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Sequence Number: 01-19-13
Rule ID(s): 5366
File Date: 1/29/13
Effective Date: 4/29/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Board of Communication Disorders and Sciences
Division:	Council for Licensing Hearing Instrument Specialists
Contact Person:	Alex Munderloh
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Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1370-02	General Rules Governing Hearing Instrument Specialists
Rule Number	**Rule Title**
1370-02-.12	Continuing Education, Calibration Certificates, and Bills of Sale

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Rule 1370-02-.12 Continuing Education, Calibration Certificates, and Bills of Sale is amended by adding a new part (1)(a)3. as follows, so that as amended, the new part (1)(a)3. shall read as follows:

3. For new licensees, submitting proof of successful completion of the written and practical skills examinations, pursuant to Rule 1370-02-.08, shall be considered proof of sufficient preparatory education to constitute continuing education credit for the first calendar year of licensure.

Authority: T.C.A. § 63-17-203.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Craig Haltom	X				
Cpt. Edward Alderman	X				
Dr. David Levy	X				
Dr. Frederick Rayne	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Council for Hearing Instrument Specialists on March 3, 2011, and is in compliance with the provisions of TCA 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Lynne Harmon Burgess	X				
Dr. Whitney Mauldin	X				
Dr. John Ashford	X				
Dr. Valeria Matlock				X	
Dr. Ron Eavey				X	
Terri Philpot Flynn	X				
O. H. Freeland				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Communication Disorders and Sciences on August 30, 2012, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *01/06/11*

Rulemaking Hearing(s) Conducted on: (add more dates). *03/03/11*

Date: 9-26-12

Signature:

Name of Officer: Alex Munderloh

Title of Officer: Assistant General Counsel
Department of Health

THEODORA P. WILKINS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: 9/26/12

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.

Attorney General and Reporter

1-22-13

Date

Department of State Use Only

Filed with the Department of State on: 1/29/13

Effective on: 4/29/13

Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

There were no written comments received or verbal comments at the rulemaking hearing.

Regulatory Flexibility Addendum
Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Regulatory Flexibility Analysis

(1) The proposed rule amendments do not overlap, duplicate, or conflict with other federal, state, or local government rules.

(2) The language of the proposed rule amendments is clear, concise, and lacks ambiguity.

(3) The proposed rule amendments affect licensed hearing instrument specialists and hearing instrument specialist apprentices. The proposed rules are not written with special consideration for flexible compliance and/or requirements. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.

(4) The proposed rule amendments affect licensed hearing instrument specialists and hearing instrument specialist apprentices. The compliance and/or reporting requirements throughout the proposed rules are as "user-friendly" as possible. There is sufficient notice between the rulemaking hearing and the final promulgation of these rules to allow affected persons to come into compliance with the proposed rules.

(5) The proposed rule amendments affect licensed hearing instrument specialists and hearing instrument specialist apprentices. The compliance and/or reporting requirements throughout the proposed rules are as consolidated and/or simplified as possible. There is sufficient notice between the rulemaking hearing and the final promulgation of these rules to allow affected persons to come into compliance with the proposed rules.

(6) The proposed rule amendments affect licensed hearing instrument specialists and hearing instrument specialist apprentices. The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards, design standards, or operational standards for the affected persons.

(7) The proposed rule amendments do not create unnecessary entry barriers or other effects that stifle entrepreneurial activity.

Types of small businesses that will be directly affected by the proposed rules:

The proposed rule amendments affect licensed hearing instrument specialists and hearing instrument specialist apprentices.

Types of small businesses that will bear the cost of the proposed rules:

The proposed rule amendments affect licensed hearing instrument specialists and hearing instrument specialist apprentices.

Types of small businesses that will directly benefit from the proposed rules:

The proposed rule amendments affect licensed hearing instrument specialists and hearing instrument specialist apprentices.

Description of how small business will be adversely impacted by the proposed rules:
NA

Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

The Board of Communication Disorders and Sciences does not believe there are less burdensome alternatives to the proposed rule amendments.

Comparison of the proposed rule with federal or state counterparts:

Federal: The Board of Communication Disorders and Sciences is not aware of any federal counterparts.

State: The Board of Communication Disorders and Sciences is not aware of any state counterparts.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

These rule amendments are not expected to have any impact on local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

For new licensees, submitting proof of successful completion of the written and practical examinations shall be considered proof of sufficient preparatory education to constitute continuing education credit for the first calendar year of licensure.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Authority for these amendments comes from state statutes regarding the practice of hearing instrument specialists, Tenn. Code Ann. §§ 63-17-105, 63-17-203.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The rule amendments affect licensed hearing instrument specialists.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

NA

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Alex Munderloh, Assistant General Counsel, Department of Health and Stacy Tarr, Administrator possess substantial knowledge and understanding of the rule.

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alex Munderloh, Assistant General Counsel, Department of Health and Stacy Tarr, Administrator will explain the rule at a scheduled meeting of the committees.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Alex Munderloh, Assistant General Counsel, Office of General Counsel, 220 Athens Way, Suite 210, Nashville, TN 37243, (615) 741-1611, Alex.Munderloh@tn.gov; Stacy Tarr, Administrator for the Council of Hearing Instrument Specialists, 227 French Landing Dr., Suite 300, Nashville, TN 37243, (615) 532-5157, Stacy.Tarr@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

(Rule 1370-2-.11, continued)

expiration of one (1) year from the date of retirement, the Council will require payment of the late renewal fee, licensure renewal fees, and state regulatory fees as provided in rule 1370-2-.06; and

(c) Comply with the continuing education provision of Rule 1370-2-.12 applicable to reactivation of retired license.

(4) Upon receipt of the request, renewal application, fees, and continuing education documentation, the Council shall consider the renewal application.

(5) License reactivation applications hereunder shall be treated as license applications, and review and decisions shall be governed by Rule 1370-2-.05, including payment of the application fee.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-15-103, 63-15-113, 63-17-203, and 63-17-213.* ***Administrative History:*** *(For history prior to November, 1987 see page 1.) New rule filed September 24, 1987; effective November 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.11 filed December 28, 1999; effective March 12, 2000.*

1370-2-.12 CONTINUING EDUCATION, CALIBRATION CERTIFICATES, AND BILLS OF SALE.

(1) Basic Requirements:

(a) Continuing Education

1. Each licensee registered with the Council is required to successfully complete twenty (20) hours of continuing education during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year.

2. Two (2) hours of the twenty (20) hour requirement shall pertain to Tennessee statutes and rules concerning hearing instrument specialists.

3. For new licensees, submitting proof of successful completion of the written and practical skills examinations, pursuant to Rule 1370-02-.08, shall be considered proof of sufficient preparatory education to constitute continuing education credit for the first calendar year of licensure.

(b) Calibration Certificates - Each licensee registered with the Council is required to retain calibration of equipment certificates for each audiometer used at his/her place of business during the calendar year.

(c) Bills of Sale - Each licensee registered with the Council is required to retain copies of bills of sale for each hearing aid sold at his/her place of business during the calendar year.

(2) Documentation of Compliance:

(a) Each licensee must retain documentation of completion of all requirements of this rule. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the requirements were completed. This documentation must be produced for inspection and verification, if requested in writing by the Council during its verification process.

(b) Acceptable continuing education documentation:

1. Certificates or original letters from course providers verifying the licensee's attendance at continuing education program(s); or

(Rule 1370-2-.12, continued)

2. An original letter on official stationery from IHS verifying continuing education, specifying date, continuing education hours, program title, licensee's name, and license number.

(c) The individual must, within thirty (30) days of a request from the Council, provide documentation of successfully completing this rule's requirements.

(3) Continuing Education Course Approval - Courses to be offered for credit toward the continuing education requirement must, unless otherwise provided, receive prior approval from the Council. Unless otherwise provided, all courses shall be offered within Tennessee.

(a) Course approval procedures

1. Pre-approved course providers - Continuing education courses which pertain to hearing instrument specialists shall be considered approved if provided or sanctioned by the following entities:

(i) International Hearing Society;

(ii) National Board for Certification-Hearing Instruments Specialists;

(iii) National Institute for Hearing Instruments Studies;

(iv) Any state professional association affiliated with the associations listed in subparts (i) through (iii);

(v) Any state regulatory agency for hearing instrument specialists in the United States.

2. Course approval procedure for other course providers

(i) Unless pre-approved as provided in part (3) (a) 1., the course provider must have delivered to the Council's Administrative Office at least thirty (30) days prior to a regularly scheduled meeting of the Council that precedes the course, documentation which includes all of the following items which must be resubmitted if substantive changes are made after receipt of approval from the Council:

(I) course description or outline;

(II) names of all lecturers;

(III) brief resume of all lecturers;

(IV) number of hours of educational credit requested;

(V) date of course;

(VI) copies of materials to be utilized in the course; and

(VII) how verification of attendance is to be documented.

(ii) Notwithstanding the provisions of the introductory language of this paragraph, any clinic, workshop, seminar or lecture at national, regional, state and local meetings of hearing instrument specialists will be recognized for continuing education credit by the Council if

(Rule 1370-2-.12, continued)

(I) the course provider has complied with the provisions of subpart (3) (a) 2. (i); or

(II) the course provider is exempt from needing prior approval as provided in part (3) (a) 1.

(iii) Notwithstanding the provisions of the introductory language of this paragraph, out-of-state continuing education providers may seek course approval if they are a hearing instrument specialist regulatory agency or association from a state that borders Tennessee; and

(I) the course provider has complied with the provisions of subpart (3) (a) 2. (i); or

(II) the course provider is exempt from needing prior approval as provided in part (3) (a) 1.

3. Course approval procedure for individual licensees

(i) Any licensee may seek approval to receive credit for successfully completing continuing education courses by delivering to the Council's Administrative Office at least thirty (30) days prior to a regularly scheduled meeting of the Council that precedes the course, everything required in items (3) (a) 2. (i) (I) through (VII) which must be resubmitted if substantive changes are made after receipt of approval from the Council; and

(ii) To retain course approval, the licensee must submit a course evaluation form, supplied by the Council, to the Council's Administrative Office within thirty (30) days after successfully completing the course.

4. Course approval for attendance at Council meetings

(i) Licensees may receive credit for one (1) hour of continuing education required in part (1) (a) 2. for each Council meeting that they attend in entirety.

(ii) Council members may receive credit for one (1) hour of continuing education required in part (1) (a) 2. for each Council meeting that they attend in entirety.

(iii) No more than two (2) hours of continuing education credit shall be awarded for attendance at Council meetings during any two (2) calendar year period.

(b) Continuing education credit will not be allowed for the following:

1. Regular work activities, administrative staff meetings, case staffing/ reporting, etc.

2. Membership in, holding office in, or participation on boards or committees, business meetings of professional organizations, or banquet speeches, except as provided in part (3) (a) 4.

3. Independent unstructured or self-structured learning.

4. Training specifically related to policies and procedures of an agency.

(Rule 1370-2-.12, continued)

5. Non-hearing instrument specialist dispensing content courses in excess of four (4) hours - examples: computer, finance or business management.

6. Courses provided by an individual hearing instrument manufacturer in excess of ten (10) hours during each renewal cycle.

(c) Continuing education hours that are clearly not hearing instrument specialist related will be unacceptable.

(4) Continuing Education for Reactivation or Reinstatement of Retired, Revoked, or Expired Licensure.

(a) Reactivation of a Retired License.

1. An individual whose license has been retired for two (2) years or less will be required to fulfill continuing education requirements as outlined in this Rule as a prerequisite to reactivation. Those hours will be considered replacement hours and cannot be counted during the next licensure renewal period.

2. An individual who requests reactivation of a license which has been retired for more than two (2) years must submit, along with the reactivation request, verification which indicates the attendance and completion of twenty (20) hours of continuing education. The continuing education hours must have been started and successfully completed within the two (2) years immediately preceding the date of the requested reactivation.

(b) Reactivation of Revoked Licensure.

1. No person whose license has been revoked for failure to comply with continuing education may have his/her license reactivated without complying with these requirements. Continuing education requirements will accumulate at the same rate as for those licenses which are active. The required clock hours of continuing education must have been begun and successfully completed before the date of reactivation.

2. Notwithstanding the provisions of part (4) (b) 1., on written request and approval by the Council, a licensee has the option to take and pass the written and practical sections of the examination given by the Council in lieu of fulfilling the continuing education requirement. The current examination fee, pursuant to rule 1370-2-.06, will be applicable.

(c) Reinstatement of Expired Licensure – No person whose license has expired may have his/her license reinstated without submitting evidence of continuing education. The continuing education hours documented at the time of reinstatement must equal the hours required, had the license remained in an active status, and must have been begun and successfully completed before the date of reinstatement.

(d) Continuing education hours obtained as a prerequisite for reactivating or reinstating a license may not be counted toward the calendar year requirement.

(5) Violations

(a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements, or who does not or can not adequately substantiate completed continuing education hours with the required documentation, may be subject to disciplinary action.

(Rule 1370-2-.12, continued)

(b) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.

(c) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.

(d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (5) (b) above may be subject to disciplinary action.

(e) Continuing education hours obtained as a result of compliance with the terms of a Council Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-17-105, 3-17-203, and 63-17-214.* ***Administrative History:*** *Original rule filed December 2 1980; effective June 16, 1981. Repeal filed September 24, 1987; effective December 8, 1987. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Repeal and new rule renumbered from 0760-1-.12 filed December 28, 1999; effective March 12, 2000. Amendment filed October 28, 2002; effective January 11, 2003. Amendment filed October 12, 2004; effective December 26, 2004. Amendment filed October 31, 2005; effective January 14, 2006. Amendment filed July 10, 2006; effective September 23, 2006*

1370-2-.13 UNETHICAL CONDUCT. The Council and the Board have the authority to deny, revoke or suspend for a period of time, or assess by monetary fine any person holding a license to practice as a hearing instrument specialist. "Unethical Conduct" shall include, but is not limited to, the following offenses:

(1) Violation of laws regarding the fitting and dispensing of hearing instruments in any other state by a person licensed by this Council, while he is visiting or residing in such other state, shall be considered as unethical conduct by the Council.

(2) A hearing aid product or instrument may be guaranteed against mechanical or electronic defects or poor workmanship, but the degree of help from the use of or the results obtained in the wearing of a hearing aid are dependent upon uncontrollable factors, including the proper use or operation of the device. Therefore, any guarantee, warranty or representation expressed or implied as to the degree or amount of help or improvement shall be considered deceptive or misleading.

(3) Failure of a license holder to abide by the terms of any contract or agreement concerning the sale or dispensing of hearing instruments.

(4) Engaging in unfair or deceptive acts specifically prohibited by T.C.A. §47-18-104(b) of the Tennessee Consumer Protection Act of 1977, while engaging in the business enterprise which is the practice of dispensing and fitting hearing instruments.

(5) The obtaining of any fee or the making of any sale by fraud or misrepresentation.

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

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

(8) Representing that the services or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when it is