

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
AND HEARING AID DISPENSERS BOARD

PROPOSED SECOND MODIFIED REGULATORY LANGUAGE
Hearing Aid Dispensing Advertising

Legend: Added text is indicated with an underline.
Omitted text is indicated by (* * * *)
Deleted text is indicated by ~~strikeout~~.
Added modified text is shown in *italic double underline*
Deleted modified text is show in ~~*italic double strikethrough*~~
Added 2nd modified text is shown in **bold double underline**
Deleted 2nd modified text is show in ~~**bold double strikethrough**~~

Amend Section 1399.127 of Article 5 of Division 13.3 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.127. Advertising.

(a) A person licensed to dispense hearing aid dispenser aids may advertise any goods ~~for the practice of fitting and/or selling of hearing aids or services~~ authorized to be provided by such ~~allowed by the license~~ in a ~~thea~~ manner authorized by Section 651 of the Code and this Section so as long as such the advertising does not promote the unnecessary, inappropriate, or excessive or ~~excessive~~ use of such hearing aids ~~goods~~ or services.

(b) An advertisement violates for the practice of fitting and/or selling hearing aids or other authorized services is in violation of Section 651 of the Code when if it violates any provision of Article 8, Chapter 5.3 of Division 2 of the Code, beginning with Section 2538.10.:

(1) ~~Is not exact, and any conditions or other variables to an advertised price are not disclosed.~~

(2) ~~Includes a statement of price comparison that is not based upon verifiable data.~~

(3) ~~Advertises a discount in a false or misleading manner, including but not limited to, failing to disclose the dates on which the sale or discount price will be in effect if the sale or discount price is a limited time offer.~~

~~When advertising a specific hearing aid model:~~

Correct:	50% off Acme Model 12
Regularly \$1000, Now \$500	

Incorrect:	50% off Acme hearing aid

When advertising a category of hearing aids (e.g. all models from one manufacturer, or all BTE models):

Correct:	50% off Manufacturer's Suggested Retail Price
All Acme Hearing Aids	
Incorrect:	Acme Hearing Aids - 50% Off
Correct:	50% off Manufacturer's Suggested Retail Price, All Hearing Aids Offer good January 1-7, 1998 (or Offer expires January 7, 1998)
Incorrect:	50% off Manufacturer's Suggested Retail Price, All Hearing Aids

(4) Utilizes a business name that is so broad as to connote comprehensive and diagnostic hearing services, unless the dispenser is also licensed as a physician or audiologist.

Correct:	Delta Hearing Aid Center
Incorrect:	Delta Hearing Center

(5) Advertises hearing tests without qualification as to the nature of the hearing testing that may be performed by a hearing aid dispenser.

Correct:	Test to determine if you could be helped by a hearing aid
Incorrect:	Hearing test

(6) Includes sending to a consumer preset appointment information or "rebate coupons" that resemble checks as part of a direct mail solicitation.

(7) Includes an educational degree but does not list the degree and field, or includes the title "Dr." where the degree is a non-medical doctorate and the advertisement does not disclose that fact.

Correct:	John Doe, Ph.D. in Audiology	Jane Doe, M.A. in Audiology
	John Doe, Ph.D. (Audiology)	Jack Doe, B.A. (Audiology)
Incorrect:	Dr. John Doe	Jane Doe, M.A.
	Dr. John Doe (Audiology)	Jack Doe, B.A.

(8) Includes abbreviations for job titles or job certifications as letters after a name where those letters do not represent an academic degree or credential.

(9) Refers to a dispenser's certification by a professional organization but either does not include the name of the certifying organization or, includes the name written in a manner not easily understood by consumers.

Correct:	John Doe, Hearing Aid Dispenser Lic. No. HA-xxxx
NB-HIS, Certified by the National Board of Certification in Hearing Instrument Sciences	
Incorrect:	John Doe, NB-HIS

(10) Includes the term “specialist” when referencing licensure without including the title “hearing aid dispenser.”

Correct:	Jane Doe, Hearing Aid Dispenser Lic. No. HA-xxxx
Jack Doe, Licensed Hearing Aid Dispenser	
John Doe, Hearing Instrument Specialist	
Hearing Aid Dispenser Lic. No. HA-xxxx	
Incorrect:	Jane Doe, Hearing Aid Specialist Lic. No. HA-xxxx
Jack Doe, Licensed Hearing Aid Specialist	

(c) Advertising for **the practice of fitting and/or selling hearing aids or other authorized services** by a person licensed to dispense hearing aids shall include the following information, *unless the following information is provided on an internet website and that internet website address is included in the advertising:*

(1) The address of the principal place of business of the licensee, and the address and office hours at which the licensee shall be available for fitting or post-fitting adjustments and servicing of the hearing aid(s) sold.

(2) The *name and* license number of ~~the all~~ persons licensed to dispense hearing aids *at the location advertised*, including the letters HA (Hearing Aid Dispenser), HTL (Temporary License), HT (Trainee), or AU (Dispensing Audiologist), as appropriate.

(d) In addition to advertisement prohibited under Section 651 of the Code, an advertisement for **the practice of fitting and/or selling hearing aids or other authorized services** shall not include:

(1) An educational degree that was not earned or does not specify the exact degree and field in which the degree was earned.

(2) Other than for a physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board in this state, the title "doctor" or any

variation of this term without specifying the exact field in which the doctoral degree was earned.

(3) A job title or dispenser's certification by a professional organization that is not clearly identified by the full job title or certification and name of the certifying organization.

(4) An offer to perform a hearing test by a hearing aid dispenser that does not clearly state that the test is being performed in order to fit and sell a hearing aid.

(5) Any description of services that are required to be performed by a licensed audiologist unless there is a licensed audiologist at the advertised address to perform those services.

(6) Preset appointment information when the consumer has not requested such an appointment.

(7) The use of rebate coupons or rebate checks without informing the consumer of all the various material facts relating to the **advertised price of the hearing aid. Material facts include** standard price of the ~~device~~ **hearing aid, the terms and conditions of the rebate coupon or rebate check,** and discounts or sales that are currently available on that ~~device~~ **hearing aid.**

(e) An offer for ~~authorized~~ **hearing aids or services for the fitting of hearing aids** as part of a research or field study does not violate this ~~Section~~ if no selling of hearing aids occurs in connection with the research or study.

(f) Any advertisement shall fully disclose ~~any and all additional~~ charges associated with the purchase **and fitting** of hearing aids, ~~such as additional programming of hearing aid features~~. An advertisement for price that uses a **sale, discount, or price comparison** shall be based on verifiable data ~~and that shall be provided to the Board upon request. An advertisement for price that uses a sale, discount, or price comparison must~~ contain the following:

(1) The dollar amount of the non-discounted ~~fee or compared price~~ for the specific hearing aid or ~~provide consumers with~~ a method **for consumers** to ascertain the standard price;

(2) The dates on which the sale, ~~or discount, or price comparison~~ will be in effect if the sale, ~~or discount, or price comparison~~ is a limited time offer; and

(3) Any other terms, conditions, or restrictions imposed for qualifying for the **sale, discount, or price comparison**.

(g) The licensee shall retain the data required in subsection (f) for one year after the advertisement is published or disseminated.

(eh) Any national advertisement run in California shall comply with California laws and regulations.

(1) The advertising described in subsection (h) is exempt from the requirements of subsection (c) of this ~~S~~section.

(2) A person licensed to dispense hearing aids is subject to discipline or enforcement action for sales resulting from a national advertisement that violates this ~~S~~section.

Note: Authority cited: ~~Section~~Sections 2531.06 and 2531.95, Business and Professions Code. Reference: Sections 651, 651.3, ~~and 2533~~2538.10, and 2538.11, Business and Professions Code.