

Report on the

Board of Hearing Instrument Dealers

Montgomery, Alabama



Department of Examiners of Public Accounts

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July 22, 2020

Representative Howard Sanderford
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Representative Sanderford,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Board of Hearing Instrument Dealers in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Board of Hearing Instrument Dealers, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

Rachel Laurie Riddle
Chief Examiner

Examiner
Janet L. Berry

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PROFILE

Purpose/Authority

The Board of Hearing Instrument Dealers operates under the *Code of Alabama 1975*, Section 34-14-1 through 34-14-34 to license and regulate hearing aid specialists and hearing aid dispensers. Hearing aid specialists and hearing aid dispensers measure human hearing for the purpose of selecting, adapting, or selling hearing instruments. The Board's mission is to protect and promote public health and welfare by licensing, regulating, and conducting complaint investigations and hearings against licensees.

The following legislation was passed since the last Sunset Review of the Board.

Act No. 112, Acts of Alabama 2016 amended Section 34-14-1 through 34-14-9; Sections 34-14-11, 34-14-30- 34-14-32, and 34-14-33 to further define terms, to remove specific dollar amounts for fees, to clarify reciprocity requirements, to reflect adoption by the board of international standardized test procedures, to require an apprentice to be under the direct supervision of a licensed dispenser, deleted antiquated language and added Section 34-14-34 to specify the fees the board may provide pursuant to administrative rule. The Act is included in the codification included in the appendix of this report.

<u>Characteristics</u>	
Members and Selection	<p>The Board consists of eight members appointed by the Governor from a list of qualified persons nominated by the Alabama Society of Hearing Healthcare Providers.</p> <p>Six members currently serving.</p> <p><i>Code of Alabama 1975</i>, Section 34-14-30</p>
Term	<p>Four years. No member who has served two or more full terms may be reappointed to the Board until at least one-year after expiration of his or her full term of office.</p> <p><i>Code of Alabama 1975</i>, Section 34-14-30</p>

Qualifications	<p>Members shall be citizens and residents of this state.</p> <ul style="list-style-type: none"> • Five licensees, one of whom may be a hearing aid specialist, with three years' experience. • One physician who specializes in diseases of the ear • One audiologist • One consumer member who has no voting powers in the matters of issuing, suspending, or revoking licenses and neither the consumer member nor his or her spouse, shall be a hearing aid specialist or dispenser. <p>No member can be from the same business or firm of another Board member and no member can be the spouse or immediate family member of another Board member.</p> <p><i>Code of Alabama 1975, Section 34-14-30(b)</i></p>
Consumer Representation	<p>One member required by statute. Consumer member position currently vacant.</p> <p><i>Code of Alabama 1975, Section 34-14-30(b)</i></p>
Racial Representation	<p>No statutory requirement One black member serving</p>
Geographical Representation	<p>No statutory requirement</p>
Other Representation	<p>The membership shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.</p> <p><i>Code of Alabama 1975, Section 34-14-30(b)</i></p>
Compensation	<p>\$25 per day for each day actually engaged in the duties of the office; not to exceed the sum of \$1,000 per year and travel expense reimbursement the same as state employees receive. Board members have waived their rights to receive the \$25 per day compensation and travel expenses for attending Board functions.</p> <p><i>Code of Alabama 1975, Section 34-14-30(e)</i></p>
Attended Board Member Training	<p>Three Board members Executive Secretary</p>

<u>Operations</u>	
Administrator	Marilyn Fletcher, Executive Secretary, contract employee. Current annual contract amount through November 30, 2020 shall not exceed \$22,860.00 per year plus travel expense not to exceed \$1,000 annually. <i>Code of Alabama 1975</i> , Section 34-14-30(f)
Location	400 South Union Street, Suite 235B Montgomery, AL 36130 Office Hours: 10:00 am – 3:00 pm. Tuesday, Wednesday, and Thursday
Employees	One part-time contract employee.
Legal Counsel	Bill Garrett, Assistant Attorney General, employee of the Attorney General’s Office
Subpoena Power	Yes, records and witnesses <i>Code of Alabama 1975</i> , Section 34-14-11(c)
Internet Presence	http://www.alabamahidb.us <ul style="list-style-type: none"> • Home • About • Laws & Rules • Forms & Applications • Testing & CEU Infor • Contact/Comment
<u>Financial</u>	
Source of Funds	License fees and penalties
State Treasury	Yes, Special Revenue Fund 0770 <i>Code of Alabama 1975</i> , Section 34-14-33
Required Distributions	None
Unused Funds	All unused funds remain at year-end for the Board’s use. <i>Code of Alabama 1975</i> , Section 34-14-33

<u>Licensee Information</u>									
Licensees	<p>As of February 26, 2020</p> <table border="1"> <tr> <td>Hearing Aid Dispensers</td> <td>60</td> </tr> <tr> <td>Hearing Aid Specialist</td> <td>68</td> </tr> <tr> <td>Apprentices</td> <td>12</td> </tr> <tr> <td>Total</td> <td>140</td> </tr> </table> <p><i>Source:</i> Executive Secretary</p>	Hearing Aid Dispensers	60	Hearing Aid Specialist	68	Apprentices	12	Total	140
Hearing Aid Dispensers	60								
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Total	140								
Qualifications	<p>In order to become a licensed Hearing Instrument Dealer in the State of Alabama you must pay the required fees and meet the following requirements:</p> <ul style="list-style-type: none"> • At least 19 years of age • Good moral character • Have an education equivalent to a four-year course in an accredited high school • Free of contagious or infectious disease • A citizen of the United States or legally present • Pass a qualifying examination <p><i>Code of Alabama 1975, Section 34-14-4</i></p>								
Examinations	<p>Hearing Aid Dispensers are required to pass a written exam developed, administered, and graded by the National Board of Hearing Instruments Specialists before being certified.</p> <p>Hearing Aid Specialists must pass a practical exam developed and administered by the International Hearing Society. The Board grades the exam.</p> <p>Hearing Aid Specialists must also pass a computer-based international licensing exam developed, administered, and graded by the International Hearing Society. The computer-based exam is given at the following locations: Lawson State Community College, Birmingham; University of Alabama – Birmingham; Jefferson State Community College – Jefferson Campus; Jefferson State Community College – Shelby Campus; Tennessee Valley Training Center – Decatur; The University of Alabama – Huntsville; The Exam Center – Millbrook; and the Tennessee Valley Training Center – Mobile.</p>								

	<p style="text-align: center;">Practical Examination</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Year</th> <th># Taken</th> <th># Passed</th> <th>% Passed</th> </tr> </thead> <tbody> <tr> <td>2016</td> <td>17</td> <td>17</td> <td>100%</td> </tr> <tr> <td>2017</td> <td>16</td> <td>15</td> <td>94%</td> </tr> <tr> <td>2018</td> <td>11</td> <td>11</td> <td>100%</td> </tr> <tr> <td>2019</td> <td>14</td> <td>13</td> <td>93%</td> </tr> </tbody> </table> <p style="text-align: center;">International Licensing Examination</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Year</th> <th># Taken</th> <th># Passed</th> <th>% Passed</th> </tr> </thead> <tbody> <tr> <td>2016</td> <td>23</td> <td>10</td> <td>43%</td> </tr> <tr> <td>2017</td> <td>23</td> <td>10</td> <td>43%</td> </tr> <tr> <td>2018</td> <td>16</td> <td>6</td> <td>38%</td> </tr> <tr> <td>2019</td> <td>14</td> <td>6</td> <td>43%</td> </tr> </tbody> </table> <p>In addition, Hearing Aid Specialists must pass a state law exam developed, administered, and graded by the Board.</p> <p style="text-align: center;">State Law Examination</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Year</th> <th>Total</th> <th>Pass</th> <th>% Passing</th> </tr> </thead> <tbody> <tr> <td>2016</td> <td>17</td> <td>17</td> <td>100%</td> </tr> <tr> <td>2017</td> <td>16</td> <td>16</td> <td>100%</td> </tr> <tr> <td>2018</td> <td>11</td> <td>11</td> <td>100%</td> </tr> <tr> <td>2019</td> <td>14</td> <td>14</td> <td>100%</td> </tr> </tbody> </table> <p><i>Code of Alabama 1975</i>, Section 34-14-4 and 34-14-5</p>	Year	# Taken	# Passed	% Passed	2016	17	17	100%	2017	16	15	94%	2018	11	11	100%	2019	14	13	93%	Year	# Taken	# Passed	% Passed	2016	23	10	43%	2017	23	10	43%	2018	16	6	38%	2019	14	6	43%	Year	Total	Pass	% Passing	2016	17	17	100%	2017	16	16	100%	2018	11	11	100%	2019	14	14	100%
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Reciprocity	<p>The Board may issue a license to an applicant from another state or jurisdiction if the requirements for licensure are equivalent to or more stringent than Alabama law. The Board currently does not have any reciprocal agreements.</p> <p><i>Code of Alabama 1975</i>, Section 34-14-3(c)</p>																																																												
Renewals	<p>Annually, on or before January 30. After expiration of a 30-day grace period, the Board may renew licenses upon payment of a reinstatement fee plus the regular renewal fee.</p> <p>Online renewals are not available.</p> <p><i>Code of Alabama 1975</i>, Section 34-14-6(a) <i>Administrative Rule</i> 445-X-1-.03(4)(b)</p>																																																												
Licensee Demographics	Data not collected by agency.																																																												

Continuing Education	10 hours annually <i>Code of Alabama 1975</i> , Section 34-14-6(c) <i>Administrative Rule</i> 445-X-1-.05
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SIGNIFICANT ISSUES

Significant Issue 2020-01 - Sixteen of the forty licensees responding to our survey stated that the most significant issue currently facing their profession is over the counter (OTC) or online hearing aid sales. The Board has no jurisdiction over people who sell over the counter or online hearing aids since the federal government passed the Food and Drug Administration Reauthorization Act of 2017 prohibiting state or local governments from prohibiting the restriction or interference with the servicing, marketing, sale, dispensing, customer service support, or distribution of over the counter hearing aids.

Board’s Response – The Board is sympathetic to licensees regarding over the counter (OTC) and internet sales of hearing aids. However, it cannot prohibit by statute or rule an activity permitted by federal law. The Board does continue to protect the public through its licensure, adoption of practice regulations and enforcement of those regulations.

STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES

All prior findings/significant issues have been resolved except for the following:

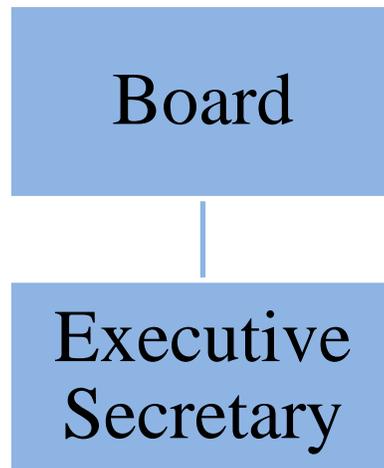
Prior Finding 2019-01 -The Board did not notify the Secretary of State of a vacancy occurring as a result of the expiration of a board member whose terms expired December 31, 2018,

The *Code of Alabama 1975*, Section 36-14-17(d)(1) states, “The chair of an existing board shall notify the Secretary of State by electronic means of a vacancy scheduled to occur on the board as a result of the expiration of a term at least 45 days before the vacancy occurs.”

Current Status - The Board did not notify the Secretary of State of vacancies occurring as a result of the expiration of the terms of four board members whose terms expired December 31, 2019.

Board’s Response – The board was made aware of the 45 days to post vacancies on the Secretary of State’s website as a result of the expiration of a board member whose term expires. The board is taking the necessary steps to ensure compliance with the Open Meeting Act requirements.

ORGANIZATION



PERSONNEL

The Board contracts with Marilyn Fletcher, a white female, to serve as the Board's Executive Secretary. The current contract is effective from December 1, 2019 through November 30, 2020, at an annual amount of \$22,860.00 plus travel not to exceed \$1,000.00 annually.

Legal Counsel

Bill Garrett, Assistant Attorney General, an employee of the Attorney General Office, provides legal services for the Board.

PERFORMANCE CHARACTERISTICS

Number of Persons per Licensee in Alabama and Surrounding States

	Population (estimate)*	Number of Licensees	Persons Per Licensee
Alabama	4,903,185	140	35,023
Florida	21,477,737	986	21,783
Georgia	10,617,423	724	14,665
Mississippi	2,976,149	70	42,516
Tennessee	6,829,174	175	39,024

**Source:* U.S. Census, December 2019 Population Estimates

Operating Disbursements per Licensee (FY 2019) - \$280.56

Fines/Penalties as a Percentage of Operating Receipts - The Board has not levied any fines or penalties since the last sunset.

Notification of Board Decisions to Amend Administrative Rules

The Board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not specifically notified of proposed changes. Notice is posted on the Board’s website.

COMPLAINT HANDLING

Any person wishing to make a complaint against a licensee or apprentice under this chapter shall reduce the same to writing and file his or her complaint with the Board within one year from the date of the action upon which the complaint is based. If the Board investigates and determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this chapter shall be suspended or revoked it shall make an order fixing a time and place for a hearing and require the licensee complained against to appear and defend against the complaint. The Board does not have jurisdiction over non-licensees. Complaints against non-licensees are referred to the Attorney General’s Office, Consumer Protection Division. (*Code of Alabama 1975*, Section 34-14-9(a))

Initial Contact/Documentation	Complaints may be filed by Board members or any person. Complaint forms are required and are located on the Board’s website. Complainants are notified by mail when the complaint is received.
Anonymous Complaints Accepted	No.
Investigative Process / Probable Cause Determination	The Board’s chairman investigates complaints and is recused from voting.
Negotiated Settlements	Yes
Notification of Resolution to the Complainant	Complaints are notified by mail stating why the Board resolved the complaint with references to the Board’s statutes in determining the action taken.

Source: Executive Secretary

The Board did not have any complaints within the last two fiscal years.

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

Audiologists can fit and sell hearing aid instruments but are exempt from regulation by the Board of Hearing Instrument Dealers. They are licensed and regulated by the Alabama Board of Speech-Language Pathology and Audiology.

The Federal Food and Drug Administration exercises federal regulatory jurisdiction over hearing instrument dealers and issues regulations applicable to hearing instrument dealers that specify requirements for medical evaluation by a licensed physician, record keeping, required warnings, and penalties.

FINANCIAL INFORMATION

Source of Funds – Licensee fees, fines, and penalties

Fund - The Board operates through Special Revenue Fund 0770 in the State Treasury, authorized by the *Code of Alabama 1975*, Section 34-14-33. The Board retains unused balances for subsequent years' expenditures.

Schedule of Fees

The *Code of Alabama 1975*, Section 34-14-34 authorizes the Board to set fees within a range between \$25 - \$1,000.00, and Section 34-14-9 authorizes the Board to collect administrative fines. The Board's fees are set in *Administrative Rule* 445-X-1-.03(7).

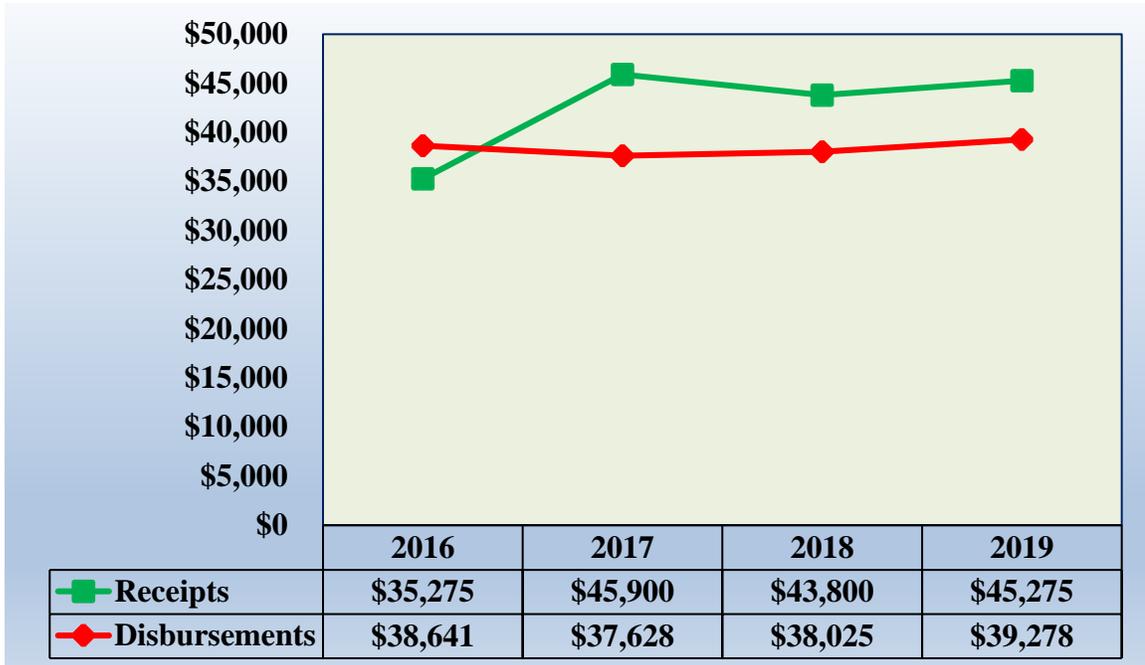
FEE TYPE/PURPOSE	AMOUNT COLLECTED
Initial Application Fee	\$250
Hearing Aid Specialist License Fee	\$200
Hearing Aid Dispenser License Fee	\$250
Hearing Aid Specialist Renewal Fee	\$200
Hearing Aid Dispenser Renewal Fee	\$250
Apprentice Permit Fee	\$125
Apprentice Renewal Fee	\$125
Examination Fee	\$200
Late Filing – Statement of Compliance	\$ 25
Late Renewal Fee	\$ 50
Reinstatement Fee	\$200
Duplicate License, Certificate, or Permit Fee	\$ 25
Replacement License, Certificate, or Permit Fee	\$ 25
Verification of License	\$ 25
Mailing List Fee	\$ 25
Administrative Fine	≤ \$1,000 per violation

Schedule of Receipts, Disbursements and Balances

October 1, 2015 through September 30, 2019

	<u>2018 - 2019</u>	<u>2017 - 2018</u>	<u>2016 - 2017</u>	<u>2015 - 2016</u>
<u>Receipts</u>				
Licensing Fees	\$ 45,275.00	\$ 43,800.00	\$ 40,900.00	\$ 27,575.00
AL Society for Hearing Healthcare Providers	-	-	5,000.00	7,700.00
Total	<u>45,275.00</u>	<u>43,800.00</u>	<u>45,900.00</u>	<u>35,275.00</u>
<u>Disbursements</u>				
Personnel Costs	22,680.00	21,780.00	21,610.10	20,760.00
Employee Benefits	1,735.02	1,666.17	1,653.18	1,588.14
Rentals and Leases	8,755.92	8,713.42	8,500.92	8,584.10
Utilities and Communication	186.48	151.95	192.49	542.39
Professional Services	4,009.29	3,562.62	3,025.16	4,409.10
Supplies, Materials, and Operating Expenses	1,911.32	2,150.51	2,646.21	2,757.68
Total	<u>39,278.03</u>	<u>38,024.67</u>	<u>37,628.06</u>	<u>38,641.41</u>
Excess (Deficiency) of Receipts over Disbursement:	5,996.97	5,775.33	8,271.94	(3,366.41)
Cash Balances at Beginning of Year	<u>44,511.49</u>	<u>38,736.16</u>	<u>30,464.22</u>	<u>33,830.63</u>
Cash Balances at End of Year	50,508.46	44,511.49	38,736.16	30,464.22
Reserved for Unpaid Obligations	<u>(400.00)</u>	<u>(450.00)</u>	<u>(200.00)</u>	<u>(100.00)</u>
Unreserved Cash Balances at End of Year	<u>\$ 50,108.46</u>	<u>\$ 44,061.49</u>	<u>\$ 38,536.16</u>	<u>\$ 30,364.22</u>

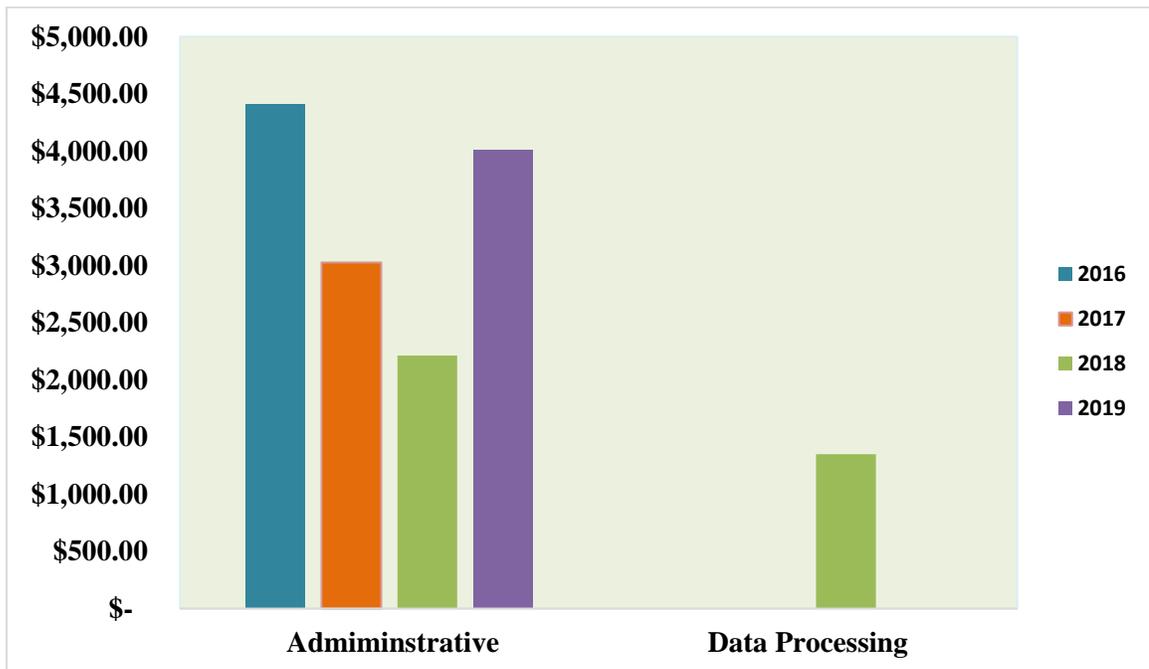
Operating Receipts vs. Operating Disbursements (Chart)



SUMMARY SCHEDULE OF PROFESSIONAL SERVICE DISBURSEMENTS*				
As of September 30				
Type of Service	2016	2017	2018	2019
Administrative Services	\$ 4,409.10	\$ 3,025.16	\$ 2,212.62	\$ 4,009.29
Data Processing	-	-	1,350.00	-
Total	\$ 4,409.10	\$ 3,025.16	\$ 3,562.62	\$ 4,009.29

*Detailed information presented in the appendix.

Professional Service Disbursement Chart



QUESTIONNAIRES

Board Member Questionnaire

A letter was sent to all six members of the Board of Hearing Instrument Dealers requesting participation in our survey. Four participated in the survey. The percentages, where shown, are based on the number who responded to the question.

1. What are the most significant issues currently facing the Board of Hearing Instrument Dealers and how is the Board addressing these issues?

Board Member #1 – “I am a new member. This doesn’t apply to me.”

Board Member #2 – “NONE THAT I KNOW OF NEW TO THE BOARD.”

Board Member #3 – “Sales tax on hearing aids, there is not anything that can be done.”

Board Member #4 – “The Board is currently addressing how our licensees report their annual continuing education is being done to streamline processing and insuring our licensees have all the necessary paperwork turned in a complete fashion by their deadline dates.”

2. What changes, if any, to the Board’s law are needed?

Board Member #1 – “ Monitoring clinics being ran without licensed specialists or proper supervision.”

Board Member #2 – “None”

Board Member #3 – “We need someone to enforce the laws and go out to offices for audit.”

Board Member #4 – “We currently are not looking at any changes to the law. Our laws and rules have been updated in recent years currently are meeting the needs of the board.”

3. Is the Board adequately funded?

Yes	2	50%
No	2	50%

Board Member #1 – “I am not sure. However, since there isn’t compensation for travel seems like an issue.”

4. Is the Board adequately staffed?

Yes	3	75%
No	1	25%

Board Member Questionnaire

Board Member #1 – “Not sure.”

Board Member #4 – “Our Executive Secretary is extremely efficient and works hard to meet the needs of the Board.”

5. **Does the Board receive regular reports on the operations of the board from the chief administrative officer?**

Yes	3	75%
No	1	25%

Board Member #1 - “Not sure, new member.”

Board Member #3 - “We would be lost without our Executive Secretary!!! She needs more money!!!!”

6. **Are you satisfied with the reports received from the Executive Secretary?**

Yes	40	100%
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7. **Has the Board experienced any significant changes to its operations?**

Yes	1	25%
No	3	75%

Board Member #1- “Not sure, new member.”

8. **Does the Board plan any significant changes in its operations?**

Board Member # 1 – “Again, have not attended a meeting, Not prepared to speak on most of these issues.”

Board Member # 2 – “ not that I know of”

Board Member # 3 – “We have had some really good changes, already.”

Board Member # 4 – “ No significant changes are being planned.”

Licensee Questionnaire

A letter was sent to one hundred and thirty-seven licensees requesting participation in our survey. Forty participated in the survey. The percentages, where shown, are based on the number who responded to the question.

1. Do you think regulation of your profession by the Board of Hearing Instrument Dealers is necessary to protect the public welfare?

Yes	40	100%
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Respondent #33 - "Regulation is necessary for best patient care and provider policies."

Respondent #38 - "For patient safety and fairness in the market for the public to have access to qualify hearing instruments from a dispenser of their choice."

2. Do you think *any* of the Board's requirements are irrelevant to the competent practice of your profession?

Yes	1	2%
No	39	98 %

3. Do you think any of the Board's laws, rules, or policies are an unnecessary restriction on the practice of your profession?

Yes	8	20%
No	31	77%
No Opinion	1	3%

Respondent #1 - "Recently, the Board established a requirement for a "Designated Dispenser." It was passed without notification or input from the dispensing license holder. There is no purpose for this new position."

Respondent #16 - "The recently pass requirement of each office having a designated dispenser. I was never aware of this being added until a conversation with a colleague. This is an unnecessary requirement."

Respondent #17 - "The recent passage of the "Designated Dispenser" serves no purpose. Not only was it passed without anyone's knowledge, but the only purpose of the new position is to generate money for the board!"

Respondent #24 - "Recently the board established a requirement for a "Designated Dispenser". It was passed without notification or input from the dispensing license holders. There is NO purpose for this new position."

Respondent # 34 - "CEU requirements for 'legal' would be better served if requirements were amended to ONE CEU per year, versus the current 2 CEU's every other year. This would simplify this process while still providing same amount of education during the same time period."

Respondent # 38 - "I think it is more the AL state legislature's problem. Tax should not be charged for hearing aids. It puts AL behind the times compared to the rest of the country and places extra burden on consumers for medical devices."

Respondent # 40 - "Because I only operate in one location. However, this is very recent "new position" as fitter Designated Dispenser was created and passed without any notice to members of our association. This kind of "behind the closed door" behavior sets a dangerous precedent. I can see where this might hurt multiple offices operations."

4. Are you adequately informed by the Board of changes to and interpretations of the Board's positions, policies, rules, and laws?

Yes	33	83%
No	6	15%
No Opinion	1	2%

Respondent #1 - "Until the most recent "Designated Dispenser" rule, the board always announced upcoming changes to either Title 34-14 or Alabama Code 445-X-1 and sought input from license holders prior to implementing a new requirement, rule, or law. I sincerely hope they return to their previous means of operations."

Respondent #16 - "I was never notified of the upcoming law change. I have never been on the state board but was on the society's board and we worked closely with the state board and kept the members informed of changes that were coming so that we could get their input."

Respondent #24 - "Until the most recent "Designated Dispenser" rule, the board always announced upcoming changes to either the Title 34-14 or Alabama Code 445-X-1 and sought input from license holders prior to implementing a new requirement, rule or law. I sincerely hope they return to their previous means of operations."

Respondent #40 - "Not this past year and with this new addition."

5. Has the Board performed your licensing and renewal in a timely manner?

Yes	40	100%
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Respondent #1 - "[REDACTED] is always timely and accurate."

Respondent #17 - "[REDACTED] is GREAT!"

6. Do you consider mandatory continuing education necessary for competent practice?

Yes	40	100%
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Respondent #11 - "But, ALL should be available online as well as in a class room."

Respondent #12 - "People who have had their license for 20 years or more should be subject to some form of competency hearing to make sure they are still able to do the

job mentally and that they are at least remember the basics of giving a hearing test and identifying a conductive hearing loss and when to refer to a doctor. I have dealt first hand with someone in my opinion who is incapable of completing basic task to do the job safe an in my opinion is a danger to the public to be allowed practice. To allow older seniors who have had their license for decades to serve patients without any sort of competency hearing is doing the public a disservice.”

Respondent #38 - “I believe continuing education should be for new information. I don’t mind paying for new education, but I don’t like requirements to pay for credit hours of information that is not new to the industry.”

7. Has the Board approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

Yes	37	93%
No	2	5%
No Opinion	1	2%

Respondent #3 - “I really get all i need from the factory.”

Respondent #8 - “We are provided opportunities through Miracle-Ear corporate and also IHS, so I have never needed to utilize the board’s resources.”

Respondent #11 - “All should be available online OR class room.”

Respondent #14 - “Board has made this easy and attainable.”

Respondent #20 - “I would like to see/hear better presenters.”

Respondent #34 - “This is an area that is extremely lacking. CEU requirements would be better served if more venues are available to meet these requirements, and at a more affordable cost.”

8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Board doing to address the issues(s)?

Respondent # 1 - “ Manage Care (insurance) restricting Hearing Instrument Specialist from access to provider referral lists due to a requirement to have a Medicare Provider Number which automatically restricts companies that can access these programs (HUMANA, United Health Care, etc.) to audiologists or ENT’s.”

Respondent # 3 - “over the counter aids for people who need more they are fooled by price and they need to be regulated”

Respondent # 5 - “OTC hearing Aids”

Respondent # 6 - “BlueCross BlueShield not paying in a timely manner. I don’t believe they are doing anything to address this issue.”

Respondent # 7 - “the OTC bill”

Respondent # 8 - “I think that OTC bill is the most significant issue that we are facing.”

Respondent # 9 - “On a more national level there should be better regulation on claims made by TV ads for mail order or OTC instruments. Patients are being duped into comfortable, poorly self fit instruments, that does not meet their hearing needs. It makes our industry as a whole look crooked and out to trick those in need of help.

Licensee Questionnaire

For new practitioners there should be more transparency on what constitutes as a passing tests score (i.e. 90%, 80%, 75%) and areas of improvement from a post test evaluation. Practitioners never know what they made on ILE and if they have not passed what areas of study caused them to fail.

For patients, we really need to be lobbying to eliminate taxes on Hearing instruments. It just makes it harder for patients to get the help they need.”

Respondent # 11 - “Online sales of hearing instruments.”

Respondent # 14 - “Recent legislation has passed which allows OTC (over the counter) hearing devices. This most likely will create awareness and opportunities to help more people become educated about hearing loss. I believe the Board is doing a wonderful job in ensuring that those who are licensed stay education and also progress in their professionalism so that we may be able to offer excellent care to the hearing impaired. Some of the requirements, instituted the last several years, have been beneficial in helping me personally become better in the hearing healthcare field.”

Respondent # 16 - “1. Tax on hearing aids.

2. VA not utilizing Hearing Instruments Specialists to relieve some of their backlog of patients.

3. Third party providers requiring testing and fitting to be done by audiologists. This completely unnecessary and significantly narrows the point of entry for the public.”

Respondent # 17 - “The most significant issue is the restriction of insurance companies to allow Hearing Instrument Specialists to receive referrals from Medicare Advantage type programs. I am not aware of anything the board may be doing to help Hearing Instrument Specialists be able to participate in many of the new managed care plans.”

Respondent # 21 - “I think Over-the-Counter hearing aids that are coming out is the most significant issue facing our profession in not only Alabama but across the country and I hope the AL State Board is preparing to do anything to help use fight to be able to keep our profession going.”

Respondent # 24 - “Managed Care (insurance) restricting Hearing Instrument Specialist from access to provider referral lists due to a requirement to have a Medicare Provider Number which automatically restricts companies that can access these programs (HUMMANA, United Health Care, etc.) to audiologists or ENTs.”

Respondent # 25 - “Over the counter hearing devices. As Board Members and hearing health professionals, we need to fight it again.”

Respondent # 26 - “OTC Hearing Aids, hopefully everything they can.”

Respondent # 27 - “unregulated hearing aid sales”

Respondent # 28 - “Competent candidates for licensing are unable to complete the supervision and examination requirements in a timely fashion. To my knowledge, the board is doing nothing to change the requirements set forth under a previous chairperson.”

Respondent # 29 - “OTC Hearing aids. Educating us on the actual device offered OTC.”

Respondent # 30 - “National licensure continuity – works with HIS to solve this issue.”

Licensee Questionnaire

Respondent # 31 - “Over the counter hearing aids and I think the board was trying to stop that.”

Respondent # 33 - “At a minimum, insurance companies are dictating the care of the patient and buying groups are allowing direct-to-consumer options for buying and programming; not taking into consideration if a patient may have otitis media, cerumen occlusion, etc., which are things local providers check regularly at no charge to the pt. as part of our follow-up service and care. The Board fights to protect both providers and the care of the patient through Congressional updates of changes, educational options and regular meetings keep all providers informed of the industry, FDA and insurance changes that are taking place. The waters are muddy, and our Board helps us, as a collective whole, understand what is going on and how to manage.”

Respondent # 34 - “Limited educational opportunities for required CEU’s. At present, I am unaware of any actions from the Board to adequately address this issue.”

Respondent # 35 - “I do not have any issues that come to mind.”

Respondent # 36 - “The biggest issue is that hearing devices can now be purchased online and this is a concern due to possible medical conditions that would not be addressed such as wax in ears or infection causing a hearing loss. This is an issue in our profession. I do feel like the board does help to educate us on the new laws so that we can help to educate the public.”

Respondent # 37 - “OVER THE COUNTER AIDS AND SALES TAX ON HEARING AIDS IS RIDICULOUS”

Respondent # 38 - “Sales tax on medical devices is ridiculous. Also new legislature limiting insurance benefits specifically medicare to only be approved by ENT and audiologists will significantly lower the service provided for the public. I do not discredit doctor’s offices and their expertise, but I believe if AL and the national board of hearing licenses someone to be a Hearing Instrument Specialist they should qualify to test, sell, and service any public person in their state.”

Respondent # 39 - “Online hearing aid sales.”

Respondent # 40 - “I would have to say, the restriction of HIS (Hearing Instrument Specialist) to access managed care through insurance companies, such as Humana, UHC, and others. This is because of a requirement to have a Medicare Provider Number.”

Did not Respond **12**

9. Do you think the Board and its staff are satisfactorily performing their duties?

Yes	35	88%
No	1	2%
No Opinion	4	10%

Respondent #1 - “I would encourage them to seek input on laws and regulations prior to implementing them.”

Licensee Questionnaire

Respondent #14 - "I have seen these men and women doing a good job in helping the licensees maintain and grow in their profession."

Respondent #17 - "We use to have more information on the actions of the board. It is hard to find out what they are doing or what actions they are considering. That may be a result of our Society not informing us more than the board not making the information available. Regardless of whose fault it is, I would like more information about their actions. Their actions directly affect us all!"

Respondent #18 - "[REDACTED] does an amazing job!"

Respondent #28 - "The staff is great. The board members rotate frequently and at times it appears one group of members are gone before a new group has been appointed."

Respondent #34 - "Other than as specified in previous answers, I feel the Board is performing satisfactorily."

Respondent #40 - "(for the most part)"

APPENDICES

Applicable Statutes

Article 1 General Provisions.

Section 34-14-1 Definitions.

For purposes of this chapter, the following words and phrases shall have the respective meanings ascribed by this section:

- (1) APPRENTICE. A person who has met the requirements of Section 34-14-7 and may engage in the practice of fitting and dealing in hearing instruments only under the direct supervision of a hearing aid dispenser or hearing aid specialist when designated by the sponsoring dispenser.
 - (2) APPRENTICE PERMIT. A permit issued while the applicant is in training to become a licensed hearing aid specialist.
 - (3) BOARD. The Board of Hearing Instrument Dealers.
 - (4) DIRECT SUPERVISION. On site and close contact whereby a supervisor is able to respond quickly to the needs of the patient or client receiving care or the supervisee.
 - (5) HEARING AID DISPENSER. Any trained person who has met all requirements of this chapter for licensure and who may engage in the practice of fitting and dealing in hearing instruments without the direct supervision of any person.
 - (6) HEARING AID or HEARING INSTRUMENT. Any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing.
 - (7) HEARING AID SPECIALIST. A trained, licensed person who may engage in the practice of fitting and dealing in hearing instruments under the indirect supervision of a hearing aid dispenser.
 - (8) INDIRECT SUPERVISION. Frequent and close contact whereby a supervisor is able to respond quickly to the needs of the patient or client receiving care or the supervisee.
 - (9) LICENSE. A license issued by the board under this chapter to a hearing aid specialist or hearing aid dispenser.
 - (10) PRACTICE OF FITTING AND DEALING IN HEARING INSTRUMENTS. 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 instruments. The term also includes the making of impressions for earmolds. A licensee or permit holder, 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.
 - (11) SELL or SALE. Any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.
 - (12) TELEPRACTICE. The practice as provided by rule of the board pursuant to subdivision (10).
- (Acts 1971, No. 2425, p. 3858, §1; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2016-112, §1.)*

Section 34-14-2 Licenses or permits - Required; display; duplicates; corporations, partnerships, etc.

(a) No person shall engage in the sale of or practice of fitting hearing instruments or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale of hearing instruments unless the person holds a license or permit issued by the board as provided in this chapter. The license or permit shall be conspicuously posted in his or her office or place of business. Duplicate licenses or permits may be issued by the board to valid license holders operating more than one office, upon additional payment determined by the board for each additional office. A license under this chapter shall confer upon the holder the right to select, fit, and sell hearing instruments.

(b) Nothing in this chapter shall prohibit a corporation, partnership, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license; provided, that it employs only properly licensed or permitted natural persons and that it shall have at least one licensed Alabama dispenser on its staff to provide direct supervision of any licensed hearing aid specialists or apprentices employed in the direct sale and fitting of such products. Such corporations, partnerships, trusts, associations, or other like organizations shall file annually with the board a list of all licensed hearing aid dispensers, hearing aid specialists, and apprentices directly or indirectly employed by them. Such organizations shall also file with the board a statement on a form approved by the board that they submit themselves to the rules and regulations of the board and the applicable provisions of this chapter.

(c) Nothing in this chapter shall apply to physicians licensed to practice medicine in this state or employees under the supervision of a physician licensed to practice medicine, or to the professional corporation or professional association of such physicians.

(d) Nothing in this chapter shall apply to speech pathologists or to audiologists licensed in this state.

(Acts 1971, No. 2425, p. 3858, §2; Acts 1989, No. 89-268, p. 408, §3; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2016-112, §1.)

Section 34-14-3 Licenses - Issuance; reciprocity; complaints; fees.

(a) The board shall register each applicant without discrimination who pays an examination fee as prescribed by rule of the board and who satisfactorily passes an examination as provided in Section 34-14-4, and upon the applicant's payment of the application fee, shall issue to the applicant a license signed by the board. The license shall be effective until January 30 of the year following the year in which issued.

(b) An applicant who fulfills the requirements regarding age, character, education, and health, as set forth in subsection (a) of Section 34-14-4, and who shall provide proof of having met all state qualifying examination requirements and requirements of certification as a national board certified hearing aid specialist shall be issued a dispenser's license.

(c) An applicant for licensure by reciprocity shall submit to the board, in form and content satisfactory to the board, written proof of all of the following:

- (1) That the applicant is currently licensed as a hearing aid specialist, hearing aid dispenser, or hearing aid dealer under the laws of another state or the District of Columbia.
 - (2) That the requirements for the license are equivalent to or greater than those required in this state. Minimum acceptable tests shall be approved by the board and shall be at or above the standards set by the National Institute of Hearing Instrument Studies examination. Scores from the licensing authority shall be mailed from that authority directly to the board and the test shall have been taken within the past 12 months.
 - (3) That the licensee is in good standing and his or her license has not been suspended or revoked.
 - (4) That verification of all licenses that have been issued are on file with the board.
 - (5) That the state that issued the license has a current reciprocity agreement on file with the board.
 - (d) An applicant who has a complaint pending against him or her in another state may not be granted an Alabama license until the complaint is resolved and resolution validated by the licensing agency of that state.
 - (e) Any person making application for licensure under this section shall be required to pass the Alabama law written test and all areas of the practical examination.
 - (f) The holder of a certificate of endorsement shall be registered in the same manner as a licensee. The fee for an initial certificate of endorsement shall be the same as the fee for an initial license. Fees, grounds for renewal, and procedures for the suspension and revocation of a certificate of endorsement shall be the same as the fees, grounds for renewal, and procedures for the suspension of a license.
- (Acts 1971, No. 2425, p. 3858, §6; Acts 1985, No. 85-337, §3; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2016-112, §1.)*

Section 34-14-4 Licenses - Examination of applicants.

- (a) Applicants may obtain a license by successfully passing a qualifying examination; provided, that the applicant:
 - (1) Is at least 19 years of age;
 - (2) Is of good moral character;
 - (3) Has an education equivalent to a four-year course in an accredited high school;
 - (4) Is free of contagious or infectious disease; and
 - (5) Is a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government.
 - (b) An applicant who meets the qualifications of subsection (a) as determined by the board who applies for license by examination shall appear at a time, place, and before such persons as the board may designate to be examined by means of written and practical tests in order to demonstrate that he or she is qualified to practice the fitting and sale of hearing instruments.
 - (c) The board shall give examinations at least three times each year.
- (Acts 1971, No. 2425, p. 3858, §7; Acts 1989, No. 89-268, p. 408, §3; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2009-42, p. 142, §3; Act 2016-112, §1.)*

Section 34-14-5 Licenses - Standards and scope of examination.

(a) The qualifying examination provided in Section 34-14-4 shall be designed to demonstrate the applicant's adequate technical qualifications by testing the applicant in three separate sections consisting of a written examination, a practical examination, and a state law examination. The board may revise standards for the qualifying examination, so long as the following minimum requirements are satisfied:

(1) Written examination scores from states with existing reciprocity agreements with the board are considered valid for 12 months from the date of examination in the other state if the examination is determined by the board to be similar in content to the qualifying examination required for licensure in this state.

(2) An applicant who fails one or more sections of the qualifying examination may retest failed sections for the qualifying examination in the following manner:

a. An applicant who fails the written examination section shall retake the entire written examination section.

b. An applicant who fails the Alabama law section shall retake the entire Alabama law section.

c. An applicant who fails the practical examination section shall be retested in only those portions of the practical examination that he or she failed.

d. An applicant who fails to successfully complete a retest pursuant to paragraphs a., b., or c., or any combination of these, may retake the entire three-section qualifying examination within one year from the initial test.

(b) The three-section qualifying examination may not include questions requiring a medical or surgical education. The purpose of the examination, at a minimum, is to provide the opportunity for a person with a high school level education, or its equivalent, with appropriate study through the apprentice training program and training and supervision under the direction of a licensed dispenser, to enter the profession.

(c) The practical examination section of the qualifying examination shall include all of the following areas:

(1) Pretest procedure.

(2) Pure tone air conduction and masking.

(3) Pure tone bone conduction and masking.

(4) Speech audiometry and masking.

(5) Ear impressions.

(6) Audiogram interpretation and fitting.

(7) Troubleshooting hearing aids.

(Acts 1971, No. 2425, p. 3858, §9; Acts 1989, No. 89-268, p. 408, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2016-112, §1.)

Section 34-14-6 Licenses - Renewal; fees; continuing education.

(a) Each person who engages in the fitting and sale of hearing instruments shall annually, on or before January 30, pay to the board a fee as prescribed by rule of the board for renewal of his or her license and shall keep such certificate conspicuously posted in his or her office or place of business at all times. Where more than one office is operated by the licensee, duplicate certificates shall be issued by the board for posting in each location upon payment of the fee prescribed by rule of the board. A license may be reinstated and renewed within two years. The board may renew such expired certificates upon payment

of a reinstatement fee as prescribed by the board, in addition to the license renewal fee, to the board. No person who applies for renewal, whose license has expired, shall be required to submit to any examination as a condition to renewal; provided, that such renewal application is made within two years from the date of such expiration.

(b) All fees collected by the board shall be set by rule of the board. For calendar year 2016, no single fee shall exceed two hundred fifty dollars (\$250). For any calendar year thereafter, no single fee may be increased by more than 20 percent per year.

(c) The board shall maintain a program of continuing education for its licensees. No licensee shall have his or her active license renewed unless, in addition to any other requirements of this chapter, the minimum continuing annual education requirements are met.

(Acts 1971, No. 2425, p. 3858, §11; Acts 1985, No. 85-337, p. 274, §3; Acts 1989, No. 89-268, p. 408, §3; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2016-112, §1.)

Section 34-14-7 Apprentice permit; hearing aid specialist license; supervision and training.

(a) An applicant who fulfills the requirements regarding age, character, education, and health, as set forth in subsection (a) of Section 34-14-4, may obtain an apprentice permit upon application to the board and payment of any required application and permit fees as prescribed by rule of the board.

(b) Upon receiving an application as provided under this section and accompanied by the required fees, the board shall issue an apprentice permit which shall entitle the applicant to engage in the fitting and sale of hearing instruments for a period of one year under the direct supervision of a person holding a valid Alabama dispenser license or hearing aid specialist license, when designated by the sponsor, provided the apprentice has successfully completed the International Institute for Hearing Instrument Studies distance learning program. A sponsoring dispenser is responsible for the actions and training of the apprentice. An apprentice permit may be renewed for an additional year, upon terms and conditions established by the board. An applicant may not be issued a second permit within a five-year period following the expiration date of the initial permit.

(c) An apprentice or applicant who successfully completes the hearing aid specialist examination may obtain a hearing aid specialist license upon application to the board, and payment of the required fees, which shall entitle the applicant to engage in the sale or fitting of hearing instruments until January 30th of the following year under the direct supervision of a person holding a current Alabama hearing aid dispenser's license. The licensed dispenser shall be totally responsible for the supervision of all activities of the hearing aid specialist pertaining to the sale and fitting of hearing instruments.

(d) The dispenser who is responsible for the supervision and training of an apprentice shall not have more than four apprentices under his or her supervision at any time. There shall be no limitations on the number of hearing aid specialists a dispenser may have under his or her supervision at any given time.

(e) The dispenser responsible for the supervision and training of any apprentice or hearing aid specialist shall be subject to administrative actions with respect to licensure and to civil liability for all actions of an apprentice or hearing aid specialist under his or her supervision when the apprentice or hearing aid specialist engages in unethical,

prohibited, fraudulent, deceptive, and misleading conduct involving the fitting and dispensing of hearing instruments.

(Acts 1971, No. 2425, p. 3858, §8; Acts 1982, No. 82-146, p. 173, §4; Acts 1985, No. 85-337, p. 274, §3; Acts 1989, No. 89-268, p. 408, §3; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2001-250, p. 301, §3; Act 2016-112, §1.)

Section 34-14-8 Business addresses; notices; replacement certificates.

(a) A person who holds a license shall notify the board in writing of the regular address of the place or places where he or she engages or intends to engage in the fitting or the sale of hearing instruments.

(b) The board shall keep a record of the place of business of licensees.

(c) Any notice required to be given by the board to a person who holds a license shall be mailed to him or her at the address of the last place of business of which he or she has notified the board.

(d) Any change of address, place of business, or sponsor shall be submitted to the board within 30 days after the change. Replacement certificates shall be issued by the board upon the payment of the required fee.

(Acts 1971, No. 2425, p. 3858, §10; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2016-112, §1.)

Section 34-14-9 Complaint and hearing; appeal; disciplinary actions.

(a) Any person wishing to make a complaint against a licensee or apprentice under this chapter shall reduce the same to writing and file his or her complaint with the board within one year from the date of the action upon which the complaint is based. If the board investigates and determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this chapter shall be suspended or revoked, it shall make an order fixing a time and place for a hearing and require the licensee complained against to appear and defend against the complaint. The order shall have annexed thereto a copy of the complaint. The order and copy of the complaint shall be served upon the licensee at least 20 days before the date set for hearing, either personally or by registered or certified mail sent to the licensee's last known address. Continuances or adjournment of hearing date shall be made if for good cause. At the hearing the licensee complained against may be represented by counsel. The licensee complained against and the board may take depositions in advance of hearing and after service of the complaint, and either may compel the attendance of witnesses by subpoenas issued by the board under its seal. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party may attend, with counsel if desired, and cross-examine. Appeals from suspension or revocation may be made to the circuit court. In the event of an appeal, there shall be a trial de novo and the trial shall be before the court without the intervention of a jury.

(b) The board may discipline its licensees and apprentices by the adoption and collection of administrative fines, not to exceed one thousand dollars (\$1,000) per violation and may institute any legal proceedings necessary to effect compliance with this chapter.

(c) Any person registered under this chapter may have his or her permit or license revoked or suspended by the board, be reprimanded by the board, or be administratively

fined not more than one thousand dollars (\$1,000) per violation by the board for any of the following causes:

(1) The conviction of a felony or a misdemeanor involving moral turpitude; the record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be prima facie proof of such conviction.

(2) Procuring of a license by fraud or deceit.

(3) Unethical conduct, including:

a. The obtaining of any fee or the making of any sale by fraud or misrepresentation.

b. Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.

c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.

d. Advertising a particular model or type of hearing instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.

e. Representing that the service or advice of a person licensed to practice medicine shall be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when that is not true, or using the words "doctor," "clinic," "balance clinics," or similar words, abbreviations, or symbols which tend to connect the medical profession when such use is not accurate.

f. Habitual intemperance.

g. Gross immorality.

h. Permitting another's use of a license.

i. Advertising a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist.

j. Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or her or have him or her influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, hearing aid specialist, or apprentice, or influencing persons to refrain from dealing in the products of competitors.

(4) Conducting business while suffering from a contagious or infectious disease.

(5) Engaging in the fitting and sale of hearing instruments under a false name or alias with fraudulent intent.

(6) Selling a hearing instrument to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing instruments, except in cases of selling replacement hearing instruments.

(7) Gross incompetence or negligence in fitting and selling hearing instruments.

(8) Violating any provision of this chapter.

(d) The board may bring an action to enjoin any person, firm, or corporation who, without being licensed or issued a permit by the board, dispenses hearing instruments in this state. The action shall be filed in the county in which such person resides or practices or in the county where the firm or corporation maintains an office or practices.

Notwithstanding any other provision of law to the contrary, after notice and hearing, the board may issue a cease and desist order prohibiting any person from violating this chapter by engaging in the practice of fitting, selling, or dispensing hearing instruments without a license.

(Acts 1971, No. 2425, p. 3858, §12; Acts 1989, No. 89-268, p. 408, §3; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2009-42, p. 142, §3; Act 2016-112, §1.)

Section 34-14-9 Complaint and hearing; appeal; disciplinary actions.

(a) Any person wishing to make a complaint against a licensee or apprentice under this chapter shall reduce the same to writing and file his or her complaint with the board within one year from the date of the action upon which the complaint is based. If the board investigates and determines the charges made in the complaint are sufficient to warrant a hearing to determine whether the license issued under this chapter shall be suspended or revoked, it shall make an order fixing a time and place for a hearing and require the licensee complained against to appear and defend against the complaint. The order shall have annexed thereto a copy of the complaint. The order and copy of the complaint shall be served upon the licensee at least 20 days before the date set for hearing, either personally or by registered or certified mail sent to the licensee's last known address. Continuances or adjournment of hearing date shall be made if for good cause. At the hearing the licensee complained against may be represented by counsel. The licensee complained against and the board may take depositions in advance of hearing and after service of the complaint, and either may compel the attendance of witnesses by subpoenas issued by the board under its seal. Either party taking depositions shall give at least five days' written notice to the other party of the time and place of such depositions, and the other party may attend, with counsel if desired, and cross-examine. Appeals from suspension or revocation may be made to the circuit court. In the event of an appeal, there shall be a trial de novo and the trial shall be before the court without the intervention of a jury.

(b) The board may discipline its licensees and apprentices by the adoption and collection of administrative fines, not to exceed one thousand dollars (\$1,000) per violation and may institute any legal proceedings necessary to effect compliance with this chapter.

(c) Any person registered under this chapter may have his or her permit or license revoked or suspended by the board, be reprimanded by the board, or be administratively fined not more than one thousand dollars (\$1,000) per violation by the board for any of the following causes:

(1) The conviction of a felony or a misdemeanor involving moral turpitude; the record of conviction or a certified copy thereof, certified by the clerk of the court or by the judge in whose court the conviction is had, shall be prima facie proof of such conviction.

(2) Procuring of a license by fraud or deceit.

(3) Unethical conduct, including:

a. The obtaining of any fee or the making of any sale by fraud or misrepresentation.

b. Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.

c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other

representation, however disseminated or published, which is misleading, deceptive, or untruthful.

d. Advertising a particular model or type of hearing instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.

e. Representing that the service or advice of a person licensed to practice medicine shall be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when that is not true, or using the words "doctor," "clinic," "balance clinics," or similar words, abbreviations, or symbols which tend to connect the medical profession when such use is not accurate.

f. Habitual intemperance.

g. Gross immorality.

h. Permitting another's use of a license.

i. Advertising a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist.

j. Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or her or have him or her influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, hearing aid specialist, or apprentice, or influencing persons to refrain from dealing in the products of competitors.

(4) Conducting business while suffering from a contagious or infectious disease.

(5) Engaging in the fitting and sale of hearing instruments under a false name or alias with fraudulent intent.

(6) Selling a hearing instrument to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing instruments, except in cases of selling replacement hearing instruments.

(7) Gross incompetence or negligence in fitting and selling hearing instruments.

(8) Violating any provision of this chapter.

(d) The board may bring an action to enjoin any person, firm, or corporation who, without being licensed or issued a permit by the board, dispenses hearing instruments in this state. The action shall be filed in the county in which such person resides or practices or in the county where the firm or corporation maintains an office or practices.

Notwithstanding any other provision of law to the contrary, after notice and hearing, the board may issue a cease and desist order prohibiting any person from violating this chapter by engaging in the practice of fitting, selling, or dispensing hearing instruments without a license.

(Acts 1971, No. 2425, p. 3858, §12; Acts 1989, No. 89-268, p. 408, §3; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2009-42, p. 142, §3; Act 2016-112, §1.)

Section 34-14-11 Powers and duties of board.

(a) The board shall perform the following duties:

(1) Authorize all disbursements necessary to carry out the provisions of this chapter;

- (2) Register persons who apply to the board who are qualified to engage in the fitting and sale of hearing instruments;
 - (3) Administer, coordinate, and enforce this chapter, evaluate the qualifications and supervise the examinations of applicants for licensure under this chapter, issue and renew licenses and permits under this chapter, and investigate allegations of violations of this chapter;
 - (4) Promulgate rules and regulations necessary to carry out the provisions of this chapter and to establish consumer protection provisions, provisions for prohibited practices, and requirements for businesses;
 - (5) Issue and renew a dispenser's license to sell and fit hearing instruments to any person who is duly licensed under the laws of this state as an audiologist; and
 - (6) Furnish a list of persons licensed under this chapter, upon request and payment of the required fee.
- (b) The board shall be authorized to review individual appeals for exemption from required certification for a dispenser's license.
- (c) The board may subpoena witness's testimony and records for any official hearing or proceeding of the board.
- (Acts 1971, No. 2425, p. 3858, §14; Acts 1982, No. 82-146, p. 173, §4; Acts 1989, No. 89-268, p. 408, §3; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2016-112, §1.)*

Section 34-14-12 Prohibited acts and practices.

No person shall:

- (1) Sell, barter, or offer to sell or barter a license or permit;
 - (2) Purchase or procure by barter a license or permit;
 - (3) Alter a license or permit;
 - (4) Use or attempt to use as valid a license or permit which has been fraudulently obtained, counterfeited, or materially altered; or
 - (5) Willfully make a false statement in an application for license or apprentice permit or application for renewal of a license.
- (Acts 1971, No. 2425, p. 3858, §13; Acts 1994, No. 94-180, p. 224, §3.)*

Section 34-14-13 Chapter not applicable to certain persons and practices.

This chapter is not intended to prevent any person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments; provided, that such person or organization employing such person does not sell hearing instruments or accessories thereto.

(Acts 1971, No. 2425, p. 3858, §4; Acts 1994, No. 94-180, p. 224, §3.)

Section 34-14-14 Penalties.

A violation of this chapter shall be punishable as a Class C misdemeanor.

(Acts 1971, No. 2425, p. 3858, §19; Acts 1994, No. 94-180, p. 224, §3.)

Article 2 Board of Hearing Instrument Dealers.

Section 34-14-30 Creation; composition; compensation.

(a) There is established a Board of Hearing Instrument Dealers which shall administer this chapter.

(b) Members of the board shall be citizens and residents of the state and appointed by the Governor. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. The board shall consist of eight members as follows: Five licensees, one of whom may be a hearing aid specialist, one physician who specializes in diseases of the ear, one audiologist, and one consumer member. The consumer member shall have the same powers as other board members, except that the consumer member shall have no voting powers in matters of issuing, suspending, or revoking licenses, and neither the consumer member, nor his or her spouse, shall be a hearing aid specialist or hearing aid dispenser. Each hearing aid specialist or hearing aid dispenser on the board shall have no less than three years of experience and shall hold a valid license as a hearing aid specialist or hearing aid dispenser, as provided under this chapter. No member of the board shall be from the same business or firm of another board member, and no member shall be the spouse or immediate family member of another board member.

(c) All members of the board shall be appointed by the Governor from a list of qualified persons nominated by the Alabama Society for Hearing Healthcare Providers. The term of office of each member shall be for four years. Before a member's term expires, the Governor shall appoint a successor to assume his or her duties upon the expiration of his or her predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term. The members of the board shall annually designate one member to serve as chair, another to serve as vice chair, and such other officers the board deems necessary, including a complaints chair.

(d) No member of the board who has served two or more full terms may be reappointed to the board until at least one year after the expiration of his or her most recent full term of office.

(e) Members of the board shall receive for each day actually engaged in the duties of the office a per diem amount of twenty-five dollars (\$25), not to exceed the sum of one thousand dollars (\$1,000) per year, and reimbursement for traveling expenses as provided in Article 2 of Chapter 7 of Title 36, and other expenses, the remuneration and reimbursement to be paid from appropriations made for this purpose.

(f) The Governor may remove any member for neglect of duty, incompetency, or unprofessional conduct. The board may employ, and at its pleasure discharge, an executive secretary and such officers and employees as may be necessary, and the board shall fix their compensation.

(Acts 1971, No. 2425, p. 3858, §15; Acts 1989, No. 89-268, p. 408, §3; Acts 1991, No. 91-198, p. 365, §3; Acts 1994, No. 94-180, p. 224, §3; Act 2005-66, p. 93, §3; Act 2009-42, p. 142, §3; Act 2016-112, §1.)

Section 34-14-31 Attorney General to act as legal adviser.

The Attorney General of the state shall act as legal adviser of the board and shall render such legal assistance as may be necessary in carrying out the provisions of this chapter.

(Acts 1971, No. 2425, p. 3858, §16; Acts 1989, No. 89-268, p. 408, §3; Acts 1994, No. 94-180, p. 224, §3.)

Section 34-14-32 Meetings.

The board shall meet not less than twice each year at a place, day, and hour determined by the board. The board shall also meet at such other times and places as may be requested by the state board.

(Acts 1971, No. 2425, p. 3858, §17; Act 2016-112, §1.)

Section 34-14-33 Disposition of funds.

(a) Within a week of receiving funds, the board shall pay into the State Treasury all moneys received by it under this chapter during the preceding calendar month. The State Treasury shall credit the moneys to the Board of Hearing Instrument Dealers Account, which account is hereby created.

(b) The moneys in the Board of Hearing Instrument Dealers Account shall remain, and the board may use funds in the account for the purpose of paying the expenses of administering and enforcing the provisions of this chapter.

(Acts 1971, No. 2425, p. 3858, §18; Acts 1994, No. 94-180, p. 224, §3; Act 2016-112, §1.)

Section 34-14-34 Fees.

(a) The board shall establish fees by rule adopted pursuant to the Alabama Administrative Procedure Act. The board may impose fees of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1,000) for each of the following:

- (1) Initial application fee for an apprentice permit, hearing aid specialist license, and hearing aid dispenser license.
- (2) License fee for a hearing aid specialist license and for a hearing aid dispenser license.
- (3) Renewal fee for the renewal of a hearing aid specialist license and the renewal of a hearing aid dispenser license.
- (4) Permit fee for an apprentice permit.
- (5) Renewal fee for an apprentice permit.
- (6) Qualifying examination and retest examination fees.
- (7) Late filing fee for a business statement of compliance.
- (8) Late renewal fee.
- (9) Reinstatement license fee.
- (10) Duplicate license, certificate, or permit fee.
- (11) Replacement license, certificate, or permit fee.
- (12) Verification of license fee.
- (13) Mailing list fee.
- (14) Returned check fee.
- (15) Special assessment fee.

(b) A fee may not be refunded to an applicant or licensee under any circumstances.

(Act 2016-112, §2.)

Professional Services by Vendor

	2016	2017	2018	2019
Administrative Services				
Department of Finance	\$ 3,199.10	\$ 3,025.16	\$ 1,662.62	\$ 3,109.29
International Hearing Society	-	-	-	650.00
Legislative Reference Service	1,210.00	-	550.00	250.00
Total Administrative Services	4,409.10	3,025.16	2,212.62	4,009.29
Data Processing Services				
Department of Finance	-	-	1,350.00	-
Total Professional Services	\$ 4,409.10	\$ 3,025.16	\$ 3,562.62	\$ 4,009.29

Board Members



**STATE OF ALABAMA
HEARING INSTRUMENT DEALERS BOARD**

400 S. Union Street, Suite 235B
Montgomery, AL 36104
(334) 593-3777

TO: Examiners of Public Accounts

DATE: February 11, 2020

SUBJECT: Current Board Members

D. Scott Dishman, Chairman
Term Expires 12/1/21
Huntsville AL

Amy Farmer, Board Member
Term Expires 12/31/20
Dothan AL

Grace White, Board Member
Term Expires 12/31/20
Montgomery AL

Joshua Wright, Board Member
Term Expires 12/31/23
Homewood AL

Michelle Stone, Audiologist Board Member
Term Expires 12/31/23
Orange Beach AL

Zachary Watson, Board Member
Term Expires 12/31/23
Madison AL

Consumer Board Member
Vacant

Physician Board Member
Vacant

Sincerely,

A handwritten signature in cursive script that reads "Marilyn Fletcher".

Marilyn Fletcher
Executive Secretary

Board's Response to Significant Issues



**STATE OF ALABAMA
HEARING INSTRUMENT DEALERS BOARD**

400 S. Union Street, Suite 235B
Montgomery, AL 36104
(334) 593-3777

May 19, 2020

Maria Catledge
Director, Operational Division
Department of Examiners of Public Accounts
P. O. Box 302251
Montgomery AL 36130-2251

Subject: Response to Significant Issues/Prior Findings

Dear Ms. Catledge:

The following response is provided for your consideration with respect to Significant Issues/
Status of Prior Findings for the Sunset Committee report.

Significant Issue 2020-01

Response:

The Board is sympathetic to licensees regarding over the counter (OTC) and internet sales of hearing aids. However it cannot prohibit by statute or rule an activity permitted by federal law. The Board does continue to protect the public through its licensure, adoption of practice regulations and enforcement of those regulations.

Prior Finding 2019-01

Response:

The board was made aware of the 45 days to post vacancies on the Secretary of State's website as a result of the expiration of a board member whose term expires. The board is taking the necessary steps to ensure compliance with the Open Meeting Act requirements.

If you need any additional information, please feel free to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Marilyn Fletcher".

Marilyn Fletcher
Executive Secretary