
Chapter 320. AN ACT RELATIVE TO ENTERING BY FALSE PRETENSES IN THE DAYTIME.

Be it enacted, etc., as follows:

Chapter 266 of the General Laws is hereby amended by inserting after section 18, as appearing in the 1996 Official Edition, the following section:-

Section 18A. Whoever enters a dwelling house by false pretenses, without breaking and with the intent to commit a felony, no person lawfully therein being put in fear, or whoever enters a dwelling house by false pretenses, without breaking and, after having entered, commits a larceny, as defined by section 30, no person lawfully therein being put in fear, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than \$5,000 and imprisonment in a house of correction for not more than two years, or by both such fine and imprisonment.

Approved September 4, 1998.

Be it enacted, etc., as follows:

Chapter 321. AN ACT ESTABLISHING A BOARD OF REGISTRATION OF HEARING INSTRUMENT SPECIALISTS.

Be it enacted, etc., as follows:

SECTION 1. Chapter 13 of the General Laws is hereby amended by adding, under the caption BOARD OF REGISTRATION OF HEARING INSTRUMENT SPECIALISTS, the following three sections:-

Section 93. There shall be a board of registration of hearing instrument specialists, hereinafter called the board in sections 93 to 95, inclusive, consisting of five members appointed by the director and one nonvoting advisory member who shall be a dispensing audiologist in private practice who has engaged in hearing aid dispensing for at least three years. Members of the board shall be citizens of the United States and residents of the commonwealth. One member shall be a hearing aid user who has no affiliation in any way with hearing aid dispensing, three members shall be hearing instrument specialists registered in the commonwealth with a minimum of five years experience in dispensing hearing aids and one member shall be a representative of the public who shall have neither hearing aid industry nor consumer affiliations. All board members shall be subject to the provisions of chapters 268A and 268B.

Appointments to the board shall be for a period of three years except for the initial appointments, two of which shall be for one year and the three remaining members for two years. No member shall be appointed for more than two consecutive full terms. In the event of a vacancy prior to the expiration of a term, the director shall appoint a person to fill the vacancy for the remainder of the unexpired term. The director may make the appointments using lists of candidates for members provided by the Massachusetts commission for the deaf and hard of hearing, with its advisory council, and the Massachusetts Hearing Aid Society

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and a list of candidates for the nonvoting advisory member audiologist from the Massachusetts Speech and Hearing Association. The hearing instrument specialists initially appointed to the board shall have a minimum of three years experience in dispensing hearing aids in the commonwealth and shall hold certification as a hearing instrument specialist from a national certifying body.

The board shall annually elect a chairman, by a majority vote, from its membership. A quorum of the board shall be three members. The board shall meet quarterly or more frequently upon the call of the chairman or upon the call of the majority of board members. Members shall receive no compensation for their services but shall be entitled to reasonable travel expenses for the purpose of attending board meetings; provided, however, that the expenses of the members of the board and the nonvoting advisory member audiologist, the cost of personnel providing services to the board and all other expenses associated with the operation of the board shall be generated by application and registration fees.

Section 94. The board shall establish the requirements for registration, establish standards of professional and ethical conduct, authorize and conduct appropriate examinations to determine the qualifications of applicants, grant registrations and licenses to qualified applicants, establish minimum procedures for reviewing and investigating complaints, investigate complaints and set and administer penalties as defined in section 200 of chapter 112 for fraudulent, deceptive, professionally incompetent and unsafe practices in hearing aid dispensing and for violations of the rules and regulations as promulgated by the board.

The board shall adopt such rules and regulations covering the details of the process of complaint investigation in conjunction with the director of registration, a systematic procedure for managing complaints, hearings, appeals and penalties, the process of registration, standards of practice of hearing aid dispensing, oversight and review and other such regulations as it may deem necessary in the performance of its duties.

The board shall annually compile a list of names and addresses of individuals licensed as hearing instrument specialists and apprentices in the commonwealth which shall be held by the board and made available to members of the public upon request.

The board shall administer and enforce the provisions of sections 196 to 200, inclusive, of said chapter 112.

Section 95. Beginning January 1, 1999 and every three years thereafter, the state auditor shall conduct a performance review in accordance with generally accepted government auditing standards in cooperation with the division, the board and appropriate consumer and governmental agencies to evaluate the performance of the board and the consumer protection provided by the statute and regulations, and shall submit a written report to the house and senate post audit and oversight committees, to the clerks of the house of representatives and the senate and to the chairs of the legislature's joint committee on health care detailing whether the services provided by the board are providing consumer protection and adequately meeting consumer needs.

SECTION 2. Chapter 112 of the General Laws is hereby amended by adding the following six sections:-

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Section 196. As used in this section and sections 197 to 200, inclusive, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Apprentice", a person registered as an apprentice hearing instrument specialist, engaged in dispensing hearing aids under the supervision of a Massachusetts registered hearing instrument specialist or audiologist and studying to become a hearing instrument specialist.

"Assistive listening device and system", an amplification system specifically designed to improve the signal to noise ratio for the user that is used to reduce interference from the noise in the background and to enhance hearing level at a distance by picking up sound from as close to the source as possible and sending it directly to the ear of the user.

"Audiologist", a person licensed as an audiologist in the commonwealth.

"Board", the board of registration of hearing instrument specialists.

"Dispensing hearing instruments", (a) the selection and adaptation of suitable hearing aids, the making of ear molds or ear impressions, or both, and providing appropriate initial and follow-up counseling and training in hearing aid use through utilization of results of audiological or hearing tests and hearing aid evaluations, or both; and (b) all acts pertaining to the selling, renting, leasing, pricing, delivery, servicing, repairing and warranty of hearing aids.

"Hearing aid", a wearable aid or device, not including surgical implants, which is inserted directly into the ear or worn with an ear mold and air conduction receiver or bone oscillator attachment and any part, attachment or accessory but excluding batteries, cords and accessories thereto, designed for or offered for the purpose of aiding or compensating for hearing loss.

"Hearing instrument specialist", a person licensed as a hearing instrument specialist in the commonwealth.

"Register", "registered", "registrant" and "registration" shall be used interchangeably with the words "license", "licensed", "licensee" and "licensure".

"Sale" or "sell", to transfer title to a hearing aid or the right of possession of a hearing aid by sales contract, lease, bailment, loan or other means, excluding wholesale transactions of dealers and distributors and excluding transfer of a title to a used hearing aid for purposes of donation to a hearing aid bank for distribution.

Section 197. (a) Beginning July 1, 2000, no person shall identify, present or otherwise portray himself as a hearing instrument specialist or practice hearing aid dispensing in the commonwealth unless he is licensed by the board or is an audiologist in the commonwealth, whichever of the registrations is appropriate to the training of the individual; provided, however, that the provisions of this section shall not apply to: (i) persons who only repair or manufacture hearing aids or their accessories, or both; or (ii) persons who engage in the sale of assisted listening devices or systems but not in the dispensing of hearing aids.

(b) An audiologist engaged in the practice of hearing aid dispensing shall be exempt from registration as a hearing instrument specialist in the commonwealth and shall remain under the jurisdiction of the board of registration for speech-language pathology and audiology, pursuant to section 138 of chapter 112.

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(c) A person who desires to be licensed as a hearing instrument specialist shall apply to the board in writing on an application form prescribed and furnished by the board. When the application is filed, an applicant for registration shall pay to the board a fee which shall be set by the secretary of administration and finance.

(d) The board shall register as a hearing instrument specialist each applicant who meets the requirements set forth in this section. The board shall issue to each person so registered a certificate of registration. Each such licensed hearing instrument specialist shall conspicuously display such certificate in his place of business. Original and duplicate certificates shall be issued by the board for a reasonable fee to a registrant operating or working in more than one location. Each such hearing instrument specialist shall be issued a license stating that the undersigned is a registered hearing instrument specialist. The registered hearing instrument specialist shall present his license to a customer when dispensing hearing instruments outside of his place of business.

(e) The term of the registration issued by the board shall be two years from the date of issuance. Notwithstanding the foregoing, each license originally issued to an individual shall be valid until the date of birth next occurring more than 24 months from the date of issuance. Each licensee shall pay to the board a fee which shall be set by the secretary of administration and finance. Renewal dates for other related registrations shall be set by the board. The renewal of a hearing instrument specialist license shall be contingent upon compliance with the continuing education requirements and standards of practice as determined by the board and defined in rules and regulations.

(f) To be eligible for registration by the board as a hearing instrument specialist, an applicant shall:

- (1) be at least 18 years of age;
- (2) have a high school diploma or its equivalent;
- (3) be of good moral character;

(4) have successfully completed a board approved 12 month apprenticeship, including completion of the apprentice training program and supervised work experience, and meet one of the following criteria:

(i) hold current certification as a hearing instrument specialist from a board approved, nationally recognized body certifying hearing instrument specialists; or

(ii) pass a written or electronic examination approved by the board and designed to test competencies and knowledge needed in hearing aid fitting and dispensing; and

- (5) pay the appropriate fee set by the secretary of administration and finance.

(g) An individual who has been in the practice of dispensing hearing aids within the commonwealth for more than three years full-time prior to July 1, 1999, shall be excluded from the requirement in clause (4) of subsection (f) provided that the applicant: (1) satisfies the board that he has dispensed hearing aids with accepted professional practice standards; (2) satisfies the board that he is of good moral character; and (3) pays the appropriate fee.

Section 197A. An individual who holds a license as a hearing instrument specialist or the equivalent thereof as determined by the board from a state which is deemed by the

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board to have substantially equivalent or higher licensure requirements than those of the commonwealth may be licensed as a hearing instrument specialist without satisfying the requirements of clause (4) of subsection (f) of section 197. The word "state", as used in this section, shall include a state or territory of the United States, the District of Columbia, the commonwealth of Puerto Rico or a foreign country, state or province.

Section 198. (a) The board shall establish the requirements for registration of apprentice hearing instrument specialists and shall promulgate the rules and regulations consistent with law as may be necessary. A person registered as an apprentice by the board may engage in the dispensing of hearing aids without first having met the requirements under subsection (f) of section 197. The board shall promulgate rules and regulations to establish an apprentice training program which may include a board approved home study course. The board shall register as an apprentice and issue a certificate of registration to an applicant who has shown to the satisfaction of the board that the applicant: (1) is at least 18 years of age; (2) has a high school diploma or its equivalent; (3) is registered in a board approved training program; (4) has an identified supervisor who is a person registered in good standing in the commonwealth as a hearing instrument specialist or licensed as an audiologist and who has agreed to perform supervisory functions as described in subsection (c); and (5) has paid the board a fee which shall be set by the secretary of administration and finance. The certificate of registration for an apprentice shall include the name of the hearing instrument specialist who is supervising the apprentice and such supervisor shall execute an acknowledgment of responsibility for all acts of the apprentice in connection with hearing aid dispensing.

(b) Upon completion of the training program, the apprentice shall take the board approved examination. Following three failed examinations, an apprentice shall only be reexamined at the discretion of the board.

(c) An apprentice shall perform the functions of a hearing instrument specialist in accordance with board rules only under the supervision of a registered hearing instrument specialist or licensed audiologist. Such supervision shall be direct, on site and full-time, or the equivalent part time, for a minimum of 30 days after the initial hiring of the apprentice.

"Direct supervision", as used in this section, shall mean all of the following: (1) the supervisor shall be present within the office to which the apprentice is assigned 100 per cent of the time; (2) the supervisor shall be physically present in the same work area with the apprentice at a minimum of 50 per cent of the time in which the apprentice is providing services; (3) the supervisor shall approve the selection of a hearing aid by an apprentice; (4) the supervisor shall physically oversee all testing and taking of ear mold impressions by the apprentice and shall approve in writing the results of all hearing tests done by the apprentice; (5) the supervisor shall countersign all sales documents prepared and consummated by the apprentice.

Subsequent to the period of direct, on-site supervision, the supervisor shall review and approve in writing all hearing aid fittings by the apprentice, including physical inspection of ear mold impressions, ear mold plans and hearing aid recommendations and fittings. The supervisor shall give final approval to work performed by the apprentice and shall attempt

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to contact the consumer who purchased the hearing aid by phone or through a follow-up appointment within one week to ensure satisfaction with the fitting.

The supervisor shall be responsible for providing supervision until either of the following occurs: (1) the apprentice obtains a certificate of registration as a hearing instrument specialist from the board; or (2) the supervisor or apprentice gives written notification to the board that he is terminating supervision and training.

An apprentice shall complete the minimum of 12 months under supervision as described in this subsection even if a board approved test has been successfully passed, prior to being granted a license as hearing instrument specialist.

(d) The board shall develop standards and regulations governing dispensing practices related to home visits. An apprentice engaging in hearing aid dispensing, after the initial period of direct supervision, shall be subject to all standards of dispensing and related penalties and fines pertaining to hearing instrument specialists.

(e) An apprentice registration shall expire 18 months from the date of its issuance except that, on recommendation of the board, the registration may be reissued for 18 months only.

Section 199. (a) In addition to its other rule making powers, the board may develop and adopt such rules of professional competence and conduct as may be instrumental in fixing and maintaining high standards of integrity and dignity in the hearing instrument specialist profession.

(b) The board may revoke or suspend a license granted to an individual as a hearing instrument specialist under section 197 and refuse to renew a license or may censure the holder of any such certificate of registration for any one or any combination of the following causes or may impose penalties as stated in section 200 if such individual:

(1) makes a misrepresentation for the purpose of obtaining a license or renewing a license, including falsification of the continuing education requirement;

(2) has violated any provision of the laws of the commonwealth relating to the practice of dispensing hearing instruments or a rule or regulation adopted thereunder;

(3) has made any material misstatement of fact or has omitted any material fact which is misleading in the application for registration or on a written or oral communication to the board concerning the issuance or retention of a registration;

(4) has been convicted of a crime which directly relates to the practice of dispensing hearing aids, including violations of any federal laws or regulations regarding hearing aids;

(5) has demonstrated gross incompetence in the fitting of hearing aids;

(6) engages in unethical conduct in dispensing hearing aids; provided, however, that unethical conduct shall include, but not be limited to:

(i) using, causing or promoting the use of language in any advertising manner, promotional literature, testimony, guarantee, warranty, label, brand, insignia or other representation, however disseminated or published, which is fraudulent, false, misleading or deceptive in form or content;

(ii) knowingly employing, directly or indirectly, a suspended or nonregistered hearing

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instrument specialist or apprentice to dispense hearing aids;

(iii) repeatedly failing, refusing to honor or refusing to perform as represented a representation, promise, agreement or warranty in connection with the promotion, sale, dispensing, repair or fitting of hearing aids;

(iv) advertising a particular model, type or kind of hearing aid or sale which purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than is advertised;

(v) falsifying hearing test or evaluation results;

(vi) falsely representing that the services or advice of a physician or audiologist shall be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids or using the words "doctor", "audiologist", "clinic", "clinical", "medical", "audiologic" or other term or title which may connote or imply the availability of professional services when such use is not accurate;

(vii) permitting another to use his registration;

(viii) engaging in conduct which constitutes a conflict of interest, including accepting or paying a client referral fee or other consideration or directing or limiting a client's choice of product other than as necessary based on the results of audiological or hearing tests or hearing aid evaluation;

(ix) dispensing hearing aids under a false, misleading or deceptive name; or

(x) failing within 30 days or within such time as may otherwise be set by law, to provide information in response to a written request from the board or the attorney general.

(7) has dispensed hearing aids while his ability to do so was impaired by alcohol or drugs;

(8) has violated a lawful order of the board previously entered in a disciplinary hearing.

Section 200. (a) The board may, by a majority vote of the entire board and upon determination made after a hearing pursuant to chapter 30A, find that a hearing instrument specialist or apprentice is liable for a violation of the provisions of sections 197 to 200, inclusive, and may impose the following fines and penalties: (1) require such holder to participate in an alcohol or drug rehabilitation program or undergo drug testing as a condition of reinstatement of such license or both; (2) suspend, revoke, cancel or place on probation such registration; (3) reprimand or censure the registrant; (4) require such holder to complete additional education or training or both as a condition of retention or future consideration or reinstatement of such registration; (5) require such holder to practice under appropriate supervision for a period of time to be determined by the board as a condition of retention of future consideration or reinstatement of such registration; (6) require financial restitution, where appropriate; and (7) assess an administrative penalty of not more than \$5,000 for each violation.

(b) Whoever, not being registered as a hearing instrument specialist, apprentice or as an audiologist licensed under the board of registration of speech-language pathology and

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audiology, holds himself out as a dispenser of hearing aids or as being able to dispense hearing aids or whoever impersonates another hearing instrument specialist or apprentice or violates any other provision of the board of registration of hearing instrument specialists or a rule or regulation made under the authority thereof, may be punished by a fine of not less than \$1,000 nor more than \$5,000 for each violation.

(c) A violation of sections 197 to 199, inclusive, shall also constitute a violation of chapter 93A.

Approved September 4, 1998.

Chapter 322. AN ACT RELATIVE TO REAL ESTATE TAX EXEMPTIONS FOR CERTAIN VETERANS WHO RESIDE IN THE CITY OF NEWTON.

Be it enacted, etc., as follows:

SECTION 1. Chapter 656 of the acts of 1985 is hereby amended by inserting after section 1 the following section:-

Section 1A. The real estate of surviving spouses of veterans who at the time of death were entitled to the exemption described in section 1, so long as such surviving spouse remains unmarried, shall be exempt from taxation under chapter 59 of the General Laws in the same manner and to the same extent that such real estate was exempt during the life of the qualifying veteran; provided, that such property is occupied as the domicile of the surviving spouse.

SECTION 2. This act shall take effect upon its passage.

Approved September 11, 1998.

Chapter 323. AN ACT RELATIVE TO A CERTAIN PAYMENT IN LIEU OF TAXES IN THE TOWN OF CHARLTON.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding the provisions of any general or special law to the contrary, the town of Charlton may establish and maintain two funds, one to be known as the Charlton Debt Service Reserve Fund and the second to be known as the Charlton Capital Expenditures Fund which shall be kept separate and apart from all other accounts of the town. The town treasurer shall be the custodian of each fund and may deposit the proceeds or invest the same in accordance with the provisions of section 54 or 55 of chapter 44 of the General Laws. Any interest earned thereon shall be credited to, and become part of, the funds.

SECTION 2. The town of Charlton may appropriate monies from the Charlton Debt