

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

October 22, 2019
10:00 a.m. Central Time
Nebraska State Office Building – Lower Level B
301 Centennial Mall South, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 172, Chapter 75 of the Nebraska Administrative Code (NAC) – *Practice of Hearing Aid Instrument Dispensers and Fitters*. The chapter provides the requirements for education, experience, documentation, and examinations to be licensed as a hearing instrument specialist or temporary hearing instrument specialist. The proposed changes update the name of the chapter, remove all duplicative statutory language from the regulations and removes any repetitive regulatory language that is found in 172 NAC 10; revise definitions; update examination eligibility for the practical examination; clarify activities considered unprofessional conduct; and update formatting.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 172	Prepared by: Claire Covert-ByBee
Chapter: 75	Date prepared: 06/06/2019
Subject: Hearing Instrument Specialists	Telephone: 402-471-0547

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 75 PRACTICE OF HEARING INSTRUMENT SPECIALISTS

001. SCOPE AND AUTHORITY. These regulations govern the licensure of Hearing Instrument Specialists under the Nebraska Revised Statute (Neb. Rev. Stat.) §§ 38-1501 to 38-1518 of the Hearing Instrument Specialists Practice Act and the Uniform Credentialing Act (UCA).

002. DEFINITIONS. Definitions are set out in the Hearing Instrument Specialists Act, the Uniform Credentialing Act, 172 Nebraska Administrative Code (NAC) 10, and this chapter.

002.01 ACCREDITED HIGH SCHOOL. A secondary school accredited by a regional accrediting institution.

002.02 INITIAL TRAINING. The first 90 days of training commencing from issuance of the temporary license.

002.03 PRACTICAL EXAMINATION. One part of the qualifying examination. The Nebraska Practical Examination administered by the Department.

002.04 PROVIDER. An individual or sponsoring organization that presents continuing education programs to licensees and requests approval from the Board for those programs.

002.05 QUALIFYING EXAMINATION. Examination consisting of the written and the practical examination.

002.06 SUPERVISOR. An individual that holds an active non-disciplined license as a hearing instrument specialist or audiologist in Nebraska.

002.07 SUPERVISION. The process by which the quality of work of a temporary licensee is monitored. Supervision includes training and guidance in order to prepare the temporary licensee to perform the correct procedures for fitting and selling hearing aid instruments. During the first 90 days of initial training and guidance, the supervisor must be physically present for at least 80 hours while the temporary licensee is carrying out assigned duties.

002.08 WRITTEN EXAMINATION. One part of the qualifying examination. The International Hearing Society's Written Comprehensive Examination.

003. LICENSE REQUIREMENTS. To obtain a license, an individual must submit a complete application provided by the Department and provide documentation demonstrating that the

applicant meets the licensing requirements of Neb. Rev. Stat. §§ 38-1501 to 38-1518, 172 NAC 10, and this chapter.

003.01 DOCUMENTATION. The following documentation must be provided to the Department.

003.01(A) AGE. Provide documentation showing that the applicant is at least 21 years of age.

003.01(B) EDUCATION. Submit an official transcript, directly from the issuing institution, showing completion of a 4-year course of study from an accredited high school; or an official copy of a diploma or certificate from an accredited high school.

003.01(C) EXAMINATION. Provide documentation of successful completion of the qualifying examination sent directly to the Department.

003.01(D) LICENSED IN ANOTHER JURISDICTION. If an applicant holds a license in another jurisdiction, he or she may apply for licensure based upon licensure in another jurisdiction. The applicant must provide documentation that the standards regulating the practice of hearing instrument specialists in the other jurisdiction are equivalent to those maintained in Nebraska and the license was based on a written examination and practical examination equivalent to the qualifying examination for a Nebraska license, the grades given at the examination, and the date the license was issued.

003.01(E) OTHER PROOF OF COMPETENCY. For applicants who are not practicing at the time of application, the following applies:

003.01(E)(i) PASSED EXAMINATION AND NOT PRACTICING. An applicant who has met the education and examination requirements as listed in 172 NAC 75-003.01, who passed the written examination more than 3 years prior to the time of application, and who is not practicing at the time of application, must within the 3 years immediately preceding the application, present proof of having obtained 20 hours of acceptable continuing education within the 3 years immediately preceding the date of application.

003.01(E)(ii) LICENSED IN ANOTHER JURISDICTION AND NOT PRACTICING. An applicant who holds a license in another jurisdiction, but is not practicing at the time of application, must provide proof of having obtained a minimum of 20 hours of acceptable continuing education within the 3 years immediately preceding the date of application.

003.02 TEMPORARY LICENSE. A temporary license may be issued to an applicant who has submitted documentation of meeting educational requirements for licensure set out in this chapter except passing the practical examination. Previous experience or a waiting period is not required to obtain a temporary license. All temporary licenses will become null and void upon the Department's notification that the temporary licensee has passed the practical examination or 1 year from the issuance date, whichever comes first. A temporary license may be renewed once pursuant to this chapter. The supervisor of a person who holds a

temporary license must immediately notify the Department when supervision of the temporary licensee is terminated.

003.02(A) STANDARDS FOR SUPERVISION. Any person who practices as a temporary hearing instrument specialist must be supervised by a hearing instrument specialist or audiologist licensed in Nebraska whose license is active and has not been disciplined.

003.02(A)(i) MANDATORY SUPERVISORY CONTACT. The supervisor must meet with the temporary licensee face to face for 80 hours during the first 90 days of the initial training session, which will commence upon the issuance of the temporary license. Thereafter, the supervisor must meet with the temporary licensee monthly to evaluate the temporary licensee's performance in the following areas:

- (1) Audiometric evaluations;
- (2) Impressions;
- (3) Purchase agreements;
- (4) Instrument orders;
- (5) Hearing instrument fittings; and
- (6) Consultation advice and training.

003.02(A)(ii) ADDITIONAL SUBJECTS COVERED. The supervisor must train the temporary licensee in the following areas during the initial 90-day training period:

- (1) Basic physics of sound;
- (2) Anatomy and physiology of the ear;
- (3) Function of hearing aids;
- (4) Pure tone audiometry, including air conduction testing and bone conduction testing;
- (5) Live voice or recorded voice speech audiometry;
- (6) Masking;
- (7) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid; and
- (8) Taking earmold impressions.

004. PRACTICAL EXAMINATION. An applicant must successfully complete the practical examination administered by the Department.

004.01 ELIGIBILITY. To be eligible to take the practical examination, an applicant must have met the age, education, and written examination requirements for licensure set out in 172 NAC 75.

004.02 APPLICATION. To register for the practical examination, the applicant must submit a complete application for licensure as provided by the Department.

004.03 PASSING SCORE. The practical examination passing scores obtained must be at least 70 out of 100 in each subject examined.

004.04 REEXAMINATION. An examinee who fails the practical examination may retake the examination pursuant to the requirements as set forth below:

- (A) An examinee who fails the practical examination with an overall average of less than 70 must retake the entire examination.
- (B) An examinee who fails the practical examination in 1 or 2 subjects with an overall average of 70 or above must retake those sections failed.
- (C) An examinee who fails the practical examination in more than 2 subjects with an overall average of 70 or above must retake the entire examination.
- (D) The applicant may retake the practical examination upon resubmission of an application and fee.

005. RENEWAL, WAIVER OF CONTINUING EDUCATION, AND INACTIVE STATUS. The applicant must meet the requirements set out in 172 NAC 10 and this chapter. All hearing instrument specialist licenses expire on December 31st of each even-numbered year. Temporary hearing instrument specialist licenses expire one year from the date of issuance and may be renewed for one additional twelve-month period.

005.01 WAIVERS OF CONTINUING EDUCATION REQUIREMENTS FOR ILLNESS OR DISABILITY. The Department may waive continuing education requirements, in whole or in part, upon submission of proof that the license holder was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing education hours during the 24 months immediately preceding the license renewal date.

006. CONTINUING EDUCATION. On or before December 31st of each even-numbered year, individuals holding an active license in the State of Nebraska must complete at least 24 hours of acceptable continuing education hours during the preceding 24-month period.

006.01 CONTINUING EDUCATION HOUR OR CREDIT CALCULATIONS. The following provides the hour calculations for acceptable continuing education:

006.01(A) PROGRAMS AT STATE AND NATIONAL MEETINGS. Includes meetings of the Nebraska Hearing Aid Society and the National Hearing Aid Society. Documentation must include a certificate of attendance and a program outline or objectives. One hour for each hour of attendance.

006.01(B) FORMAL EDUCATION COURSES. The content of the course must relate directly to the practice of hearing aid instrument dispensing and fitting. Live streaming instruction, where the applicant can interact with the lecturer, may count as formal education. Documentation must include a certificate of attendance. One hour for each hour of attendance.

006.01(C) UNIVERSITY OR COLLEGE SPONSORED COURSES. The content of the course must relate directly to the practice of hearing aid instrument dispensing and fitting. Distance learning courses are included. Documentation must include a certificate of attendance. One hour for each hour of attendance.

006.01(D) PRESENTER OR LECTURER. One hour credit will be awarded for each hour of scientific presentation by a licensee acting as an essayist or lecturer to licensed hearing instrument specialists if the program relates to the theory or clinical application of theory

pertaining to hearing instrument specialists. A licensee may receive continuing education credit for only the initial presentation during a renewal period.

006.01(E) FORMAL SELF-STUDY. The content of the self-study activity must relate to the practice of hearing aid dispensing and fitting whether the subject is research, treatment, documentation, education, or management. A licensee may complete a maximum of 6 hours of continuing education by formal self-study each 24-month renewal period. The self-study program must have a testing mechanism. Documentation must include a certificate of completion and a program outline or objectives. One hour for each 2 hours of study.

006.01(F) BUSINESS, MANAGEMENT, AND MARKETING COURSES. Must pertain to the practice of hearing aid instrument dispensing and fitting. A licensee may complete a maximum of 8 hours of continuing education utilizing these courses each 24-month renewal period. Documentation must include a certificate of attendance and a program outline or objectives. One hour for each hour attended.

006.01(G) SUPERVISION. Supervision of a temporary hearing instrument specialist by a hearing instrument specialist. One credit hour is earned for each 8 hours of in person supervision. A maximum of 10 hours of continuing education can be earned from supervision during each 24-month renewal period.

006.01(H) OTHER ACTIVITIES. Other types of activity that may be acceptable may include: human relations, governmental regulations and third party reimbursement. One hour for each hour attended.

006.02 ACCEPTABLE CONTINUING EDUCATION PROGRAMS. In order for a continuing education activity or program to be accepted for renewal or reinstatement of a license, the program must be at least 60 minutes in duration; the program's objectives must relate directly to the theory or clinical application of theory pertaining to the practice of hearing aid instrument dispensing and fitting; the presenter of the program must be qualified by education, experience, or training; and the program must be open to all hearing instrument specialists licensed in Nebraska.

007. UNPROFESSIONAL CONDUCT. Unprofessional conduct is set out in Neb. Rev. Stat. § 38-179 and this chapter:

- (A) Providing services for which he or she is not trained or experienced;
- (B) Willfully or intentionally committing any act which endangers patient safety or welfare;
- (C) Encouraging or promoting hearing aid instrument dispensing and fitting by untrained or unqualified persons.
- (D) Failing to safeguard the welfare of patients;
- (E) Failing to maintain appropriate professional relationships with patients;
- (F) Carrying out hearing aid instrument dispensing and fitting services that have been requested when such services are known to be contraindicated or unjustified;
- (G) Carrying out procedures that have been requested when such services are known to be outside of the hearing instrument specialist's scope of practice;
- (H) Falsification or unauthorized destruction of patient records; and

(J) Deceiving, misleading, or defrauding the public through advertising, including charging a fee through any hearing instrument specialist service conducted within 24 hours after performing a hearing instrument specialist service that was advertised as being free.

008. REINSTATEMENT. The applicant must meet the requirements set out in 172 NAC 10.

009. FEES. Fees are set out in 172 NAC 2.

~~TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE~~

~~CHAPTER 75 PRACTICE OF HEARING AID INSTRUMENT DISPENSERS AND FITTERS~~

~~75-001 SCOPE AND AUTHORITY:~~

~~These regulations are intended to implement the laws governing the practice of hearing aid instrument dispensers and fitters and set forth the procedures for licensing pursuant to Neb. Rev. Stat. §§71-4701 to 71-4719 and 71-110, 71-147 to 71-161.19, and the Uniform Licensing Law. Remains in section 001 as modified.~~

~~75-002 DEFINITIONS:~~

~~Accredited High School means a secondary school accredited by a regional accrediting institution. Remains in section 002 as modified~~

~~Act means Neb. Rev. Stat. §71-4701 to §71-4719, known as the Statutes relating to Hearing Aid Instrument Dispensers and Fitters.~~

~~Attest/Attestation means that the individual declares that all statements on the application/petition are true and complete.~~

~~Board means the Board of Hearing Aid Instrument Dispensers and Fitters.~~

~~Continuing Education means the offering of instruction or information to licensees for the purpose of maintaining skills necessary to the safe and competent practice of Hearing Aid Instrument Dispensers and Fitters. The continuing education may be offered under such names as "scientific school", "clinic", "forum", "lecture", "course of study", or "educational seminar". In order for continuing education to be recognized/count for licensure renewal, it must be approved by the Board.~~

~~Department means the Department of Health and Human Services Regulation and Licensure.~~

~~Director means the Director of Regulation and Licensure or the Chief Medical Officer if one has been appointed pursuant to Neb. Rev. Stat. § 81-3201, for performance of the duties set out in that statute.~~

~~Hearing Aid means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories, including earmold, but excluding batteries and cords. A hearing aid will also be known as a hearing instrument.~~

~~Inactive License means the voluntary termination of the right or privilege to practice as a hearing aid instrument dispenser and fitter. The licensee retains the right or privilege to represent himself/herself as having an inactive license.~~

Initial Training means the first 90 days of training commencing from issuance of the temporary license. **Remains in section 002 as modified.**

Lapsed License means the voluntary termination of the right or privilege to represent oneself as a licensed person and to practice as a hearing aid instrument dispenser and fitter.

License means a license issued by the state pursuant to Neb. Rev. Stat. §§71-4701 to 71-4719 to hearing aid instrument dispensers and fitters.

Licensure Examination means the International Hearing Institute's Written Comprehensive Examination and the Nebraska Practical Examination administered by the Department.

Modified Nedelsky Method means a method of determining the passing score based on the aggregate information obtained by having judges predict the response behavior of minimally competent examinees on each option (distractor) of each multiple choice test item.
Source: Linn, Robert L. (Ed) 1989. *Educational Measurement, Third Edition.* Washington, D.C.: National Council on Measurement in Education and American Council in Education.

NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 75.

Official means issued by and under the original seal of the educational institution.

Practice of Fitting Hearing Aids means the measurement of human hearing by means of an audiometer or by other means approved by the board solely for the purpose of making selections, adaptations, or sale of hearing aids. The term also includes the making of impressions for earmolds. A dispenser, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.

Provider means an individual or sponsoring organization that presents continuing education programs to licensees and requests approval from the Board for those programs. **Remains in section 002 as modified.**

Sell, Sale, or Dispense means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (a) wholesale transactions with distributors or dispensers and (b) distribution of hearing aids by nonprofit service organizations at no cost to the recipient for the hearing aid.

Supervision means the process by which the quality of work of a temporary licensee is monitored. The supervision includes training and guidance in order to prepare the temporary licensee to perform the correct procedures for fitting and selling hearing aid instruments. During the first 90 days of initial training and guidance, the supervisor must be physically present, at least twice monthly, while the temporary licensee is carrying out assigned duties. **Remains in section 002 as modified.**

Temporary License means a license issued while the applicant is in training to become a licensed hearing aid instrument dispenser and fitter.

Verified means sworn to before a Notary Public.

~~75-003 REQUIREMENTS FOR ISSUANCE OF LICENSE AND TEMPORARY LICENSE:~~ Any person who wishes to practice as a hearing aid instrument dispenser and fitter must obtain a license or temporary license. The criteria for issuance of licenses and temporary licenses, and the documentation required by the Department and the Board are set forth below.

~~75-003.01 License Based on Examination:~~ An applicant for a license to practice as a hearing aid instrument dispenser and fitter on the basis of an examination must:

1. ~~Be at least 21 years of age;~~ **Remains in section 003 as modified**
2. ~~Be of good moral character;~~
3. ~~Have an education equivalent to a four-year course in an accredited high school;~~ **Remains in section 003 as modified**
4. ~~Be free of contagious or infectious disease;~~
5. ~~Have passed the licensure examination with passing scores pursuant to 172 NAC 75-006; and~~ **Remains in section 003 as modified**
6. ~~Submit to the Department:~~
 - a. ~~Evidence of having obtained at least 21 years of age;~~
 - b. ~~An official transcript showing completion of a four-year course of study from an accredited high school; or~~
 - c. ~~An official copy of a diploma or certificate from an accredited high school;~~
 - d. ~~Official documentation of passing the licensure examination;~~
 - e. ~~A complete application, on a form provided by the Department, a copy of which is attached as Attachment A and incorporated in these regulations. Only applications which are complete will be considered;~~
 - f. ~~A statement of good health, on a form provided by the Department, a copy of which is attached as Attachment A1 and incorporated into these regulations;~~
 - g. ~~The required licensure fee; and~~
 - h. ~~Attestation by the applicant:~~
 - (1) ~~That s/he has not practiced in Nebraska prior to the application for a license; or~~
 - (2) ~~To the actual number of days practiced in Nebraska prior to the application for a license.~~
7. ~~The Department will act within 150 days upon all completed applications for licensure.~~

Effective Date ~~NEBRASKA HEALTH AND HUMAN SERVICES~~ ~~172 NAC 75~~
September 22, 2004 ~~REGULATION AND LICENSURE~~

8. ~~When a license will expire within 180 days after its initial issuance date, the Department will collect \$38.50 and any other applicable fees, and the license will be valid until the next subsequent renewal date.~~

~~9. Administrative Penalty/Other Action: An individual who practices prior to issuance of a license, is subject to an assessment of an administrative penalty pursuant to 172 NAC 75-015, or such other action as provided in the~~

~~statutes and regulations governing the license.~~

~~75-003.02 License Based On A License Issued In Another Jurisdiction: An applicant for a license to practice as a hearing aid instrument dispenser and fitter on the basis of a license in another jurisdiction must:~~

1. ~~Provide documentation that the standards regulating the practice of hearing aid instrument dispensing and fitting in the other jurisdiction are equivalent to those maintained in Nebraska;~~

2. ~~Provide documentation that his/her license was based on a written examination equivalent to the Nebraska examination, the grades given at the examination, and the date the license was issued; Remains in section 003 as modified.~~

3. ~~Provide documentation that s/he is free of contagious or infectious disease;~~

4. ~~Have attained 21 years of age; and~~

5. ~~Submit to the Department:~~

a. ~~A complete application on a form provided by the Department, a copy of which is attached as Attachment A, and incorporated in these regulations. Only applications which are complete will be considered;~~

b. ~~A statement of good health, on a form provided by the Department, a copy of which is attached as Attachment A1 and incorporated into these regulations;~~

c. ~~Evidence of having attained at least 21 years of age;~~

d. ~~The required licensure fee; and~~

e. ~~Have the licensing or certifying agency submit to the Department:~~

(1) ~~A certification that the applicant is duly licensed or certified, that his/her license or certificate has never been suspended or revoked, and that so far as the record of the agency is concerned, the applicant is entitled to its endorsement on a form provided by the Department, a copy of which is attached as Attachment A2 and incorporated into these regulations;~~

- ~~(2) The nature of disciplinary actions, if any, taken against the applicant's license or certificate;~~
- ~~(3) The date of the applicant's license or certificate;~~
- ~~(4) The name of the examination on which licensure or certification was based;~~
- ~~(5) The score attained on the examination; and~~
- ~~(6) Documentation of the requirements for licensure or certification in the other jurisdiction which are currently in effect and which were in effect at the time the license or certification was issued;~~

~~f. Attestation by the applicant:~~

- ~~(1) That s/he has not practiced in Nebraska prior to the application for a license; or~~
- ~~(2) To the actual number of days practiced in Nebraska prior to the application for a license.~~

~~6. The Board will review the documents submitted to determine if the applicant's license or certificate issued by the other jurisdiction was based upon standards which are equal to those maintained by hearing aid instrument dispensers and fitters by Nebraska.~~

~~7. The Department will act within 150 days upon all completed applications for licensure.~~

~~8. When a license will expire within 180 days after its initial issuance date, the Department will collect \$38.50 and any other applicable fees, and the license will be valid until the next subsequent renewal date.~~

~~9. Administrative Penalty/Other Action: An individual who practices prior to issuance of a license, is subject to an assessment of an administrative penalty pursuant to 172 NAC 75-015, or such other action as provided in the statutes and regulations governing the license.~~

~~75-003.03 Temporary License Requirements: A temporary license may be issued to an applicant who has met all requirements for licensure pursuant to 172 NAC 75-003.01 except passing the licensure examination. Previous experience or a waiting period is not required to obtain a temporary license.~~

~~75-003.03A An applicant for a temporary license must submit to the Department:~~

- ~~1. An official copy of a transcript showing completion of a four-year course of study from an accredited high school; or~~
- ~~2. An official copy of a diploma or certificate from an accredited high school; and~~

~~3. Evidence of having attained at least 21 years of age; Remains in section 003 as modified.~~

~~4. A complete application, on a form provided by the Department and attached as Attachment B and incorporated in these regulations. Only applications which are complete will be considered;~~

~~5. A statement of good health on a form provided by the Department, a copy of which is attached as Attachment A1 and incorporated into these regulations; and~~

~~6. The required temporary licensure fee.~~

~~7. Attestation by the applicant:~~

~~(a) That s/he has not practiced in Nebraska prior to the application for a license; or~~

~~(b) To the actual number of days practiced in Nebraska prior to the application for a license.~~

~~8. The Department will act within 150 days upon all completed applications for licensure.~~

~~75-003.03B Expiration of a Temporary License: All temporary licenses will become null and void upon the Department's notification that the temporary licensee has passed the examination or a year from the issuance date, whichever comes first. A temporary license may be renewed pursuant to the requirements of 172 NAC 75-010.~~

~~75-003.03C Standards for Supervision: Any person who practices as a temporary hearing aid instrument dispenser and fitter must be supervised by a licensed hearing aid instrument dispenser and fitter.~~

~~75-003.03C1 The supervisor must meet with the temporary licensee face to face twice a month during the first 90 days of the initial training session, which will commence upon the issuance of the temporary license. Thereafter, the supervisor must meet with the temporary licensee monthly to evaluate the temporary licensee's performance in the following areas:~~

~~1. Audiometric evaluations;~~

~~2. Impressions;~~

~~3. Purchase agreements;~~

~~4. Instrument orders;~~

~~5. Hearing instrument fittings; and~~

~~6. Consultation advice and training.~~

~~75-003.03C2~~ The supervisor must train the temporary licensee in the following areas during the initial 90-day training period:

- ~~1. Basic physics of sound;~~
- ~~2. The anatomy and physiology of the ear;~~
- ~~3. The function of hearing aids;~~
- ~~4. Pure tone audiometry, including air conduction testing and bone conduction testing;~~
- ~~5. Live voice or recorded voice speech audiometry;~~
- ~~6. Masking;~~
- ~~7. Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid; and~~
- ~~8. Taking earmold impressions.~~

~~75-003.03C3~~ The supervisor of a person who holds a temporary license must immediately notify the Department when supervision of the temporary licensee is terminated. **Remains in section 003 as modified.**

~~75-003.03C4~~ Upon completion of the initial training pursuant to 172 NAC 75-003.03C2, the supervisor must document the training on a form provided by the Department and referenced in these regulations as Attachment P.

75-004 EXAMINATION ELIGIBILITY

~~75-004.01~~ To be eligible to take the licensure examination administered by the Department, an applicant must have met all the requirements for licensure pursuant to 172 NAC 75-003.01 except passage of such examination. **Remains in section 004 as modified.**

~~75-004.02~~ To take the examination administered by the Department, an applicant must submit a complete application form and fee to the Department. Submit this form at least 30 days prior to the administration of the examination. A copy of the form is attached as Attachment A and incorporated in these regulations.

75-005 EXAMINATION PROCEDURES

~~75-005.01~~ The examination will be administered by the Department in February, May, and October of each year, and the applicant will be notified of the date, time, place, and other information pertinent to administration of the examination.

~~75-005.02~~ The Department will notify the applicant in writing of examination results from six to ten weeks after the administration of the examination.

~~75-006 EXAMINATION PASSING SCORE: To receive a license each examinee must pass the written comprehensive examination and the practical examination.~~

~~75-006.01 The passing score for the written comprehensive examination is determined by using the Modified Nedelsky Method.~~

~~75-006.02 The practical examination passing scores must be at least 70 in each subject examined.~~ Remains in section 004 as modified

~~75-007 REEXAMINATION: An examinee who fails the written comprehensive or practical examination may retake the examinations pursuant to the requirements as set forth below.~~
Remains in section 004 as modified.

75-007.01 Written Comprehensive Examination

1. ~~An examinee who fails the written comprehensive examination must retake the entire examination.~~
2. ~~The examinee will be entitled to take the next regularly scheduled examination.~~
3. ~~The examinee must submit to the Department:~~
 - a. ~~A complete application, on a form provided by the Department, a copy of which is attached as Attachment A and incorporated into these regulations; and~~
 - b. ~~The required licensure fee.~~

75-007.02 Practical Examination

1. ~~An examinee who fails the practical examination with an overall average of less than 70 must retake the entire examination.~~
2. ~~An examinee who fails the practical examination in one or two subjects with an overall average of 70 or above must retake those sections failed.~~
3. ~~An examinee who fails the practical examination in more than two subjects with an overall average of 70 or above must retake the entire examination.~~
4. ~~The examinee will be entitled to take the next regularly scheduled examination.~~
5. ~~The examinee must submit to the Department:~~

- a. ~~A complete application, on a form provided by the Department, a copy of which is attached as Attachment A and incorporated into these regulations; and~~
- b. ~~The required licensure fee.~~

~~75-008 CONTINUING COMPETENCY REQUIREMENTS~~

~~75-008.01 General Requirements for License: On or before December 31 of each even-numbered year, each hearing aid instrument dispenser and fitter who is in active practice in the State of Nebraska must:~~

1. ~~Complete 24 hours of approved continuing education during the preceding 24 month period. No more hours than the total number of approved hours offered in Nebraska will be required during this period; Remains in section 006 as modified.~~
2. ~~Be responsible for:~~
 - a. ~~Maintaining a record of attendance at continuing education programs;~~
 - b. ~~Verifying with the Department that the continuing education program is approved by the Board;~~
 - c. ~~Maintaining documentation of attendance at or presentation of approved continuing education programs. Subject matter acceptable for continuing education credit is described as follows:~~
 - (1) ~~Approved programs at State and National Meetings, i.e., Nebraska Hearing Aid Society and/or the National Hearing Aid Society.~~
 - (a) ~~One hour credit awarded for each hour attended.~~
 - (2) ~~Formal education courses which relate directly to the practice of hearing aid instrument dispensing and fitting.~~
 - (a) ~~One hour credit awarded for each hour of attendance;~~
 - (3) ~~University sponsored courses in continuing education.~~
 - (a) ~~One hour credit awarded for each hour of attendance.~~

~~(4) Any other types of activity that may be approved by the Board may include but are not limited to: human relations, governmental regulations and third party reimbursement;~~

~~(a) One hour credit awarded for each hour of attendance.~~

~~(5) Licensee acting as essayist, or lecturer to licensed hearing aid instrument dispensers and fitters;~~

~~(a) One hour credit awarded for each hour of scientific presentation;~~

~~(6) Formal self study where the content of the self study activity relates to the practice of hearing aid instrument dispensing and fitting whether the subject is research, treatment, documentation, education, or management, e.g. videotapes, internet courses, and correspondence courses. Licensees may complete a maximum of 6 hours of continuing education by self study each 24 month renewal period. The self study program must have a testing mechanism. A licensee's~~

~~documentation must include a certificate of completion, and a program outline and/or objectives;~~

~~(a) One hour credit awarded for each two hours of study.~~

~~(7) Business, management and marketing courses which pertain to the practice of hearing aid instrument dispensing and fitting.~~

~~Licensees may complete a maximum of eight hours of continuing education utilizing these courses each 24 month renewal period. A licensee's documentation must include~~

~~a~~

~~certificate of attendance and a program outline and/or objectives;~~

~~(a) One hour credit awarded for each hour attended.~~

~~d. Maintaining documentation of presentation of an approved continuing education program. A presenter may receive credit for only the initial presentation during a renewal period. Credit will not be given for subsequent presentations of the same program; and~~

- e. ~~If applicable, submit an application for waiver of the continuing education requirement pursuant to 172 NAC 75-008.03.~~

~~75-008.02 Approval of Continuing Education Programs~~

~~75-008.02A~~ The Board will evaluate applications from providers of continuing education programs in order to determine if approval is to be granted or denied. To be approved, a continuing education program must meet the following criteria:

- ~~1. The program must be at least 60 minutes in duration;~~
- ~~2. The program's objectives must relate directly to the theory or clinical application of theory pertaining to the practice of hearing aid instrument dispensing and fitting;~~
- ~~3. The presenter of the program must be qualified by education, experience, or training; and~~
- ~~4. Programs must be open to all hearing aid instrument dispensers and fitters licensed in Nebraska.~~

~~75-008.02B~~ The provider must submit to the Board an application on a form provided by the Department, a copy of which is attached as Attachment C and incorporated into these regulations. Only applications which are complete will be considered. The following information must be included in the application:

- ~~1. A description in detail of program content;~~
- ~~2. Program objectives;~~
- ~~3. A description of the qualifications of each presenter;~~
- ~~4. The number of hours for which approval is requested;~~
- ~~5. The name, address, and telephone number of the provider and its administrator or operating officer;~~
- ~~6. A description of the process the provider uses to verify attendance by the licensee;~~
- ~~7. A sample copy of the documentation the provider issues to the licensee as proof of attendance at the program; and~~
- ~~8. Date, time and place of program; and~~
- ~~9. The type of program that is being provided pursuant to 175 NAC 75-008.01, item 2.c.~~

~~75-008.02C~~ The provider may submit such additional documents or information as the applicant may consider relevant to the application and compliance with the provisions of these regulations.

~~75-008.02D~~ The provider must submit a complete application to the Department at least 45 days prior to the date on which the program is to be given to gain approval before the program is presented.

~~75-008.02E~~ Once a provider is granted approval by the Board for a continuing education program, reapproval will not be required for each subsequent occasion on which the program is administered so long as the program is not changed. If any portion of the program is changed, reapplication must be made pursuant to 172 NAC 75-008.02B.

~~75-008.02F Post-Program Approval:~~ Applications for approval of a continuing education program made after the program has occurred must be submitted within 60 days after the date of the program, except those applications for approval submitted 60 days or less before December 31, of each even-numbered year will not be considered for approval for the renewal period.

~~75-008.02G~~ After the Board has granted its written approval of the application, the provider is entitled to state upon any publication which advertises or announces the program, the following statement: "This program is approved for _____ hours of continuing education by the Nebraska Board of Hearing Aid Instrument Dispensers and Fitters."

~~75-008.02H~~ The Board will grant approval for continuing education programs that meet the criteria pursuant to 172 NAC 75-008.02A when such is offered by a state or national professional association. These include, but are not limited to: The National Hearing Aid Society and Nebraska Hearing Aid Society.

~~75-008.02I Grounds for Denial of Continuing Education Programs:~~ _____ The Department will deny an application for approval of a continuing education program on any of the following grounds:

- ~~1. _____~~ Fraud or misrepresentation of information in an application;
- ~~2. _____~~ Program content or the presenter's qualifications fail to meet requirements pursuant to 172 NAC 75-008.02. The Board will not approve the following types of continuing education programs including, but not limited to: personal development, time management, child abuse, professional affairs, administration, collective bargaining, tours, and supervision; or

- ~~3. If the program's objectives do not relate to the theory or clinical application of theory pertaining to the practice of hearing aid instrument dispensing and fitting.~~
- ~~4. The Board may grant or deny an application for approval of continuing education programs. Should the Board determine to deny an application approval of a continuing education program, it will send to the applicant by either certified or registered mail to the last address of record in the Department or as otherwise known, a notice setting forth the reasons for the determination. The denial will become final 30 days after the mailing of the notice unless the applicant within the 30 day period, gives written notice to the Department of a desire for hearing. The hearing will be conducted pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920, the Administrative Procedure Act and 184 NAC 1 of the Rules of Practice and Procedure for the Department.~~
- ~~5. Only applications which are complete will be considered. To be complete, an application must include:
 - ~~a. All of the information requested on a verified complete application for approval of continuing education program on a form provided by the Department, a copy of which is attached hereto as Attachment C, and incorporated in these regulations; and~~
 - ~~b. The signature of the licensee or administrator or operating officer of the provider making the application.~~~~
- ~~6. An applicant may submit such additional documents or information as the applicant may consider relevant to the application and in compliance with the Act and these regulations.~~
- ~~7. In the event that an application is determined to be incomplete, the Department will notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of such additional information. The applicant will have ten days in which to provide the information necessary to complete the application. Should an applicant fail to complete the application within the ten day period, all materials will be returned and a new application will be necessary.~~

~~75-008.03 Waiver of Continuing Competency Requirement: The Department, on the recommendation of the Board, may waive the continuing competency requirements, in whole or in part, for any two-year license or for the period of time since the license was~~

~~last issued when a licensee submits documentation that circumstances beyond his/her control prevented him/her from completing the requirements.~~

~~75-008.03A The circumstances include situations in which:~~

- ~~1. The licensee holds a Nebraska license but is not practicing his/her profession in Nebraska;~~
- ~~2. The licensee has served in the regular armed forces of the United States during part of the 24 months immediately preceding the license renewal date;~~
- ~~3. The licensee has submitted proof that s/he was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing education hours during the 24 months immediately preceding the license renewal date; and~~
- ~~4. The licensee was first licensed within the 24 months immediately preceding the license renewal date.~~

~~75-008.03B Application: Any licensee seeking waiver of continuing competency requirements must apply to the Board for a recommendation to the Department to waive continuing competency. This application must be made on Attachment D, and it must be received by the Department on or before December 31 of the year the license is due to be renewed.~~

~~75-008.03B1 The licensee must submit:~~

- ~~1. A complete application for waiver of continuing competency requirements on a form provided by the Department, a copy of which is attached hereto as Attachment D, and incorporated in these regulations. Only applications which are complete will be considered, and the application must be~~

~~received by the Department on or before December 31 of the year the license is due to be renewed; and~~

- ~~2. Documentation of the circumstances beyond the licensee's control which prevented completion of continuing competency requirements pursuant to 172 NAC 75-008.03A must include the following:~~
 - ~~a. If the licensee holds a Nebraska license but is not practicing in Nebraska, s/he must mark the appropriate response in Section C of Attachment D.~~
 - ~~b. If the licensee has served in the regular armed forces of the United States during part of the 24 months immediately preceding the license renewal~~

~~date, s/he must mark the appropriate response in Section C of Attachment D and submit official documentation stating the dates of the service.~~

- ~~c. If the licensee suffered from a serious or disabling illness or physical disability which prevented completion of the of continuing competency requirements during the 24months immediately preceding the license renewal date, s/he must mark the appropriate response in Section C of Attachment D and submit a statement from a treating physician(s) stating that the licensee was injured or ill, the duration of the illness or injury and of the recovery period, and that the licensee was unable to obtain continuing competency requirements during that period.~~
- ~~d. If the licensee was first licensed within the 24months immediately preceding the license renewal date, s/he must mark the appropriate response in Section C of Attachment D and list the date the license was issued.~~

~~75-008.03C The Department, on recommendation of the Board, may grant or deny, in part or in total, an application for waiver of continuing competency requirements, upon proof that circumstances beyond the applicant's control prevented completion of the requirements.~~

~~75-008.03C1 When the Department determines to deny an application for waiver of continuing competency requirements, it will send to the applicant by certified mail to the last name and address of record in the Department or as otherwise known, a notice setting forth the reason for the denial determination.~~

~~75-008.03C1a The applicant has 30 days from the date of receipt of the denial notice to make a written request to the Department for an appeal. The appeal must be conducted pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920, the Administrative Procedure Act and 184 NAC 1 of the Rules of Practice and Procedure for the Department.~~

~~75-008.03C1b The Department will issue at the conclusion of the appeal pursuant to 184 NAC 1, a final order setting forth the results of the appeal.~~

~~75-008.03C2 When the Department determines to grant a waiver of continuing competency requirements, the applicant will be notified within 30days of receipt of the application.~~

~~75-008.04 Audit of Continuing Competency Requirements: The Board may select, in a random manner, a sample of the license renewal applications for audit of continuing competency requirements. Each licensee is responsible for maintaining in his/her own personal files the certificates or records of credit from continuing education activities received from providers. Licensees selected for audit must produce documentation of their attendance at those continuing education activities attested to on their renewal applications.~~

~~75-008.04A The Department will send to each licensee selected for audit a notice of audit.~~

~~75-008.04B When selected for audit, the licensee must provide satisfactory documentation of attendance at or participation in approved continuing education activities.~~

~~75-008.04C Failure to comply with the audit may result in non-renewal of the license.~~

~~75-009 PROCEDURES FOR RENEWAL OF LICENSE: All initial licenses issued by the Department under the Act and these regulations expire on December 31 of each even-numbered year. Remains in section 005 as modified.~~

~~75-009.01 Renewal Process: Any licensee who wishes to renew his/her license must:~~

- ~~1. Meet continuing competency requirements pursuant to 172 NAC 75-008;~~
- ~~2. Pay the renewal fee pursuant to 172 NAC 75-014; and~~
- ~~3. Respond to the following questions:~~

- ~~a. Has your license in any health care profession in another state been revoked, suspended, limited, or disciplined in any manner?~~
- ~~b. Have you been convicted of a misdemeanor or a felony?~~

~~These questions related to the time period since the last renewal of the license or during the time period since initial licensure in Nebraska if such occurred within the two years prior to the expiration date.~~

~~4. Cause to be submitted to the Department:~~

- ~~a. The renewal notice;~~
- ~~b. The renewal fee; and~~
- ~~c. Attestation of completing 24 hours of continuing education earned within 24 months of the date of expiration or an application for waiver of continuing competency requirements. Attestation to meeting continuing competency requirements satisfies the~~

~~submission of the documentation requirement of Neb. Rev. Stat. §71-110;~~

~~d. If any disciplinary action was taken against the applicant's license by another state, an official copy of the disciplinary action, including charges and disposition;~~

~~e. If the licensee has been convicted of a felony or misdemeanor:~~

~~(1) Official Court Record, which includes charges and disposition;~~

~~(2) Copies of arrest records;~~

~~(3) A letter from the licensee explaining the nature of the conviction;~~

~~(4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~

~~(5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~

~~75-009.02 First Notice: At least thirty days before December 31 of each even-numbered year the Department will send a renewal notice by means of regular mail to each licensee at the licensee's last known address as noted in the records of the Department. It is the responsibility of the licensee prior to the renewal period to notify the Department of any name and/or address changes.~~

~~75-009.02A The renewal notice must specify:~~

~~1. The name of the licensee;~~

~~2. The licensee's last known address of record;~~

~~3. The license number;~~

~~4. The expiration date of the license;~~

~~5. The renewal fee pursuant to 172 NAC 75-014;~~

~~6. The number of continuing education hours required for renewal;
and~~

~~7. The option to place the license on either inactive or lapsed status.~~

~~75-009.02B The licensee will apply for renewal by submitting to the Department:~~

~~1. The renewal notice;~~

~~2. The renewal fee;~~

~~3. The licensee's Social Security Number;~~

~~4. Attestation of completing 24 hours of continuing education earned within 24 months of the date of expiration or an application for waiver of continuing competency requirements; and~~

5. ~~Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation, or disciplinary action (if applicable).~~

~~75-009.02C~~ If the licensee wishes to place his/her license on either inactive or lapsed status s/he must:

1. ~~Request that his/her license be placed on inactive status by submitting to the Department:~~
 - a. ~~The renewal notice with a check in the box marked inactive;~~
~~and~~
 - b. ~~The fee of \$25 or~~
2. ~~Request that his/her license be placed on lapsed status by submitting to the Department:~~
 - a. ~~The renewal notice with a check in the box marked lapsed.~~

~~75-009.02D~~ The Department will notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on lapsed or inactive status.

~~75-009.03 Second Notice:~~ The Department will send to each licensee who fails to renew his/her license or place such license on inactive or lapsed status in response to the first notice, a second notice of renewal pursuant to the requirements of 172 NAC 75-009.02 that specifies:

1. ~~That the licensee failed to pay the renewal fee;~~
2. ~~That the license has expired;~~
3. ~~That the licensee is subject to an administrative penalty under 172 NAC 75-015 if s/he practices after the expiration date;~~
4. ~~That upon receipt of the renewal fee, together with an additional fee of \$25, and documentation of continuing competency requirements within that time, no order of revocation will be entered; and~~
5. ~~That upon failure to receive \$25 in addition to the regular renewal fee, and documentation of continuing competency requirements, the license will be revoked pursuant to 172 NAC 75-011.~~

~~75-009.04~~ The licensee must apply for renewal by submitting to the Department:

1. ~~The renewal notice;~~
2. ~~The renewal fee and the additional late fee of \$25;~~
3. ~~The licensee's Social Security Number;~~
4. ~~Attestation by the licensee:~~
 - (a) ~~That s/he has not practiced in Nebraska since the expiration of his/her license; or~~

~~(b) To the actual number of days practiced in Nebraska since the expiration of his/her license.~~

- ~~5. Attestation of completing 24 hours of continuing education earned within 24 months of the date of expiration or waiver of continuing competency requirements; and~~
- ~~6. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).~~

~~75-009.05 If the licensee wishes to place his/her license on either inactive or lapsed status s/he must:~~

- ~~1. Request that his/her license be placed on inactive status by submitting to the Department:
 - ~~a. The renewal notice with a check in the box marked inactive; and~~
 - ~~b. The fee of \$25; or~~~~
- ~~2. Request that his/her license be placed on lapsed status by submitting to the Department:
 - ~~a. The renewal notice with a check in the box marked lapsed.~~~~

~~75-009.06 The Department will notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on lapsed or inactive status.~~

~~75-009.07 When any licensee fails, within 30 days of expiration of a license, to pay the renewal fee, to submit documentation of continuing competency requirements and/or to pay an additional fee of \$25 the Department will automatically revoke the license without further notice or hearing and makes proper record of the revocation.~~

~~75-009.08 Failure to meet the continuing competency requirement for renewal within 30 days of expiration of his/her license will constitute non-renewal of license, unless a waiver of continuing competency requirements is granted or the license is placed on inactive or lapsed status. When any licensee fails, within 30 days of expiration of a license, to meet the continuing competency requirements for renewal, and/or to pay an additional late fee of \$25, the Department will revoke the license after notice and opportunity for hearing. Hearings held before the Department will be conducted pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920, the Administrative Procedure Act and 184 NAC 1, the Rules of Practice and Procedure for the Department.~~

~~75-009.09 When the licensee has given notification to the Department that s/he desires to have the license lapse or be placed on inactive status upon expiration, 172 NAC 75-009.07 and 009.08 will not apply.~~

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~~75-009.10~~ The Department may refuse to renew a license for falsification of any information submitted for renewal of a license. The refusal will be made pursuant to Neb. Rev. Stat. §§71-149 to 71-155 and 184 NAC 1, Rules of Practice and Procedure for the Department.

~~75-009.11~~ An individual who practices after expiration of his/her credential, is subject to assessment of an Administrative Penalty under 172 NAC 75-015, or such other action as provided in the statutes and regulations governing the credential.

75-010 RENEWAL/REISSUANCE OF TEMPORARY LICENSE: The temporary license expires 12 months from the date of issuance and may be renewed or reissued once for a 12 month period. Remains in section 005 as modified.

75-010.01 Notice of Renewal

~~75-010.01A~~ The Department will send a renewal notice, at least 30 days prior to the expiration date of licensure, to each temporary licensee who has not successfully completed the licensure examination. It is the responsibility of the temporary licensee prior to the license expiration date to notify the Department of any additions or corrections.

75-010.01A1 The renewal notice must specify:

1. ~~The name of the temporary licensee;~~
2. ~~The name of the temporary licensee's supervisor;~~
3. ~~The temporary licensee's last known address of record;~~
4. ~~The temporary licensee's license number;~~
5. ~~The expiration date of the license; and~~
6. ~~The temporary license renewal fee pursuant to 172 NAC 75-014.~~

75-010.01B The temporary licensee must apply for renewal by submitting to the Department:

1. ~~The renewal notice;~~
2. ~~The renewal fee;~~
3. ~~The licensee's Social Security Number; and~~
4. ~~Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).~~

75-011 LICENSURE REVOCATION FOR FAILURE TO MEET RENEWAL REQUIREMENTS: The Department will automatically revoke a license to practice hearing aid instrument dispensing and fitting when the licensee fails to meet the renewal requirements within 30 days of its expiration.

75-011.01 Revocation for Nonpayment of Renewal Fee

~~75-011.01A~~ When a licensee fails to pay the required renewal fee, to submit documentation of continuing education, and/or to pay an additional fee of \$25, or fails to request that his/her license be placed on either inactive or lapsed status within 30 days of its expiration, the Department will automatically revoke the license without further notice or hearing and will make proper record of the revocation.

~~75-011.01A1~~ The revocation notice must specify:

- ~~1.~~ That the licensee was given a first and final notice of renewal requirements and the respective dates for these notices;
- ~~2.~~ That the licensee failed to renew the license or to have his/her license placed on inactive or lapsed status;
- ~~3.~~ That the Department has revoked the license;
- ~~4.~~ That the licensee has a right to appeal the revocation; and
- ~~5.~~ That the licensee has a right to reinstatement of the license.

~~75-011.02~~ Revocation for Failure to Meet Continuing Competency Requirements

~~75-011.02A~~ When a licensee fails within 30 days of the expiration of his/her license to meet the continuing competency requirement for licensure renewal the Department will revoke his/her license after notice and opportunity for a hearing.

~~75-011.02A1~~ The notice of failure to meet continuing competency requirements and opportunity for a hearing must specify that:

- ~~1.~~ The licensee was given first and second notice of failure to meet the continuing competency requirement and the respective dates of each notice;
- ~~2.~~ Licensee either failed to renew the license or have his/her license placed on inactive or lapsed status;
- ~~3.~~ The Department will revoke the license within 30 days of date of receipt of the notice unless the licensee requests in writing a hearing.
- ~~4.~~ The licensee has a right to appeal the revocation; and
- ~~5.~~ The licensee has a right to reinstatement of the license.

~~75-~~

~~012~~ **75-012 GROUNDS ON WHICH THE DEPARTMENT MAY DENY, REFUSE RENEWAL OF, OR DISCIPLINE A LICENSE** Remains in section 007 as modified.

~~75-012.01~~ The Department may deny an application for a license when the applicant fails to meet the requirements for licensure pursuant to 172 NAC 75-003.

~~75-012.02~~ The Department may refuse renewal of a license if the licensee fails to meet the requirements pursuant to 172 NAC 75-009 or 172 NAC 75-012.03.

~~75-012.03~~ The Department may deny, refuse renewal of, limit, suspend, or revoke licenses for any of the following grounds:

- ~~1. Fraud, forgery, or misrepresentation of material facts, in procuring or attempting to procure a license or certificate;~~
- ~~2. Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state;~~
- ~~3. Habitual intoxication or dependence or failure to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 71-172.01;~~
- ~~4. Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the applicant's or licensee's fitness or capacity to practice the profession;~~
- ~~5. Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with manifest incapacity, (d) with gross incompetence or gross negligence, or (e) in a pattern of negligent conduct. Pattern of negligent conduct means a continued course of negligent conduct in performing the duties of the profession;~~
- ~~6. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability;~~
- ~~7. Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means;~~
- ~~8. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license or certificate by a person not licensed or certified to do so;~~
- ~~9. Having had his/her license denied, refused renewal, limited, suspended, or revoked, or having had such license disciplined in any other manner pursuant to Neb. Rev. Stat. § 71-155 by another state or jurisdiction to practice Hearing Aid Instrument Dispensing and Fitting, based upon acts by the applicant or license holder similar to acts pursuant to 172 NAC 75-012. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license or the taking of other disciplinary measures against it by another state or jurisdiction will be conclusive evidence; and~~

10. ~~Unprofessional conduct, which term includes all acts pursuant to Neb. Rev. Stat. § 71-148 and such other acts which include but are not limited to:~~

a. ~~Competence: A hearing aid instrument dispenser and fitter must not provide services for which s/he is not trained or experienced. Unprofessional conduct in the practice of Hearing Aid Instrument Dispensing and Fitting includes but is not limited to:~~

(1) ~~Committing any act which endangers patient safety or welfare;~~

(2) ~~Encouraging or promoting hearing aid instrument dispensing and fitting by untrained or unqualified persons; or~~

(3) ~~Failure or departure from the standards of acceptable and prevailing practice in hearing aid instrument dispensing and fitting.~~

b. ~~Confidentiality: A hearing aid instrument dispenser and fitter must hold in confidence information obtained from a patient, except in those unusual circumstances in which to do so would result in clear danger to the person or to others, or where otherwise required by law. Failure to do so constitutes unprofessional conduct.~~

c. ~~Professional Relationships: A hearing aid instrument dispenser and fitter must safeguard the welfare of patients and maintain appropriate professional relationships with patients. Commission of any of the following acts or behavior constitutes unprofessional conduct:~~

(1) ~~Improper use of another person for one's own advantage;~~

(2) ~~Failure to decline to carry out hearing aid instrument dispensing and fitting services that have been requested when such services are known to be contraindicated or unjustified;~~

(3) ~~Failure to decline to carry out procedures that have been requested when such services are known to be outside of the hearing aid instrument dispenser and fitter's scope of practice;~~

(4) ~~Verbally or physically abusing patients;~~

(5) ~~Falsification or unauthorized destruction of patient records;~~

- ~~(6) Attempting to provide diagnostic or treatment information to patient(s) that is beyond the hearing aid instrument dispenser and fitter's level of training and expertise;~~
 - ~~(7) Delegating to other personnel those patient related services when the clinical skills and expertise of a hearing aid instrument dispenser and fitter is required; or~~
 - ~~(8) Failure to conform to the ethics of the profession.~~
- d. ~~Sexual Harassment: A hearing aid instrument dispenser and fitter must not under any circumstances engage in sexual harassment of patients or co-workers.~~
- ~~(1) Sexual Harassment includes making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature as a condition of:
 - ~~(a) The provision or denial of care to a patient;~~
 - ~~(b) The provision or denial of employment or employment advances to a co-worker;~~
 - ~~(c) For the purpose or effect of creating an intimidating, hostile, or offensive environment for the patient or unreasonably interfering with the patient's ability to recover; or~~
 - ~~(d) For the purpose or effect of creating an intimidating, hostile, or offensive environment or unreasonably interfering with the co-worker's ability to perform his/her work.~~~~
- e. ~~Advertising: To advertise in a manner that deceives, misleads, or defrauds the public. The following advertising practices will be considered to be deceptive:~~
- ~~(1) To charge a fee for any hearing aid instrument dispenser and fitter service conducted within 24 hours after performing a hearing aid instrument dispenser and fitter service that was advertised as being free; and~~
 - ~~(2) Obtaining any fee for professional services by fraud, deceit, or misrepresentation.~~

- ~~f. The violation of an assurance of compliance entered into pursuant to Neb. Rev. Stat. §71-171.02 of the Uniform Licensing Law;~~
- ~~g. Failure to follow policies or procedures implemented in the practice situation to safeguard patient care;~~
- ~~h. Failure to safeguard the patient's dignity and right to privacy;~~
- ~~i. Failure to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed professional;~~
- ~~j. Practicing hearing aid instrument dispensing and fitting in this state without a current Nebraska license;~~
- ~~k. Use of untruthful or improbable statements, or flamboyant, exaggerated, or extravagant claims concerning such licensee's professional excellence or abilities in advertisements;~~
- ~~l. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;~~
- ~~m. Distribution of intoxicating liquors, controlled substances or drugs for any other than lawful purposes;~~
- ~~n. Willful or repeated violations pursuant to 172 NAC 75-012;~~
- ~~o. Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the licensee is not licensed or certified to practice;~~
- ~~p. Practicing as a hearing aid instrument dispenser and fitter while his/her license is suspended or in contravention of any limitations placed upon such license;~~
- ~~q. Physical or mental illness or physical or mental deterioration or disability which would render the applicant or licensee unqualified to practice his/her profession or occupation;~~
- ~~r. Refusal of an applicant for a license or of a licensee to submit to a physical or mental examination request by the Board, pursuant to Neb. Rev. Stat. §§ 71-161.12 to 71-161.16 to determine his/her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which s/he is licensed;~~

- s. ~~Failure to file a report pursuant to Neb. Rev. Stat. § 71-168;~~
- t. ~~Fitting and selling a hearing aid without a signed waiver by the legal guardian to a child under the age of sixteen who has not been examined and cleared for hearing aid use within a six-month period by an otolaryngologist. This subdivision does not apply to the replacement with an identical model of any hearing aid within one year of its purchase;~~
- u. ~~Any other condition or acts which violate the Trade Practice Rules for the Hearing Aid Industry of the Federal Trade Commission or the Food and Drug Administration;~~
- v. ~~Conducting business while suffering from a contagious or infectious disease; and~~
- w. ~~Violating any provision of Neb. Rev. Stat. §§ 71-4701 to 71-4719 of this act.~~

~~75-012-04~~ If the Department proposes to deny, refuse renewal of, limit, revoke, or suspend a license other than for non-payment of the renewal fee, the applicant or licensee will be given an opportunity for a hearing before the Department and will have the right to present evidence on his/her own behalf. Hearings before the Department will be conducted pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920, the Administrative Procedure Act and 184 NAC 1, the Rules of Practice and Procedure for the Department.

~~75-013 RE-CREDENTIALING:~~ This section applies to individuals previously issued a Nebraska credential who have lost the legal authority to practice in total or in part and who seek the authority to return to practice in Nebraska with a valid Nebraska credential.

~~75-013.01 Eligibility~~

~~75-013.01A An individual whose credential has been previously:~~

- ~~1. Placed on lapsed status;~~
- ~~2. Placed on inactive status;~~
- ~~3. Revoked for failure to meet the renewal requirements;~~
- ~~4. Suspended or limited for disciplinary reasons; or~~
- ~~5. Voluntarily surrendered or voluntarily limited for an indefinite period of time;~~
~~may request, at any time, to be re-credentialed and re-authorized to practice under the credential, pursuant to these regulations.~~

~~75-013.01B An individual whose credential has been revoked for disciplinary reasons may apply for reinstatement only after a period of two years has elapsed from the date of revocation.~~

~~75-013.01C~~ An individual who practices prior to re-credentialing, is subject to:

- ~~1. Assessment of an Administrative Penalty pursuant to 172 NAC 75-015;
and~~
- ~~2. Limitation or other sanction on the credential, or denial of the request to
be re-credentialed and re-authorized to practice under the credential, and
referral for prosecution for uncredentialed practice, as provided in the
statutes and regulations governing the credential.~~

~~75-013.02 Requirements for Restoration from Lapsed Status:~~ A person whose credential
has been placed on lapsed status may have their credential restored from lapsed to active
status by the Department upon proof to the Department that they meet the requirements
pursuant to 172 NAC 75-003.

~~75-013.02A~~ If the Department has evidence that an applicant has practiced while
his/her credential was lapsed, the Department may:

- ~~1. Assess an Administrative Penalty pursuant to 172 NAC 75-015;~~
- ~~2. Initiate disciplinary action against the lapsed credential;~~
- ~~3. Deny the request to restore the credential from lapsed to active status; or~~
- ~~4. Restore the credential to active status and impose limitation(s) or other
sanctions on the credential.~~

~~75-013.02B~~ If the Department has evidence that an applicant has committed any
other violation of the statutes and regulations governing the credential, the
Department may:

- ~~1. Initiate disciplinary action against the lapsed credential;~~
- ~~2. Deny the request to restore the credential from lapsed to active status;
or~~
- ~~3. Restore the credential to active status and impose limitation(s) or other
sanctions on the credential.~~

~~75-013.02C~~ The Department will act within 150 days on all completed applications.

~~75-013.02D~~ The applicant will be provided with notice and the opportunity for
hearing pursuant to the Department's Rules of Practice and Procedure and Neb.
Rev. Stat. §§ 84-901 to 84-920 before any of the actions pursuant to 172 NAC 75-
013.02A and 75-013.02B are final.

~~75-013.03 Requirements to Move a Credential from Inactive to Active Status:~~ A person
whose credential has been placed on inactive status may have his/her credential moved
from inactive to active status upon proof to the Department that they meet the following
requirements:

- ~~1. Meet renewal requirements, including:~~

- ~~a. The continuing competency requirements; and~~
- ~~b. Paying the renewal fee and any other applicable fees;~~

~~2. Attest:~~

- ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
- ~~b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.~~

~~75-013.04 Procedures for Moving from Inactive to Active Status: To move a credential from inactive status to active status, the applicant must submit the following to the Department:~~

~~1. A written application which contains the following information about the applicant:~~

- ~~a. Name;~~
- ~~b. Address;~~
- ~~c. Social Security Number; and~~
- ~~d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;~~
- ~~e. A statement describing all:
 - ~~(1) Felony or misdemeanor convictions during the time period since the credential was active;
 - ~~(a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
 - ~~[1] Official Court Record, which includes charges and disposition;~~
 - ~~[2] Arrest records;~~
 - ~~[3] A letter from the applicant explaining the nature of the conviction;~~
 - ~~[4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~[5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~~~
 - ~~(b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;~~~~~~

~~[1] If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~

~~(c) Disciplinary charges pending against any professional credential held by the applicant.~~

~~f. Attestation that the continuing competency requirements for renewal have been met;~~

~~2. The renewal fee and any other applicable fees.~~

~~3. Attestation by applicant:~~

~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~

~~b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.~~

~~75-013.04A If an applicant has practiced while his/her credential was inactive, the Department may:~~

~~1. Assess an Administrative Penalty pursuant to 172 NAC 75-015;~~

~~2. Initiate disciplinary action against the credential;~~

~~3. Deny the request to move the credential from inactive to active status; or~~

~~4. Move the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~75-013.04B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:~~

~~1. Initiate disciplinary action against the credential;~~

~~2. Deny the request to move the credential from inactive to active status; or~~

~~3. Move the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~75-013.04C In either event pursuant to 172 NAC 75-010.04A or 75-010.04B, a notice and the opportunity for hearing will be given to the applicant.~~

~~75-013.04D The Department will act within 150 days on all completed applications.~~

~~75-013.05 Requirements for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies not more than one year following revocation for failure to meet renewal requirements must:~~

~~1. Meet the renewal requirements, including:~~

~~a. The continuing competency requirements; and~~

~~b. Paying the renewal fee, the late fee of \$35 and any other applicable fees;~~

2. Attest:
- a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

~~75-013.06 Procedures for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: To reinstate a credential not more than one year following revocation for failure to meet renewal requirements, the applicant must submit the following to the Department:~~

1. A written application which contains the following information about the applicant:
 - (1) Name;
 - (2) Address;
 - (3) Social Security Number; and
 - (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - (5) A statement describing all:
 - (a) Felony or misdemeanor convictions during the time period since the credential was active;
 - [1] If the applicant has been convicted of a felony or misdemeanor, provide copies of:
 - [a] Official Court Record, which includes charges and disposition;
 - [b] Arrest records;
 - [c] A letter from the applicant explaining the nature of the conviction;
 - [d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [e] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
 - (b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was revoked;
 - [1] If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
 - (c) Disciplinary charges pending against any professional credential held by the applicant.
 - (6) Attestation that the continuing competency requirements for renewal have been met;
 2. The renewal fee, the late fee of \$35 and any other applicable fees.

- ~~3. Attestation by the applicant:~~
- ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
 - ~~b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.~~
 - ~~(1) If an applicant has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 75-015 in which case a notice and opportunity for hearing will be sent to the applicant.~~
 - ~~(2) If an applicant has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 75-013.06B below.~~

The Department will forward the application to the Board for its recommendation pursuant to Neb. Rev. Stat. § 71-110 (5).

~~75-013.06A~~ The Board's recommendation to the Department may be to:

- ~~1. Reinstatement of the credential;~~
- ~~2. Reinstatement of the credential with terms, conditions or restrictions; or~~
- ~~3. Denial of reinstatement.~~

~~75-013.06B~~ Upon receipt of the Board's recommendation, the Department will, within 150 days, send to the applicant a written notice of the Department's response. The Department may:

- ~~1. Reinstatement of the credential: An Administrative Penalty may be assessed pursuant to 172 NAC 75-015 if warranted;~~
- ~~2. If the Department determines that the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. §§ 71-147 or 71-148, the Department may:~~
 - ~~a. Reinstatement of the credential with terms, conditions or restrictions: In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920. An Administrative Penalty may be assessed pursuant to 172 NAC 75-015 if warranted; or~~
 - ~~b. Denial of reinstatement: In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~75-013.07~~ Requirements for Reinstatement More Than One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies more than one year after revocation for failure to meet the renewal requirements must:

- ~~1. Petition the Board for reinstatement pursuant to Neb. Rev. Stat. § 71-161.05. The petition for reinstatement must be accompanied by:
 - ~~a. Verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and~~
 - ~~b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.~~~~
- ~~2. Meet the renewal requirements, including:
 - ~~a. The continuing competency requirements; and~~
 - ~~b. Paying the renewal fee, the late fee of \$75 and any other applicable fees.~~~~
- ~~3. Attest:
 - ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
 - ~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~~~

~~75-013.08 Procedures for Reinstatement More Than One Year Following Revocation for Failure to Meet Renewal Requirements: An applicant for reinstatement more than one year following revocation for failure to meet renewal requirements must submit to the Board:~~

- ~~1. A petition for reinstatement:
 - ~~a. Stating the reason the petitioner believes his/her credential should be reinstated;~~
 - ~~b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.~~
 - ~~c. Containing the following information about the petitioner:
 - ~~(1) Name;~~
 - ~~(2) Address;~~
 - ~~(3) Social Security Number; and~~
 - ~~(4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;~~
 - ~~(5) A statement describing all:
 - ~~(a) Felony or misdemeanor convictions during the time period since the credential was active;~~
 - ~~[1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:~~
 - ~~[a] Official Court Record, which includes charges~~~~~~~~

~~and disposition;~~
~~[b] Arrest records;~~
~~[c] A letter from the petitioner explaining the nature of the conviction;~~
~~[d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
~~[e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.~~
~~(b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was revoked;~~

~~[1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~
~~(c) Disciplinary charges pending against any professional credential held by the petitioner.~~

~~(6) Attestation that the continuing competency requirements for renewal have been met.~~

~~2. The renewal fee, the late fee of \$75 and any other applicable fees.~~

~~3. Attestation by the petitioner:~~

~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~

~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~

~~(1) If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 75-015 in which case a notice and opportunity for hearing will be sent to the petitioner.~~

~~(2) If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 75-013.08F.~~

~~75-013.08A The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.~~

~~75-013.08B Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.~~

~~75-013.08C~~ If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.

~~75-013.08D~~ Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Board, if formally requested by the petitioner.

~~75-013.08D1~~ The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.

~~75-013.08E~~ If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the

~~petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.~~

~~75-013.08F~~ The Board will review the petition to recommend reinstatement and the record of any hearing held, and submits its recommendation regarding reinstatement and the record on which such recommendation is made to the Department within 180 days of receipt of the petition to recommend reinstatement.

~~75-013.08F1~~ If the Board recommends reinstatement of the credential, the Department may:

- ~~1.~~ Accept the Board's recommendation and grant reinstatement of the credential.
- ~~2.~~ If the Department determines that the Board's recommendation is: in excess of statutory authority; made upon unlawful procedure; unsupported by competent, material, and substantial evidence; or arbitrary or capricious, the Department may not accept the Board's recommendation and either:
 - ~~a.~~ Deny reinstatement of the credential, or
 - ~~b.~~ Grant reinstatement with terms, conditions, or restrictions.

~~75-013.08F2~~ If the Board recommends denial of reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

~~75-013.08F3~~ If the Board recommends reinstatement with terms, conditions, or restrictions, the Department may:

- ~~1.~~ Accept the Board's recommendation and grant reinstatement with terms, conditions, or restrictions; or

- ~~2. Not accept the Board's recommendation and either:~~
 - ~~a. Deny reinstatement of the credential; or~~
 - ~~b. Grant reinstatement of the credential.~~

~~75-013.08F4~~ The Department will, within 150 days of receipt of the Board's recommendation, send to the petitioner a written notice of the Department's reinstatement with or without terms, conditions, or restrictions or denial of reinstatement of the credential.

~~75-013.08F5~~ The petitioner may appeal the Department's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

~~75-013.09~~ Requirements to Reinstate a Credential Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must meet the following requirements:

- ~~1. Petition the Board for reinstatement;~~
 - ~~a. The petition for reinstatement must be accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and~~
 - ~~b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.~~
- ~~2. Pay the reinstatement fee of \$75; and~~
- ~~3. If the credential was revoked or suspended, attest:~~
 - ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
 - ~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~

~~75-013.10~~ Procedures for Reinstatement Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must submit to the Board:

- ~~1. A petition for reinstatement:~~
 - ~~a. Stating the reason the petitioner believes his/her credential should be reinstated;~~
 - ~~b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and verified recommendations from~~

~~at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.~~

- ~~c. Containing the following information about the petitioner:~~
 - ~~(1) Name;~~
 - ~~(2) Address;~~
 - ~~(3) Social Security Number; and~~
 - ~~(4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;~~
 - ~~(5) A statement describing all:
 - ~~(a) Felony or misdemeanor convictions during the time period since the credential was suspended, limited, or revoked;~~
 - ~~[1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:~~
 - ~~[a] Official Court Record, which includes charges and disposition;~~
 - ~~[b] Arrest records;~~
 - ~~[c] A letter from the petitioner explaining the nature of the conviction;~~
 - ~~[d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~[e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.~~
 - ~~(b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was suspended, limited, or revoked;~~
 - ~~[1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~
 - ~~(c) Disciplinary charges pending against any professional credential held by the petitioner;~~
 - ~~(6) Any continuing competency activities.~~~~
- ~~2. The reinstatement fee of \$75.~~
- ~~3. Attestation by the petitioner, if the credential was revoked or suspended:
 - ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
 - ~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.
 - ~~(1) If a petitioner has practiced after his/her credential was revoked the~~~~~~

~~Department may assess an Administrative Penalty pursuant to 172 NAC 75-015 in which case a separate notice and opportunity for hearing will be sent to the petitioner.~~

- ~~(2) If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 75-015.10G.~~

~~75-013.10A The Board will make a recommendation to the Director regarding reinstatement following disciplinary action. In determining whether reinstatement should be recommended, the Board may:~~

- ~~1. Request the Department investigate all activities of the petitioner since the disciplinary action was taken against him/her, including activities prohibited by Neb. Rev. Stat. §§71-147 and 71-148.~~
- ~~2. Require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the Board, the petitioner being free also to consult a physician or physicians of his/her own choice for a complete diagnostic examination and make available a report or reports thereof to the Board;~~
- ~~3. Require the petitioner to pass a written, oral, or practical examination or any combination of such examinations; or~~
- ~~4. Require the petitioner to complete additional education.~~

~~75-013.10B The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.~~

~~75-013.10C Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.~~

~~75-013.10D If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.~~

~~75-013.10E Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Board, if formally requested by the petitioner.~~

~~75-013.10E1 The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.~~

~~75-013.10E2~~ If the petitioner had a hearing or an opportunity for a hearing on a prior petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04 within a period of two years immediately preceding the filing of the current petition, the Board may grant or deny, without a hearing, the current petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04.

~~75-013.10F~~ If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to ~~172 NAC 1-~~

~~75-013.10G~~ The Board reviews the petition to recommend reinstatement, any examination or investigatory information and the record of hearing, if one was held. The Board will submit its recommendation to the Director within 180 days of receipt of the petition to recommend reinstatement.

~~75-013.10G1~~ If the Board recommends reinstatement of the credential:

~~1.~~ The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.

~~2.~~ The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.

~~a.~~ The application must include:

~~(1)~~ Name of the petitioner; and

~~(2)~~ Signed statement that the petitioner requests the Director to issue the credential in pursuant to the Board's recommendation for reinstatement.

~~3.~~ Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:

~~a.~~ The application;

~~b.~~ The written recommendation of the Board, including any finding of fact or order of the Board;

~~c.~~ The petition submitted to the Board;

~~d.~~ The record of hearing, if any; and

~~e.~~ Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the petitioner.

- ~~4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.~~
- ~~a. When the Director affirms, modifies or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner;~~
- ~~b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~75-013.10G2 If the Board recommends reinstatement of the credential with terms, conditions, or restrictions:~~

- ~~1. The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.~~
- ~~2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.~~
- ~~a. The application must include:~~
- ~~(1) Name of the petitioner; and~~
- ~~(2) Signed statement that the petitioner requests the Director to issue the credential pursuant to the Board's recommendation for reinstatement.~~
- ~~3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:~~
- ~~a. The application;~~
- ~~b. The written recommendation of the Board, including any finding of fact or order of the Board;~~

- ~~c. The petition submitted to the Board;~~
- ~~d. The record of hearing, if any; and~~
- ~~e. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the petitioner.~~

~~4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.~~

~~a. When the Director affirms, modifies or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner;~~

~~b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~75-013.10G3 If the Board denies reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation to deny reinstatement. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~75-013.11 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for an Indefinite Period of Time~~

~~75-013.11A Credentials voluntarily surrendered or limited for an indefinite period of time pursuant to Neb. Rev. Stat. §71-161.11 may be restored at the discretion of the Department.~~

~~75-013.11A1 An applicant for restoration of a credential that was voluntarily surrendered or limited for an indefinite period of time must submit to the Department:~~

- ~~1. A written application which contains the following information about the applicant:
 - ~~a. Name;~~
 - ~~b. Address;~~
 - ~~c. Social Security Number; and~~
 - ~~d. If the applicant holds a professional credential in another state, a list~~~~

- ~~_____ of the state(s) and type of credential;~~
~~_____ e. A statement describing all:~~
- ~~_____ (1) Felony or misdemeanor convictions during the time period since the credential was active;~~
 - ~~_____ (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:~~
 - ~~_____ [1] Official Court Record, which includes charges and disposition;~~
 - ~~_____ [2] Arrest records;~~
 - ~~_____ [3] A letter from the applicant explaining the nature of the conviction;~~
 - ~~_____ [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~_____ [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~
 - ~~_____ (2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;~~
 - ~~_____ (a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~
 - ~~_____ (3) Disciplinary charges pending against any professional credential held by the applicant.~~

~~_____ f. Any continuing competency activities.~~

~~_____ g. Attest:~~

~~_____ (1) That s/he has not practiced in Nebraska prior to the voluntary surrender of his/her credential; or~~

~~_____ (2) To the actual number of days practiced if the applicant has practiced in Nebraska prior to the voluntary surrender of his/her credential.~~

~~_____ 75-013.11A2 If an applicant has practiced while his/her credential was voluntarily surrendered, the Department may:~~

~~_____ 1. Assess an Administrative Penalty pursuant to 172 NAC 75-015;~~

~~_____ 2. Initiate disciplinary action against the credential;~~

~~_____ 3. Deny the request to restore the credential; or~~

~~_____ 4. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~_____ 75-013.11A3 If an applicant has committed any other violation of the statutes and regulations governing the credential while his/her credential was voluntarily~~

surrendered or limited, the Department may:

- ~~1. Initiate disciplinary action against the credential;~~
- ~~2. Deny the request for restoration of the credential; or~~
- ~~3. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~75-013.11A4~~ In either event pursuant to 172 NAC 75-013.11A2 or 75-013.11A3, a notice and the opportunity for hearing will be given to the applicant.

~~75-013.11A5~~ The Department will act within 150 days on all completed applications.

~~75-013.12 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for a Specific and Definite Period of Time~~

~~75-013.12A~~ Credentials voluntarily surrendered or limited for a specific and definite period of time as agreed to between the holder and Department pursuant to Neb. Rev. Stat. § 71-161.11, will be automatically restored at the expiration of that period of time.

~~75-013.12B~~ If an individual has practiced while his/her credential was voluntarily surrendered for a specific and definite period of time, the Department may assess an Administrative Penalty pursuant to 172 NAC 75-015.

~~75-013.13 Credentials Voluntarily Surrendered or Limited Permanently~~

~~75-013.13A~~ Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored.

75-014 SCHEDULE OF FEES: The following fees have been set by the Department.

- ~~1. Initial License Fee: By an applicant for a license to practice as a hearing aid instrument dispenser and fitter, the fee of \$150 and the Licensee Assistance Program Fee of \$1 for each year remaining during the current biennial renewal period.~~
- ~~2. Proration of Initial License Fee: For issuance of a hearing aid instrument dispenser and fitter license that will expire within 180 days after its initial issuance date, a fee of \$37.50 and the Licensee Assistance Program Fee of \$1.~~
- ~~3. Temporary License Fee: By an applicant for a temporary license to practice as a hearing aid instrument dispenser and fitter, the fee of \$50.~~
- ~~4. License Renewal Fee: By an applicant for renewal on a biennial basis of a license to practice as a hearing aid instrument dispenser and fitter, the fee of \$25 and the Licensee Assistance Program Fee of \$2.~~

- ~~5. Temporary License Renewal Fee: By an applicant for a one-time renewal or reissuance of a temporary license to practice as a hearing aid instrument dispenser and fitter, the fee of \$100.~~
- ~~6. Inactive License Status Fee: By an applicant to have his/her hearing aid dispenser and fitter license placed on inactive status, the fee of \$25.~~
- ~~7. Renewal Late Fee: By an applicant for a renewal on a biennial basis of a hearing aid instrument dispenser and fitter license, who fails to pay the renewal fee on or before the expiration date of his/her license, the fee of \$25 as a late fee in addition to the renewal fee.~~
- ~~8. Certification of License Fee: For issuance of a certification of a hearing aid instrument dispenser and fitter license, the fee of \$25. The certification includes information regarding:
 - ~~a. The basis on which a license was issued;~~
 - ~~b. The date of issuance;~~
 - ~~c. Whether disciplinary action has been taken against the license; and~~
 - ~~d. The current status of the license.~~~~
- ~~9. Verification of License Fee: For issuance of a verification of a hearing aid instrument dispenser and fitter license, the fee of \$5. The verification includes written confirmation as to whether a license was valid at the time the request was made.~~
- ~~10. Duplicate License Fee: For a duplicate of original hearing aid instrument dispenser and fitter license or reissued license, the fee of \$10.~~
- ~~11. Administrative Fee: For a denied hearing aid instrument dispenser and fitter license or a withdrawn application the administrative fee of \$25 will be retained by the Department, except if the licensing fee is less than \$25, the fee will be forfeited and an examination fee will not be returned.~~
- ~~12. Reinstatement Late Fee: For reinstatement of a hearing aid instrument dispenser and fitter licenses for failure to meet renewal requirements:
 - ~~a. Within one year, the fee of \$35 in addition to the renewal fee.~~
 - ~~b. After one year of revocation, the fee of \$75 in addition to the renewal fee.~~~~
- ~~13. Reinstatement Fee: For reinstatement of a hearing aid instrument dispenser and fitter license following suspension, limitation, or revocation for disciplinary reasons, the fee of \$75.~~

~~75-015 ADMINISTRATIVE PENALTY:~~ The Department may assess an administrative penalty when evidence exists that a person or entity practices without a license. Practice without a license for the purpose of this regulation means practice:

1. ~~Prior to the issuance of a license;~~
2. ~~Following the expiration of a license; or~~
3. ~~Prior to the reinstatement of a license.~~

~~75-015.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without a license:~~

1. ~~The person admits to engaging in practice;~~
2. ~~Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;~~
3. ~~Billing or payment records document the provision of service, care, or treatment by the person;~~
4. ~~Service, care, treatment records document the provision of service, care, or treatment by the person;~~
5. ~~Appointment records indicate that the person was engaged in practice; and~~
6. ~~The person or entity opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.~~

~~For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.~~

~~75-015.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a license. To assess such penalty, the Department will:~~

1. ~~Provide written notice of the assessment to the person: The notice will specify:~~
 - a. ~~The total amount of the administrative penalty;~~
 - b. ~~The evidence on which the administrative penalty is based;~~
 - c. ~~That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;~~
 - d. ~~That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund; and~~
 - e. ~~That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property.~~
2. ~~Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.~~

Effective Date ~~_____~~ NEBRASKA HEALTH AND HUMAN SERVICES ~~_____~~ 172 NAC 75
September 22, 2004 ~~_____~~ REGULATION AND LICENSURE

~~75-015.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and the Department's rules and regulations adopted pursuant to these statutes.~~

Approved by Attorney General: ~~_____~~ August 12, 2004

Approved by Governor: ~~_____~~ September 17, 2004

Filed with Secretary of State: ~~_____~~ September 17, 2004

Effective Date: ~~_____~~ September 22, 2004

Forms A through P may be obtained by contacting the Credentialing Division.

Nebraska Department of Health and Human Services
Regulation and Licensure
Credentialing Division
PO Box 94986
Lincoln NE 68509-4986

(402)471-2299

<http://www.hhs.state.ne.us/crl/profindex1.htm>