



# Board of Hearing Aid Dispensers and Audiologists

Mailing Address:  
810 North Main Street, Suite 298  
Spearfish, SD 57783

Phone: (605) 642-1600 E-Mail: [proflic@rushmore.com](mailto:proflic@rushmore.com)  
Home Page: [www.doh.sd.gov/boards/audiology](http://www.doh.sd.gov/boards/audiology)

## Draft-Teleconference BOARD MEETING AGENDA

TO: All Board Members  
FROM: Carol Tellinghuisen  
DATE: July 5, 2021  
MEETING DATE: July 19, 2021  
LOCATION: Teleconference

Persons interested in joining the meeting may do so by calling the teleconference number at 1-866-410-8397. Key in the Passcode: 605-773-4946#

MEETING TIME: 12:00 PM CST / 11:00 AM MST

---

### Agenda Item Number

1. Call to Order/Welcome and Introductions-Decker
2. Roll Call
3. Corrections or additions to the agenda
4. Approval of the agenda
5. Public Comment at 12:05 p.m. CST
6. Approval of the minutes from January 11, 2021
7. FY Financial Update
8. Update on Online Renewal System
9. Executive Order 2020-05
10. Legislative Updates (Legal Counsel)
11. Legal Counsel Transition Update
12. Vote on revised SDCL 36-24
13. Update on Audiology and Speech-Language Pathology Interstate Compact
14. Executive Session Pursuant to SDCL 1-25-2
15. Any other business coming in between date of mailing and date of meeting
16. Schedule next meeting
17. Adjourn



## Board of Hearing Aid Dispensers and Audiologists

Mailing Address:  
810 North Main Street, Suite 298  
Spearfish, SD 57783

Phone: (605) 642-1600 E-Mail: [proflic@rushmore.com](mailto:proflic@rushmore.com)  
Home Page: [audiology.sd.gov](http://audiology.sd.gov)

### DRAFT-OFFICIAL BOARD MINUTES FOR January 11, 2021 Teleconference

**MEMBERS PRESENT:** Todd Decker, President  
Kurt Reder, Member  
Norman Sorensen, Member

**MEMBERS ABSENT:** Dan Smith, Secretary/Treasurer

**OTHERS PRESENT:** Carol Tellinghuisen, Executive Secretary  
Jill Lesselyoung, Executive Assistant  
Brooke Tellinghuisen Geddes, Executive Assistant  
Jennifer Schultz, SDSLHA  
Agelia Stout, SDSLHA  
Megan Borchert, DOH Board Attorney

President Decker called the meeting to order at 12:05PM CT. Decker expressed condolences to the family of Ann Oldenkamp on her passing and his appreciation to Ann for her years of service to the Board.

**ROLL CALL:** Decker asked Lesselyoung to call the roll. Decker, yes; Reder, yes; Sorensen, yes. A quorum was present.

**CORRECTIONS OR ADDITIONS TO THE AGENDA:** None

**APPROVAL OF THE AGENDA:** Reder made a motion to approve the agenda. Sorensen seconded the motion. **MOTION PASSED** by roll call vote. Decker, yes; Reder, yes; Sorensen, yes.

**PUBLIC COMMENT:** Decker called for public comment. Tellinghuisen advised Schultz and Stout could comment at this time or wait until the update on the Audiology and Speech-Language Pathology Interstate Compact. Schultz indicated she will wait. There were no public comments.

**ELECTION OF OFFICERS:** Sorensen motioned to continue with the current slate of officers with Decker serving as President and Smith as Secretary/Treasurer. Reder seconded the motion. **MOTION PASSED** by roll call vote. Decker, yes; Reder, yes; Sorensen, yes.

**NEW LEGAL COUNSEL FOR DOH-BORCHERT, PROSECUTOR-WILLIAMS:**  
Decker introduced Borchert as the Board attorney for DOH and welcomed her to the Board.

**REVIEW-ROLE OF BOARD MEMBER AND CONFLICT OF INTEREST POLICY:**  
Borchert advised her role for the Board is to assist with meetings and provide legal advice as general counsel. Justin Williams will handle complaints and settlements. Borchert advised a Board member's role is to protect the health and safety of the consumers. It is a distinct purpose from the association's role of expansion of the practice and promotion of the profession. She advised members to keep the public protection in the back of their minds. She discussed the Code of Conduct and Conflict of Interest Policy that is a part of the Boards and Commissions Meeting Guidelines; a Board member must not use information for personal gain. She discussed the Anti-Harassment Policy and the Open Meeting Laws. All are encouraged to reach out with any questions.

**APPROVAL OF MINUTES:** Reder made a motion to approve the minutes from July 13, 2020. Sorensen seconded the motion. **MOTION PASSED** by roll call vote; Decker, yes; Reder, yes; Sorensen.

**FY FINANCIAL UPDATE:** Lesselyoung reported fiscal year-end figures as of June 30, 2020; revenue of \$29,820.94, expenses of \$24,826.34 and cash balance of \$98,926.66 and year to date figures as of November 30, 2020; revenue of \$8,463.48, expenses of \$11,911.80 and cash balance of \$95,478.34. The Board discussed and agreed the Board is fiscally independent and has been very fiscally responsible. Sorensen presented figures showing the Board's cash balance had steadily increased since 2016. Decker requested the fee structure for legal counsel be added to the next agenda.

**EXECUTIVE SESSION PURUSANT TO SDCL 1-25-2:** Sorensen made a motion to enter executive session at 12:30PM to discuss the executive secretary contract renewal. There are no pending complaints. Reder seconded the motion. **MOTION PASSED** by roll call vote. Decker, yes; Reder, yes; Sorensen, yes.

Decker thanked and commended Tellinghuisen and her staff for the job they do. Decker moved to renew the contract with Tellinghuisen with a state cost of living increase if implemented. Reder seconded the motion. **MOTION PASSED** by roll call vote. Decker, yes; Reder, yes; Sorensen, yes.

**BOARD COMBINATION BILL UPDATE:** The general consensus is the Board is not in favor of combining with the Speech Language Pathology Board. They are not convinced it is in the best interest of the consumers and do not see an advantage to combine. The two professions are autonomous, overlap less and less, and each profession specializes in what they do. The Board is financially self-sufficient and combining does not strengthen their voice or the SLPs. They have the upmost respect for the Speech Language Pathology profession but do not want to be a part of regulating the SLP profession. Stout questioned if combining was really necessary. Schultz voiced concerns the proposed language for the Board member composition of the combination Board would preclude an SLP in private practice from being on the Board. There is general concern that multiple professions under 1 Board would result in inadequate representation of each profession.

**AUDIOLOGY AND SPEECH LANGUAGE PATHOLOGY INTERSTATE COMPACT**

**UPDATE:** Schultz advised there were concerns on financial impacts to the Board expressed at the informational meetings in July. The SDSLHA is not pursuing legislation to adopt the compact at this time. Stout questioned what the Board combo bill would look like for the compact. Sorensen indicated he is in favor and not opposed to the compact at this time. Schultz advised there needs to be a consensus for the compact and all need to be on the same page.

**LEGISLATIVE UPDATE:** Tellinghuisen advised a bill (HB1014) was introduced to create a statutory complaint procedure for Boards. The Board combination was introduced as HB 1041.

**VA FEDERAL EMPLOYEE EXEMPTION QUESTION:** Lesselyoung advised assistant attorney general Scott Roetzel had checked into the question and advised if a person is employed as VA staff, they should not need a SD license but if they were a contract employee they would. Borchert advised a VA employee can operate under the license of any state. Reder questioned VA practices using office personnel through virtual connections. Decker advised the VA is stringent with vetting. Tellinghuisen advised this is a VA question and not under the Board's jurisdiction. If a concern would come in writing it would be forwarded to the VA for consideration.

**ANY OTHER BUSINESS COMING IN BETWEEN DATE OF MAILING AND DATE OF MEETING:** Lesselyoung advised the current database management system was purchased by another company and would no longer service the Board under the current contract. The Board office is moving to Albertson Consulting for database management for the DSS Boards. Following discussion, Decker moved to approve updating to the Albertson Consulting software system. Reder seconded the motion. **MOTION PASSED** by roll call vote. Decker, yes; Reder, yes; Sorensen, yes.

**SCHEDULE NEXT MEETING:** The next meetings are set for July 19<sup>th</sup>, 2021 and January 10<sup>th</sup>, 2022 via teleconference at 11:00MT/12:00CT.

Reder made a motion to adjourn the meeting at 1:17PM CT. Sorensen seconded the motion. **MOTION PASSED** by roll call vote, Decker, yes; Reder, yes; Smith, yes; Sorensen.

Respectfully submitted,

Carol Tellinghuisen  
Executive Secretary

1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

STATE OF SOUTH DAKOTA  
 REVENUE SUMMARY BY BUDGET UNIT  
 FOR PERIOD ENDING: 05/31/2021

AGENCY BUDGET UNIT	09 09203	HEALTH BOARD OF HEARING AID DISPENSERS - INFO			
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE
COMPANY NO	6503				
COMPANY NAME	PROFESSIONAL & LICENSING BOARDS				
092030061811	6503	4293954	HEARING AID DISPENSER	7,500.00	16,450.00
ACCT:	4293		BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	7,500.00	16,450.00
ACCT:	42		LICENSES, PERMITS & FEES	7,500.00	16,450.00
092030061811	6503	4920045	NONOPERATING REVENUES	.00	2,113.48
ACCT:	4920		NONOPERATING REVENUE	.00	2,113.48
ACCT:	49		OTHER REVENUE	.00	2,113.48
CNTR:	092030061811				
CNTR:	092030061				
CNTR:	0920300				
COMP:	6503				
B UNIT:	09203				

STATE OF SOUTH DAKOTA  
MONTHLY EXPENDITURE REPORT  
FOR PERIOD ENDING: 05/31/2021

AGENCY 09 HEALTH  
BUDGET UNIT 09203 BOARD OF HEARING AID DISPENSERS - INFO

COMP	CENTER	ACCOUNT	DOCUMENT NUMBER	POSTING DATE	JV APPL # OR PAYMENT #	SHORT NAME	VENDOR NUMBER	VENDOR GROUP	AMOUNT	DR/CR
COMPANY NO 6503										
COMPANY NAME PROFESSIONAL & LICENSING BOARDS										
6503	092030061811	520409000000000000	042321CON210101	05/05/2021	02393852	PROFESSION	12078255		217.97	DR
6503	092030061811	520409000000000000	043021CON210101	05/12/2021	02394445	PROFESSION	12078255		1,503.57	DR
6503	092030061811	520409000000000000	043021CON210101	05/12/2021	02394445	PROFESSION	12078255		1,175.00	DR
OBJSUB: 5204090										
6503	092030061811	520420000000000000	FM103057	05/31/2021					18.68	DR
6503	092030061811	520420000000000000	FM103060	05/27/2021					57.10	DR
OBJSUB: 5204200										
6503	092030061811	520420700000000000	PI104052	05/19/2021					60.60	DR
OBJSUB: 5204207										
6503	092030061811	520531000000000000	CD103020	05/14/2021					2,032.92	DR
6503	092030061811	520531000000000000	CD103020	05/14/2021					24.73	DR
6503	092030061811	520531000000000000	CD103020	05/14/2021					24.73	DR
OBJSUB: 5205310										
OBJECT: 5205 SUPPLIES & MATERIALS										
GROUP: 52 OPERATING EXPENSES										
COMP: 6503										
CNTR: 092030061811										
CNTR: 092030061										
CNTR: 0920300										
B. UNIT: 09203										

STATE OF SOUTH DAKOTA  
MONTHLY OBJECT/SUB-OBJECT REPORT BY BUDGET UNIT  
FOR PERIOD ENDING: 05/31/2021

AGENCY BUDGET CENTER-5	09 09203	HEALTH BOARD OF HEARING AID DISPENSERS - INFO BOARD OF HEARING AID DISPENSERS - INFO	09203	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE	
COMPANY NO 6503 COMPANY NAME PROFESSIONAL & LICENSING BOARDS 092030061811 6503 510103000000000000 BOARD & COMM MBRS FEES									
ACCT: 5101	6503	EMPLOYEE SALARIES					.00	480.00	*
092030061811	6503	510201000000000000 OAS1-EMPLOYER'S SHARE					.00	36.72	
ACCT: 5102		EMPLOYEE BENEFITS					.00	36.72	*
ACCT: 51		PERSONAL SERVICES					.00	516.72	**
092030061811	6503	520409000000000000 MANAGEMENT CONSULTANT					1,896.54	22,759.07	
092030061811	6503	520418100000000000 RPT DEVELOPMENT COSTS					.00	84.10	
092030061811	6503	520420000000000000 CENTRAL SERVICES					75.78	489.14	
092030061811	6503	520420400000000000 RECORDS MGMT SERVICES					.00	238.00	
092030061811	6503	520420700000000000 HUMAN RESOURCES SERVICES					60.60	164.43	
092030061811	6503	520451000000000000 RENTS-OTHER					.00	100.00	
092030061811	6503	520458000000000000 TRUCK-DRAYAGE & FREIGHT					.00	55.54	
092030061811	6503	520459000000000000 INS PREMIUMS & SURETY BDS					.00	245.00	
ACCT: 5204		CONTRACTUAL SERVICES					2,032.92	24,135.28	*
092030061811	6503	520502000000000080 OFFICE SUPPLIES					.00	14.16	
092030061811	6503	520531000000000000 PRINTING-STATE					24.73	73.18	
092030061811	6503	520532000000000000 PRINTING-COMMERCIAL					.00	48.46	
092030061811	6503	520535000000000000 POSTAGE					.00	6.60	
ACCT: 5205		SUPPLIES & MATERIALS					24.73	142.40	*
ACCT: 52		OPERATING EXPENSES					2,057.65	24,277.68	**
COMP: 6503 PROFESSIONAL & LICENSING BOARDS CENTER: 092030061811 B UNIT: 09203									
							2,057.65	24,794.40	***
							2,057.65	24,794.40	****
							2,057.65	24,794.40	*****

STATE OF SOUTH DAKOTA  
CASH CENTER BALANCES  
AS OF: 05/31/2021

AGENCY: 09 HEALTH  
BUDGET UNIT: 09203 BOARD OF HEARING AID DISPENSERS - INFO

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092000061811	1140000	92,695.74	DR	BOARD OF HEARING AID DISPENSERS
COMPANY/SOURCE TOTAL 6503 618			92,695.74	DR *	
COMP/BUDG UNIT TOTAL 6503 09203			92,695.74	DR **	
BUDGET UNIT TOTAL 09203			92,695.74	DR ***	





STATE OF SOUTH DAKOTA  
OFFICE OF THE GOVERNOR

KRISTI NOEM | GOVERNOR

June 28, 2021

Board of Hearing Aid Dispensers and Audiologists  
810 North Main Street, Suite 298  
Spearfish, SD 57783  
And via email [proflic@rushmore.com](mailto:proflic@rushmore.com)

Dear Executive Director and Board Members,

The COVID pandemic has presented so many challenges to all of us, the least of which is to our healthcare workers in all the fields of practice. Those providers have answered the call to take care of people and for that, I am so appreciative.

In recognition of the challenges to not only recruit healthcare providers but to also retain workers during the pandemic, I suspended several provisions of statutes and administrative rules to cope with this emergency, including the statutory provision of SDCL 36-24-17.3 requiring applicants to submit proof of completing examination requirements to prevent delaying licensure during the emergency.

We have done a tremendous job of coming together as a state to combat this pandemic and our case counts have declined dramatically. A state of emergency is no longer necessary. Therefore, audiologists who were granted a license without having submitted the proof of examination pursuant to Executive Order 2020-25, which was extended by Executive Order 2020-34, shall submit proof of examination to their respective state licensing Board by August 31, 2021.

We fought this pandemic together. Thank you for all you do in serving the courageous healthcare providers that you license.

Best regards,

A handwritten signature in black ink, appearing to read "Kristi Noem", written over a white background.

Kristi Noem  
Governor

CC: Secretary Malsam-Rysdon, Department of Health

**CHAPTER 36-24**  
**HEARING AID DISPENSERS AND AUDIOLOGISTS**

**36-24-1. Definition of terms.**

Terms used in this chapter mean:

- (1) "Audiogram," a graphic summary of the measurements of hearing loss showing number of decibels loss at each frequency tested;
- (2) "Audiologist," any person who is engaged in the practice of audiology and licensed pursuant to this chapter;
- (3) "Audiology," the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders;
- (4) "Auditory brain stem implant," a surgically implanted device that provides perception of sound via stimulation to the brainstem to persons who have significant sensorineural hearing loss in which stimulation at the auditory nerve is no longer a viable option;
- ~~(3)~~(5) "Board," the South Dakota Board of Hearing Aid Dispensers and Audiologists;
- (6) "Cochlear implant," a surgically implanted devise that provides perception of sound via stimulation to the cochlea to persons who have a sensorineural earing loss in which benefits from hearing aids is limited;
- ~~(4)~~(7) "Disorders of hearing and balance," any condition, whether of organic or nonorganic origin, peripheral or central, that impedes the normal function of balance or normal process of human communication including disorders of auditory sensitivity, acuity, function, or processing;
- ~~(5)~~(8) "Dispense," any transfer of title, possession, or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with a distributor or dealer;
- (9) "Hearing aid," any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with, or compensating for, impaired hearing including any parts, attachments, or accessories to the instrument or device, including ear molds, but excluding batteries and cords. The term, hearing aid, does not include cochlear implant or cochlear prosthesis;
- (10) "Hearing aid dispenser," any person, other than an audiologist, who is engaged in the practice of hearing aid dispensing and who is licensed pursuant to this chapter;
- (11) "Instruction," is either of the following:
  - (a) Providing audiology services or teaching in an infant or toddler program, a preschool, an elementary school, a secondary school, or a developmental disability program; or
  - (b) Teaching students in institutions of higher education;
- ~~(6)~~(12) "License," any license issued by the board to dispense hearing aids or practice audiology;
- (13) "Osseointegrated device," or "bone conduction device," a device, including surgical and non-surgical wearing options, that delivers sound to the inner ear by bypassing the outer and middle ear via bone conduction;
- ~~(7)~~(14) "Provisional license," any license ~~issued to an applicant who is practicing audiology while completing the postgraduate professional experience as required by this chapter or a~~ license issued to an applicant as a hearing aid dispenser trainee and supervised by a person who holds a valid hearing aid dispensing license or audiology license;
- ~~(8)~~—"Supervisor," ~~any person who is licensed and accepts the responsibility of overseeing the training of provisional licensees in their respective professions and~~
- (15) "Telepractice," the application of telecommunication technology to deliver audiology at a distance for assessment, intervention, or consultation.

**36-24-1.1. Hearing aid defined.**

~~For the purposes of this chapter, a hearing aid is any wearable instrument or device offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories~~

~~to the instrument or device, including ear molds, but excluding batteries and cords. The term, hearing aid, does not include cochlear implant or cochlear prosthesis.~~

### **36-24-1.2. Audiologist defined.**

~~For the purposes of this chapter, an audiologist is any person who engages in the practice of audiology and who meets the qualifications set forth in this chapter. A person represents oneself to be an audiologist if that person holds out to the public by any means, or by any service or function performed, directly or indirectly, or by using the terms audiology, audiologist, audiometrist, audiological, hearing therapy, hearing therapist, hearing clinic, hearing clinician, hearing aid audiologist, or any variation that expresses these terms.~~

### **36-24-1.3. Hearing aid dispenser defined.**

~~For the purposes of this chapter, a hearing aid dispenser is any person, other than an audiologist, engaged in the evaluation or measurement of the powers or range of human hearing by means of an audiometer, or by any other means devised, and the consequent selection or adaptation or sale of a hearing aid intended to compensate for hearing loss, including the making of an ear impression.~~

### **36-24-1.4. Instruction defined.**

~~For the purposes of this chapter, instruction is either of the following:~~

- ~~(1) — Providing audiology services or teaching in an infant or toddler program, a preschool, an elementary school, a secondary school, or a developmental disability program; or~~
- ~~(2) — Teaching students in institutions of higher education.~~

### **36-24-1.5. Research defined.**

~~For the purposes of this chapter, research is the systematic investigation designed to develop or contribute to generalizable knowledge about human communication, human communication disorders, and evaluation or treatment strategies. Activities which meet this definition constitute research. However, research does not include activities that take place under the auspices of a recognized institutional review board which reviews, approves, and monitors proposals and activities involving human subjects to ensure that the rights and welfare of such subjects are protected.~~

### **36-24-1.6. Scope of audiology.**

The scope of practice of audiology includes:

- (1) Activities that identify, assess, diagnose, manage, and interpret test results related to disorders of human hearing, balance, and other neural systems;
- (2) ~~Otoscope examination and external ear canal management for removal~~ **Management** of cerumen in order to evaluate hearing or balance, make ear impressions, fit hearing protection or prosthetic devices, and monitor the continuous use of hearing aids;
- (3) The conduct and interpretation of behavioral, electroacoustic, or electrophysiologic methods used to assess hearing, balance, and neural system function;
- (4) Evaluation and ~~management~~ **treatment** of children and adults with central auditory processing disorders;
- (5) Supervision and conduct of newborn hearing screening programs;
- (6) Measurement and interpretation of sensory and motor evoked potentials, electromyography, and other electrodiagnostic tests for purposes of neurophysiologic intraoperative monitoring and cranial nerve assessment;
- (7) Provision of hearing care by selecting, evaluating, fitting, facilitating adjustment to, and dispensing prosthetic devices for hearing loss, including hearing aids, sensory aids, hearing assistive devices, alerting and telecommunication systems, and captioning devices;

- (8) Assessment of the candidacy of persons with hearing loss for cochlear implants, osseointegrated bone conduction devices, or auditory brainstem implants and provision of fitting, programming, and audiological rehabilitation to optimize device use;
- (9) Provision of audiological rehabilitation including speech reading, communication management, language development, auditory skill development, and counseling for psychosocial adjustment to hearing loss for persons with hearing loss and their families or caregivers;
- (10) Consultation to educators as members of interdisciplinary teams about communication management, educational implications of hearing loss, educational programming, classroom acoustics, and large-area amplification systems for children with hearing loss;
- (11) Prevention of hearing loss and conservation of hearing function by designing, implementing, and coordinating occupational, school, and community hearing conservation and identification programs;
- (12) Consultation and provision of rehabilitation to persons with balance disorders using habituation, exercise therapy, and balance retraining;
- (13) Design and conduct of basic and applied audiologic research to increase the knowledge base, to develop new methods and programs, and to determine the efficacy of assessment and treatment paradigms, and the dissemination of research findings to other professionals and to the public. For the purpose of this chapter, research does not include activities that take place under the auspices of a recognized institutional review board;
- (14) Education and administration in audiology graduate and professional education programs;
- (15) Measurement of functional outcomes, consumer satisfaction, effectiveness, efficiency, and cost-benefit of practices and programs to maintain and improve the quality of audiological services;
- (16) Administration and supervision of professional and technical personnel who provide support functions to the practice of audiology;
- (17) Screening of ~~speech language, use of sign language, and other~~ factors affecting communication function for the purposes of an audiological evaluation or initial identification of individuals with other communication disorders;
- (18) Consultation about accessibility for persons with hearing loss in public and private buildings, programs, and services;
- (19) Assessment and nonmedical management of tinnitus ~~using biofeedback, masking, hearing aids, education, and counseling;~~
- (20) Consultation to individuals, public and private agencies, and governmental bodies, or as an expert witness regarding legal interpretations of audiology findings, effects of hearing loss and balance system disorders, and relevant noise-related considerations;
- (21) Case management and service as a liaison for consumers, families, and agencies in order to monitor audiologic status and management and to make recommendations about educational and vocational programming;
- (22) Consultation to industry on the development of products and instrumentation related to the measurement and management of auditory or balance function; and
- (23) Participation in the development of professional and technical standards.

### **36-24-1.7. Scope of hearing aid dispensing.**

The scope of practice of a hearing aid dispenser includes the evaluation or measurement of the powers or range of human hearing by means of an audiometer, or by any other means devised, and the consequent selection or adaption or sale of a hearing aid intended to compensate for hearing loss, including the making of an ear impression.

### **36-24-2. Board of hearing aid dispensers and audiologists ~~created~~ – Composition of board - Qualifications.**

~~There is hereby created the South Dakota~~ The Governor shall appoint a five-member Board of Hearing Aid Dispensers and Audiologists with the duties and powers as provided in this chapter. Two members of the board shall be audiologists with at least two year of experience practicing audiology and who hold active audiology license in this state. Two members of the board shall be hearing aid dispensers with at least two years of experience in the practice of fitting and dispensing hearing aids and who hold an active hearing aid dispensing license in this state. One member of the board shall be a representative of the public who is not associated with or financially interested in the practice or business of hearing aid dispensing or audiology or who is not a member of a related profession or occupation. No member of the board may concurrently serve in an elected, appointed, or employed position in any state professional association or governmental regulatory agency which presents a conflict of interest.

### **36-24-3. Composition of board – Qualifications.**

~~The board shall consist of five members who have been residents of this state for at least one year prior to their appointment. Two members of the board shall be audiologists who are currently practicing audiology or who have two years of experience practicing audiology and who hold active licensure for the practice of audiology in this state. The first audiologist appointed to the board shall meet the eligibility requirements for licensure as specified in this chapter. Two members of the board shall be persons with at least two years of experience in the practice of fitting and dispensing hearing aids and who hold an active hearing aid dispensing license. One member of the board shall be a representative of the public who is not associated with or financially interested in the practice or business of hearing aid dispensing or audiology or who is not a member of a related profession or occupation.~~

### **36-24-4. Appointments to board.**

~~The members of the board enumerated in § 36-24-3 shall be appointed by the Governor. No member of the board may concurrently serve in an elected, appointed, or employed position in any state professional association or governmental regulatory agency which presents a conflict of interest.~~

#### **36-24-4.1. Lay member of board – Appointment and term of office.**

~~The membership of the board shall include one lay member who shall be appointed by the Governor and shall have the same term of office as other members of the board. The lay member of the board shall be a member of the general public who:~~

- ~~(1) — Is not and has never been an audiologist or hearing aid dispenser;~~
- ~~(2) — Has no household member who is an audiologist or hearing aid dispenser;~~
- ~~(3) — Is not and has never been a participant in a commercial or professional field related to audiology or the provisions of hearing aid services;~~
- ~~(4) — Has no household member who participates in a commercial or professional field related to audiology or the provisions of hearing aid services; and~~
- ~~(5) — Has not had, within two years before appointment, a financial interest in a person regulated by the board.~~

### **36-24-5. Terms of office of board members – Vacancies – Removal of member.**

Board members shall be appointed for a term of three years. Each member shall serve until a successor has been appointed.

The terms of members begin on October thirty-first of the calendar year in which the Governor appoints the member, unless otherwise designated by the Governor. The appointee's term expires on October thirtieth in the third year of appointment. No member of the board may serve more than three consecutive full terms. In the event of a vacancy on the board, the Governor shall appoint a new member to serve out the unexpired term. The Governor may remove a member of the board for dishonorable conduct, incompetence, or neglect of duties. The appointment to an unexpired term is not considered a full term.

~~Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in the year the term is to expire.~~

#### **36-24-6. Limitation on reappointment of board member.**

~~No member of the board may serve more than three consecutive full terms or be reappointed to the board until at least one year after the expiration of the member's third term of office. The appointment to an unexpired term is not considered a full term. The Governor may remove a member of the board for dishonorable conduct, incompetence, or neglect of duty.~~

#### **36-24-7. Vacancies on board.**

~~In the event of a vacancy on the board caused by the death of a member, resignation, removal from the state, or for any other reason, the Governor shall appoint a new member to serve out the unexpired term.~~

#### **36-24-8. ~~Election of chairman and secretary-treasurer of board~~ Board – Officers.**

~~The members of the board shall annually elect one such member as chairman and another member to serve as secretary-treasurer of the board~~ from its members a president and vice-president. No member may serve as president for more than three consecutive terms.

#### **36-24-9. Meetings of board – Quorum.**

~~The board shall meet at least once in each fiscal year to conduct business~~ hold at least two meeting annually at a place and time ~~it determines set by the board. Additional meetings may be convened at the call of the chair to carry out the purposes of this chapter. Four members of the board constitute a quorum to conduct business~~ The board may hold other meetings at times and places set by the president or a majority of the board. A majority of board members constitutes a quorum. Except as provided for in § 36-24-41, a majority vote of those present constitutes a decision of the entire board.

#### **36-24-9.1. ~~Per diem and expenses of board~~ – Personnel.**

~~Each board member shall receive a per diem set pursuant to § 4-7-10.4 and expenses at the same rate as other state employees~~ may be reimbursed for expenses as provided by law while ~~actually~~ engaged in official duties. ~~The board, pursuant to chapter 3-6D, may hire office personnel necessary to perform the board's official duties.~~

#### **36-24-10.1. Board continued within Department of Health – Records and reports.**

~~The South Dakota Board of Hearing Aid Dispensers and Audiologists~~ board shall continue within the Department of Health, and shall retain all its prescribed functions, including administrative functions. The board shall submit such records, information, and reports in the form and at such times as required by the secretary of health. However, the board shall report at least annually.

#### **36-24-11. Disposition of money received by board – Board of hearing aid dispensers and audiologists account of general fund.**

All moneys coming into the custody of the board, including ~~license any fees, renewal fees, penalty fees, reciprocity fees, late fees,~~ and any other payments, shall be paid by the board to the state treasurer ~~on or before the tenth day of each month, and shall consist of all moneys received by the board during the preceding calendar month.~~ The state treasurer shall credit the moneys to the South Dakota Board of Hearing Aid Dispensers and Audiologists account of the general fund, ~~which account is hereby created. The moneys in the account are hereby continuously appropriated~~ to be used by the board for the purpose of paying the expense of administering and enforcing the provisions of this chapter. The total expenses incurred by the board may not exceed the total moneys collected.

#### **36-24-12.1. ~~Authority of Board of Hearing Aid Dispensers and Audiologists~~ – Powers and duties.**



The board may:

- ~~(1) Authorize all disbursements necessary to carry out the provisions of this chapter;~~
- ~~(2) Administer, coordinate, and enforce the provisions of this chapter, establish licensure fees, evaluate the qualifications of applicants, and issue and renew licenses;~~
- ~~(3) Prepare, administer, conduct, and supervise the qualifying examinations to test the knowledge and proficiency of hearing aid dispensers, and provide facilities necessary to carry out these examinations;~~
- ~~(4) Revoke, suspend, refuse to issue or renew a license, issue a letter of reprimand or concern, require restitution of fees, or impose probationary conditions in the manner provided in this chapter;~~
- ~~(5) Issue subpoenas, examine witnesses, administer oaths, conduct hearings and, at its discretion, investigate allegations of violations of this chapter and impose penalties if such violations of this chapter have occurred;~~
- ~~(6) Maintain a list of persons currently licensed and registered under the provision of this chapter and the clock hours of continuing education submitted by each person;~~
- ~~(7) Employ personnel as determined by its needs and budget;~~
- ~~(8) Request legal advice and assistance, as needed, from the Attorney General's Office;~~
- ~~(9) Enter into contracts as necessary to carry out its responsibilities under this chapter;~~
- ~~(10) Hire legal counsel, if necessary;~~
- ~~(11) Establish a budget;~~
- ~~(12) Submit reports of its operations and finances as requested by the Department of Health;~~
- ~~(13) Adopt an official seal by which it may authenticate its proceedings, copies of proceedings, records, acts of the board, and licenses;~~
- ~~(14) Communicate disciplinary actions to relevant state and federal authorities and to other state audiology licensing authorities as necessary;~~
- ~~(15) Establish continuing education requirements;~~
- ~~(16) Establish peer review committees within each discipline for review purposes~~ Establish educational, training, and competency standards governing the examination and practice of licensees using board-approved national accrediting agencies and accepted nationally established standards, if applicable;
- (2) Examine an eligible applicant for a hearing aid dispenser license;
- (3) Issue a license to an applicant who has met the licensure standards of this chapter and renew the license of audiologists and hearing aid dispensers who continue to meet the licensure standards of this chapter;
- (4) Establish continuing education requirements;
- (5) Establish standards for telepractice;
- (6) Establish a budget;
- (7) Conduct all disciplinary proceedings pursuant to chapter 36-1C;
- (8) Establish peer review committees within each discipline for review purposes;
- (9) Promulgate rules, pursuant to chapter 1-26, to:
  - (a) Delineate qualifications for licensure;
  - (b) Specify requirements for the renewal of licensure;
  - (c) Regulate the delivery of services via telepractice;
  - (d) Establish standards of professional conduct;
  - (e) Establish a schedule of disciplinary actions for violations of professional conduct;
  - (f) Permit inactive licenses;
  - (g) Establish procedures for collection and management of fees and payments; and
  - (h) Establish requirements for license application and renewal;
- (10) Employ personnel in accordance with the needs and budget of the board;
- (11) Establish and collect fees as provided for by this chapter;

- (12) Enter into contracts as necessary to carry out the board's responsibilities pursuant to the provisions of this Act;
- (13) Revoke, suspend, refuse to issue or renew a license, issue a letter of reprimand or concern, require restitution of fees, or impose probationary conditions in the manner provided in this chapter;
- (14) Issue subpoenas, examine witnesses, administer oaths, conduct hearings and, at its discretion, investigate allegations of violations of this chapter and impose penalties if such violations of this chapter have occurred;
- (15) Communicate disciplinary actions and licensure status to relevant state and federal governing bodies as may be required, including the National Practitioner Data Bank; and
- (16) Carry out the purposes and enforce the provisions of this chapter.

#### **36-24-13.4. Student participation.**

~~Nothing in this chapter may be construed as preventing or restricting the activities and services of persons pursuing a course of study leading to a degree in speech language pathology or audiology at a college or university if these activities and services constitute a part of a planned course of study at that institution and these persons are designated by a title such as intern, trainee, student, volunteer, occupational hearing conservationist, industrial audiometric technician, or by other such title clearly indicating the status appropriate to their level of education and these persons work under the supervision of a person licensed by the state to practice audiology.~~

#### **36-24-14. Physicians exempt from chapter.**

~~This chapter shall not apply to a physician licensed by the State Board of Medical and Osteopathic Examiners.~~

#### **36-24-16. License required for practice.**

No person may engage in the practice of fitting and dispensing hearing aids or audiology, or display a sign, or in any other way advertise or hold oneself out as a person who practices the fitting and dispensing of hearing aids or audiology in the State of South Dakota unless the person holds a current license issued by the board as provided in this chapter.

#### **36-24-17.1. Application form and fees.**

~~Any applicant pursuant to this chapter shall apply on a form prescribed by the board and pay any applicable fees. The applicant shall also meet all other qualifications specified within this chapter for each respective profession for which the person seeks licensure.~~

#### **36-24-17.2. Qualifications of applicant for hearing aid dispensing.**

Any applicant for licensure to practice hearing aid dispensing shall:

- (1) ~~Be of good moral character~~ Submit an application on a form prescribed by the board and pay the required fee;
- (2) Be eighteen years of age or older;
- (3) Be a high school graduate or the equivalent; ~~and~~
- (4) ~~Pass an a national~~ Pass a national examination approved by the board;
- (5) Pass a practicum examination approved by the board; and
- (6) Have committed no act for which disciplinary action may be justified.

~~The applicant may not be the holder of an audiology license.~~ The practicum examination required by subsection (5) shall include the following:



- (1) Tests of knowledge in the following areas as they pertain to the fitting and dispensing of hearing aids:
  - (a) Basic physics of sound;
  - (b) The human hearing mechanism, including the science of hearing and the rehabilitation of abnormal hearing disorders;
  - (c) Structure and function of hearing aids;
- (2) Tests of proficiency in the following techniques as they pertain to the fitting and dispensing of hearing aids:
  - (a) Pure tone audiometry, including air conduction and bone conduction testing;
  - (b) Live voice and recorded voice speech audiometry, including speech threshold testing and speech discrimination testing;
  - (c) Effective masking;
  - (d) Recording and evaluation of audiograms and speech audiometry tests to determine hearing aid candidacy;
  - (e) Selection and adaptation of hearing aids and testing of hearing aids;
  - (f) Taking earmold impressions, and proficiency in any other skills as they pertain to the fitting and dispensing of hearing aids.

The practicum examination may not include any questions requiring a medical or surgical education. Applicants holding a current license to practice hearing aid dispensing in another state are exempt from the requirement of subsection (5) upon furnishing proof of a current, valid license and passage of a board-approved national examination.

### **36-24-17.3. Qualifications for audiologist applicant.**

To be eligible for licensure by the board as an audiologist, the applicant shall:

- (1) ~~Be of good moral character~~ Submit an application on a form prescribed by the board and pay the required fee;
- (2) Possess a ~~master's or~~ doctorate degree in audiology from a regionally accredited educational institution;
- (3) Complete the supervised clinical practicum experience from a regionally accredited educational institution or its cooperating programs;
- ~~(4) Complete a period of supervised graduate professional experience in audiology as recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology; and~~
- ~~(5) Pass a national standardized examination in audiology as recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology; and~~
- (4) Have committed no act for which disciplinary action may be justified.

Applicants for an audiology license who completed training prior to August 30, 2007 and who possess a master's degree in audiology are exempt from the requirements of subdivisions (2) and (3) upon proof of completion of a period of supervised graduate professional experience in audiology recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology.

### **36-24-17.4. Audiologist license pending approval.**

~~An applicant who does not meet the provisions of subdivision 36-24-17.3(4) or (5) may be issued a license to practice as an audiologist pending board approval if the applicant demonstrates the following:~~

- ~~(1) Has formally and consistently represented oneself to the public as an audiologist;~~
- ~~(2) Has a master's or doctorate degree in audiology from a regionally accredited educational institution;~~

- ~~(3) — Has spent the majority of working hours in the practice of audiology;~~
- ~~(4) — Passed any board designated written or oral exam for applicants who have not met subdivision 36-24-17.3(5);~~
- ~~(5) — Submits an application on a form prescribed by the board by January 1, 1998; and~~
- ~~(6) — Pays the application fee set by the board not to exceed three hundred fifty dollars.~~

### **36-24-18. Examination of applicant – Notice to appear.**

~~An applicant for a hearing aid dispensing license having been notified by the board that the applicant has fulfilled the requirements of §§ 36-24-17.1 and 36-24-17.2 shall appear at a time, place, and before such persons as the board may designate, to be examined by written and oral tests to determine that the applicant is qualified to practice the fitting and dispensing of hearing aids.~~

### **36-24-19. Dates of qualifying examinations.**

~~As the volume of applications may make appropriate, the board shall administer the qualifying examinations throughout the year as the board may designate.~~

### **36-24-20. Scope of qualifying examinations.**

~~Any applicant who otherwise qualifies for a license to practice hearing aid dispensing is entitled to be examined. The examination shall include the following:~~

- ~~(1) — Tests of knowledge in the following areas as they pertain to the fitting and dispensing of hearing aids:
  - ~~(a) — Basic physics of sound;~~
  - ~~(b) — The human hearing mechanism, including the science of hearing and the rehabilitation of abnormal hearing disorders;~~
  - ~~(c) — Structure and function of hearing aids;~~~~
- ~~(2) — Tests of proficiency in the following techniques as they pertain to the fitting and dispensing of hearing aids:
  - ~~(a) — Pure tone audiometry, including air conduction and bone conduction testing;~~
  - ~~(b) — Live voice and recorded voice speech audiometry, including speech threshold testing and speech discrimination testing;~~
  - ~~(c) — Effective masking;~~
  - ~~(d) — Recording and evaluation of audiograms and speech audiometry tests to determine hearing aid candidacy;~~
  - ~~(e) — Selection and adaptation of hearing aids and testing of hearing aids;~~
  - ~~(f) — Taking earmold impressions, and proficiency in any other skills as they pertain to the fitting and dispensing of hearing aids.~~~~

~~No test under this section may include any questions requiring a medical or surgical education.~~

### **36-24-21.1. Issuance of license – Application form – Fee.**

The board shall issue a license to any applicant who applies on a form prescribed by the board and meets the requirements of this ~~section~~ chapter and pays the application fee set by the board, by rule promulgated pursuant to chapter 1-26, not to exceed three hundred fifty dollars.

### **36-24-24.1. Certain activities not prevented or restricted.**

Nothing in this chapter may be construed as preventing or restricting:

- (1) A person licensed ~~or, certified,~~ registered, or otherwise credentialed by this state in another profession from practicing within the scope of the profession for which licensed ~~or, certified,~~ registered, or otherwise;

- (2) A person credentialed by this state as a teacher of deaf or hard of hearing students providing instruction to persons who are deaf or hard of hearing;
- (3) A physician or surgeon licensed by this state from performing tasks directly related to a disorder being treated;
- (4) Any person possessing a valid certificate as a certified industrial audiometric technician or occupational hearing conservationist recognized by the board as meeting Council for Accreditation in Occupational Hearing Conservation Standards if such service is performed in cooperation with either an audiologist licensed under this chapter or a licensed physician of this state; or
- (5) The activities and services of persons pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university if these activities and services constitute a part of a planned course of study at that institution and these persons are designated by a title such as intern, trainee, student, volunteer, or by other such title clearly indicating the status appropriate to their level of education and these persons work under the supervision of a person licensed by the state to practice audiology.

### **36-24-24.2. Provisional hearing aid dispensing license – Scope of provisional license Terms.**

~~The board shall issue a provisional hearing aid dispensing license, valid until the board receives the results from the next available administration of the examination following a submission of application of license, to an applicant to provide hearing aid services to a person who is waiting to take the hearing aid dispensing examination under this chapter.~~ The board may issue a provisional hearing aid dispensing license valid until the board receives the results from the next available administration of the examination, not to exceed a one-year period, to provide hearing aid services only to a person who:

- (1) Except for ~~taking and~~ passing an examination under this chapter, otherwise qualifies for a hearing aid dispensing license;
- (2) Submits an application on the form prescribed by the board; and
- (3) Pays the application fee set by the board not to exceed one hundred fifty dollars.

~~If a person who holds a provisional hearing aid dispensing license issued under this section after the date of issue is unable to be present at the board specified examination, the~~ A provisional hearing aid dispensing license issued pursuant to this section shall be valid until the board receives the results of the qualifying examination and may not be renewed except for good cause shown to the satisfaction of the board.

~~While the provisional hearing aid dispensing license is in effect, the holder~~ A person who holds a provisional license pursuant to this section may provide hearing aid services only ~~while being trained~~ under the supervision of a licensed hearing aid dispenser or licensed audiologist.

### **36-24-24.3. Provisional audiology license – Terms.**

~~The board shall issue a provisional audiology license to any applicant who:~~

- ~~(1) Except for the postgraduate professional experience, meets the academic, practicum, and examination requirements of this chapter;~~
- ~~(2) Applies to the board on a form prescribed by the board, with a plan for the content of the postgraduate professional experience; and~~
- ~~(3) Pays to the board the application fee for a provisional license not to exceed one hundred fifty dollars set by the board by rule promulgated pursuant to chapter 1-26.~~

~~A person holding a provisional audiology license is authorized to practice audiology only while working under the supervision of a licensed audiologist under the provisions of this chapter. The term for~~

~~provisional audiology licenses and the conditions for renewal shall be determined by the board by rules promulgated pursuant to chapter 1-26.~~

### **36-24-25.1. Issuance of license to out-of-state licensee.**

~~Pending board approval, the~~ The board may issue a hearing aid dispensing license or audiology license to an applicant holding a valid license from another state in the applicant's respective professional area who:

- (1) Applies to the board on a form prescribed by the board;
- (2) Pays ~~to the board~~ the application fee not to exceed three hundred fifty dollars set by the board by rule promulgated pursuant to chapter 1-26; and
- (3) ~~Shows proof of current valid professional licensure;~~
- (4) ~~—~~ Holds a current license from a state with equivalent licensure standards; and
- (5) ~~— Is practicing audiology or hearing aid dispensing in the state in which the license was issued.~~

### **36-24-25.2. Foreign educated applicant for audiology license.**

The board shall waive the education, practicum, and professional experience requirements for applicants for an audiology license who received a professional education in another country if the board is satisfied that equivalent education and practicum requirements have been met and the applicant passes the national examination in audiology.

### **36-24-28.1. Expiration of license – Renewal.**

A license or provisional license issued under this chapter expires annually at a time specified by rules promulgated by the board pursuant to chapter 1-26. A person licensed under this chapter shall:

- (1) Pay a renewal license fee established by the board, by rule promulgated pursuant to chapter 1-26, not to exceed three hundred fifty dollars;
- (2) Submit an application for renewal on a form prescribed by the board; and
- (3) Meet the continuing education requirements established by the board.

Licensees are granted a grace period of thirty days beyond the expiration date of the license to renew retroactively as long as licensees are otherwise eligible and pay to the board the renewal fee and any late fee not to exceed one hundred dollars set by the board, by rule promulgated pursuant to chapter 1-26.

### **36-24-29.1. Failure to renew – Reinstatement – New license.**

A licensee who fails to renew by the end of the thirty-day grace period may have the license reinstated if:

- (1) The person submits an application for reinstatement to the board within ~~three years~~ twenty four months after the expiration date of the license;
- (2) The person meets the requirements established by the board as conditions for license renewal; and
- (3) The person pays to the board a reinstatement fee that equals the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee not to exceed one hundred dollars set by the board, by rule promulgated pursuant to chapter 1-26.

Any person who fails to renew a license within ~~three years~~ twenty four months from the expiration date may not have the license reinstated. The person may apply for and obtain a new license on conditions of the requirements of this chapter and pay to the board the appropriate fees.

### **36-24-29.2. Renewal of suspended license – Reinstatement of revoked license.**

A suspended license is subject to expiration and may be renewed as provided in this chapter, but such renewal does not entitle the licensee, while the license remains suspended and until the license is reinstated, to engage in the licensed activity or in any other conduct or activity in violation of the order of judgment by which the license was suspended.

A license revoked on disciplinary grounds is subject to expiration as provided in this chapter, and the license may not be renewed. If such license is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee equal to the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee not to exceed one hundred dollars set by the board, by rule promulgated pursuant to chapter 1-26.

Application must be made to the board for reinstatement. If a licensee is placed on probation, the board may require the license holder to:

- (1) Report regularly to the board on matters that are the basis of the probation;
- (2) Limit practice to areas prescribed by the board; or
- (3) Order or review continuing education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

### **36-24-30 Posting of certificate of license – Violation a misdemeanor.**

The license required by § 36-24-16 shall be kept conspicuously posted in the licensee's office or place of business at all times. A violation of this section is a Class 2 misdemeanor.

### **36-24-31. ~~Business address of licensee given to board—Board record required~~ Notice to board of change of name or address.**

~~Any person who holds a hearing aid dispensing license or an audiology license shall notify the board in writing of the town and street address of the place where the licensee engages or intends to engage in the practice of the dispensing of hearing aids or audiology. If the place of business is located in, or in connection with, a place of residence, the room to be used as an office shall be clearly designated and identified for the convenience of the public. The board shall keep an up to date record of these addresses~~  
Each licensee, upon changing a name, place of employment, or place of business shall, within ninety days thereafter, furnish the board with updated information. A post office box number may not be the address of the place of business. Any notice required to be given by the board to licensees may be given by mailing it to the licensee at the place of business on file with the board.

### **36-24-32. Notices to licensees by board – Mailing to business address.**

~~Any notice required to be given by the board to a person who holds a hearing aid dispensing license or an audiology license may be given by mailing it to the licensee at the address of the last place of business of which the licensee has notified the board under § 36-24-31. A post office box number may not be the address of a place of business.~~

### **36-24-33. Receipt for sale of hearing aid – Contents – Refund – Violation as misdemeanor.**

Any person who practices the dispensing of hearing aids in the State of South Dakota shall deliver to each person sold a hearing aid a receipt which contains ~~the~~:

- (1) The seller's signature, ~~the~~;
- (2) The business address of the seller, ~~specification the~~;
- (3) The specifications of the hearing aid furnished, including whether it is new, used, or rebuilt;
- (4) The serial number of the aid;
- (5) The date of sale, ~~and the~~;
- (6) The total purchase price charged for the aid, less any allowance for a trade-in, ~~if any~~; and
- (7) ~~the~~ The net amount paid by the purchaser.

A copy of the original sales order constitutes a valid receipt and a legal bill of sale, and the purchaser's signature constitutes full acknowledgment of the terms of the sale. Any purchaser of a hearing aid is entitled to a refund of the full purchase price advanced by the purchaser for the hearing aid, less a maximum of ten percent upon the return of the hearing aid by the purchaser to the licensee within thirty days from the date of delivery unless set by contract for more than thirty days. Any refund shall be paid within thirty days of the return date. A violation of this section is a Class 2 misdemeanor.

**36-24-34. Sale of certificate or license prohibited – Violation a misdemeanor.**

~~No person may sell, barter, or offer to sell or barter any hearing aid dispensing license or audiology license. A violation of this section is a Class 2 misdemeanor.~~

**36-24-35. Purchase of license prohibited – Violation a misdemeanor.**

~~No person may purchase a hearing aid dispensing license or an audiology license or procure either license by barter with the intent to use it as evidence of the holder's qualifications to practice the dispensing of hearing aids or to practice audiology. A violation of this section is a Class 2 misdemeanor.~~

**36-24-36. Alteration of license prohibited – Violation a misdemeanor.**

~~No person may alter a hearing aid dispensing license or an audiology license with fraudulent intent. A violation of this section is a Class 2 misdemeanor.~~

**36-24-37. Use of purchased, fraudulently obtained or altered license prohibited – Violation a misdemeanor.**

~~No person may use or attempt to use a valid hearing aid dispensing license or audiology license which has been purchased, fraudulently obtained, counterfeited, or altered. A violation of this section is a Class 2 misdemeanor.~~

**36-24-38. False statement in application for license or renewal prohibited – Violation a misdemeanor.**

~~No person may intentionally make a false statement in an application for a hearing aid dispensing license or an audiology license or for a renewal of either license. A violation of this section is a Class 2 misdemeanor.~~

**36-24-39.1. Grounds for disciplinary action.**

~~Conduct which endangers or is likely to endanger the health, welfare, or safety of the public is grounds for The board may take disciplinary action and includes for the following conduct:~~

- ~~(1) — Aiding or abetting unlicensed practice;~~
- ~~(2) — Using or promoting or causing the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation;~~
- ~~(3) — Falsely representing the use or availability of services or advice of a physician;~~
- ~~(4) — Misrepresenting the applicant, licensee, or holder by using the word, doctor, or any similar word, abbreviation, or symbol if the use is not accurate or if the degree was not obtained from a regionally accredited institution;~~
- ~~(5) — Committing any act of dishonorable or unprofessional conduct while engaging in the practice of audiology or hearing aid dispensing;~~
- ~~(6) — Engaging in illegal, incompetent, or habitually negligent practice;~~
- ~~(7) — Providing professional services while mentally incompetent, under the influence of alcohol, using any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication or having a serious infectious or contagious disease;~~



- ~~(8) Providing services or promoting the sale of devices, appliances, or products to a person who cannot reasonably be expected to benefit from such services, devices, appliances, or products;~~
- ~~(9) Violating any provision of this chapter, any order given by the board, or rule adopted by the board;~~
- ~~(10) Being convicted of or pleading guilty or nolo contendere to a felony, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;~~
- ~~(11) Being disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;~~
- ~~(12) Obtaining any fee or making any sale by fraud or misrepresentation;~~
- ~~(13) Advertising a particular model, type, or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;~~
- ~~(14) Permitting another person to use the hearing aid dispensing license or audiology license;~~
- ~~(15) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies, or services;~~
- ~~(16) Displaying competitive products in a show window, shop, or advertisement in such manner as to falsely disparage them;~~
- ~~(17) Quoting prices of competitive hearing aids or devices without disclosing that they are not the present current prices, or to show, demonstrate, or represent competitive models as being current models when such is not the fact;~~
- ~~(18) Imitating or simulating the trademarks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers;~~
- ~~(19) Using any trade name, corporate name, trademark, or other designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature, or origin of any product of the industry, or of any material used in the product, or which is false, deceptive, or misleading in any other material effect;~~
- ~~(20) Obtaining information concerning the business of a competitor by bribery of an employee or agent of a competitor, by false or misleading statements or representations, impersonation of one in authority, or by any other unfair means;~~
- ~~(21) Giving, or offering to give money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or audiologist, or to influence persons to refrain from dealing in the products of competitors;~~
- ~~(22) Use of a false name or alias in the practice of the business~~
- (1) Fraudulently or deceptively obtaining or attempting to obtain a license or provisional license;
- (2) Fraudulently or deceptively using a license or professional license;
- (3) Altering a license or provisional license;
- (4) Aiding or abetting unlicensed practice;
- (5) Selling, bartering, or offering to sell or barter a license or provisional license;
- (6) Committing fraud or deceit in the practice of audiology or hearing aid dispensing, including:
  - (a) Willfully making or filing a false report or record in the practice of audiology or hearing aid dispensing;
  - (b) Submitting a false statement to collect a fee; or
  - (c) Obtaining a fee through fraud or misrepresentation;

- (7) Using or promoting or causing the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand insignia, or any other representation;
- (8) Falsely representing the use or availability of services or advice of a physician;
- (9) Misrepresenting the applicant or licensee by use the term, doctor, or any similar word, abbreviation, or symbol if the use is not accurate or if the degree was not obtained from a regionally accredited institution;
- (10) Committing any act of dishonesty, immorality, or unprofessional conduct while engaging in the practice of audiology or hearing aid dispensing;
- (11) Engaging in illegal, incompetent, or negligent practice;
- (12) Providing professional services while:
  - (a) Maintaining a physical or mental disability or incompetence which renders practice potentially harmful or dangerous; or
  - (b) Using alcohol or any substance to such an extent to render unfit for practice with reasonable skill and safety;
- (13) Providing services or promoting the sale of devices, appliances, or products to a person who cannot reasonably be expected to benefit from such services, devices, appliances, or products as supported by relevant published literature;
- (14) Violating any provision of this Act, or any lawful order given, or rule adopted, by the board;
- (15) Being convicted or pleading guilty or nolo contendere to a felony or to a crime involving moral turpitude as defined by SDCL 22-1-2(25), whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- (16) Being disciplined by a licensing or disciplinary authority of any state or country, or any nationally recognized professional organization, or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;
- (17) Failing to report any discipline subject to (16) of this section;
- (18) Exploiting a patient for financial gain or sexual favors;
- (19) Failing to report suspected cases of child abuse or vulnerable adult abuse; or
- (20) Violating federal, state, or local laws relating to the profession.

### **36-24-39.2. Disciplinary actions.**

Any person licensed under this chapter is subject to the disciplinary actions of this section. Disciplinary actions are subject to contested case procedure in chapter 1-26. The board may impose, separately, or in combination, any of the following disciplinary actions ~~if an applicant for a license or a licensee is found guilty of conduct which endangered or is likely to endanger the health, welfare, or safety of the public:~~

- (1) Refuse to issue or renew a license;
- (2) Issue a letter of reprimand or concern;
- (3) Require ~~restitution of fees~~ the licensee to reimburse the board for the costs of the investigation and proceedings;
- (4) Impose probationary conditions;
- (5) Suspend or revoke a license;
- (6) Impose practice or supervision requirements, or both; or
- (7) Require the licensee to attend continuing education programs specified by the board as to content and hours.

### **36-24-41. Procedure for suspension, revocation or denial of license – Decision – Appeal.**

No hearing aid dispensing license or audiology license issued pursuant to this chapter may be suspended, revoked, or denied, and no renewal may be denied, except in compliance with chapter 1-26 and chapter 36-1C.



Any decision of the board to discipline, suspend, revoke or reissue a license requires a majority vote of the board membership.

Any party aggrieved by the acts, rulings or decision of the board relating to refusal to grant or cancellation, revocation, or suspension of a license shall have the right to appeal the same under provisions of chapter 1-26 and chapter 36-1C.

**36-24-42. Enforcement of chapter by board – Election of remedies – Injunctive Relief.**

Any person violating the provisions of this chapter may be enjoined from further violation upon application for an injunction in any court of competent jurisdiction to restrain the person from continuing to practice. The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding. No proceeding may be barred by any proceeding which occurred or is pending pursuant to § 36-24-39.2. However, an action for injunction is alternate to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

**Source:** SL 1968, ch 118, § 23; SL 1972, ch 15, § 4; SL 1997, ch 221, § 52.

**36-24-44. Injunctive relief.**

The board may apply for relief by injunction, without bond, to restrain any person, partnership, or corporation from engaging in any act or practice which constitutes an offense against this chapter. It is not necessary for the board to allege and prove that there is no adequate remedy at law in order to obtain the relief requested. The members of the board are not individually liable for applying for such relief.

**36-24-45. Hearing aid dispensing license holder prior to July 1, 1997.**

~~An applicant shall be issued a South Dakota hearing aid dispensing license if the applicant holds a current and valid South Dakota hearing aid dispenser's license and is not eligible for a South Dakota audiology license prior to July 1, 1997.~~

**36-24-46. Promulgation of rules.**

~~The board may promulgate rules pursuant to chapter 1-26 to establish application fees, license fees, provisional license fees, renewal fees, penalty fees, reciprocity fees, and late fees. All fees provided under this chapter are nonrefundable. No fee may exceed three hundred fifty dollars.~~

~~The board may also promulgate rules pursuant to chapter 1-26 for the qualification of applicants, issuance and renewal of licenses, and requirements for continuing education.~~

**36-24-47. Telepractice permitted.**

A person licensed pursuant to this chapter may provide services via telepractice pursuant to chapter 34-52. Service delivered via telepractice shall be equivalent to the quality of services delivered face-to-face.

**36-24-48. Criminal background investigation of audiology applicants and licensees subject to disciplinary investigation – Cooperation required – Fees.**

Each applicant for licensure as an audiologist in this state shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the board shall submit completed fingerprint cards to the Division of Criminal Investigation. Upon completion of the criminal background check, the Division of Criminal Investigation shall forward to the board all information obtained as a result of the criminal background check. This information shall be obtained prior to permanent licensure of the applicant. The board may require a state and federal criminal background check for any licensee who is the subject of a disciplinary investigation by the board. Failure to submit or cooperate with the criminal background investigation is grounds for denial of an application or may result in revocation of a license.

The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal background investigation.

**36-24-49. Participation in the Audiology and Speech-Language Pathology Interstate Compact.**  
In addition to the provisions of this Chapter, the provisions of SDCL 36-39-1 and 36-39-2, inclusive, apply.

DRAFT

FOR AN ACT ENTITLED, An Act to adopt the audiology and speech-language pathology interstate compact.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

**Section 1.** That a NEW SECTION be added:

**36-39-1. Audiologists and Speech-Language Pathologists – Licensure – Interstate**

**Compact.**

The Audiology and Speech-Language Pathology Interstate Compact is enacted into law and entered into with all other jurisdictions that legally join the compact, which is substantially as follows:

SECTION 1: PURPOSE

The purpose of this Compact is to facilitate interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language pathology services. The practice of audiology and speech-language pathology occurs in the state where the patient/client/student is located at the time of the patient/client/student encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

1. Increase public access to audiology and speech-language pathology services by providing for the mutual recognition of other member state licenses;
2. Enhance the states' ability to protect the public's health and safety;
3. Encourage the cooperation of member states in regulating multistate audiology and speech-language pathology practice;
4. Support spouses of relocating active duty military personnel;
5. Enhance the exchange of licensure, investigative and disciplinary information between member states;
6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and
7. Allow for the use of telehealth technology to facilitate increased access to audiology and speech-language pathology services.

SECTION 2: DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

- A. “Active duty military” means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapter 1209 and 1211.
- B. “Adverse action” means any administrative, civil, equitable or criminal action permitted by a state’s laws which is imposed by a licensing board or other authority against an audiologist or speech-language pathologist, including actions against an individual’s license or privilege to practice such as revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee’s practice.
- C. “Alternative program” means a non-disciplinary monitoring process approved by an audiology or speech-language pathology licensing board to address impaired practitioners.
- D. “Audiologist” means an individual who is licensed by a state to practice audiology.
- E. “Audiology” means the care and services provided by a licensed audiologist as set forth in the member state’s statutes and rules.
- F. “Audiology and Speech-Language Pathology Compact Commission” or “Commission” means the national administrative body whose membership consists of all states that have enacted the Compact.
- G. “Audiology and speech-language pathology licensing board,” “audiology licensing board,” “speech-language pathology licensing board,” or “licensing board” means the agency of a state that is responsible for the licensing and regulation of audiologists and/or speech-language pathologists.
- H. “Compact privilege” means the authorization granted by a remote state to allow a licensee from another member state to practice as an audiologist or speech-language pathologist in the remote state under its laws and rules. The practice of audiology or speech-language pathology occurs in the member state where the patient/client/student is located at the time of the patient/client/student encounter.
- I. “Current significant investigative information” means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the audiologist or speech-language pathologist to respond, if required by

state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

- J. “Data system” means a repository of information about licensees, including, but not limited to, continuing education, examination, licensure, investigative, compact privilege and adverse action.
- K. “Encumbered license” means a license in which an adverse action restricts the practice of audiology or speech-language pathology by the licensee and said adverse action has been reported to the National Practitioners Data Bank (NPDB).
- L. “Executive Committee” means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.
- M. “Home state” means the member state that is the licensee’s primary state of residence.
- N. “Impaired practitioner” means individuals whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.
- O. “Licensee” means an individual who currently holds an authorization from the state licensing board to practice as an audiologist or speech-language pathologist.
- P. “Member state” means a state that has enacted the Compact.
- Q. “Privilege to practice” means a legal authorization permitting the practice of audiology or speech-language pathology in a remote state.
- R. “Remote state” means a member state other than the home state where a licensee is exercising or seeking to exercise the compact privilege.
- S. “Rule” means a regulation, principle or directive promulgated by the Commission that has the force of law.
- T. “Single-state license” means an audiology or speech-language pathology license issued by a member state that authorizes practice only within the issuing state and does not include a privilege to practice in any other member state.
- U. “Speech-language pathologist” means an individual who is licensed by a state to practice speech-language pathology.
- V. “Speech-language pathology means the care and services provided by a licensed speech-language pathologist as set forth in the member state’s statutes and rules.
- W. “State” means any state, commonwealth, district or territory of the United States of America that regulates the practice of audiology and speech-language pathology.

- X. “State practice laws” means a member state’s laws, rules and regulations that govern the practice of audiology or speech-language pathology, define the scope of audiology or speech-language pathology practice, and create the methods and grounds for imposing discipline.
- Y. “Telehealth” means the application of telecommunication technology to deliver audiology or speech-language pathology services at a distance for assessment, intervention and/or consultation.

### SECTION 3. STATE PARTICIPATION IN THE COMPACT

- A. A license issued to an audiologist or speech-language pathologist by a home state to a resident in that state shall be recognized by each member state as authorizing an audiologist or speech-language pathologist to practice audiology or speech-language pathology, under a privilege to practice, in each member state.
- B. A state must implement or utilize procedures for considering the criminal history records of applicants for initial privilege to practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant’s criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state’s criminal records
1. A member state must fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.
  2. Communication between a member state, the Commission and among member states regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.
- C. Upon application for a privilege to practice, the licensing board in the issuing remote state shall ascertain, through the data system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on

any license or privilege to practice held by the applicant, whether any adverse action has been taken against any license or privilege to practice held by the applicant.

D. Each member state shall require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as, all other applicable state laws.

E. For an audiologist:

1. Must meet one of the following educational requirements:

- a. On or before, December 31, 2007, has graduated with a master's degree or doctorate in audiology, or equivalent degree regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or
- b. On or after, January 1, 2008, has graduated with a Doctoral degree in audiology, or equivalent degree, regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or
- c. Has graduated from an audiology program that is housed in an institution of higher education outside of the United States (a) for which the program and institution have been approved by the authorized accrediting body in the applicable country and (b) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program.

2. Has completed a supervised clinical practicum experience from an accredited educational institution or its cooperating programs as required by the Commission;

3. Has successfully passed a national examination approved by the Commission;

4. Holds an active, unencumbered license;

5. Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of audiology, under applicable state or federal criminal law;

6. Has a valid United States Social Security or National Practitioner Identification number.

F. For a speech-language pathologist:

1. Must meet one of the following educational requirements:

a. Has graduated with a master's degree from a speech-language pathology program that is accredited by an organization recognized by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the board; or

b. Has graduated from a speech-language pathology program that is housed in an institution of higher education outside of the United States (a) for which the program and institution have been approved by the authorized accrediting body in the applicable country and (b) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program.

2. Has completed a supervised clinical practicum experience from an educational institution or its cooperating programs as required by the Commission;

3. Has completed a supervised postgraduate professional experience as required by the Commission;

4. Has successfully passed a national examination approved by the Commission;

5. Holds an active, unencumbered license;

6. Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of speech-language pathology, under applicable state or federal criminal law;

7. Has a valid United States Social Security or National Practitioner Identification number.

G. The privilege to practice is derived from the home state license.

H. An audiologist or speech-language pathologist practicing in a member state must comply with the state practice laws of the state in which the client is located at the time service is



provided. The practice of audiology and speech-language pathology shall include all audiology and speech-language pathology practice as defined by the state practice laws of the member state in which the client is located. The practice of audiology and speech-language pathology in a member state under a privilege to practice shall subject an audiologist or speech-language pathologist to the jurisdiction of the licensing board, the courts and the laws of the member state in which the client is located at the time service is provided.

I. Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals shall not be recognized as granting the privilege to practice audiology or speech-language pathology in any other member state. Nothing in this Compact shall affect the requirements established by a member state for the issuance of a single-state license.

J. Member states may charge a fee for granting a compact privilege.

K. Member states must comply with the bylaws and rules and regulations of the Commission.

#### SECTION 4. COMPACT PRIVILEGE

A. To exercise the compact privilege under the terms and provisions of the Compact, the audiologist or speech-language pathologist shall:

1. Hold an active license in the home state;
2. Have no encumbrance on any state license;
3. Be eligible for a compact privilege in any member state in accordance with Section 3;
4. Have not had any adverse action against any license or compact privilege within the previous 2 years from date of application;
5. Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);
6. Pay any applicable fees, including any state fee, for the compact privilege;
7. Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

B. For the purposes of the compact privilege, an audiologist or speech-language pathologist shall only hold one home state license at a time.

- C. Except as provided in Section 6, if an audiologist or speech-language pathologist changes primary state of residence by moving between two-member states, the audiologist or speech-language pathologist must apply for licensure in the new home state, and the license issued by the prior home state shall be deactivated in accordance with applicable rules adopted by the Commission.
- D. The audiologist or speech-language pathologist may apply for licensure in advance of a change in primary state of residence.
- E. A license shall not be issued by the new home state until the audiologist or speech-language pathologist provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a license from the new home state.
- F. If an audiologist or speech-language pathologist changes primary state of residence by moving from a member state to a non-member state, the license issued by the prior home state shall convert to a single-state license, valid only in the former home state.
- G. The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of Section 4A to maintain the compact privilege in the remote state.
- H. A licensee providing audiology or speech-language pathology services in a remote state under the compact privilege shall function within the laws and regulations of the remote state.
- I. A licensee providing audiology or speech-language pathology services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens.
- J. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:
1. The home state license is no longer encumbered; and
  2. Two years have elapsed from the date of the adverse action.

K. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of Section 4A to obtain a compact privilege in any remote state.

L. Once the requirements of Section 4J have been met, the licensee must meet the requirements in Section 4A to obtain a compact privilege in a remote state.

#### SECTION 5. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

Member states shall recognize the right of an audiologist or speech-language pathologist, licensed by a home state in accordance with Section 3 and under rules promulgated by the Commission, to practice audiology or speech-language pathology in any member state via telehealth under a privilege to practice as provided in the Compact and rules promulgated by the Commission.

#### SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change their home state through application for licensure in the new state.

#### SECTION 7. ADVERSE ACTIONS

A. In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to:

1. Take adverse action against an audiologist's or speech-language pathologist's privilege to practice within that member state.
2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located.

3. Only the home state shall have the power to take adverse action against an audiologist's or speech-language pathologist's license issued by the home state.
- B. For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.
- C. The home state shall complete any pending investigations of an audiologist or speech-language pathologist who changes primary state of residence during the course of the investigations. The home state shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any adverse actions.
- D. If otherwise permitted by state law, the member state may recover from the affected audiologist or speech-language pathologist the costs of investigations and disposition of cases resulting from any adverse action taken against that audiologist or speech-language pathologist.
- E. The member state may take adverse action based on the factual findings of the remote state, provided that the member state follows the member state's own procedures for taking the adverse action.
- F. Joint Investigations
1. In addition to the authority granted to a member state by its respective audiology or speech-language pathology practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.
  2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.
- G. If adverse action is taken by the home state against an audiologist's or speech language pathologist's license, the audiologist's or speech-language pathologist's privilege to practice in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against an audiologist's or speech language pathologist's license shall include a

statement that the audiologist's or speech-language pathologist's privilege to practice is deactivated in all member states during the pendency of the order.

H. If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

I. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

## SECTION 8. ESTABLISHMENT OF THE AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY COMPACT COMMISSION

A. The Compact member states hereby create and establish a joint public agency known as the Audiology and Speech-Language Pathology Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting and Meetings

1. Each member state shall have two (2) delegates selected by that member state's licensing board. The delegates shall be current members of the licensing board. One shall be an audiologist and one shall be a speech-language pathologist.

2. An additional five (5) delegates, who are either a public member or board administrator from a state licensing board, shall be chosen by the Executive Committee from a pool of nominees provided by the Commission at Large.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring on the Commission, within 90 days.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.
6. A delegate shall vote in person or by other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.
7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;
2. Establish bylaws;
3. Establish a Code of Ethics;
4. Maintain its financial records in accordance with the bylaws;
5. Meet and take actions as are consistent with the provisions of this Compact and the bylaws;
6. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;
7. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state audiology or speech-language pathology licensing board to sue or be sued under applicable law shall not be affected;
8. Purchase and maintain insurance and bonds;
9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;
10. Hire employees, elect or appoint officers, fix compensation, define duties, grant individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;
11. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that

- at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;
12. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;
  13. Sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;
  14. Establish a budget and make expenditures;
  15. Borrow money;
  16. Appoint committees, including standing committees composed of members, and other interested persons as may be designated in this Compact and the bylaws;
  17. Provide and receive information from, and cooperate with, law enforcement agencies;
  18. Establish and elect an Executive Committee; and
  19. Perform other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of audiology and speech-language pathology licensure and practice.

D. The Executive Committee

The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact:

1. The Executive Committee shall be composed of ten (10) members:
  - a. Seven (7) voting members who are elected by the Commission from the current membership of the Commission;
  - b. Two (2) ex-officios, consisting of one nonvoting member from a recognized national audiology professional association and one nonvoting member from a recognized national speech-language pathology association; and
  - c. One (1) ex-officio, nonvoting member from the recognized membership organization of the audiology and speech-language pathology licensing boards.

E. The ex-officio members shall be selected by their respective organizations.

1. The Commission may remove any member of the Executive Committee as provided in bylaws.
2. The Executive Committee shall meet at least annually.

3. The Executive Committee shall have the following duties and responsibilities:
  - a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;
  - b. Ensure Compact administration services are appropriately provided, contractual or otherwise;
  - c. Prepare and recommend the budget;
  - d. Maintain financial records on behalf of the Commission;
  - e. Monitor Compact compliance of member states and provide compliance reports to the Commission;
  - f. Establish additional committees as necessary; and
  - g. Other duties as provided in rules or bylaws.
4. Meetings of the Commission All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 10.
5. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Committee or other committees of the Commission must discuss:
  - a. Non-compliance of a member state with its obligations under the Compact;
  - b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;
  - c. Current, threatened, or reasonably anticipated litigation;
  - d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;
  - e. Accusing any person of a crime or formally censuring any person;
  - f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;
  - g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;



- h. Disclosure of investigative records compiled for law enforcement purposes;
  - i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or
  - j. Matters specifically exempted from disclosure by federal or member state statute.
6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.
7. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.
8. Financing of the Commission
- a. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
  - b. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.
  - c. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.
9. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

10. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

F. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.
2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.
3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or

responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

#### SECTION 9. DATA SYSTEM

- A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.
- B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:
1. Identifying information;
  2. Licensure data;
  3. Adverse actions against a license or compact privilege;
  4. Non-confidential information related to alternative program participation;
  5. Any denial of application for licensure, and the reason(s) for denial; and
  6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.
- C. Investigative information pertaining to a licensee in any member state shall only be available to other member states.
- D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state shall be available to any other member state.
- E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.
- F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

#### SECTION 10. RULEMAKING

- A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

- B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within 4 years of the date of adoption of the rule, the rule shall have no further force and effect in any member state.
- C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.
- D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty (30) days in advance of the meeting at which the rule shall be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:
1. On the website of the Commission or other publicly accessible platform; and
  2. On the website of each member state audiology or speech-language pathology licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.
- E. The Notice of Proposed Rulemaking shall include:
1. The proposed time, date, and location of the meeting in which the rule shall be considered and voted upon;
  2. The text of the proposed rule or amendment and the reason for the proposed rule;
  3. A request for comments on the proposed rule from any interested person; and
  4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.
- F. Prior to the adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.
- G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:
1. At least twenty-five (25) persons;
  2. A state or federal governmental subdivision or agency; or
  3. An association having at least twenty-five (25) members.
- H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.
  2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.
  3. All hearings shall be recorded. A copy of the recording shall be made available on request.
  4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.
- I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.
  - J. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.
  - K. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
  - L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:
    1. Meet an imminent threat to public health, safety, or welfare;
    2. Prevent a loss of Commission or member state funds; or
    3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision shall take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

#### SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

##### A. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and non-member states.
2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

##### B. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.
2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of litigation, including reasonable attorney's fees.
3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

SECTION 12. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR  
AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE AND ASSOCIATED  
RULES, WITHDRAWAL, AND AMENDMENT

- A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the 10th member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.
- B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.
- C. Any member state may withdraw from this Compact by enacting a statute repealing the same.
1. A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.
  2. Withdrawal shall not affect the continuing requirement of the withdrawing state's audiology or speech-language pathology licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.
- D. Nothing contained in this Compact shall be construed to invalidate or prevent any audiology or speech-language pathology licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this Compact.
- E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 13. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any member state or of the United

States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any member state, the Compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

SECTION 14. BINDING EFFECT OF COMPACT AND OTHER LAWS

- A. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.
- B. All laws in a member state in conflict with the Compact are superseded to the extent of the conflict.
- C. All lawful actions of the Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states.
- D. All agreements between the Commission and the member states are binding in accordance with their terms.
- E. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

**Section 2.** That a NEW SECTION be added:

**36-39-2. General funds not to be used to support compact.**

No state general funds shall be used to support the Audiology and Speech-Language Pathology Interstate Compact.