statutory requirement that consumers be informed if the hearing aid is used or reconditioned, or seek legislation deleting the requirement;

- c. Delete the proposed rule requiring that an otorhinolaryngologist perform the medical evaluation of children 17 years or under, and
- d. Ensure the reliability of the applicant files by requiring original documents from the source whenever possible.

Notes

Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/ Geographic Report* (printout), February 4, 1994, p. 14.
2. Hawaii, Department of Commerce and Consumer Affairs, *Operational Manual for the Board of Hearing Aid Dealers and Fitters*, July 1993, p. I-B1.
3. Hawaii, Legislative Auditor, *Sunset Evaluation Update: Hearing Aid Dealers and Fitters*, Report No. 85-1, Honolulu, January 1985, p. 6.

Chapter 2

1. Letter to Janice Takano, Office of the Auditor, from Phyllis V. Wilson, NIHIS Administrator, April 7, 1994.
2. Memorandum to Governor John Waihee from the Director of the Department of Commerce and Consumer Affairs, Clifford Higa, Subject: Proposed Amendments to the Rules of the Board of Hearing Aid Dealers and Fitters, December 23, 1993.
3. The proposal would amend Section 16-83-4, Hawaii Administrative Rules.
4. Code of Federal Regulations, Section 808.61(a).

Response of the Affected Agencies

Comments on Agency Response

We transmitted a draft of this report to the Board of Hearing Aid Dealers and Fitters and the Department of Commerce and Consumer Affairs on July 28, 1994. A copy of the transmittal letter to the board is included as Attachment 1. The response from the board is included as Attachment 2. The department did not submit a separate response.

The board does not agree with our recommendation that Chapter 451A, Hawaii Revised Statutes should be repealed. It believes there are potential risks of harm to the hearing of consumers of all ages, and that regulation and licensure of hearing aid dealers and fitters is necessary to ensure competent and trained professionals. We believe the potential harm is minimal and Chapter 451A is not needed.

The board also does not agree with our recommendation that if the statute is continued the Legislature should consider amending it to delete the examination requirements. It believes the examination ensures the minimal competency of practitioners. However, we believe that competency is not an issue because we found no evidence that hearing aid dealers and fitters have caused physical harm.

We also recommended that if regulation is continued the Legislature should consider terminating the board and assigning its duties to the director of the Department of Commerce and Consumer Affairs. In its response, the board says it would concede termination of the board provided the director of the department is able to appoint an advisory committee to aid in the administration of the program when expertise is required.

The board agrees with our recommendation that the department amend the board's operational manual to eliminate the policy of periodic inspections of medical authorization and waiver records, and says that the amendments have already been initiated.

We also recommended that the department either seek a waiver from the federal Food and Drug Administration (FDA) for the state statutory requirement that consumers be informed if the hearing aid is used or reconditioned, or seek legislation deleting this requirement. The board says it is not in favor of deleting the requirement. Furthermore, it disputes the need for a waiver, saying the FDA has confirmed that no waiver is needed. In addition, we recommended that the department delete the proposed rule requiring that an otorhinolaryngologist perform the medical evaluation of children 17 years or under. The board

responds that it intends to keep the rule which took effect on July 18, 1994; it is legal and proper according to the state attorney general's office.

In addition, we recommended that the department ensure the reliability of applicant files by requiring original documents from the source whenever possible. The board views this as important, but not always possible or prudent. It believes that requiring an original copy of a diploma is overly burdensome on the applicant. The board says it requires a certified photostatic copy of a transcript as a means of verifying educational qualifications, and implements this policy by requiring a copy with the official seal of the school (embossed). Its rules will be revised to reflect this practice.

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ATTACHMENT 1

MARION M. HIGA
State Auditor

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July 28, 1994

COPY

Ms. June M. Uyehara-Isono, Chair
Board of Hearing Aid Dealers and Fitters
Kamamalu Building
1010 Richards Street
Honolulu, Hawaii 96813

Dear Ms. Uyehara-Isono:

Enclosed for your information are 8 copies, numbered 9 to 16 of our draft report, *Sunset Evaluation Update: Hearing Aid Dealers and Fitters*. We ask that you telephone us by Monday, August 1, 1994, on whether or not you intend to comment on our recommendations. Please distribute the copies to the members of the board. If you wish your comments to be included in the report, please submit them no later than Monday, August 29, 1994.

The Director of the Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



RECEIVED

CLIFFORD K. HIGA
DIRECTOR

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STATE OF HAWAII

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LICENSING ADMINISTRATOR

BOARD OF HEARING AID DEALERS AND FITTERS
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PROFESSIONAL & VOCATIONAL LICENSING DIVISION
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September 1, 1994

The Honorable Marion M. Higa, State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

The Board of Hearing Aid Dealers and Fitters ("Board") thanks you for the opportunity to respond to the Sunset Evaluation Update on Hearing Aid Dealers and Fitters. We will comment on the recommendations as they appear chronologically on pages 10 and 11 of the report.

1. "Chapter 451A, Hawaii Revised Statutes (HRS), should be reenacted to leave regulation of hearing aid dealers and fitters to the federal Food and Drug Administration, Federal Trade Commission, and state Office of Consumer Protection."

The Board does not concur with this recommendation and strongly opposes the repeal of Chapter 451A, HRS. The Board is aware that few consumers have complained; however, they attribute this to the market makeup which has primarily been comprised of the elderly who are very reluctant to file formal complaints. There are potential risks of harm to the hearing of consumers of all ages if the appropriate amplification is not found, if earmold impressions are not fashioned or removed carefully, or if instruments are incorrectly used. The Board feels strongly that to leave regulation to these areas that do not test minimal competency of applicants or require licensure; especially when the industry is seeing more work done with children, is jeopardizing public safety and welfare.

The Honorable Marion M. Higa, State Auditor
Page Two
September 1, 1994

As an example, pursuant to Sections 321-361 through 321-363, HRS, mandatory statewide hearing screening for infants was enacted. This screening allows the identification of hearing impaired infants who will need to wear hearing aids. This mandate allows babies, who would normally not be identified until two years old or older with significant hearing loss, to be intervened with amplification and prevent speech and language delays. These babies deserve to be seen by competent and trained professionals, such as hearing aid dealers and fitters, who are qualified to determine appropriate amplifications to provide the best possible fitting. To ensure competent and trained professionals, regulation and licensure is necessary.

2. "If the statute is continued, the Legislature should consider amending it to:
 - a. Delete the examination requirements"

The Board believes its licensing examination does ensure the minimal competency of practitioners and that the examination should not be deleted. The Board strongly disagrees that the licensing examinations are restrictive and asserts that the reason there is no evidence hearing aid dealers and fitters have caused physical harm is that the examination does test minimal competency.

Although the NIHIS examination has not been validated, this does not mean that the examination is not valid. The current NIHIS examination is a science-based examination that was written by professionals in the hearing aid field. The examination was developed to test for entry level competency and consists only of pertinent and relevant questions. This examination is administered in 32 states and in the 25 years NIHIS has furnished this examination, it has never been challenged. The necessity of the state practical examination was determined by a survey of licensed hearing aid dealers and fitters who clearly felt an applicant for licensure should be tested on the aspects of taking an earmold impression. Making an earmold impression involves inserting a gel-like substance into the depths of the ear canal which is

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then left to harden in the ear and subsequently removed. The entire process is potentially harmful due to the instruments used. The syringe and otoscope, which is inserted into the ear, needs to be handled in a specific fashion to prevent damage to the ear. It is the removal of the impression that creates the greatest potential for harm. If it is not skillfully removed, the impression could break inside the ear, cause parts to be lodged in the ear canal, and require surgical removal. Thus, although there may not be any documented evidence of physical harm regarding earmold impressions, knowledge and minimal competency in this area should be demonstrated.

- "b. Terminate the Board of Hearing Aid Dealers and Fitters."

The Board strongly disagrees with the Auditor's comment that the Board serves little purpose. The law established the Board with the basic duty and responsibility of regulating the practice of dealing and fitting of hearing aids to ensure minimal competency of licensees for the protection of the public's health, safety and welfare, which they have always held as their foremost duty. The Board has worked hard to reach this point of development whereby the standards for licensure are so clearly set forth that the DCCA staff is able to review and examine applicants. They do, however, realize that their expertise is not needed on a regular basis and the natural next step is to transfer all board duties to the DCCA.

The Board agrees that the DCCA could manage the entire regulatory program and would concede termination of the board, provided the Director is able to appoint an advisory committee to aid in the administration of the program when expertise is required.

The Board feels it more appropriate that they respond to the remaining recommendations, directed at the Department, as such matters resulted from Board action.

3. "a. Amend the board's operational manual to eliminate the policy of periodic inspections of medical authorization and waiver records;"

The Board agrees with the recommendation to eliminate the policy of periodic inspections since there appears to be little abuse of the medical authorization and waiver system and feels comfortable in relying on records inspections conducted by RICO in response to complaints to protect the consumer. The Board has already initiated amendments to their operational manual to delete the periodic inspection requirement and procedures.

- "b. Either seek an FDA waiver for the state statutory requirement that consumers be informed if the hearing aid is used or reconditioned, or seek legislation deleting the requirement;"

The Board received direct confirmation from the Federal Food and Drug Administration that they do not require consumers be informed if a hearing aid is used or reconditioned, and that since the FDA does not regulate this area, the state may adopt such a requirement without having to obtain a waiver from the FDA. It was further confirmed that states could regulate more areas than the FDA provided the state law did not conflict with any federal statute or rule and thereby place the onus on dealers and fitters to comply with both state and federal regulations to do business in that particular state. Moreover no current FDA policy exists that would require states with more regulations in areas that the federal law does not regulate to obtain a waiver from the FDA.

Due to the foregoing, the Board disputes the necessity for a FDA waiver. Further the Board is not in favor of seeking legislation to delete this requirement. The Board strongly feels that the public should be informed if a hearing aid is used or reconditioned and plans to continue to require licensees to inform their customers of this fact.

- "c. Delete the proposed rule requiring that an otorhinolaryngologist perform the medical evaluation of children 17 years or under; and"

The Board's revised rules which included the revision to require an otorhinolaryngologist to perform the

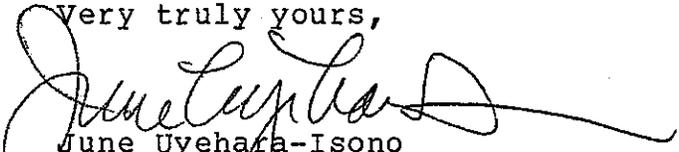
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medical evaluation of children 17 years or under was promulgated and took effect on July 18, 1994. The Attorney General's office, in their review of the rule revision, concurred with the Board that §451A-14.1, Hawaii Revised Statutes, provided the Board with authority to require children 17 years or under be medically evaluated by an otorhinolaryngologist. Therefore, the Board's rule is legal and proper, and the Board intends to retain this rule.

- "d. Ensure the reliability of the applicant files by requiring original documents from the source whenever possible."

The Board agrees that it is very important to ensure the reliability of the applicant files by requiring original documents whenever possible; however, they also are aware that this is not always possible or prudent. As with many other boards, the Board of Hearing Aid Dealers and Fitters does accept a photocopy of a diploma (high school or college). They believe that to require an original diploma is overly burdensome on the applicant. The Board's policy of requiring a "certified photostatic copy of a transcript," as a means of verifying educational qualifications is being implemented by requiring a copy with the official seal of the school (embossed). This alternative ensures authenticity. Although this has been the practice, the Board admits it rules, do not clearly set this forth. The Board will revise its rules so it is consistent with the Board's practice of verifying educational qualifications and out-of-state licensure statuses.

The Board appreciates the opportunity to comment on the findings and recommendations of this sunset evaluation report.

Very truly yours,

June Uyehara-Isono
Chairperson

EIGHTEENTH LEGISLATURE, 1995
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO HEARING AID DEALERS AND FITTERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 451A, Hawaii Revised Statutes, is
2 repealed.

3 SECTION 2. Section 26-9, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The board of acupuncture, board of public accountancy,
6 board of barbers, board of cosmetology, boxing commission, board
7 of chiropractic examiners, contractors license board, board of
8 dental examiners, board of electricians and plumbers, elevator
9 mechanics licensing board, board of professional engineers,
10 architects, surveyors, and landscape architects, [board of
11 hearing aid dealers and fitters,] board of massage therapy, board
12 of medical examiners, motor vehicle industry licensing board,
13 motor vehicle repair industry board, board of examiners in
14 naturopathy, board of nursing, board of examiners of nursing home
15 administrators, board of dispensing opticians, board of examiners
16 in optometry, board of osteopathic examiners, pest control board,
17 board of pharmacy, board of physical therapy, board of
18 psychology, board of private detectives and guards, real estate
19 commission, board of veterinary examiners, board of speech

1 pathology and audiology, and any board, commission, program, or
2 entity created pursuant to or specified by statute in furtherance
3 of the purpose of this section including but not limited to
4 section 26H-4, or chapters 484, 514A, and 514E shall be placed
5 within the department of commerce and consumer affairs for
6 administrative purposes."

7 SECTION 3. Statutory material to be repealed is bracketed.

8 SECTION 4. This Act shall take effect upon its approval.

9

10

INTRODUCED BY: _____

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8 architects, surveyors, and landscape architects, [board of
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19 entity created pursuant to or specified by statute in furtherance

1 of the purpose of this section including but not limited to
2 section 26H-4, or chapters 484, 514A, and 514E shall be placed
3 within the department of commerce and consumer affairs for
4 administrative purposes."

5 SECTION 2. Section 451A-1, Hawaii Revised Statutes, is
6 amended by deleting the definition of "board":

7 ["Board" means the board of hearing aid dealers and
8 fitters."]

9 SECTION 3. Section 451A-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§451A-2 License required. It shall be unlawful for any
12 person not licensed under this chapter to engage in the sale or
13 practice of dealing and fitting of hearing aids or to use any
14 sign, card, or device to indicate that the person is licensed
15 [and registered].

16 Any person wishing to obtain a license [or a permit or
17 certificate of endorsement] shall apply on a form prescribed by
18 the [board] department and shall furnish to the [board:]
19 department:

20 (1) Satisfactory proof that the person is a graduate of a
21 high school approved and recognized by the [board;]
22 department; and

1 (2) Satisfactory proof that the person has fulfilled all of
2 the requirements of the [board.] department.

3 [An applicant shall be required to pass a licensing
4 examination.]"

5 SECTION 4. Section 451A-3, Hawaii Revised Statutes, is
6 repealed.

7 ["§451A-3 Appointment, qualifications, term. There is
8 hereby established a board of hearing aid dealers and fitters
9 which shall consist of seven members. Of the seven members,
10 there shall be at least one hearing aid dealer and fitter, one
11 otolaryngologist, and one audiologist. Each hearing aid dealer
12 and fitter on the board shall have at least five years of
13 experience and shall hold a valid license as a hearing aid dealer
14 and fitter.

15 All members of the board shall be residents of the State."]

16 SECTION 5. Section 451A-5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§451A-5 Powers and duties of the [board.] department. In
19 addition to any other powers and duties authorized by law, the
20 powers and duties of the [board] department are to:

21 (1) Adopt rules in accordance with chapter 91 to carry out
22 the purposes of this chapter;

- 1 (2) Develop standards for licensure;
- 2 [(3) Prepare and administer examinations;
- 3 (4)] (3) Issue, renew, suspend, and revoke licenses;
- 4 [(5) Register applicants and holders of a license, permit
- 5 and certificate of endorsement;]
- 6 (4) Investigate and conduct hearings regarding any
- 7 violation of this chapter and any rules of the [board;]
- 8 department;
- 9 [(7) Maintain a record of its proceedings;
- 10 (8)] (5) Do all things necessary to carry out the
- 11 functions, powers, and duties set forth in the chapter;
- 12 [(9)] (6) Monitor medical authorizations and waiver records;
- 13 and
- 14 [(10)] (7) Develop policies and procedures, in consultation
- 15 with the state ethics commission, for handling real or
- 16 potential conflicts of interest."

17 SECTION 6. Section 451A-6, Hawaii Revised Statutes, is
18 repealed.

19 ["§451A-6 Scope of the licensing examination. The
20 licensing examination shall assess the applicant's knowledge of:

- 21 (1) Basic physics of sound;
- 22 (2) Anatomy and physiology of the ear;

- 1 (3) Function of hearing aids;
- 2 (4) Pure tone audiometry, including air and bone conduction
- 3 testing;
- 4 (5) Live voice or recorded voice speech audiometry,
- 5 including speech reception threshold and speech
- 6 discrimination testing;
- 7 (6) Masking when indicated;
- 8 (7) Recording and analyzing test results to determine
- 9 proper selection of hearing aids; and
- 10 (8) Taking earmold impressions."]

11 SECTION 7. Section 451A-7, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§451A-7 Issuance of license. The [board] department shall
14 [register] issue a license to each applicant [without
15 discrimination or examination] who [satisfactorily] meets the
16 [experience] requirements [or who passes an examination as
17 provided in] of section 451A-2[. Upon the payment of] and pays
18 application[, examination,] and license fees[, the board shall
19 issue to the applicant a license]. The license shall be valid
20 until January 30 of the year following the year in which the
21 license is issued."

22 SECTION 8. Section 451A-8, Hawaii Revised Statutes, is

1 amended to read as follows:

2 "§451A-8 Biennial renewal of license; fees; effect of
3 failure to renew. Each person who engages in the fitting and
4 sale of hearing aids, on or before December 31 of each
5 odd-numbered year, shall pay to the department a biennial fee for
6 renewal of the license and shall keep the certificate
7 conspicuously posted in the licensee's office or place of
8 business at all times. Where more than one office is operated by
9 the licensee, duplicate certificates shall be issued by the
10 department for posting at each location. A thirty-day grace
11 period shall be allowed after December 31, during which time
12 licenses may be renewed upon payment of a restoration fee to the
13 department. After expiration of the grace period, the department
14 may renew the certificates upon payment of a second restoration
15 fee to the department. No person who applies for renewal, whose
16 license has expired, shall be required to [submit to any
17 examination as a condition to renewal;] apply as a new applicant;
18 provided that the renewal application is made within two years
19 from the date of expiration."

20 SECTION 9. Sections 451A-9 and 451A-10, Hawaii Revised
21 Statutes, are repealed:

22 ["§451A-9 Temporary permit. (a) Upon receiving an

1 application for a temporary permit and a payment of a fee, the
2 board may issue a temporary permit which shall entitle the
3 applicant to engage in the fitting and sale of hearing aids for a
4 period of one year. A waiting period is not required. A person
5 issued a temporary permit shall be under the direct supervision
6 and training of a person duly licensed under this chapter.

7 (b) If a person who holds a temporary permit under this
8 section has not passed the examination within one year from the
9 date of issuance, the temporary permit may be renewed or reissued
10 once upon payment of the required fee.

11 **[\$451A-10] Certificate by endorsement.** Whenever the board
12 determines that another state or jurisdiction has a program with
13 requirements equivalent to or higher than those in effect under
14 this chapter to fit and sell hearing aids, the board may issue
15 certificates of endorsement to applicants who hold current,
16 unsuspended, and unrevoked certificates or licenses to fit and
17 sell hearing aids in another state or jurisdiction. Applicants
18 for certificate of endorsement shall not be required to pass an
19 examination as provided in section 451A-2. The holder of a
20 certificate of endorsement shall be subject to the same
21 provisions applying to a licensee regarding registration, fees,
22 and grounds for renewal, suspension and revocation of a

1 license."]

2 SECTION 10. Section 451A-11, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "[[§451A-11]] Notice to [board] department of place of
5 business; notice to holders of license. (a) Any person who
6 holds a license[, certificate of endorsement, or temporary
7 permit] shall notify the [board] department in writing of the
8 address of the place where the person engages or intends to
9 engage in the fitting or the sale of hearing aids.

10 (b) The [board] department shall keep a record of the place
11 of business.

12 (c) Any notice required to be given by the [board]
13 department to the person shall be mailed to the person by
14 certified mail at the address of the last place of business which
15 the person has notified the [board.] department."

16 SECTION 11. Section 451A-13, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§451A-13 Discipline; grounds; proceeding; hearings. (a)
19 In addition to any other actions authorized by law, the [board]
20 department may deny, revoke, or suspend any license[, certificate
21 of endorsement, or temporary permit] issued under this chapter
22 and fine or otherwise discipline a licensee for any cause

1 authorized by law, including but not limited to proof that the
2 person has:

- 3 (1) Obtained a license[, certificate of endorsement, or
4 temporary permit] by fraud or deceit;
- 5 (2) Obtained a fee or the making of a sale by fraud or
6 misrepresentation;
- 7 (3) Employed with knowledge, directly or indirectly, any
8 suspended or [unregistered] unlicensed person to
9 perform any work covered by this chapter;
- 10 (4) Applied, caused, or promoted for advertising, the use
11 of any matter, promotional literature, testimonial,
12 guarantee, warranty, label, brand, insignia, or any
13 other representation which is misleading, deceptive, or
14 untruthful;
- 15 (5) Advertised a particular model or type of hearing aid
16 for sale which in fact is not immediately available and
17 where it is established that the purpose was to obtain
18 prospects for the sale of a different model or type;
- 19 (6) Represented that the service or advice of a person
20 licensed to practice medicine will be used or made
21 available in the selection, fitting, adjustment,
22 maintenance, or repair of hearing aids when that is not

1 true, or used the words "doctor", "clinic", or similar
2 words, abbreviations, or symbols related to the medical
3 profession when it is not accurate;

4 (7) Permitted the use of a license by another;

5 (8) Advertised a product or used a manufacturer's name or
6 trademark which implies a relationship which in fact
7 does not exist;

8 (9) Given or offered to give, directly or indirectly, money
9 or anything of value to any person who advises another
10 in a professional capacity as an inducement to
11 influence the person or have the person influence
12 others to purchase or contract to purchase products
13 sold or offered for sale by a hearing aid dealer or
14 fitter, or influencing persons to refrain from dealing
15 in the products of competitors;

16 (10) Engaged in the fitting and selling of hearing aids
17 under a false name or alias with fraudulent intent;

18 (11) Sold a hearing aid to a person who has not been given
19 tests utilizing appropriate established procedures and
20 instrumentation in fitting of hearing aids;

21 (12) Committed gross incompetence or negligence in fitting
22 and selling hearing aids;

1 (13) Violated any provisions of this chapter [and] or any
2 implementing rules;

3 (14) Submitted to or filed with the [board] department any
4 notice, statement, or other document required under
5 this chapter, which is false or untrue or contains any
6 material misstatement of fact; or

7 (15) Failed to report to the [board] department any
8 disciplinary action taken against the licensee in
9 another jurisdiction within thirty days after the
10 disciplinary action becomes final.

11 (b) Any person who wishes to make a complaint against a
12 person who has a license[, certificate of endorsement, or
13 temporary permit] shall file a complaint in writing with the
14 [board] department within one year from the date of the action
15 upon which the complaint is based.

16 (c) Any fine imposed by the [board] department after
17 hearing in accordance with chapter 91 shall be no less than \$100
18 and no more than \$1,000 for each violation."

19 SECTION 12. Section 451A-14, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§451A-14 Prohibited acts and practices. No person shall:

22 (1) Sell, barter, offer to sell, barter or transfer or

- 1 assign a license[, certificate of endorsement, or
2 temporary permit];
- 3 (2) Purchase or procure by barter a license[, certificate
4 of endorsement, or temporary permit] with intent to use
5 it as evidence of qualification to practice the fitting
6 and selling of hearing aids;
- 7 (3) Alter a license[, certificate of endorsement, or
8 temporary permit] with fraudulent intent;
- 9 (4) Use or attempt to use a license[, certificate of
10 endorsement, or temporary permit] which is invalid
11 because it was purchased, fraudulently obtained,
12 forged, or materially altered;
- 13 (5) Make a false statement in an application for a
14 license[, certificate of endorsement, or temporary
15 permit,] or in an application for renewal of a license;
- 16 (6) Sell hearing aids through "door-to-door sales" as
17 defined in section 481C-1."

18 SECTION 13. Section 451A-14.1, Hawaii Revised Statutes, is
19 amended by amending subsections (c) and (d) to read as follows:

20 "(c) For the purposes of subsection (a) the hearing aid
21 dealer and fitter may offer persons eighteen years of age or
22 older an opportunity to waive the requirement of a medical

1 examination if the hearing aid dealer and fitter:

2 (1) Informs the prospective user that the exercise of the
3 waiver is not in the user's best health interest;

4 (2) Does not in any way actively encourage the prospective
5 user to waive the medical examination; and

6 (3) Affords the prospective user the opportunity to sign
7 the following statement:

8 "I have been advised by _____
9 (hearing aid dealer and fitter's name) that the [Board
10 of Hearing Aid Dealers and Fitters] department of
11 commerce and consumer affairs has determined that my
12 best health interest would be served if I had a medical
13 examination by a physician (preferably a physician who
14 specializes in diseases of the ear) before purchasing a
15 hearing aid. I do not wish a medical examination
16 before purchasing a hearing aid.

17 (d) Every hearing aid dealer and fitter licensed pursuant
18 to this chapter shall keep a suitable book or file, or a
19 microfilm of the book or file, in which shall be preserved, for a
20 period of not less than five years, every authorization by
21 physicians or otorhinolaryngologists received pursuant to this
22 section and every statement executed in accordance with

1 subsection (c)(3). The book, file, or microfilm of the
2 authorizations and statements shall at all times be open to
3 inspection by the [board of hearing aid dealers and fitters]
4 department and other law enforcement agencies."

5 SECTION 14. Section 451A-17, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[[]§451A-17[[]] Injunctive relief. The [board] department
8 may apply for an injunction in any court of competent
9 jurisdiction to enjoin any person who has not been issued a
10 license[, permit, or certificate of endorsement] or whose
11 license[, permit, or certificate of endorsement] has been
12 suspended or revoked or has expired from practicing in the
13 dealing and fitting of hearing aids[; and, upon]. Upon the
14 filing of a verified petition in the court, the court or any
15 judge thereof, if satisfied by affidavit or otherwise, may issue
16 a temporary injunction, without notice or bond, enjoining the
17 defendant from further practicing in the dealing and fitting of
18 hearing aids. A copy of the verified complaint shall be served
19 upon the defendant and the proceedings shall thereafter be
20 conducted as in other civil cases. If it is established that the
21 defendant has been or is practicing dealing and fitting of
22 hearing aids without having been issued a license[, permit or

1 certificate of endorsement] or after it has been suspended or
2 revoked or has expired, the court or any judge thereof may enter
3 a decree enjoining the defendant from further practicing in the
4 dealing and fitting of hearing aids. In case of violation of any
5 injunction issued under this section, the court may summarily try
6 and punish the offender for contempt of court. The injunction
7 proceeding shall be in addition to, and not in lieu of all
8 penalties and other remedies provided in this chapter."

9 SECTION 15. Section 451A-18, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[~~§~~451A-18] Persons and practices not affected. This
12 chapter is not intended to:

13 (1) Prohibit any person from engaging in the practice of
14 measuring human hearing for the purpose of selection of
15 hearing aids; provided the person or the organization
16 employing the person does not sell hearing aids or
17 accessories.

18 (2) Prohibit a person [in] who is maintaining an
19 established business address from engaging in the
20 business of selling or offering for sale hearing aids
21 at retail without a license, provided that [it]:

22 (A) It employs persons licensed under this chapter

1 responsible for the fitting and direct sale of
2 [such] those products; [provided also that there
3 shall be] and

4 (B) There is filed annually with the [board]
5 department a list of all licensed hearing aid
6 dealers and fitters directly or indirectly
7 employed.

8 (3) Apply to a person who is a physician licensed to
9 practice in Hawaii."

10 SECTION 16. All rules, policies, procedures, guidelines,
11 and other material adopted or developed by the board of hearing
12 aid dealers and fitters shall remain in full force and effect
13 until amended or repealed by the department of commerce and
14 consumer affairs pursuant to chapter 91, Hawaii Revised Statutes.
15 In the interim, every reference to the board of hearing aid
16 dealers and fitters in those rules, policies, procedures,
17 guidelines, and other material is amended to refer to the
18 department of commerce and consumer affairs or director of
19 commerce and consumer affairs as appropriate.

20 SECTION 17. This Act does not affect rights and duties that
21 matured, penalties that were incurred, and proceedings that were
22 begun, before its effective date.

1 SECTION 18. Statutory material to be repealed is bracketed.

2 New statutory material is underscored.

3 SECTION 19. This Act shall take effect upon its approval.

4

5

INTRODUCED BY: _____

