MEMORANDUM

State of California
Department of Consumer Affairs
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board

Date: October 3, 2011

To: Hearing Aid Dispensers Committee

Via: Annemarie Del Mugnaio, Executive Officer
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board

From: Yvonne Crawford, Enforcement Analyst
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board

Subject: Advertising Regulations Revisions & Proposed Regulatory Language

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Purpose To clarify and expand advertising regulations and propose updated regulatory language.

Background Over the past few years, the Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board (SLPAHADB) has received inquiries related to clarification of specific areas of the advertising regulations and has identified items, as a result of complaints received, that are not currently included in the advertising regulations.

Therefore, questionable areas identified in complaints related to misleading advertising and new items identified by Board staff that should be included or revised in the advertising regulations are as follows:

1. Add "**not a medical diagnosis"** to the disclaimer (CCR 1399.127(b)(5)) required as to the nature of hearing testing being advertised.

   Current Requirement: Test to determine if you could be helped by a hearing aid.
   Proposed Change: Testing is to determine if you could be helped by a hearing aid and is not a medical diagnosis.

2. Add provisions to restrict advertising that resembles/leads one to believe that the offer of new technology is part of a research study.

   Example: Wanted 30 People….to try new hearing aid technology….receive a discount if candidate for the program.

   The above is misleading in nature and a violation of B&P Code Section 651.

3. Add information related to the correct manner in which to advertise the title Audioprosthologist.

   Proposed Addition: Hearing Aid Dispensers may include the term Audioprosthologist in their advertising as long as it is done in conjunction with their hearing aid dispenser license number.

   Example: John Doe, ACA
   Certified by the American Conference of Audioprosthology
   Audioprosthologist
   Hearing Aid Dispenser License Number HA-xxxx

4. Add provision that would require hearing aid dispenser's name and license number or name & phone number of responsible party for dispensing services in all forms of advertising.

   Proposed Addition: All advertising must include the name and license number of the hearing aid dispenser at the location or responsible party for the dispensing services.

   Example: Jack Doe, HA-xxxx **OR**
   For information regarding this ad contact: Jane Doe, 123-456-7899

5. Add information regarding the prohibited use of phrases such as “as low as”, “and up or up to”, “lowest prices”, or words or phrases of similar import (per B&P Code Section 651(c).

6. Update California Code of Regulations Section 1399.127(b)(3) to clarify proper advertising of a discount on a specific hearing aid model:

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

   When advertising a specific hearing aid model:

Correct:	50% off Acme Model 12 Regularly $1000, Now $500 **OR** Acme Model 12 50% off Manufacturer’s Suggested Retail Price
Incorrect:	50% off Acme hearing aid

7. Update California Code of Regulations Section 1399.127(b)(9) to include current advertised certifications:

   Current Example:

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

   Proposed Example:

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

Objectives

- Clarify and expand advertising regulations;
- Reduce advertising infractions by licensees;
- Reduce/prevent repeat infractions; and
- Swifter resolution of advertising complaints.

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Recommendation

- Revise Advertising Regulations to reflect the above changes and additions. (See Attached)
- Revise the Advertising Fact Sheet to include revisions.

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1399.127. Advertising.

(a) A licensed hearing aid dispenser may advertise any goods or services authorized to be provided by such license in a manner authorized by Section 651 of the code so long as such advertising does not promote the unnecessary or excessive use of such goods or services.

(b) An advertisement violates Section 651 of the code when it:

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

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

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

When advertising a specific hearing aid model:

Correct: 50% off Acme Model 12
Regularly $1000, Now $500 **OR**
Acme Model 12
50% off Manufacturer's Suggested Retail Price

Incorrect: 50% off Acme hearing aid

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

Correct: 50% off Manufacturer's Suggested Retail Price
All Acme Hearing Aids

Incorrect: Acme Hearing Aids - 50% Off

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

Incorrect: 50% off Manufacturer's Suggested Retail Price, All Hearing Aids

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

Correct: Delta Hearing Aid Center

Incorrect: Delta Hearing Center

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

Correct: Test to determine if you could be helped by a hearing aid and not a medical diagnosis

Incorrect: Hearing test

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

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

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

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

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

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

Incorrect: John Doe, ~~NB~~BC-HIS

Correct: John Doe, ACA
Certified by the American Conference of Audioprosthology
Audioposthologist
Hearing Aid Dispenser License No. HA-xxxx

Incorrect: John Doe, ACA, BC-HIS
Audioprosthologist

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

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

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

(11) Includes phrases such as “as low as”, “and up or up to”, “lowest prices”, or words or phrases of similar import.

(12) Includes information that leads one to believe that the offer of new technology is part of a research project when it is not.

Example: Wanted 30 People…to try new hearing aid technology…receive a discount if candidate for the program

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

(d) All forms of advertising shall include a hearing aid dispenser’s name and license number or the responsible party for dispensing services.

Example: Jack Doe, HA-xxxx **OR**
For information regarding this ad contact: Jane Doe, 123-456-7899

NOTE: Authority Cited: Section 3328, Business and Professions Code. Reference: Sections 651, 651.3 and 3401, Business and Professions Code.
HISTORY:
1. Amendment of Section 1399.127 filed 3-10-00; effective thirtieth day thereafter.

MEMORANDUM

State of California
Department of Consumer Affairs
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board

Date: October 7, 2011

To: Hearing Aid Dispensers Committee

Via: Annemarie Del Mugnaio, Executive Officer
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board

From: Yvonne Crawford, Enforcement Analyst
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board

Subject: Internet Sales of Hearing Aids

Purpose To determine if current practices involving the sale of hearing aids via the Internet comply with the statute related to dispensing hearing aids, pose a consumer protection risk, and/or require amendments to current statutory language.

Current Statute California Business and Professions Code Section 3351.5 – Catalog or Direct Mail Sales Exception

(a) Hearing aids may be sold by catalog or direct mail provided that:
(1) The seller is licensed as a hearing-aid dispenser in this state.
(2) There is no fitting, selection, or adaptation of the instrument and no advice is given with respect to fitting, selection, or adaptation of the instrument and no advice is given with respect to the taking of an ear impression for an earmold by the seller.
(3) The seller has received a statement which is signed by a physician and surgeon, audiologist, or a hearing-aid dispenser, licensed by the State of California which verifies that Section 3365.5 and subdivision (b) of Section 3427.5 have been complied with.
(b) A copy of the statement referred to in paragraph (3) of subdivision (a) shall be retained by the seller for a period provided for in Section 3366.

(c) A licensed hearing-aid dispenser who sells a hearing aid under this section shall not be required to comply with subdivision (b) of Section 3427.5.

Issue

The Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board (SLPAHADB) has received complaints related to the practice of selling hearing aids via the Internet by various companies.

The following are identified Internet sales practices that appear to violate current law and/or allow for potential consumer harm:

1. Companies engaging in the sale of hearing aids over the Internet contract with licensed hearing aid dispensers or dispensing audiologists, or require licensees to join their Network in order to provide such services as testing, selection, fitting, etc. Payment for the hearing aid(s) is made directly to the company. The company then pays the manufacturer and a fee to the dispenser or dispensing audiologist for fitting and follow-up services. Are these companies in violation of current law because the company is accepting payment from the consumer for the hearing aid(s)?

2. Hearing aids offered for sale via the Internet appear to be custom hearing aids not generic aids which may conflict with current law as custom hearing aids would entail fitting and adaptation of the hearing aids.

3. Companies engaging in the sale of hearing aids over the Internet are privately-held corporations or health care organizations, not individual licensed hearing aid dispensers. (So, who is the responsible party?)

4. One company/health care organization provides an Internet-based hearing test that is administered by consumers via an interactive web-based program. Are there consumer protection issues with this mode of service delivery?

5. Some companies selling hearing aids through the Internet to California consumers sell custom hearing aids that are set/programmed by the manufacturer based on an audiogram sent to the company by the consumer. Is this practice in violation of current law?

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Objectives

- Define what is authorized under current law;
- Determine if current practice of Internet sales of hearing aids violates the law and may be a consumer protection issue;
- Determine if self-administered Internet-based hearing test is an acceptable form of telehealth;
- Determine if current law should be amended to address existing internet sale practices; and
- Provide clear direction for resolution of complaints regarding Internet sales.

Business & Professions Code Sections

Conditions for Referral

3365.5. Whenever any of the following conditions are found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user, a licensee shall, prior to fitting or selling a hearing aid to any individual, suggest to that individual in writing that his best interests would be served if he would consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to a duly licensed physician:

(1) Visible congenital or traumatic deformity of the ear.
(2) History of, or active drainage from the ear within the previous 90 days.
(3) History of sudden or rapidly progressive hearing loss within the previous 90 days.
(4) Acute or chronic dizziness.
(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
(6) Significant air-bone gap (when generally acceptable standards have been established).

No such referral for medical opinion need be made by any licensee in the instance of replacement only of a hearing aid which has been lost or damaged beyond repair within one year of the date of purchase. A copy of the written recommendation shall be retained by the licensee for the period provided for in Section 3366. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensee for the period provided for in Section 3366. Nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by the provisions of this code.

(Amended by Stats. 1979, Ch. 970.)

Records Required

3366. A licensee shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his office or place of business at all times and each such record shall be kept and maintained for a seven-year period. These records shall include:

(a) Results of test techniques as they pertain to fitting of the hearing aid.
(b) A copy of the written receipt required by Section 3365 and the written recommendation and receipt required by Section 3365.5 when applicable.

(Added by Stats. 1970, Ch. 1514 § 2, operative January 15, 1971)

Unlawful Practice

3427.5 It is unlawful for a licensed hearing aid dispenser to fit or sell a hearing aid unless he or she has first (a) complied with all provisions of state laws and regulations relating to the fitting or selling of hearing aids, (b) conducted a direct observation of the purchaser's ear canals, and (c) informed the purchaser of the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.

(Amended by Stats. 1982, Ch. 868.)

Proposed Regulatory Provisions for Song Beverly Consumer Warranty Act

Pursuant to the provisions of Civil Code Section 1793.02 et seq., The Song Beverly Consumer Warranty Act, and Business and Professions Code Section 3365 (f), the following express warranty provisions shall apply to hearing aid devices:

a) A consumer shall be entitled to a refund of the cost of a hearing aid device, less an amount not to exceed $200 per hearing aid, of which the provider shall be permitted to retain, should the device be returned to the hearing aid dispenser for a refund within thirty (30) days from the date the consumer acquired the device from the hearing aid dispenser. The refund should be received by the consumer within thirty (30) days from the date of return of the hearing aid to the provider.
b) The above "right of return" provision shall be "tolled" in the event that the hearing aid device is returned by the consumer to the hearing aid dispenser for service. The time period the hearing aid device is in the possession of the hearing aid dispenser, shall be excluded from the thirty (30) day right of return period:
c) Any period of time that the hearing aid dispenser is in possession of a device that has been serviced or adjusted and fails to notify the consumer the device is available for retrieval, or fails to make the device available to the consumer for retrieval, shall be deemed "tolled" and shall be excluded from the right of return period.
d) Should the consumer fail to retrieve the hearing aid device from the hearing aid dispenser within seven (7) business days of being notified by telephone and by mail that the device has been repaired or adjusted, the right of return period shall commence.
e) The hearing aid dispenser shall provide the consumer with a written purchase agreement signed by both the hearing aid dispenser and the consumer that contains the following: the specified date(s) the device was initially delivered to the consumer, the date(s) the device was returned to the hearing aid dispenser for service or adjustment, and the date(s) the device was retrieved by the consumer.

Amend Section 1793.02 of the Civil Code to read:

1793.02. (a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: "This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws." In lieu of the words "30 days" the retail seller may specify any longer period.

(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.

(c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be canceled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

(d) With respect to the retail sale of an assistive device to an individual, organization, or agency known by the seller to be purchasing for the ultimate user of the device, this section and subdivision (b) of Section 1792.2 shall be construed to require that the device be specifically fit for the particular needs of the ultimate user.

(e) This section and subdivision (b) of Section 1792.2 shall not apply to any of the following sales of assistive devices:

(1) A catalog or similar sale, as defined in subdivision (q) of Section 1791, except a sale of a hearing aid.

(2) A sale which involves a retail sale price of less than fifteen dollars ($15).

(3) A surgical implant performed by a physician and surgeon, or a

restoration or dental prosthesis provided by a dentist.

(f) The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are not subject to waiver under Section 1792.3. The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are cumulative, and shall not be construed to affect the obligations of the retail seller or any other party or to supplant the rights or remedies of the buyer under any other section of this chapter or under any other law or instrument.

(g) Section 1795.5 shall not apply to a sale of used assistive devices, and for the purposes of the Song-Beverly Consumer Warranty Act the buyer of a used assistive device shall have the same rights and remedies as the buyer of a new assistive device.

(h) The language in subdivision (a) shall not constitute an express warranty for purposes of Sections **1793**.2 and **1793**.3.

(i) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board created pursuant to Section 2531 of the Business and Professions Code may adopt regulations to carry out the purposes and objectives of Subdivisions (a), (b) and (c). Until the board adopts regulations under this subdivision, subdivisions (a), (b) and (c) shall remain in effect.

Business and Professions Code:
Section 2530.2 (m) Audiology Aide:

(m) "Audiology aide" means any person meeting the minimum requirements established by the board. An audiology aid may not perform any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist. The board may by regulation exempt certain functions performed by an industrial audiology aide from supervision provided that his or her employer has established a set of procedures or protocols that the aide shall follow in performing these functions.

Title 16 Division 13.4
Article 5. Speech-Language Pathology & Audiology Aides

1399.154. Definitions.

As used in this article, the term:

(a) "Speech-language pathology aide" means a person who

(1) assists or facilitates while a speech-language pathologist is evaluating the speech and/or language of individuals or is treating individuals with a speech-language and/or language disorder and

(2) is registered by the supervisor with the board and the registration is approved by the board.

(b) "Audiology aide" means a person who

(1) assists or facilitates while an audiologist is evaluating the hearing of individuals and/or is treating individuals with hearing disorders, and

(2) is registered by the supervisor with the board and the registration is approved by the board.

(c) "Supervisor" means a licensed speech-language pathologist who supervises a speech-language pathology aide or a licensed audiologist who supervises an audiology aide.

(d) "Industrial audiology aide" means an audiology aide who conducts pure tone air conduction threshold audiograms for the purpose of industrial hearing testing in addition to other acts and services as provided in these regulations.

(e) Direct supervision means on-site observation and guidance by the speech-language pathology or audiology supervisor while the speech-language pathology or audiology aide is treating a patient or client.

NOTE: Authority cited: Section 2531.95, Business and Professions Code. Reference: Sections 2530.2 and 2530.6, Business and Professions Code.

1399.154.2. Responsibilities of Aide's Supervisor.

A supervisor of a speech-language pathology or audiology aide shall:

(a) Have legal responsibility for the health, safety and welfare of the patients.

(b) Have legal responsibility for the acts and services provided by the speech-language pathology or audiology aide, including compliance with the provisions of the Act and these regulations.

(c)~~Be physically present while the speech-language pathology or audiology aide is assisting with patients, unless an alternate plan of supervision has been approved by the board. A supervisor of an industrial audiology aides shall include a proposed plan for alternative supervision with the application form. An industrial audiology aide may only be authorized to conduct puretone air conduction threshold audiograms when performing outside the physical presence of a supervisor. The supervisor shall review the patient histories and the audiograms and make the necessary referrals for evaluation and treatement.~~ Directly supervise the speech-pathology or audiology aide when he or she is engaged in direct client or patient care or assisting with patients. Direct supervision is not required for an industrial audiology aide, if all of the following conditions are met:

(1) An alternative plan of supervision has been approved by the board.
(2) The supervisor includes the proposed plan with his or her application form.
(3) The only activity the industrial audiology aide performs outside the physical presence of the supervisor is puretone air conduction threshold audiograms.
(4) Following the conduction of any puretone air conduction threshold audiograms, the supervisor reviews the patient histories and the audiograms and make any necessary referrals for evaluation and treatment.

(d) Evaluate, treat, manage and determine the future dispositions of patients.

(e) Appropriately train the speech-language pathology or audiology aide to perform duties to effectively assist in evaluation and/or treatment. A supervisor shall establish and complete a training program for a speech-language pathology or audiology aide in accordance with Section 1399.154.4 which is unique to the duties of the aide and the setting in which he or she will be assisting the supervisor.

(f) Define the services which may be provided by the speech-language pathology or audiology aide. Those services shall not exceed the competency of the aide as determined by his or her education, training and experience, and shall not include any treatment beyond the plan established by the supervisor for the patient.

NOTE: Authority cited: Section 2531.95, Business and Professions Code. Reference: Sections 2530.2 and 2530.6, Business and Professions Code.

SURVEY OF AUDIOLOGY AIDE DUTIES AND ASSIGNED SUPERVISION STANDARDS

- A **total of 93 surveys were returned**
- **Roughly 84% of those who responded disagreed with the tasks listed for audiology support personnel and disagreed with the tasks listed under "general supervision."**
- A **majority of those who responded agreed with the tasks listed in the "other- not an audiology function" category.**

1.) Do you agree that the tasks listed on the *Sample of Audiology Aide Duties* are appropriate to assign to audiology support personnel?

- No ENGs/ V AT
- No audiometric testing
- No acoustic impedance, emissions, or auditory evoked potentials
- No acoustic reflexes
- No pure-tone air conduction
- No tympanometry

2.) Do you agree with the tasks listed under "Direct Supervision" meaning in line-of-sight supervision on the *Audiology Aide Supervision Table?*

- No ear mold impressions

3.) Do you agree with the tasks listed under "General Supervision" meaning in the facility and available for immediate consultation on the *Audiology Aide Supervision Table?*

- No audiometric testing
- No ENG/VNG testing (OR- Should be performed only under Direct Supervision)
- No tympanometry/acoustic threshold or OAE testing
- No pure tone air, bone and speech

4.) Do you agree with the tasks listed under "Indirect Supervision" meaning not in the facility but available by telephonic or other electronic means on the *Audiology Aide Supervision Table?*

- No hearing aid report or earmold modification

5.) Do you agree that the tasks listed under the heading "Other-Not An Audiology Function" should be categorized as such, meaning that no regulation of the tJJ.s is necessary?

A large majority of the respondents agreed with the Board's tasks listed under the headin denoted above.

Please submit your survey responses by fax: (916) 263-2668 or email: slpab(a)dca.ca.gov
Written Responses May to Mailed to: SLP AB, Attn: Annemarie Del Mugnaio 2005
Evergreen Street, Suite 2100 Sacramento, CA 95815

State Regulation of Audiology Support Personnel

Type of Regulation
Twenty states regulate the use of audiology support personnel. Of the 20 states, two (2) states regulate by licensure and 18 states that regulate by registration or certification.

Licensure: (2 states)

- Ohio
- Texas

Registration or Certification: (18 states)

- Alabama
- California
- Florida
- Georgia
- Iowa
- Kansas
- Massachusetts
- Mississippi
- Missouri
- Montana
- Nebraska
- Oklahoma
- Pennsylvania
- Rhode Island
- Utah
- Virginia
- West Virginia
- Wyoming

Audiology support personnel are acknowledged in three states (Connecticut, Virginia, and Wisconsin), support personnel are not directly regulated.

Education/Experience Required
The level of education required of support personnel varies from a bachelor's degree plus enrollment in a master's degree program to a high school diploma. Some states do not regulate education.

Bachelors Degree—7 States:

- Alabama
- Florida
- Montana
- Nebraska
- Oklahoma
- Rhode Island
- Texas

Associates Degree—2 States:

- Massachusetts
- West Virginia

High School Diploma + Additional Training (one state)

- Iowa

High school Diploma (7 states):

- Delaware
- Mississippi
- Missouri
- Kansas
- Ohio
- Utah
- Wyoming

Specialized training (one state):

- Pennsylvania

Limits on Number of Support Personnel:

- California—3
- Florida—2 full-time or 3 part-time assistants
- Iowa—3
- Massachusetts—3
- Mississippi—3
- Missouri—3
- Nebraska—2
- Oklahoma—2
- Pennsylvania—3
- Rhode Island –3
- West Virginia--5 full time equivalent individuals at any given time. In industrial settings, an audiologist may supervise up to 10 full time equivalent individuals at any given time.
- Wyoming--3

Allowed Services

Air conduction pure tone assessment and data recording
Hearing screenings
Assist with conditioning techniques
Cursory otoscopy
Basic hearing aid maintenance
Routine instrument sterilization
Biologic and electroacoustic assessment of the audiometer
Clerical support
Participation with the professional in research projects, in service training, or similar endeavors.
Conduct basic hearing testing without diagnostic interpretation, including air and bone conduction thresholds and speech audiometry
Conduct impedance audiometric testing
Assist in the evaluation of difficult-to-test patients

Record case history information
Assist in conducting real ear measurements
Assist in ABR, ENG, and otoacoustic emissions testing
Report changes in client performance to the audiology licensee having responsibility for that client
Assistant in implementing a plan or program for management and/or treatment developed by the supervising audiology licensee
Demonstrate assistive listening devices.
Test hearing aids to determine if they meet appropriate specification and/or mechanical performance
Demonstrate care and use of the hearing aid controls, battery insertion and insertion of the hearing aid or ear mold into the ear
Prepare clinical materials and where appropriate, in accordance with universal precaution
Prepare instructional materials
Monitor hearing aids and other equipment
Assist the audiologist during assessment of patients
Collect data for monitoring quality improvement
Except for the purpose of dispensing hearing aids, make ear molds/impressions after ears are "visually inspected" by the physician or the licensed audiologist
Administer self-questionnaires to clients (paper and pencil or computerized)
Demonstrate any computerized testing/therapy materials that the clinician utilizes
Disinfect materials or items used in testing or therapy (equipment, furniture, specula, etc.) after every patient visit
Take sound intensity readings as with a sound level meter
Explain of the proper care of hearing aids and assistive listening devices
Conduct hearing conservation education

Prohibited Services

Provide diagnostic services
Perform any procedure where there is a risk of physical injury as a result of the procedure; specifically, where injury to the physical structures of hearing is likely to occur.
Develop a plan of care or treatment for auditory or vestibular disorders
Diagnose or write treatment plans for individuals with hearing disorders
Interpret or discuss confidential information or test results
Perform any procedure for which the assistant is not qualified
Write, develop, or modify a patient’s/client’s individualized treatment plan in any way
Sign any formal documents (e.g., treatment plans, reimbursement forms, or reports)
Select patients/clients for service
Determine case selection
Make referrals for additional service
Consult with the patient/client, family or others, or participate in conferences, case conferences, or any interdisciplinary team meetings
Represent himself or herself as an audiologist
Fit or dispense hearing aids
Function without direct supervision
Provide professional training of other staff
Provide program review for individualized habilitation plans or other forms of care planning for patients
Exercise independent professional judgment
Counsel patients or their families (other than informational counseling that is provided under the direct supervision of the audiologist)

STATE	REGULATED: License, Registration, Certification, or None?	If Regulated, What is Regulatory Document's Citation Number?	Link(s)	EDUCATION	What Level of Supervision is Required?	Max-imum Number of Assistants per Aud?	Are "Auth-orized" Duties Named?	Are "Prohibited" Duties Named?	Specific Training Required?	Need Con-tinuing Ed?
Alabama	Registration	ABESPA Rules and Regulations and Administrative Code Chpt 870-X-1	http://abespa.org/rules.htm and http://abespa.org/files/Code2007.pdf	Bachelors degree in Communication Disorders or similar	Must specify within submitted plan; 10% direct supervision	N/A	Yes	Yes	Submit training and work plan	No
Alaska	None (SLP Yes)									
Arizona	None (SLP Yes)		http://www.azdhs.gov/als/hadisp/ and http://www.azsos.gov/public_services/Title_09/9-16.htm#Article_2							
California	Registration	CA Business & Professional Codes, Division 2, Chapter 5.3, 2530.6 and Title 16, Division 13.4, Section 1399.154	http://www.slpab.ca.gov/ http://www.slpab.ca.gov/board_activity/laws_regs/lawsregs.pdf	None	Not specified, audiologist reports supervision plan to Board	Determined by the Board, generally not more than 3	No, audiologist submits duties to be delegated to Board	No	Yes	No
Colorado	None (hearing aid trainee Yes)		http://www.dora.state.co.us/audiologists/aud/licensing.htm							
Connecticut	None (SLP support personnel Yes)		http://www.ct.gov/dph/lib/dph/practitioner_licensing_and_investigations/plis/speech/slp_stats.pdf							
Delaware	Registration	Title 24 Regulated Professions and Occupations 3700 Board of Examiners of Speech/Language Pathologists, Audiologists & Hearing Aid Dispensers	http://dpr.delaware.gov/boards/speechaudio/index.shtml and	CAOHC or equivalent	Direct (on site)	N/A	Yes, other duties may be determined as appropritate with training & direct supervision	No	Yes	No

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Florida	Certification	Chpt 64B20-4 Florida Administrative Code	https://www.flrules.org/gateway/RuleNo.asp?ID=64B20-4.001 and https://www.flrules.org/gateway/RuleNo.asp?ID=64B20-4.002 and https://www.flrules.org/gateway/RuleNo.asp?ID=64B20-4.003 and https://www.flrules.org/gateway/RuleNo.asp?id=64B20-4.004	High school and on-the-job training	Some tasks require direct (onsite) supervision, other tasks allowed with indirect supervision	2 Full-time or 3 part-time	Yes (rule 4.003) includes basic testing without interpretation	Yes (testing those younger than 5 and developing treatment plans)	Yes	No
Georgia	Registration		http://sos.georgia.gov/plb/speech/ and http://rules.sos.state.ga.us/docs/609/6/02.pdf	2 yrs college or associates degree or Board approved technical school certification program or board approved audiology assistant training program. Specific training requirements listed.	Specific rules on supervision plan in regulations	2 if employed full time; 1 if audiologist is part time	Yes	Yes	Yes	Yes
Hawaii	None		http://hawaii.gov/dcca/areas/pvl/boards/speech/							
Idaho	None (SLP Yes)		http://adm.idaho.gov/adminrules/rules/idapa24/2301.pdf							
IlliNois	None (SLP Yes)		http://www.idfpr.com/dpr/who/spch.asp							

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Indiana	None (SLP Yes)		http://www.in.gov/pla/speech.htm and http://www.in.gov/pla/files/ISLPAB.2008_EDITION(1).pdf							
Iowa	Audiologist submits plan for assistant, assistant does Not appear to be registered, licensed or certified by the state	Iowa Administrative Code Professional Licensure Division (645) Chapter 300	http://www.idph.state.ia.us/licensure/board_home.asp?board=spa and http://web.legis.state.ia.us/aspx/ACODocs/ruleList.aspx?pubDate=3-25-2009&agency=645&chapter=300	1 college audiology course and 15 hours specific instruction or 75 clock hours of instruction / practicum experience	Supervisory plan must be filed	3 unless otherwise approved by board	No	No	Yes	
Kansas	Audiologist submits name, qualifications of assistant	Kansas administrative rules and regulations for Kansas speech-language pathologists and audiologists (section 28-61-8)	http://www.kdheks.gov/hoc/slpa.html and http://www.kdheks.gov/hoc/downloads/currentregs.pdf	High school and audiologist conducted training	Direct supervision of 10% of client contact time	N/A	Yes	Yes	Yes	No
Kentucky	None (SLP Yes)		http://www.lrc.state.ky.us/KRS/334A00/020.PDF							
Louisiana	Provision for audiology aide; SLP has assistants		http://www.lbespa.org/forms_&_lit.htm and http://www.lbespa.org/rules_2007.pdf							
Maine	None									
Maryland	None									

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Mass.	Licensed	260 CMR 10.00: Use And Supervision Of Speech-Language Pathology And Audiology Assistants	http://www.mass.gov/?pageID=ocasubtopic&L=5&L0=Home&L1=Licensee&L2=Division+of+Professional+Licensure+Boards&L3=Board+of+Registration+in+Speech-Language+Pathology+and+Audiology&L4=Statutes+and+Regulations&sid=Eoca		10% direct plus 10% direct or indirect as a minimum.	3	Yes	Yes	No	No
Michigan	None									
Minnesota	None									
Mississippii	Registration	Title 15, Part 36, Subpart 60, Chapter 10, 109	http://www.msdh.ms.gov/msdhsite/_static/resources/571.pdf	High school and audiologis 'instituted'	First 5 hours of contact with clients and then 20% direct observation of time with clients	3	Yes, very explicit	No	Yes	No
Missouri	Registration	Division 2150 Chapter 4 sections 4.100 - 4.130	http://www.pr.mo.gov/speech.asp	High school plus on-the-job training, a plan for which is filed with the Board	Direct, in view of the aide, for diagNostic and intervention activities, plus indirect supervision with the amount determined by the audiologist	N/A	Yes	Yes	No, only that the audiologist is responsible for the training	No

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Montana	Registration	Dept of Labor & Industry, Chapter 222, Board of Speech-Language Pathologists and Audiologists	http://bsd.dli.mt.gov/dli/bsd/license/bsd_boards/slp_board/pdf/slp_rules.pdf http://bsd.dli.mt.gov/dli/bsd/license/bsd_boards/slp_board/board_page.asp	Three level of assistants, lowest, assistant III does Not hold bachelors in field	Depends on qaulifications of assistant and type of service; minimums range from 10 to 30% direct supervision	N/A	No	No	Submit supervision plan and functions assistant will be tasked with	Yes
Nebraska	Registration	Health and Human Services System, Title 172, Chapter 23	http://www.sos.state.ne.us/rules-and-regs/regsearch/Rules/Health_and_Human_Services_System/Title-172/Chapter-23.pdf http://www.hhs.state.ne.us/crl/rcs/audio/audiology.htm	High-school plus 12 or more hours	20% of treatment sessions	N/A	Broad categories are defined, mostly related to treatment	Yes	Submit supervision plan and methods of supervision	Yes, inservices
Nevada	None									
New Hampshire	None									
New Jersey	None									
New Mexico	None									
New York	None		http://www.op.nysed.gov/prof/slpa/speechfaqs.htm							
North Carolina	Registration mentioned, may apply only to SLP. Recognizes certified technicians for OSHA testing		http://www.ncboeslpa.org/	Specified for SLP					No	
North Dakota	None									

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Ohio	Licensed	Title [47}XlVII Occupations, Chapt 47533.072 (Effective Date: 11-05-1992)	http://codes.ohio.gov/orc/4753.06 and http://codes.ohio.gov/orc/4753.072	High School diploma	"Direct supervision" Supervisor must be present in the room or immediately available to provide assistance to aide	?	Yes	Yes	No	?
Oklahoma	"Authorized"	Title 59, chapter 39 Section 1601 subchapter 7	http://www.ok.gov/obespa/documents/2005Rules.pdf	Bachelors degree, with emphasis in communication sciences and disorders (if degree in other area, than 15 hrs of coursework in Comm Sci or Disorders)	Only at those times when the supervisor is available for on-site supervision, instruction, and assistanc	2	Yes	Yes	Completed 25 hrs of clinical observation by licensed audiologist prior to application	
Oregon	None (SLP Yes)	(ORS Chapter 681 for SLPA board rules)	http://www.leg.state.or.us/ors/681.html							
Pennsylvania	Registration	Title 49, Chapter 45	http://www.pacode.com/secure/data/049/chapter45/chap45toc.html	30 semester hours in speech-language or hearing (unless already supervised by audiologist since June 8, 1989)	Direct observation of assistant's performance in 25% of each clinical session	3	Yes	Yes	Yes- needs 20 hours in competency-based skill acquisition	
Puerto Rico	None									

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Rhode Island	Registered	R5-48-SPA	http://www2.sec.state.ri.us/dar/regdocs/released/pdf/DOH/5012.pdf	high school diploma	Direct on-site observations of the 1st 10 hrs of direct client contact; then 5% of all clinical sessions and indirect supervision of 5% of each 40 hrs	?	No	No	Receive intensive on-the-job training by the supervising licensed audiologist, in accordance with ASHA/AAA guidelines	No
South Carolina	None (SLP Yes)	Title 40 chapter 67	http://www.scstatehouse.gov/code/t40c067.htm							
South Dakota	None									
Tennessee	Registration			hs						
Texas	Licensed	TX Occ Code Chapt 401	http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.401.htm	Bachelors degree	Min of 2 hrs/week direct supervision	N/A	Yes	Yes	No	20 hrs every 2 years
Utah	Mentioned in state law, registration status unclear	Title 58, Chapter 41, Utah Code anNotated 1953, as amended Session Laws of Utah 2009	http://www.dopl.utah.gov/laws/58-41.pdf	Accredited high school or equivalent	Must have a current written utilization plan outlining the specific manner in which the aide will be employed and the manner in which the aide will be supervised.	3	No	Yes	No	No
Vermont	None									
Virgin Islands	None									

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Virginia	None	Chapter 26 of Title 54.1	http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+18VAC30-20-240 and http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+18VAC30-20-240					Yes: cannot 'practice audiology'		
Washington	None									
West Virginia	Registration	Chapter 30-32-10. Legislative Rules, Title 29, Series 1, 2, 3, and 4	http://www.wvspeechandaudiology.com/	Associates or Bachelors degree from program designed to prepare student to be an audiology assistant	Direct supervision of 50% of time in 1st 90 days of employment and minium of 10% of subsequent contact	3	No	No	No. All training requirements apply including a supervised practicum, on-the-job training and demonstrated competence through out-come based measures.	5 hrs per year
Wisconsin	None, person is unlicensed but assistants statutorily limited	Rule 01-048	http://www.legis.state.wi.us/cr_final/01-043.pdf	Not specified	Direct supervision of 1st 10 hrs of direct client contact and a minimum of 10% of all subsequent client contact	5 (10 if in industrial setting)	Yes	Yes	No	No

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Wyoming	Registration			high school diploma	Direct on-site supervision of 1st 10 hours of client contact; then 10% of all clinical sessions, to include 1 in every 10 consecutive clinical sessions.	3	No	No	No	No

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STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY & HEARING AID DISPENSERS BOARD
2005 EVERGREEN STREET, SUITE 2100, SACRAMENTO, CA 95815
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July 15, 2011
Department of Consumer Affairs
2005 Evergreen Street
"Hearing Room"
Sacramento, CA

Committee Members Present
Carol Murphy, M.A., Chair
Lisa O'Connor, M.A.
Rodney Diaz, M.D.

Staff Present
Annemarie Del Mugnaio, Executive Officer
Spencer Walker, Legal Counsel
Breanne Humphreys, Staff
Ily Mason, Staff

Committee Members Absent
Monty Martin, M.A.

Board Member Present
Alison Grimes, Au.D.
Robert Green, Au.D.
Deane Manning, Hearing Aid Dispenser
Jamie Lee, Esq.

Guests Present
Cindy Kanemoto, DCA
Cynthia Peffers, HHP CA
Robert Powell, CSHA
Bill Barnaby, Sr., CSHA
Michael Susca, CSHA
Tricia Hunter, HHP CA
Louise Zimmerman
Becky Bingea, UCSF
Jackie Bryla, CSHA
Holy Kaiser, CSHA
Bill Barnaby Jr., CSHA

I. Call to Order

Carol Murphy, Committee Chair, called the meeting to order at 9:25 a.m.

II. Introductions

Those in attendance introduced themselves.

III. Review Website Posting for Telepractice Provisions for Speech-Language Pathology Services

Ms. Del Mugnaio referenced a proposed telehealth statement she prepared at the Board's request to be posted on the website. She stated that the telehealth statement is intended to provide guidance to practitioners and consumers on the general laws governing speech-language pathologists, audiologists, and hearing aid dispensers engaging in telehealth as a mode of service

delivery. Ms. Del Mugnaio stated that she modeled the statement after the information posted on the Medical Board of California's website.

Ms. Del Mugnaio stated that Ms. Walker has reviewed the web posting.

The Committee reviewed the statement prepared by Ms. Del Mugnaio.

Chairperson Murphy and Ms. O'Connor recommended technical changes to the language.

M/S/C: Diaz/O'Connor

The Committee voted to recommended to the Board to approve the draft statement regarding telehealth to be posted on the Board's website.

IV. Proposed Regulations Regarding Supervision and Field Work Experience Requirements for Speech-Language Pathology Assistants (California Code of Regulations 1399.170, 1399.170.6, 1399.170.10, 1399.170.11 & 1399.170.15)

Chairperson Murphy referenced the proposed language in the meeting packets and asked the Committee to review the underlined changes.

Ms. Del Mugnaio explained that the proposed changes to Section 1399.170.4 regarding the requirement that the speech-language pathology assistant (SLPA) training program director be licensed in the field of speech-language pathology or have equivalent qualifications, stemmed from an incident where the Board received complaints regarding an approved SLPA program where an occupational therapy assistant was hired to serve as the SLPA training program director. She stated that the complaints alleged that the training program director was not equipped to oversee an SLPA program as the individual did not possess the appropriate knowledge and experience.

The Committee discussed the proposed changes.

M/S/C: O'Connor/Diaz

The Committee recommended to the Board to approve the amendments to the SLPA regulations in California Code of Regulations Sections 1399.170, 1399.170.6, 1399.170.10, 1399.170.11, and 1399.170.15.

V. English Language Competency as a Prerequisite to Licensure and the Proposal for Conducting a Standard Setting Study for the Test of English for International Communication (TOEIC) Examination

Chairperson Murphy reported that she and Ms. Del Mugnaio have continued to send letters to the Educational Testing Service (ETS) requesting information on cost, necessary resources, and timelines for developing the standard setting study for the TOIEC Examination. She stated to date, the Board has not received the requested information from ETS.

The Committee discussed the need for English language competency to be assessed as an entry-level licensing standard in that a practitioner's ability to communicate effectively with their client has a direct impact on their ability to serve their client effectively.

Chairperson Murphy stated that there are several issues surrounding implementing such a requirement, such as equity in who is subject to the language competency assessment, and which test provides a valid measure of English language proficiency. However, she believes the Board needs to move forward with exploring the TOEIC as an examination prerequisite.

Ms. Murphy and Ms. Del Mugnaio will continue to work with ETS on identifying costs and resources necessary to conduct a standard setting study for the TOEIC Examination for the practice of speech-language pathology.

Chairperson Murphy adjourned the meeting at 9:43 a.m.

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Board Members Present
Lisa O'Connor, Chairperson
Alison Grimes, Au.D., Vice Chairperson
Sandra Danz, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Robert Green, Au.D.
Rodney Diaz, M.D.
Carol Murphy, M.A.
Jamie Lee, Esq.

Staff Present
Annemarie Del Mugnaio, Executive Officer
Spencer Walker, Legal Counsel
Breanne Humphreys, Staff
Michelle Mason, Staff

Board Members Absent
Monty Martin, M.A.

Guests Present
Cindy Kanemoto, DCA
Cynthia Peffers, HHP CA
Robert Powell, CSHA
Bill Barnaby, Sr., CSHA
Michael Susca, CSHA
Tricia Hunter, HHP CA
Louise Zimmerman
Becky Bingea, UCSF
Jackie Bryla, CSHA
Holy Kaiser, CSHA
Bill Barnaby Jr., CSHA

I. Call to Order

Chairperson O'Connor called the meeting to order at 10:33 a.m.

II. Introductions

Those in attendance introduced themselves.

III. Approval of Meeting Minutes January 26-27, 2011 Hearing Aid Dispensers Committee, Speech-Language Pathology Committee, & Full Board Meeting Minutes

The Board discussed minor edits to the meeting minutes of the May 19-20, 2011 Hearing Aid Dispensers Committee, Audiology Practice Committee, and full Board meeting minutes.

M/S/C: Grimes/Green

The Board voted to approve the meeting minutes as amended.

IV. Presentation by the American Board of Audiology Regarding the Pediatric Audiology Specialty Certification Examination- Discussion of Current National Examination – The Praxis Examination in Audiology

Torryn Brazell and Yvonne Sininger, of the American Board of Audiology (ABA), presented an overview of the new Pediatric Audiology Specialty Certification (PASC) Program and Examination. It was noted that the first administration of the exam was held April 10th, 2011 in Chicago.

Ms. Brazell outlined the steps involved in developing the PASC Examination:

1. Developed test blue print based on practice analysis
2. Trained subject matter experts
3. Formulated questions based on two key factors:
   Q1: How important is it for a pediatric audiologist to know this information?
   Q2: What are the consequences if pediatric audiologists do not posses this knowledge?
4. Pilot examinations given to key professionals
5. Standard setting workshop to determine passing score- Angoff method used
6. Score reports

Ms. Sininger reviewed the requirements for PASC:

1. Minimum of a graduate degree in audiology
2. 2000 hours as a paid professional experience as an Audiologist including
   -550 of those hours in direct pediatric patient contact hours
   -50 hours of case management of pediatric cases
3. 50 of the 150 hours of pediatric care must be in case management
4. Two letters from supervisor or another professional who must verify candidates work in the area of pediatric audiology

The follows comments were in response to questions posed to Ms. Brazell and Ms. Sininger by the Board:

- As of now there is no standard form to track the requisite pediatric audiology hours.
- The current PASC Examination timeframe validity is 9 years.
- Every 3 years there is a re-certification cycle for certified audiologists which also includes requisite continuing eduation hours.
- The Audiology Practice analysis is updated every 5 years.
- 7/10 exam candidates received a passing score on the first administration of the PASC Examination.
- There are two methods of scoring: norm based (pass with a specific scale [i.e. 70%]) and criterion reference (based on level of difficulty)
- Exam will be administered twice a year at a cost of $350.
- If a candidate fails the examination twice, they will need to provide evidence of further education in the specific areas the candidate was not successful on the exam.
- It is not an eligibility requirement to hold the ABA Certification in order to sit for the PASC Examination.

Ms. Del Mugnaio reported that the Educational Testing Service is in the process of revising the current Audiology Specialty Area Test. She stated that the current test will not be administered after July 2011 and that the revised test will be introduced in November 2011.

Ms. Del Mugnaio suggested that Board hold public hearings regarding changing the law to acknowledge a subspecialty in Pediatric Audiology and the need for a qualifying examination.

V. Executive Officer's Report

A. Budget Update

Ms. Del Mugnaio reviewed the expenditures reports with the Board for both the Speech-Language Pathology and Audiology budget and the Hearing Aid Dispensers' budget as of Month 11, ending on May 31, 2011. Ms. Del Mugnaio reported that the reversion to the fund should come in about 14% for the Speech and Audiology Fund and about 5% for the Hearing Aid Dispensers Fund once all end of year expenditures are reported.

B. Status of Proposed Regulations

1. Consumer Protection Enforcement Initiative (California Code of Regulations 1399.150.3, 1399.151, 1399.156, & 1399.156.5)

Ms. Del Mugnaio reported that the notice package for the regulations was filed with the Office of Administrative Law on June 14, 2011 and that no hearing is scheduled for the proposed regulations. She stated that a hearing may be scheduled should a member of the public request one. Ms. Del Mugnaio stated that the forty-five (45) day public comment period will close on August 8, 2011, at which time she will begin preparing the final rulemaking documents.

2. Dispensing Audiologists Renewal Fee/Continuing Professional Development Amendments (California Code of Regulations Sections -1399.157, 1399.160.3-1399.160.6) – Discussion of Course Approval Process

Ms. Del Mugnaio explained that the proposed regulations as approved by the Board at the May 19-20, 2011 Board meeting included language modifications which:

- Provides that non-dispensing audiologists may not obtain continuing professional development (CPD) hours in hearing aid dispensing courses where the content focuses on equipment, devices, or other products of a particular manufacturer.
- Provides for a minimum number of CPD hours that must be completed by an individual who holds dual licensure in both speech-language pathology and dispensing audiology. The proposed provision would require a dually licensed individual to obtain sixteen (16) hours in CPD for the biennial speech-language pathology license and eight (8) hours of CPD in dispensing audiology annually.

Ms. Del Mugnaio addressed CPD requirements for dual licensure and stated that there are currently seventeen (17) licensees in California who currently hold dual licensure. She stated that these licensees have been sent the proposed changes.

Ms. Del Mugnaio reported that the proposed regulations for dispensing audiologists, that are currently in effect as emergency provisions, were filed with the Office of Administrative law on June 14, 2011 and that no public hearing for the proposed regulations was scheduled. Ms. Del Mugnaio stated that the forty-five (45) day public comment period will close on August 8, 2011, at which time she will begin preparing the final rulemaking documents.

3. Continuing Education Requirements for Licensed Hearing Aid Dispensers- California Code of Regulation Section 1399.140-1399.143

Ms. Del Mugnaio stated that the proposal to modify the Hearing Aid Dispensers continuing education program was approved at the May 19, 20, 2011 Board meeting and that a notice package will be prepared in late August

C. Executive Orders - Hiring Freeze / Travel Restrictions / Staff Recruitment / Personnel Issues- New Executive Officer Performance Evaluation Process

Ms. Del Mugnaio reported on the status of the state's on-going hiring freeze, but stated that there has been some relief in that the boards and bureaus within the Department of Consumer Affairs may recruit Department staff through promotion opportunities. She reported that Cynthia Alameda has taken another job within the Department and that she has hired Patty Rodriguez as her replacement. Ms. Rodriguez has been with the Department for approximately fifteen (15) years and will bring a wealth of experience with her to the Board. Ms. Rodriguez will begin her new position as the Board's Enforcement Analyst on July 18th, 2011.

Ms. Del Mugnaio reported that the Department has introduced a new Executive Officer Performance Evaluation process and the new process is now available for Board's to utilize as an evaluation method for their respective Executive Officer.

Ms. Del Mugnaio reported that the restrictions regarding state personnel travel is still in force and as such, the Board must continue to be very conservative in expending travel funds. She stated that the next Board meeting is scheduled to take place in San Francisco, however, the meeting location will likely change to Sacramento to reduce travel and meeting room expenditures.

VI. Chairperson's Report- Report on the Department of Consumer Affairs Director's Conference Call and Information Regarding Continued Competency

Chairperson O'Connor reported that she has been participating in conference calls with the Director of the Department of Consumer Affairs and other Board Chairs and Vice-Chairs where the subject of continued competency for health care providers has been a reoccurring topic of interest. Chairperson O'Connor addressed the opportunities for the Board to transfer its continuing professional development program and the traditional method of requiring a specified number of hours in approved coursework to a more tailored method of individual licensee assessment and testing. She stated that she and Ms. Del Mugnaio have discussed the possibility of inviting a representative from the Citizen Advocacy Center (CAC) to attend a future Board meeting and educate the Board on existing continued competency program models.

Ms. Del Mugnaio referenced the Board of Podiatric Medicine's continued competency requirements and provided the Board with complaint statistics demonstrating the relationship of requiring continued competency for license renewal and how implementing the model reduced overall complaint activity.

Ms. Del Mugnaio stated she will contact the CAC and invite a representative to present information to the Board at the next Board meeting.

VII. Report from the Department of Consumer Affairs, Office of Information Services on the BreEze Project- Debbie Balaam

Ms. Balaam of the Department of Consumer Affairs reported on the status of the BreEze Project:

- BreEZe will be replacing existing antiquated data systems and will provide an integrated program with document image storage.
- Includes a new online segment for status of applications, complaints, and license renewals and will retain functionality for cashiering, generating reports, and auditing. Such processes will provide for greater efficiency and record tracking.
- Includes cross-referencing of license capabilities (Cosmetology and Hearing Aid)
- System design is approximately two-years at which time all boards and bureaus will have phased in to the new program.
- The Department is still in contract negotiations with the vendor, Accenture, for a total program cost of 38.6 million dollars.
- The project is scheduled to start in September 2011 with the first phase of boards/bureaus moving to the new BreEze system.
- The Board is scheduled for the second phase of transition beginning February 2013. However, preliminary business processes and functions will be identified by staff and the BreEze project team within the next month.
- Once the contract with the vendor is finalized and signed, actual project costs will be shared with the boards and bureaus.

VIII. Practice Committee Report

Speech-Language Pathology Committee Report and Recommendations Regarding Telepractice, Provisions for Speech-Language Pathology, Regulations Regarding Supervision and Field Work Experience Requirements for Speech-Language Pathology Assistants, and Status of the Proposal to Conduct a Standard Setting Study for the Test of English for International Communication (TOEIC) Examination

Ms. Murphy provided an overview of the issues discussed at the Speech-Language Pathology Committee meeting and outlined the recommendations of the Committee before the Board:

- The Committee had approved the public statement regarding speech-language pathologists, audiologists, and hearing aid dispensers providing services via telehealth.

  M/S/C: Grimes/Murphy

  The Board voted to adopt the recommendation of the Committee and approve the statement regarding telehealth as modified by the Committee and delegated to Ms. Del Mugnaio to post the statement on the Board's website.

- The Committee reviewed and approved changes to existing regulations regarding speech-language pathology assistant (SLPA) program requirements including Section 1399.174 requiring the SLPA Training Program Director to hold a license or equivalent credentials in speech-language pathology.

  M/S/C: Murphy/Grimes

The Board voted to adopt the recommendation of the Committee and approve the proposed regulation changes regarding supervision and training program requirements for speech-language pathology assistants (California Code of Regulations Section 1399.170-1399.170.11)

- Ms. Murphy indicated that there has been no response thus far from the Educational Testing Service regarding the Board's inquiry to the standard setting study process for the TOEIC Examination.

M/S/C: Grimes/Green

The Board voted to adopt the report and recommendation of the Committee.

IX. Legislation

Ms. Del Mugnaio reviewed the following bills with the Board:

A. Senate Bill 933 - Runner - Merger of the Speech-Language Pathologist and Audiologist/Hearing Aid Dispensers Practice Act(s)

- Merger of the practice acts of speech-language pathologist, audiologist, and hearing aid dispensers and merges the two existing funds.
- The Board initiated the bill as a clean-up measure; letters of support have been forwarded.
- The bill, if signed by the Governor, will take effect on January 1, 2012.
- No opposition is reported at this time.

B. SB 541- Price- Regulatory Boards: Expert Consultants

- SB 541 would enable boards and bureaus to utilize expert consultants under a simplified and expedited contract process.
- The Board has taken a position of support on the bill; letters of support have been sent.
- The bill is an urgency measure and takes effect upon signature by the Governor.
- No opposition is reported.

C. **AB 415- Logue - Healing arts: Telehealth.**

- Establishes the Telehealth Advancement Act of 2011 to revise and update existing law to facilitate the advancement of telehealth as a service delivery mode in managed care and the Medi-Cal Program.
- The bill, if signed by the Governor, will take effect on January 1, 2012.
- No opposition is reported at this time.

D. Amendments to 1793.02 Civil Code Regarding Warranty Provisions for Assistive Devices-Hearing Aids

- Ms. Del Mugnaio reviewed the draft regulatory document with the Board outlining proposed right of return provisions for hearing aids.
- The Hearing Health Care Providers is still in conversations with potential legislative authors for a 2012 bill.

E. Other Legislation of Interest to the Board

- Assembly Bill 136 – Beall- would Require the PUC to: expand the deaf and disabled program to include assistance to individuals with speech disabilities that impair access to and use of the telephone network and ensure funding for speech-generating devices, accessories, and mounting systems and specialized telecommunications equipment, including infrared telephones, speaker phones, and telephone interface devices; evaluate options for controlling the program costs of providing speech-generating devices, as part of an existing report to the Legislature; ensure that eligibility for speech-generating devices is limited to state residents who are certified as speech impaired by a licensed physician, licensed speech-language pathologist, or qualified state or federal agency; provide appropriate speech-generating equipment consistent with the recommendation of a licensed speech-language pathologist and with the economy, efficiency, and quality of equipment available for purchase in the state; be the provider of last resort and limit device costs to the Medi-Cal rate.
- The bill, if signed by the Governor, will take effect on January 1, 2012.
- No opposition is reported at this time.

The Board requested Ms. Del Mugnaio to research the background and genesis of the bill.

X. Licensing / Enforcement/Examination Statistical Data/ Enforcement Program Update

The Board reviewed the statistical data as provided by staff.

Ms. Del Mugnaio reported a large influx of applications submitted to the Board in May and June 2011, and stated that there has been an increase in overall processing times due to the volume of applications and supporting documents received in the last quarter of 2011.

XI. Public Comment on Items Not on the Agenda/Future Agenda Items

Representatives of the California Speech-Language-Hearing Association (CSHA) addressed the Board regarding lengthy delays in applicants receiving their licenses and requested the Board to revisit its application review policies and procedures. The CSHA representative requested the matter be placed on a future meeting agenda so that CSHA may engage with the Board on opportunities for expediting application review.

Cynthia Peffers of the Hearing Health Care Providers of California inquired about the status of the new audiology aide regulations and whether the Board was still pursuing new provisions for audiology support personnel.

XII. Announcements - Future 2011 Board Meetings October 20-21, Location TBD Discuss- 2012 Board Meeting Calendar

The Board identified its 2012 meeting schedule as follows:

January 26-27, 2012
April 19-20, 2012
July 19-20, 2012
October 18-19, 2012

XIII. Adjournment

Chairperson O'Connor adjourned the meeting at 2:10 p.m.

DEPARTMENT OF CONSUMER AFFAIRS
SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY
& HEARING AID DISPENSERS BOARD

TITLE 16 CALIFORNIA CODE OF REGULATIONS

DIVISION 13.3

ARTICLE 2
APPLICATIONS

§ 1399.110. Applications.

In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice hearing aid dispensing safely because the applicant's ability to practice may be impaired due to mental or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant. If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the board may deny the application.

NOTE: Authority cited: Sections 3328, Business and Professions Code. Reference: Sections 3352 and 3357, Business and Professions Code.

ARTICLE 6
ENFORCEMENT

§ 1399.130. Violations

Notwithstanding the causes for action listed under 3401 of the Code, the Board may deny, issue subject to terms and conditions, suspend, or revoke a license, or impose conditions of probation upon a licensee, for any of the following causes:

(a) Commission of an act of sexual abuse or misconduct.

(b) To the extent a licensee has control over the terms of an agreement; including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(c) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel.

This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(d) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(e) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(f) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

NOTE: Authority cited: Section 726 and 3328, Business and Professions Code. Reference: Section 3401, Business and Professions Code.

§ 1399.130.1. Required Actions Against Registered Sex Offenders

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a licensee under any other provision of state law.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny a license or discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE:**Authority cited**: Section 3328, Business and Professions Code. Reference: Section 3401, Business and Professions Code.

1399.131. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the ~~director~~ board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines and Model Disciplinary Orders" Sixth Edition, June 1997 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the ~~director~~ board in ~~his or her~~ its sole discretion determines that the facts of the particular case warrant such a deviation -- for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the license.

As used in this section, the term "sex offense" shall mean any of the following:

(a) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(b) Any offense defined in Section 261.5, 313.1, 647b, 243.4 (a)-(d), or 647 subsections (a) or (d) of the Penal Code or a finding that a person committed such an act.

(c) Any attempt to commit any of the offenses specified in this section.

(d) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section."

NOTE: Authority cited: Section 3328, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code. Reference: Sections 729, 3400,

3401, 3402 and 3403, Business and Professions Code; ~~and~~ Sections 11400.20, ~~and~~ 11425.50(e), and 11500, Government Code; and Section 44010, Education Code.

DIVISION 13.4

ARTICLE 1
GENERAL PROVISIONS

§ 1399.150.3. Delegation of Functions.

(a) Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer of the board, ~~or in his or her absence, the executive director of the Medical Board,~~ all functions necessary to the dispatch of the board in connection with investigative and administrative proceedings under the jurisdiction of the board including, the ability to accept default decisions and ~~the authority~~ to approve settlement agreements for the revocation, surrender or interim suspension of a license.

(b)The executive officer is further authorized~~, subject to the approval of the board,~~ to investigate and evaluate each applicant for licensure under the Act; and to issue a license in conformance with the provisions of the Act and this chapter.

NOTE: Authority cited: Section 2531.95, Business and Professions Code. Reference: Sections 2531.4 and 2531.5, Business and Professions Code.

ARTICLE 2
APPLICATION

§ 1399.151. Applications for License.

(a) An application for a license as a speech-language pathologist or audiologist shall be filed with the board at its principal office.

(b) Every application shall be typed or written in ink, signed under the penalty of perjury and accompanied by the appropriate application fee and by such evidence, statements, or documents as therein required.

(c) The applicant shall be notified, in writing, of the results of the evaluation of the application for license if the application is rejected.

(d) An applicant shall be deemed to have abandoned his or her licensure application if the requirements for licensure are not completed within two years from the date on which application was filed unless the applicant has requested extension by the board. An application submitted subsequent to an abandoned application shall be treated as a new application.

(e) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice speech-language pathology or audiology safely because the applicant's ability to practice may be impaired due to mental or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such

examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant. If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the board may deny the application.

NOTE: Authority cited: Section 2531.95, Business and Professions Code. Reference: Sections 2531.4 and 2532.1, Business and Professions Code.

ARTICLE 6
DISCIPLINARY GUIDELINES

1399.155 Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines July 16, 2004" that are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation is appropriate where the board, in its soul discretion, determines that the facts of the particular case warrant such a deviation—for example: the presence of mitigating factors; the age of the case and evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the license.

As used in this section, the term "sex offense" shall mean any of the following:

(a) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(b) Any offense defined in Section 261.5, 313.1, 647b, 243.4 (a)-(d), or 647 subsections (a) or (d) of the Penal Code or a finding that a person committed such an act.

(c) Any attempt to commit any of the offenses specified in this section.

(d) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section."

NOTE: Authority cited: Sections 2531.95, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 729, 2533 and 2533.1, Business and Professions Code; ~~and~~ Sections 11400.20, ~~and~~ 11425.50(e), and 11500, Government Code; and Section 44010, Education Code.

ARTICLE 7
DENIAL, SUSPENSION AND REVOCATION OF LICENSURE

§ 1399.156. Unprofessional Conduct.

Unprofessional conduct as set forth in Section 2533 of the code includes, but is not limited to the following:

(a) Violating or conspiring to violate or aiding or abetting any person to violate the provisions of the Act or these regulations.

(b) Committing any corrupt act, or any abusive act against a patient, which is substantially related to the qualifications, functions or duties of a speech-language pathologist or audiologist.

(c) Incompetence or negligence in the practice of speech-language pathology or audiology which has endangered or is likely to endanger the health, welfare, or safety of the public.

(d) Commission of an act of sexual abuse or misconduct.

(e) To the extent a licensee has control over the terms of an agreement, including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(f) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(g) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(h) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(i) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

NOTE: Authority cited: Section 726 and 2531.95, Business and Professions Code. Reference: Section 2533, Business and Professions Code.

§ 1399.156.5. Required Actions Against Registered Sex Offenders

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 2531.95, Business and Professions Code. Reference: Section 2533, Business and Professions Code; Section 11500, Government Code; and Section 290, Penal Code.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

Order of Adoption

Title 16, Division 13.4, California Code of Regulations
Speech-Language Pathology and Audiology Regulations

Article 8. Miscellaneous

(1) Amend section 1399.157 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

1399.157. Fees.

(a) The application fee shall be $60.00 for any person applying for a speech-language pathology or non-dispensing audiology license.

(b) The application fee shall be $280 for any person applying for a dispensing audiology license.

(c) The biennial renewal fee for licensed speech-language pathologists and non-dispensing audiologists which expire prior to January 31, 2002 shall be $75.00. Effective January 1, 2002, the biennial renewal fee for licensed speech-language pathologists or non-dispensing audiologists shall be $110.00.

(d) The annual renewal fee for a licensed audiologist authorized to dispense hearing aids shall be $280.

(e) The fee for registration of an aide shall be $10.00

(f) The application and the biennial renewal fee for a continuing professional development provider is a $200 non-refundable fee.

(g) The fee for issuance of a license status and history certification letter shall be $10.00.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Sections 163.5, 2532.6(f), and 2534.2, Business and Professions Code.

Article 11. Continuing Professional Development

(2) Amend section 1399.160 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

1399.160. Definitions

(a) A continuing professional development "course" means a form of systematic learning at least one hour (60 minutes) in length including, but not limited to, academic studies, extension studies, lectures, conferences, seminars, workshops, and self-study courses.

(b) A "self-study course" means a form of systematic learning performed at a licensee's residence, office, or other private location including, but not limited to, viewing ~~of videotapes, and~~ or listening to recorded courses ~~audiotapes~~, or participating in "self-assessment testing" (open-book tests that are completed by the licensee, submitted to the provider, graded, and returned to the licensee with correct answers and an explanation of why the answer chosen by the provider was the correct answer). A self-study course does not mean a course taken at an accredited university towards a degree~~,~~ ,nor does it include any interactive courses offered via electronic media where the course offering affords participants the opportunity to interact with an instructor and/or other course participants.

(c) A continuing professional development "provider" means an accredited institution of higher learning, a nonprofit education association, a nonprofit professional association, an individual, or other organization that offers continuing professional development courses and meets the requirements contained in this article.

(d) A "renewal period" means the two-year period that spans from a license's expiration date to the license's next expiration date.

(e) An "operational plan" means a detailed, written description which contains information that explains how the provider intends to conduct business, advertise its courses, provide educational services, and meet the minimum standards established in this article.

(f) "Professional development" shall have the same meaning and effect as the term "continuing education" when interpreting the provisions in this Article.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Section 2532.6(b), (c)(1), (e), and (f), Business and Professions Code.

(3) Amend section 1399.160.3 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

1399.160.3. Continuing Professional Development Requirements.

(a) A licensee, whose license expires in the year 2001, shall accrue at least twelve (12) hours of continuing professional development courses as defined in Section 1399.160.4. A licensee may accrue no more than four (4) hours of continuing professional development courses through self-study courses during this renewal period.

(b) A licensee who holds both a speech-language pathology license and an audiology license that expire in the year 2001, shall accrue at least eight (8) hours of continuing professional development courses as defined in Section 1399.160.4. for each license. A licensee may accrue no more than two (2) hours of continuing professional development courses through self-study courses for each license.

(c) A licensee shall accrue at least twenty-four (24) hours during a single renewal period of continuing professional development courses as defined in Section 1399.160.4. A licensee may accrue no more than eight (8) hours of continuing professional development courses through the following activities during a single renewal period:

(1) No more than six (6) hours of self-study activities,

(2) No more than four (4) hours from courses related to the discipline of speech-language pathology or audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

(3) Not more than 50% of the continuing professional development hours required of a licensed <u>non-dispensing</u> audiologist, <u>may be in hearing aid courses, but</u> shall <u>not</u> be obtained from courses where the content focuses on equipment, devices, or other products of a particular publisher, company or corporation.

(d) A licensee who holds both a speech-language pathology license and an audiology license, shall accrue at least sixteen (16) hours of continuing professional development courses as defined in Section 1399.160.4 for each license. A licensee may accrue no more than five (5) hours of continuing professional development through the following activities for each license:

(1) No more than two and one-half (2.5) hours of self-study activities,

(2) No more than two and one-half (2.5) hours from courses related to the discipline of speech-language pathology or audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

(e) A licensed audiologist authorized to dispense hearing aids as provided by Section 2539.1 of the code shall accrue at least twelve (12) hours of continuing professional development as defined in Section 1399.160.4 annually. A licensed audiologist authorized to dispense hearing

aids may accrue no more than three (3) hours of continuing professional development courses through the following activities during a single renewal period:

(1) No more than one and a half (1.5) hours of self-study activities,

(2) No more than one and a half (1.5) hours from courses related to the discipline of audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

(3) Exactly 50% of the continuing professional development hours required of a licensed audiologist authorized to dispense hearing aids, shall be obtained from courses related to hearing aid dispensing but shall not be obtained from courses where the content focuses on the equipment, devices, or other products of a particular manufacturer or company. The remaining 50% of the continuing professional development hours required of a dispensing audiologist shall be relevant to the practice of audiology as defined in Section 2530.2 (k) and shall not be obtained from hearing aid dispensing courses as provided for in this section.

(f) A licensee who holds both a speech-language pathology license and a dispensing audiology license shall accrue:

(1) At least sixteen (16) hours of continuing professional development courses in speech-language pathology biennially, of which no more than four (4) hours of the continuing professional development may be accrued through the following activities during a single renewal period:

(A) No more than two and one-half (2.5) hours of self-study activities,

(B) No more than two and one-half (2.5) hours from courses related to the discipline of speech-language pathology as defined in Section 1399.160.4 (c)(4) or in indirect client care courses as defined in Section 1399.160.4 (c)(3).

(2) At least eight (8) hours of continuing professional development courses in dispensing audiology as defined in Section 1399.160.4 and 1399.160.3(e)(3) annually, of which no more than two (2) hours of continuing professional development courses may be accrued through the following activities during a single renewal period:

(A) No more than one (1) hour of self-study activities,

(B) No more than one (1) hour from courses related to the discipline of speech-language pathology as defined in Section 1399.160.4 (c)(4) or in indirect client care courses as defined in Section 1399.160.4 (c)(3).

~~(f)~~ (g) If a licensee teaches a course offered by a provider registered with the board or an entity listed in Section 2532.6 of the Code, the licensee may claim credit for the same course only once, receiving the same amount of hours of continuing professional development credit as a licensee who attended the course.

~~(g)~~ (h) A licensee may not claim credit for the same course more than once for hours of continuing professional development.

~~(h)~~ (i) A licensee who takes a course as a condition of probation resulting from disciplinary action by the board may not apply the course as credit towards the continuing professional development.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Section 2532.6(b), (c), and (e), and 2539.1(a)-(b) Business and Professions Code.

(4) Section 1399.160.4 is not being modified, however, the section is provided below to assist one in understanding the proposed changes in context.

1399.160.4. Continuing Professional Development Course Content.

(a) A licensed speech-language pathologist shall determine that the content and learning outcomes of a course are relevant to the practice of speech-language pathology as defined in Section 2530.2(d).

(b) A licensed audiologist shall determine that the content and learning outcomes of a course are relevant to the practice of audiology as defined in Section 2530.2(k).

(c) The content of a course shall pertain to direct, related, or indirect patient/client care.

(1) Examples of direct patient/client care courses for the practice of speech-language pathology include: fluency disorders, voice disorders, motor disorders of speech, dysphagia, speech science, oral and written language disorders, aphasia and neurogenic disorders of language and cognition, augmentative and alternative communication, phonological/ articulatory disorders language science, and patient/client counseling to facilitate recovery from, or adjustment to, a communication disorder.

(2) Examples of direct patient/client care courses for the practice of audiology include auditory and vestibular assessment, auditory habilitation/rehabilitation, hearing assistive technology, industrial audiology/hearing conservation and hearing science.

(3) Indirect patient/client care courses cover pragmatic aspects of speech-language pathology or audiology practice (e.g., legal or ethical issues, consultation, record-keeping, office management, managed care issues, research obligations, technological applications related to assessment/diagnosis or intervention).

(4) Courses that are related to the discipline of speech-language pathology or audiology may cover general medical or educational offerings including, but not limited to, social interaction, cultural and linguistic diversity as it applies to service delivery for diverse populations, professional service delivery models, interdisciplinary case management issues, or medical pathologies related to neurological disorders that also result in communication difficulties.

(d) A provider shall ensure that a course has specific objectives that are measurable.

(e) Upon completion of a course, a licensee shall evaluate the course through some type of evaluation mechanism.

(f) Courses considered outside the scope of continuing professional development include, but are not limited to, those in the following areas:

(1) money management, the licensee's personal finances or personal business matters;

(2) general physical fitness or the licensee's personal health;

(3) presentations by political or public figures or other persons that do not deal primarily with the practice of either speech-language pathology or audiology;

(4) tort liability;

(5) courses that address increased office production or computerization, financial planning, employee benefits, marketing or motivational topics to increase productivity or profitability; and

(6) courses in which the primary beneficiary is the licensee, not the consumer.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Section 2532.6(b), (c), and (e), Business and Professions Code.

(5) Section 1399.160.5 is not being modified, however, the section is provided below to assist one in understanding the proposed changes in context.

1399.160.5.Hours of Continuing Professional Development.

(a) One hour of instruction is equal to one hour of continuing professional development credit.

(b) One academic quarter unit is equal to ten (10) hours of continuing professional development credit.

(c) One academic semester unit is equal to fifteen (15) hours of continuing professional development credit.

(d) One academic trimester unit is equal to thirteen (13) hours of continuing

professional development credit.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Section 2532.6(b), and (c), Business and Professions Code.

(6) Amend section 1399.160.6 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

1399.160.6. Continuing Professional Development Course Approval.

(a) A licensee shall only be credited with continuing professional development hours if he or she takes a course from a board-approved provider with a valid, current approval as a provider or from an entity listed in Section 2532.6 (e)(1) of the Code.

(b) Courses related to the dispensing of hearing aids as offered by hearing aid manufacturers or companies for the purposes of continuing professional development shall be reviewed by the Board prior to the offering of the course. The continuing professional development provider must submit such request for course approval to the Board according to the timeline in Section 1399.151.1 (e). Such request shall include:

(1) The name of the sponsoring institution, the Board issued professional development provider number (with the exception of those entities listed in Section 2532.6(e)(1)), the address, telephone number and contact person.

(2) Course title, date(s), location(s), and number of continuing professional development hours offered.

(3) Type and method of educational instruction and learner outcomes to be met.

(4) A course outline, course description, and instructor information and qualifications.

(5) If available, advertisements intended to be used by the provider to advertise the relevant course.

(c) A licensee or a continuing professional development provider may voluntarily petition Board consideration of any courses offered by an approved provider or an entity listed in Section 2532.6 (e)(1) of the Code. The licensee or continuing professional development provider must submit such request for course approval to the Board according to the timeline in Section 1399.151.1 (e). Such request shall include:

(1) The name of the sponsoring institution, the Board issued professional development provider number (with the exception of those entities listed in Section 2532.6(e)(1)), the address, telephone number and contact person.

(2) Course title, date(s), location(s), and number of continuing professional development hours offered.

(3) Type and method of educational instruction and learner outcomes to be met.

(4) A course outline, course description, and instructor information and qualifications. (5) If available, advertisements intended to be used by the provider to advertise the relevant course.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Section 2532.6(b), (e)(1) and (e) (2), Business and Professions Code.

(7) Section 1399.160.7 is not being modified, however, the section is provided below to assist one in understanding the proposed changes in context.

1399.160.7. Board-Approved Providers.

(a) A continuing professional development provider shall meet the board's course content and instructor qualifications criteria, as provided under this article, to qualify to become a board-approved provider.

(b) An applicant for continuing professional development provider shall submit a completed Continuing Professional Development Provider Application (form no. 77A-50, new 1/99), hereby incorporated by reference, remit the appropriate fees, submit a complete operational plan, and obtain a continuing professional provider number from the board to become a board-approved provider.

(c) A provider approval issued under this section shall expire twenty-four months after the approval issue date. To renew an unexpired provider approval, the provider shall, on or before the expiration date of the approval, pay the biennial renewal fee set forth in Section 1399.157 of these regulations.

(d) A provider approval that is not renewed by the expiration date may not be renewed, restored, reinstated, or reissued thereafter, but the provider may apply for a new approval.

(e) Board-approved provider status is not transferable.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code. Reference: Section 2532.6(e)(1) and (e)(2), Business and Professions Code.

Dated: August 15, 2011

_____

Annemarie Del Mugnaio
Executive Officer
Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
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SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY& HEARING AID DISPENSERS BOARD

FINAL STATEMENT OF REASONS

Hearing Date: The Board did not hold a public hearing on the proposed regulations.

Section(s) Affected: Title 16, Division 13.4, California Code of Regulations Sections 1399.157; 1399.160.3; 1399.160.6

Updated Information

The Initial Statement of Reasons is included in the file (Attachment D).

Emergency Filing

On February 23, 2011, the Board filed emergency regulations with the Office of Administrative Law to implement the following provisions. The emergency regulations were approved and became effective March 1, 2011. On August 24, 2011, the emergency regulations were readopted by the Board and approved by the Office of Administrative Law, and will expire on November 23, 2011.

There were no public comments received by the Board or the Office of Administrative Law following the first emergency notice and 5-day public comment period beginning on February 24, 2011, nor were there any public comments received in response to the emergency re-adoption notice and 5-day public comment period beginning on August 19, 2011.

Notice of Proposed Action

The Board proposed additional amendments to the language promulgated by the emergency action and said changes are documented in the Initial Statement of Reasons.

The Board did make formatting changes to the text of the proposed language in order to correct the underline and strikeout language noted.

The Board's notice indicated that the Board did not intend to hold a hearing on the matter, unless requested. No request for a hearing was received by the Board.

The Board did receive one written comment on the proposed regulations during the 45-day public comment period (June 24, 2011 through August 8, 2011) in support of the proposed changes.

The Board voted to adopt the proposed language at its May 19-20, 2011 Board meeting.

Summary of Comments Received During the 45-Day Comment Period:

The Board received one comment during the 45-day public comment period, which is summarized below:

Comment from Paul R. Rao, President of the American Speech-Language-Hearing Association (ASHA).

ASHA expressed their support of the elimination of the requirement that audiologists hold dual licensure, that is, hold a separated license to dispense hearing aids.

Board response:

The proposed regulations serve to implement AB 1535, which was the legislative vehicle that merged the Speech-Language Pathology and Audiology Board with the Hearing Aid Dispensers Bureau and eliminated the requirement for licensed audiologists to hold a separate hearing aid dispensers license. However, the regulations are specific to the fees and continuing professional development requirements for dispensing audiologists and the comment was not specific to the subject of the proposed amendments.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Business Impact

The Board has determined that the proposed regulatory action would have no adverse economic impact affecting businesses. This determination was based on the absence of testimony or comments indicating that the proposed amendments would adversely impact businesses.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

Title 16, Chapter 13.3
Hearing Aid Dispensers Regulations
Article 7. Continuing Education
Proposed Language

Amend Sections 1399.140 – 1399.143 of Article 6 of Division 13.3 of Title 16 as follows:

Section 1399.140 - Continuing Education Required.

(a) Any hearing aid license that expires on or after January 31, 2013, ~~Each dispenser~~ is required to complete at least ~~six (6)~~ twelve (12) hours of continuing education from a provider approved under Section 1399.141 below during each ~~calendar year~~ preceding one-year renewal period. ~~For all licenses which expire on and after January 1, 1997, all holders of licenses shall complete nine (9) hours of continuing education per year, and n~~ .

(1) No~~t~~ more than three (3) hours of continuing education may be credited in ~~any of the following areas related to hearing aids:~~ related, or indirect client care courses as provided in Section 1399.140.1 ~~ethics (including the ethics of advertising and marketing) or business practices~~.

(2) No~~t~~ more than three (3) hours of the required continuing education may be credited for self-study or correspondence-type coursework, e.g., recorded courses, home study materials, or computer courses. Self-study does not include live courses. A self-study course does not mean a course taken at an accredited university towards a degree, nor does it include any interactive courses offered via electronic media where the course affords participants the opportunity to interact with an instructor and/or other course participants.

(b) Records showing completion of each continuing education course shall be maintained by the dispenser for three (3) years following the renewal period. Records shall be provided to the Board in response to a compliance audit conducted.

~~(b)~~ (c) Each dispenser renewing his or her license under the provisions of Section 3451 of the code shall be required to submit proof satisfactory to the board of compliance with the provisions of this article.

~~(c)~~ (d) Such proof shall be submitted at the time of license renewal on a form provided by the board.

~~(d) Any dispenser who cannot complete the minimum hours required under subsection (a) may have his or her license renewed, but shall make up any deficiency during the following year. If the dispenser does not complete the deficient hours in addition to the minimum hours for the current year, he or she shall be ineligible for the next renewal of his or her license unless such dispenser applies for and obtains a waiver pursuant to Section 1399.144 below.~~

~~(e)~~ (f)This article shall not apply to any dispenser who is renewing a license for the first time following ~~was issued~~ the issuance of an initial permanent license ~~for the first time within the preceding calendar year~~.

~~(f)~~ (g) Any person whose hearing aid dispenser's license has been expired for two years or more shall complete the required hours of approved continuing education for the prior two years before such license may be restored.

Note: Authority and reference cited: Section 3327.5, Business and Professions Code.

Section 1399.140.1 - Continuing Education Course Content

(a) The content of a continuing education course shall pertain to direct, related, or indirect patient/client care.

(1) Direct client care courses cover current practices in the fitting of hearing aids.

(2) Indirect patient/client care courses cover practical aspects of hearing aid dispensing (e.g., legal or ethical issues (including the ethics of advertising and marketing, consultation, record-keeping, office management, managed care issues, business practices).

(3) Courses that are related to the discipline of hearing aid dispensing may cover general health condition or educational course offerings including, but not limited to, social interaction, cultural and linguistic diversity as it applies to service delivery for diverse populations, service delivery models, interdisciplinary case management issues, or medical pathologies related to neurological disorders that also result in hearing difficulties.

1399.141. Approval of Continuing Education Providers.

(a) In order to be approved by the board as a continuing education provider the following information shall be submitted with an application, incorporated herein by reference, forms (____) provided by the board:

(1) Description of course content of all courses to be offered. The course content for all courses, including ethics and business practices, shall be current practices related to the fitting of hearing aids for aiding or compensating for impaired human hearing or any of the subjects listed in subsection (a) of section 1399.140, and within the scope of practice for a dispenser as defined by the Code and generally shall be for the benefit of the consumer. The course content shall be information related to the fitting of hearing aids, and this information shall be at a level above that basic knowledge required for licensure as set forth in Section 3353 of the Code, except that basic knowledge which would serve as a brief introduction to the course. The phrase "at a level above that basic knowledge" means any subjects, issues, topics, theories, or findings that are more advanced than the entry level of knowledge described in those basic subjects listed in subdivision (b) of Section 3353. Examples of courses that are considered outside the scope of acceptable course content include: personal finances and business matters; marketing and sales, and office operations that are not for the benefit of the consumer.

(2) Method of instruction for course(s) offered. Teaching methods for each course or program shall be described, e.g., lecture, seminar, audiovisual, simulation, etc.

(3) Education objectives. Each course or program shall clearly state the educational objective that can be realistically accomplished within the framework of the course or program, and the number of hours of continuing education credit which may be obtained by completion of a specified course.

(4) Qualifications of instructors. Instructors shall be qualified to teach the specified course content by virtue of their prior education, training and experience. A provider shall ensure that an instructor teaching a course has at least two of the following minimum qualifications: (a) a license, registration, or certificate in an area related to the subject matter of the course. The license, registration, or certificate shall be current, valid, and free from restrictions due to disciplinary action by the Board or any other health care regulatory agency; (b) training, certification, or experience in teaching courses in the subject matter; or (c) at least

two years' experience in an area related to the subject matter of the course. A resume of each instructor shall be forwarded with the application for approval.

(5) Evaluation. Each course or program shall include an evaluation method which documents that educational objectives have been met, such as, but not limited to, a written evaluation or written examination by each participant.

(6) Open to Licensees. Only those courses or programs which are open to all licensed hearing aid dispensers shall be approved by the board.

(b) Providers shall maintain a record of attendance of each participant who is licensed as a hearing aid dispenser ~~and submit that record to the board no later than December 31 of each calendar year~~ for a period of four (4) years, and shall provide such record to the board upon request. The record shall indicate those dispensers who have complied with the requirements of the course or program offered.

(c) Applications for approval of a continuing education provider shall be submitted to the board at its Sacramento office ~~at least 45 days before the date of the first course or program offering to be approved~~ allowing for sufficient time for review and prior approval as follows. The Board will inform the provider within 30 days of receipt of the application whether the application is complete or deficient. The provider shall cure any deficiency within 30 days of such notice. The Board will approve or deny the application within 30 days of the date that the application is complete, or the last date to cure the deficiency. A provider may appeal to the Executive Officer of the Board the denial of approval of any course. Such appeal shall be filed with the Executive Officer of the Board not more than 30 days after the date of notice of such denial. The Executive Officer shall notify the provider within ten (10) days of the final decision of the appeal.

(d) Any change in the course content or instructor shall be reported to the board on a timely basis.

(e) The board may withdraw the approval of any provider for failure to comply with the provisions of this section.

(f) Each provider shall submit to the board on an annual basis a description or outline of each approved course to be offered the following year and a resume of any new instructor who will be presenting the course. This information shall be submitted prior to the re-offering of the course within the ~~time limit~~ timeframe set forth in subsection (c).

Note: Authority cited: Section 3327.5, Business and Professions Code. Reference: Section 3327.5, Business and Professions Code.

1399.142. Sanctions for Noncompliance.

(a) Any dispenser who does not complete the required number of hours of continuing education will be required to make up any deficiency during the next calendar year and renewal cycle. Such dispenser shall document to the board the completion of any deficient hours. Any dispenser who fails to make up the deficient hours and the hours of required continuing education for the current year shall be ineligible for the next renewal of his or her license to dispense hearing aids until such time as the deficient hours of continuing education are documented to the board.

(b) ~~Fraudently~~ In addition to any other sanction, fraudulently misrepresenting compliance with the continuing education requirements of Section 3327.5 of the code and this article shall constitute "obtaining a license by fraud or deceit" as those terms are used in Section 3401, subd. ~~(c)~~ (e), of the code.

Note: Authority cited: Sections 3327.5 and 3328, Business and Professions Code. Reference: Section 3327.5, Business and Professions Code.

1399.143. Repetition of Courses.

Credit will not be given toward approved continuing education coursework which is substantially similar to coursework which was successfully completed within the preceding ~~three (3)~~ two (2) years and used to meet the continuing education requirements of this article and Section 3327.5 of the code.

Note: Authority and reference cited: Section 3327.5, Business and Professions Code.

1399.144. Waiver of Requirement.

(a) The board, may, in its discretion exempt from the continuing education requirements, any dispenser who for reasons of health, military service, or undue hardship cannot meet those requirements. Applications for waivers shall be submitted to the board for its consideration.

(b) Any dispenser who submits an application for a waiver which is denied by the board, shall otherwise comply with the provisions of this article or be subject to the sanctions for noncompliance set forth in Section 1399.142.

HEARING AID DISPENSERS EXAMINATION UPDATE

WORKSHOPS:

September 8-9 Occupational Analysis 7 SMEs (4-HAD, 3-AU)

Reviewed and updated the ***tasks*** involved with dispensing with the objective to condense the information and make it easier to fill out on-line.

October 6-7 Occupational Analysis 7 SMEs (5-HAD, 2-AU)

Reviewed and updated the ***knowledge*** involved with dispensing with the objective to condense the information and make it easier to fill out on-line.

November 3-4 Practical Exam 8 SMEs (5-HAD, 3-AU)

Review and u
pdate (as needed) the practical exam. This is done annually.

NEW EXAMINER TRAINING:

October 29 Practical Exam 8 Trainees (7-HAD, 1-AU)

EXAM:

November 5 Practical Exam 55 Candidates

We will have 34 SMEs to assist in administering the exam.

Proposed Board's Mission Statement and Function
25 February 2011

MISSION STATEMENT:

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board protects the health, safety, and welfare of the people of California by requiring adherence to laws and regulations designed to ensure the qualifications and competency of providers of speech-language pathology, audiology and hearing aid dispensing services.

BOARD FUNCTION:

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board regulates the practice of speech-language pathology, audiology, and hearing aid dispensing practices in California by licensing those who meet minimum standards of competency. Among its functions, the Board promulgates laws and regulations, issues, renews, suspends, and revokes licenses; and imposes disciplinary sanctions, when necessary.

Speech-Language Pathology and Audiology
and Hearing Aid Dispensers Board

Draft

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

~~July 16, 2004~~ January, 2012

~~Speech-Language Pathology and Audiology Board~~
~~DISCIPLINARY GUIDELINES~~
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INTRODUCTION

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) is a consumer protection agency with the primary mission of protecting consumers of speech-language pathology, audiology, and hearing aid dispenser services from potentially harmful licensees. In keeping with its obligation to protect the consumer, the Board has adopted the following Disciplinary Guidelines for disciplinary orders, terms and conditions of probation for violations of the laws governing speech-language pathology, audiology and hearing aid dispensing as well as Uniform Standards Related to Substance Abuse.

The Board carefully considers all facts and circumstances associated with each case in its efforts to protect consumers. Subsequently, the Administrative Law Judge ("ALJ") shall provide in all proposed decisions a detailed basis of his or her decision in the "Findings of Fact" particularly when there is a deviation from the Guidelines. Justification. The deviation shall be clearly outlined in the decision to enable the Board to understand the reasons for the deviation and evaluate the suitability of the decision. However, an ALJ is prohibited from deviating from the Uniform Standards Related to Substance Abuse.

If at the time of hearing the ALJ finds that the Respondent, for any reason, is not capable of safe practice, the ALJ shall order outright revocation of the license. This is particularly important in cases of patient sexual abuse or bodily harm. Suspension of a license may also be appropriate where the public may be better protected if the practice of the licensee is suspended in order to correct deficiencies in skills, education or rehabilitation.

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Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

The following Standards shall be adhered to in all cases when a licensee's license is placed on probation due to a substance abuse problem. These Standards are not guidelines and shall be followed in all instances; however, the Board may impose more restrictive standards if necessary to protect the public.

SPEECH-LANGUAGE PATHOLOGISTS, AND AUDIOLOGISTS AND HEARING AID DISPENSERS

Section 1399.131 of Division 13.3 and Section1399.155 of Division 13.4 of Title 16, Article 6 entitled "Disciplinary Guidelines," of the California Code of Regulations is amended to read:

Article 6. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

1399.131 & 1399.155. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

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In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the board shall ~~consider the disciplinary guidelines entitled~~ comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines Revised January 2012, (hereinafter "Guidelines") ~~July 16, 2004~~," that are hereby incorporated by reference. Deviation from the~~se~~ guidelines and orders, including the standard terms and conditions of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; and evidentiary problems. Neither the board nor an administrative law judge may impose any terms or conditions of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the license.

As used in this section, the term "sex offense" shall mean any of the following:

(a) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(b) Any offense defined in Section 261.5, 313.1, 647b, 243.4 (a)-(d), or 647 subsections (a) or (d) of the Penal Code or a finding that a person committed such an act.

(c) Any attempt to commit any of the offenses specified in this section.

(d) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section."

Note: Authority cited: Sections 2531.95, Business and Professions Code; and Sections 11400.20, Government Code. Reference: Sections 729, 2533 and 2533.1, Business and Professions Code; ~~and~~ Sections 11400.20, ~~and~~ 11425.50(e) and 11500, Government Code; and Section 44010, Education Code.

UNIFORM STANDARDS FOR THOSE LICENSEES WHOSE LICENSE IS ON PROBATION DUE TO A SUBSTANCE ABUSE PROBLEM

Clinical Diagnostic Evaluations:

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has five (5) years experience in providing evaluations of health professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

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Clinical Diagnostic Evaluation Report:

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial, personal or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluation, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed thirty (30) days.

The Board shall review the clinical diagnostic evaluation to determine whether or not the licensee is safe to practice either on a part-time or full-time basis and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

Worksite Monitor Requirements:

If a Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

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The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional if no monitor with like practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.
The worksite monitor must adhere to the following required methods of monitoring the licensee:
a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, at least once per week.
b) Interview other staff in the office regarding the licensee's behavior, if applicable.
c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be verbally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours, the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; staff interviewed if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

If a licensee tests positive for a banned substance, the Board shall order the licensee to cease practice. The Board shall also immediately notify the licensee's employer, supervisor, and or contractor that the licensee has been ordered to cease practice and he or she may not resume working until the cease practice order is lifted.

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Major and Minor Violations:

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation terms and conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for major violations include, but are not limited to:

1. Licensee will be ordered to cease practice.
    a. The licensee must undergo a new clinical diagnostic evaluation, and
    b. The licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such a suspension, revocation, or other action

as determined by the Board.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation as required
2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

Consequences for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation or testing;
7. Other action as determined by the Board.

Drug Testing Standards:

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at minimum of 104 times per year for the first year, or at an appropriate testing frequency as determined by the Board, and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.

2. Drug testing may be required on any day, including weekends and holidays.

3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.

4. Licensees shall be required to make daily contact to determine if drug testing is required.

5. Licensees shall be drug tested on the date of notification as directed by the board.

6. *Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.*

7. *Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.*

8. *Testing locations shall comply with the Urine Specimen Collection Guidelines published U.S. Department of Transportation, regardless of the type of test administered.*

9. Collection of specimens shall be observed.

10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

11. *Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.*

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

DISCIPLINARY GUIDELINES

Guidelines to Consider When Rendering Descipline

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

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1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

Situations Where Revocation Shall Be Imposed

In addition to violation of the laws governing speech-language pathology, audiology and hearing aid dispensing, there are other circumstances that necessitate outright revocation as the recommended penalty.

1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.
2. Violation of the terms or conditions of a Respondent's probation order.
3. Substantiated evidence or convictions of physical or sexual abuse offenses.
4. Second offenses, unless the Respondent can demonstrate that he or she has been fully rehabilitated.

~~RECOMMENDED LANGUAGE FOR ISSUANCE AND PLACEMENT OF A LICENSE ON PROBATION FOR INITIAL LICENSURE AND REINSTATEMENT OF LICENSE~~

Model Introductory Language for Probation Orders

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~~In order to provide clarity and consistency in its decisions, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board recommends the following language in proposed decisions or stipulated agreements for applicants who hold a license in another state and for petitioners for reinstatement who are issued a license that is placed on probation.~~

~~Suggested language for applicants who are placed on probation:~~

When a stipulated settlement or proposed decision contains probationary terms and conditions, the following language shall be included:

- **Licensees:** Speech-Language Pathologist (SLP), Audiologist (AU), Dispensing Audiologist (DAU), Speech-Language Pathology Assistant (SLPA), Hearing Aid Dispenser (HAD) license no. _____ issued to Respondent _____ is hereby revoked; however, the revocation is stayed and Respondent's license is placed on probation for _____ years on the following terms and conditions.

- **Applicants:** ~~"~~The application of respondent _____ for licensure is hereby granted. Upon successful completion of all licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following terms and conditions.~~:"~~

~~Suggested language for applicants who are licensed in another state and are placed on probation:~~

~~"The application of respondent for licensure is hereby granted and a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of ____ years on the following terms and conditions:"~~

~~Suggested language for reinstatement of licensure with conditions of probation:~~

~~"The application of respondent _____ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following terms and conditions:"~~

- **Reinstatements:** The petition of _____ for reinstatement of the SLP, AU, DAU, SLPA, HAD license is hereby GRANTED, as follows.

  SLP, AU, DAU, SLPA, HAD license number _____ is reinstated. The license will be immediately revoked; however, the revocation is stayed for _____ years on the following terms and conditions:

In cases where a petitioner for reinstatement has not practiced in the State of California for an extended amount of time, he or she must retake the licensing exam before being reinstated. This information must be provided to the Administrative Law Judge so that the following term and condition can be included in the purposed decision: "Upon successful completion of the licensure examination, a license shall be issued to Respondent."

NOTE: *If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation term and condition requiring payment of original cost recovery on a payment plan shall be included in the decision.*

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Probationary Considerations

As part of the Board's mission to protect the consumer, any disciplinary order in which probation is imposed should include terms and conditions that ensure consumer protection.

For purposes of implementation of these terms and conditions of probation, any reference to the Board also means staff working for the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

Probationary Term

The Board generally recommends a minimum probation term of 3 years. The term may be increased depending upon the severity of the violation(s).

Probationary Conditions

Conditions of probation are divided into two categories:

1. **Standard** conditions that are included in all probation orders; and
2. **Additional** conditions which are applicable to the nature of the violation(s).

List of Probation Terms and Conditions

Standard Probation Terms and Conditions

Model introductory language and terms and conditions 1-15 are required in all probation orders:

1) Severability Clause
2) Obey all Laws
3) Comply with Probation Program
4) Changes of Name and Address
5) Submit Quarterly Written Declarations
6) Employee Notification
7) Interviews with Board Representatives
8) Employment Limitations
9) Educational Course
10) Consumer Restitution
11) Recovery of Costs
12) Function as a Licensee
13) Voluntary License Surrender
14) Violation of Probation
15) Completion of Probation

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Additional Probation Terms and Conditions

In addition to the standard terms and conditions (1-15), additional terms and conditions (16-28), are required (as applicable) if the offense involves one of the following: sexual misconduct, alcohol/drug abuse, mental/physical disabilities, fraudulent conduct, or lack of knowledge or skills. These additional terms and conditions should be included if relevant to the violation.

16) Submit to Examination by Physician
17) Psychological Evaluation
18) Psychotherapy
19) Clinical Diagnostic Evaluation
24) Take and Pass Licensure Examination
25) Supervised Practice
26) Worksite Monitor
27) Restrictions on Licensed Practice

20) Attend Chemical Dependency Support and Recovery Groups

21) Abstain from Controlled Substances

22) Abstain from the Use of Alcohol

23) Submit Biological Fluid Samples

28) Actual Suspension of License

STANDARD TERMS AND CONDITIONS OF PROBATION (1-15)

1. SEVERABILITY CLAUSE

Each term and condition of probation is a separate and distinct term and condition. If any term or condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each term and condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

Rationale: *The severability clause is required for all decisions and orders and stipulated agreements where there are terms and conditions of probation, to avoid the potential for all probation terms and conditions being invalidated upon a successful appeal.*

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~~1~~2. OBEY ALL LAWS:

Respondent shall obey all federal, state, US Military and local laws, including all statutes and regulations governing the practice of the licensee.

Further, respondent shall, within five (5) days of any arrest, submit to the Board in writing a full and detailed account of such arrest.

Rationale: *If there has been a violation of any law or regulation that is substantially related to the qualifications, functions, or duties of an SLP, AU, DAU, HAD and/or SLPA, this would constitute a violation of Respondent's probation and allow the Board to carry out the disciplinary order.*

~~2~~3. COMPLY WITH PROBATION PROGRAM

Respondent shall fully comply with the Board's probation program, ~~established by the Board and shall cooperate with the representatives of the Board.~~ and shall, upon notice, report to the Board's staff. Respondent shall contact enforcement staff regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with victims or complainants associated with the case or persons serving the Board as expert consultants.

Rationale: *Respondent must understand and comply with the probation terms to ensure consumer protection is upheld. Respondent shall be prohibited from making contact with any*

persons involved in the complaint, with the exception of the Board or its legal representatives, to protect the victims, complainants and witnesses from harassment by the Respondent

4~~3~~. CHANGES OF NAME AND ADDRESS ~~NOTIFICATION~~

Respondent shall notify the board in writing, within five (5) days of a change of name, residence or mailing address ~~notify the Board in writing of the new address~~.

Rationale: *This allows the Board to be informed of Respondent's current name, address of record, employment information, including his or her business address, phone number, and employer (if applicable) in the event the Board needs to locate the Respondent or communicate with his or her employer.*

~~4. OUT-OF-STATE RESIDENCY~~

~~Respondent shall notify the Board immediately in writing if he or she leaves California to reside or practice in another state.~~

~~Respondent shall notify the Board immediately upon return to California.~~

~~The period of probation shall be tolled during the time respondent is residing or practicing outside California.~~

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5. SUBMIT QUARTERLY WRITTEN DECLARATIONS

Respondent shall submit to the Board quarterly written declarations and verification of actions signed under penalty of perjury. These declarations shall certify and document compliance with all the terms and conditions of probation.

Rationale: *By requiring Respondent declare under penalty of perjury that all statements made to the Board are true and correct, the Board may hold the Respondent legally accountable for submitting false statements to the Board. Receiving quarterly reports, enables the Board to track the Respondent's compliance on a frequent basis, and offers a process for review in determining whether or not his or her license should be restored at the completion of his or her probation.*

6. EMPLOYEE~~R~~ NOTIFICATION ~~OF PROBATION TERMS AND RESTRICTIONS~~

When currently employed, ~~or~~ applying for employment, or contracted to provide services as a speech-language pathologist, audiologist, dispensing audiologist, ~~or~~ speech-language pathology assistant, or hearing aid dispenser, respondent shall notify his or her employer and supervisor or contractor of the probationary status of respondent's license. This notification to the respondent's current employer and supervisor, or contractor shall occur no later than the effective date of the Decision placing respondent on probation. The respondent shall notify any prospective employer and supervisor or contractor of his or her probationary status with the Board prior to accepting such employment. This notification shall ~~be by~~ include ~~providing the employer or prospective employer with~~ a copy of the Board's Decision placing

respondent on probation.

The respondent shall provide to the Board the names, physical addresses, and telephone numbers of all employers, supervisors and contractors.

The respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor or contractor.

Respondent shall cause each employer and supervisor or contractor to submit quarterly written declarations to the Board. These declarations shall include a performance evaluation.

Respondent shall notify the Board, in writing, of any change in his or her employment status, within ten (10) days of such change.

Rationale: *Any license restriction, including probation is a matter of public record. The public interest is best served when employers have knowledge of a licensee's conduct and need for rehabilitation so that employers may make informed choices to protect their consumers.*

7. INTERVIEWS WITH BOARD REPRESENTATIVES

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice. ~~An initial probation visit will be required within sixty (60) days of the effective date of the Decision. The purpose of this initial interview is to introduce Respondent to the Board's representatives and to familiarize Respondent with specific probation conditions and requirements. Additional meetings may be scheduled as needed.~~

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Rationale: *This allows the Board to schedule in-person interviews to monitor Respondent's compliance with the probation order to ensure public protection.*

8. EMPLOYMENT LIMITATIONS

While on probation, Respondent may not work as a faculty member in an accredited or approved school of speech-language pathology or school of audiology.

Rationale: *A licensee whose has had his or her license disciplined and is currently serving probation should not be allowed to provide instruction to speech-language pathology or audiology students.*

9. EDUCATIONAL COURSE

Respondent shall take and successfully complete course work substantially related to the violation. Within sixty (60) days of the effective date of the Decision, Respondent shall submit a plan to comply with this requirement. Respondent must obtain approval of such plan by the Board prior to enrollment in any course of study.

Respondent shall successfully complete the required remedial education no later than the end of the first year of probation. Upon successful completion of the course, Respondent shall cause the instructor to furnish proof to the Board immediately.

Rationale: *In those instances where a licensee has demonstrated negligence or incompetence, or has been found to have performed work or attempted treatment beyond the scope of his or her training or experience, the Board will impose a program of remedial education. This program shall specify the areas and hours of education required, and may also dictate the institution(s) where the education will be received. A remedial education program is usually required prior to allowing the licensee to return to the identified deficient area of practice, and requires prior approval by the Board. Continuing education courses used for renewal of licensure will not fulfill the remedial education requirement. This program is for licensees who have demonstrated deficiencies in skill but do not constitute a present danger to patients in other areas of practice.*

10. CONSUMER RESTITUTION

Respondent shall make restitution to consumer(s) named in the decision in the amount of damage specified within one (1) year of the effective date of the decision.

Rationale: *Where there has been patient harm resulting from negligent or incompetent treatment or a determination has been made concerning fraudulent billing or failure to adhere to warranty requirements, restitution may be warranted. Careful scrutiny should be made to ensure that proper restitution is made to either the patient or any other applicable entity. Restitution may be made within a specific time frame or on a payment schedule. Restitution should cover those amounts that are a direct result of the actions of Respondent.*

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11. RECOVERY OF COSTS

~~Where an order for recovery of costs is made, the Respondent shall make timely payments as directed in the Decision.~~

Respondent shall pay to the Board its costs of investigation, probation, and enforcement in the amount of $_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than six (6) months prior to the end of the probationary term.

Rationale: *The Board incurs costs associated with the investigation, the disciplinary process, and probation monitoring; this requires the Respondent to reimburse the Board for those expenditures*

1~~0~~2. FUNCTION AS A LICENSEE ~~IN A LICENSED CAPACITY~~

~~During probation, Respondent shall work in his or her capacity in the State of California. If respondent is unable to secure employment in his or her capacity, the period of probation shall be tolled during that time.~~

Respondent, during the period of probation, shall engage in the practice of [INSERT APPROPRIATE LICENSING CATEGORY, [e.g. speech-language pathology, audiology,

or hearing aid dispensing] in California for a minimum of sixteen (16) hours per week or sixty-four (64) hours per calendar month. For the purpose of compliance with this section, "engaged in the practice of [INSERT APPROPRIATE LICENSING CATEGORY]" may include, when approved the Board, volunteer work in [INSERT APPROPRIATE LICENSING CATEGORY], or work in any non-direct patient position that requires licensure. In the event Respondent should leave California to practice outside the state, Respondent must provide written notification (within five (5) calendar days) to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in California. Practice outside of California will not apply to the reduction of the probationary period.

In the event Respondent ceases to practice a minimum of sixteen (16) hours per calendar week or sixty-four (64) hours per calendar month in California, Respondent must provide written notification of that fact to the Board. The period when the Respondent is not practicing the minimum number of hours noted above, will not apply to the reduction of the probationary period. Absence from practice shall not relieve the Respondent from maintaining a current license. For purposes of this term and condition, non-practice due to Board ordered suspension shall not be considered a period of non-practice. If Respondent stops practicing in California for a total of five (5) years, or three (3) years for a hearing aid dispensers, Respondent's license shall be automatically cancelled.

If Respondent has not complied with this term and condition during the probationary period, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this term and condition, and if Respondent is in compliance with all other probation terms and conditions, the Board, in its sole discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this term and condition. During the one year extension, all original terms and conditions of probation shall apply unless they have been modified by the Board via a petition for modification of probation.

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Rationale: *This provides the Board with an opportunity to monitor the Respondent and determine if they can perform the functions and duties of his or her licensing category in a competent manner. It also prevents Respondent from merely "waiting out" the period of probation and avoiding the necessity of demonstrating competence and compliance with probation terms and conditions*.

~~11. MAINTAIN A VALID LICENSE~~

~~Respondent shall, at all times while on probation, maintain an active current license with the Board, including any period during which suspension or probation is tolled.~~

~~Should Respondent's license, by operation of law or otherwise, expire, upon renewal or reinstatement, Respondent's license shall be subject to any and all terms of this probation not previously satisfied.~~

13. VOLUNTARY LICENSE SURRENDER

During Respondent's term of probation, if he or she wishes to cease practice, Respondent may request in writing to surrender the license(s) to the Board. The Board shall evaluate the request and notify Respondent in writing whether to grant the request. Upon formal acceptance of the license surrender, Respondent's license will no longer be subject to the terms and conditions of probation. Respondent shall return the pocket license(s) and wall certificate(s) to the Board within ten (10) days of the effective date of the surrender.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. If Respondent re-applies for a license, the application shall be treated as a petition for reinstatement of a revoked license.

Rationale: *If Respondent feels he or she cannot follow any one of the terms and conditions of the probation order, this term and condition provides him or her the option to voluntarily surrender his or her license.*

1~~2~~4. VIOLATION OF PROBATION

If Respondent violates probation in any respect, the Board may seek to revoke probation and carry out the disciplinary order that was stayed. The Respondent shall receive prior notice and the opportunity to be heard. If a Petition to Revoke Probation, an Accusation, a Petition to Vacate Stay or other formal disciplinary action is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended and Respondent shall comply with all probation terms and conditions until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

Draft

Rationale: *This allows the Board to carry out the disciplinary order stated in the decision when a Respondent fails to comply with any of his or her probation terms and conditions.*

1~~3~~5. COMPLETION OF PROBATION

Respondent's license will be fully restored upon successful completion of probation.

Rationale: *When the Respondent has completed his or her term of probation by successfully fulfilling all of the terms and conditions, he or she has demonstrated his or her ability to practice unrestricted.*

~~OPTIONAL~~ ADDITIONAL TERMS AND CONDITIONS OF PROBATION (1~~4~~6-2~~6~~8)

1~~4~~6. SUBMIT TO EXAMINATION BY PHYSICIAN

Within sixty (60) days of the effective date of the Decision, Respondent shall submit to a physical examination by a physician and surgeon of his or her choice who meets

minimum criteria established by the Board. The physician and surgeon shall ~~must~~ be licensed in California and Board certified in Family Practice, Internal Medicine, or a related specialty. The purpose of this examination shall be to determine Respondent's ability to safely perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician and surgeon with a copy of the Board's Decision prior to the examination. Cost of such examination shall be paid by Respondent.

Respondent shall cause the physician and surgeon to complete a written medical report. This report shall be submitted by the physician and surgeon to the Board within ninety (90) days of the effective date of the Decision. If the examining physician and surgeon finds that Respondent is not physically fit to practice or can only practice with restrictions, the ~~examining~~ physician and surgeon shall notify the Board within three (3) working days. The Board shall notify the respondent in writing of the ~~examining~~ physician~~'s~~ and surgeon's determination of unfitness to practice and shall order the Respondent to cease practice or place restrictions on Respondent's practice. ~~licensed activities as a condition of probation.~~ Respondent shall comply with any order to cease practice or restriction of his or her practice ~~this condition~~ until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent in writing. ~~Respondent shall document compliance in the manner required by the Board.~~

Rationale: *This permits the Board to require the probationer to obtain appropriate treatment for physical problems/disabilities which could affect safe practice. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.*

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1~~5~~7. PSYCHOLOGICAL EVALUATION

Respondent shall participate in a psychiatric or psychological evaluation. This evaluation shall be for the purpose of determining Respondent's current mental, psychological and emotional fitness to safely perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the evaluation. The evaluation shall be performed by a ~~psychiatrist~~ physician and surgeon licensed in California and Board certified in psychiatry or by a clinical psychologist licensed in California approved by the Board.

Within twenty (20) days of the effective date of the Decision, ~~Respondent shall submit to~~ the Board shall provide to the Respondent, the name of one or more proposed evaluators ~~for prior approval by the Board~~ approved to conduct the psychological evaluation.

Respondent shall fully cooperate with the provision and undergo a psychiatric or psychological evaluation within thirty (30) days of the effective date of the Decision. The ~~cause the~~ evaluator ~~to~~ shall submit to the Board a written psychiatric or psychological report evaluating Respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted within ~~ninety (90)~~ sixty (60) days from the effective date of the Decision. Cost of ~~such~~ the evaluation shall be paid by the Respondent.

If the evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice safely with restrictions, the evaluator shall verbally notify the Board within ~~three (3)~~ one (1) working day~~s~~. The Board shall notify the Respondent in writing of the evaluator's determination of unfitness to practice and shall notify the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, Respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid for by Respondent.

Rationale: *Psychological evaluations shall be utilized when an offense calls into question the judgment and/or emotional and/or mental condition of the Respondent or where there has been a history of abuse or dependency of alcohol or controlled substances. When appropriate, Respondent shall be restricted from rendering services under the terms and conditions of probation until he or she has undergone an evaluation, the evaluator has recommended resumption of practice, and the Board has accepted and approved the evaluation.*

1~~6~~8. PSYCHOTHERAPY

Respondent shall participate in ongoing psychotherapy with a California licensed ~~psychiatrist~~ physician and surgeon who is Board certified in Psychiatry, clinical psychologist, marriage, family, and child counselor, or licensed clinical social worker approved by the Board. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy shall be paid for by Respondent.

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Within twenty (20) days of the effective date of the Decision, ~~Respondent shall submit to~~ the Board shall submit to the Respondent the name of one or more proposed therapists ~~for prior~~ approved~~al.~~ to provide on-going therapy ~~Upon approval by the Board,~~ Respondent shall commence psychotherapy within ten (10) days of receiving notification by the Board of the name's of approved therapists. Respondent shall provide the therapist with a copy of the Board's Decision no later than the first counseling session.

If the therapist finds that Respondent is not psychologically fit to practice safely, or can only practice safely with restrictions, the therapist shall notify the Board within three (3) working days. The Board shall notify the Respondent in writing of the therapist's determination of unfitness to practice and shall notify the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent.

~~Respondent shall cause~~ The therapist shall ~~to~~ submit quarterly written declarations to the Board concerning Respondent's fitness to practice and progress in treatment.

Rationale: *This should be imposed whenever there is evidence that the Respondent may have a psychological problem that impacts his or her ability to provide safe and efficacious services to the public. If the Respondent is already in therapy this condition should be imposed to ensure that he or she continues to receive help.*

19. CLINICAL DIAGNOSTIC EVALUATION

Within 20 days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license shall cease practice for minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing as prescribed by the Board.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. Respondent's license may be suspended until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one (1) month of negative drug test results.

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Rationale: *This provision should be included when a Respondent's license is placed on probation for a substance or alcohol abuse problem so that the Board has the ability to order at any time during the probation period, a Respondent to undergo an evaluation to determine if he or she is currently safe to practice.*

~~17. REHABILITATION PROGRAM~~

~~Within thirty (30) days of the effective date of the Decision, Respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board.~~

~~Components of the treatment contract shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work setting, random bodily fluid testing, abstention from drugs and alcohol, use of worksite monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations, and other appropriate rehabilitation or monitoring programs.~~

~~The cost for participation in this program shall be paid for by Respondent.~~

~~18~~20. ATTEND CHEMICAL DEPENDENCY SUPPORT AND RECOVERY GROUPS

Within five (5) days of the effective date of the Decision, Respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous). Documentation of attendance shall be submitted by the Respondent with each quarterly written report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board in writing that attendance is no longer required.

Rationale: *This provision should be included when a Respondent has an alcohol or drug problem so that the Board can monitor whether the Respondent is in violation of probation.*

~~19~~21. ABSTAIN FROM CONTROLLED SUBSTANCES

Respondent shall completely abstain from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined in Section 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

Rationale: *This provision should be included when a Respondent has a substance abuse problem so that the Board can monitor whether the Respondent is in violation of probation.*

2~~0~~2. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the intake ~~use~~ of alcohol~~ic~~ ~~beverages~~ during the period of probation.

Rationale: *This provision should be included when a Respondent has an alcohol problem so that the Board can ensure that consumption of alcohol does not pose a consumer protection issue.*

2~~1~~3. SUBMIT BIOLOGICAL FLUID SAMPLES

Respondent shall immediately submit to random and directed biological fluid testing paid for by Respondent, at the request of the Board or its designee. The Respondent shall be subject to a minimum of one-hundred and four (104) random tests per year within the first year of probation, or an appropriate testing frequency as determined by the Board, and at minimum of fifty (50) random tests per year thereafter for the duration of the probationary term. ~~Positive test results will be reported to the Board~~

Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board at least fifteen (15) days prior to the vacation or travel.

If Respondent tests positive for a banned substance, Respondent shall cease practice upon order of the Board.

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Rationale: *This provision should be included when a Respondent's license is placed on probation for a substance or alcohol abuse problem so that the Board can monitor whether or not the Respondent is abstaining from the use of banned substances or alcohol.*

2~~2~~4. TAKE AND PASS LICENSURE EXAMINATION

Option #1:

Respondent shall take and pass the first administration after the effective date of this decision of the written and/or practical licensure examination as designated by the Board. If Respondent fails the examination, Respondent must take and pass a re-examination consisting of the written and/or practical licensure examination which is administered for the purpose of licensure. If respondent is required to take and pass both the written and practical examinations, the written examination must be taken and passed prior to taking the practical examination. The waiting period between repeat written examinations shall be at least two weeks, until the examinations are passed. Respondent shall pay all examination fees and pass the required examinations no later than one-hundred (100) days prior to the termination date of probation.

Option #2 (Condition Precedent):

Before resuming practice, Respondent shall take and pass the written and/or practical licensure examination(s) currently required of new applicants prior to resuming practice. Respondent shall pay all examination fees.

Draft

Rationale: *In cases involving evidence of extreme departures from the standard of care, as a result of a lack of knowledge and skill required to be minimally competent to practice, it may be appropriate to require the Respondent to take and pass licensing examination(s) during the course of the probation period. In some instances, it may be appropriate for practice to be suspended until the examination is passed (condition precedent).*

2~~3~~5. SUPERVIS~~ION~~ED PRACTICE

~~The Board shall be informed and approve of the type of supervision or monitoring provided while the Respondent is functioning as a licensed speech-language pathologist, licensed audiologist or speech-language pathology assistant.~~

~~Respondent may not function as a supervisor for any required professional experience (RPE) candidate during the period of probation or until approved by the Board.~~

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more proposed supervisors and a plan for each such supervisor by which Respondent's practice would be supervised. The Board will advise Respondent within two weeks whether or not the proposed supervisor and plan of supervision are approved. Respondent shall not practice until receiving notification of Board of the approval of Respondent's choice of a supervisor and plan of supervision.

The plan of supervision shall be [INSERT METHOD](i.e. *direct and require the physical presence of the supervisor at the actual location during the time services are performed) (general and not require the physical presence of the supervisor during the time services are performed, but does require an occasional, random review of the work performed as well as quarterly monitoring visits at the office or place of practice).* Additionally, the supervisor shall have full and random access to all patient records of Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of deficiencies.

Each proposed supervisor shall be a California licensed [SELECT LICENSE TYPE] who shall submit written reports to the Board on a quarterly basis verifying that supervision has taken place as required and include an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely manner. Each supervisor shall have been licensed in California for at least three (3) years and have no current or prior disciplinary action by the Board. An administrative citation and fine does not constitute discipline and therefore, in and of itself, is not a reason to deny an individual as a supervisor.

The supervisor shall be independent, with no prior business, or professional relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, partner or associate of Respondent. If the supervisor terminates his or her supervision or is no longer available to serve in the supervisory role, Respondent shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by the Respondent.

Draft

OPTION: Additionally, Respondent may be prohibited from engaging in solo practice as well as being required to work in a supervised environment.

Rationale: *This allows the Board to monitor the competency of Respondent by use of a fellow practitioner. It is most appropriate in cases involving incompetence, negligence, billing and/or document fraud, and sexual misconduct. The type of supervision needs to be clearly defined relative to the necessity for the presence of the supervisor. Direct supervision would require the physical presence of the supervisor during all time services are performed. General supervision does not require the physical presence of the supervisor, and may be appropriate for violations that do not involve direct patient harm.*

26. WORKSITE MONITOR

Respondent shall submit the name of the proposed worksite monitor within (twenty) 20 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding the Respondent and the worksite monitor's requirements and reporting responsibilities. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite. If the worksite monitor terminates the agreement with the Board and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Board.

Rationale: *This provision should be included when a Respondent's license is placed on probation for substance or alcohol abuse so that the Board becomes aware of potential problems a probationer may have before any patient harm occurs.*

24~~4~~7. RESTRICTIONS ON LICENSED PRACTICE

~~Respondent shall practice only with a restricted patient population, in a restricted practice setting, or engage in limited practice procedures. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in the manner required by the Board.~~

During probation Respondent is prohibited from (insert restriction).

Rationale: *In cases wherein some factor of the patient population at large (e.g. age, gender) may put a patient at risk if in treatment with the Respondent, this term and condition should be utilized. Additional language can be added for clarification.*

~~25. RECOVERY OF COSTS~~

~~Where an order for recovery of costs is made, the Respondent shall make timely payments as directed in the Decision.~~

Draft

26~~8~~. ACTUAL SUSPENSION OF LICENSE

As part of probation, respondent is suspended from practice for ____months beginning the effective date of this decision. Respondent shall be responsible for informing his or her employer of the Board's decision, the reasons for the length of suspension. Prior to the lifting of the actual suspension of license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board. ~~Respondent shall provide documentation of completion of educational courses or treatment rehabilitation if required.~~

Rationale: *This should be imposed when it is appropriatefor the licensee to complete other terms and conditions to ensure consumer protection before the licensee is safe to resume practice.*

~~RECOMMENDED LANGUAGE FOR ISSUANCE AND PLACEMENT OF A LICENSE ON PROBATION FOR INITIAL LICENSURE AND REINSTATEMENT OF LICENSE~~

~~In order to provide clarity and consistency in its decisions, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board recommends the following language in proposed decisions or stipulated agreements for applicants who hold a license in another state and for petitioners for reinstatement who are issued a license that is placed on probation.~~

~~Suggested language for applicants who are placed on probation:~~

~~"The application of respondent _____ for licensure is hereby granted. Upon successful completion of all licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following terms and conditions:"~~

~~Suggested language for applicants who are licensed in another state and are placed on probation:~~

~~"The application of respondent for licensure is hereby granted and a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of ____ years on the following terms and conditions:"~~

~~Suggested language for reinstatement of licensure with conditions of probation:~~

~~"The application of respondent _____ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of _____ years on the following terms and conditions:"~~

Draft

Recommended Action by Violation

The Business and Professions Code section 2530 et. Seq., and general provision sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Below are the code sections with the recommended disciplinary actions listed by the degree of the offense.

When filing an Accusation, the Office of the Attorney General may also cite additional related statutes and regulations.

*Note: Under Term and Conditions of Probation you will find the applicable numbered terms and conditions to include in a decision and order.

PENALTIES FOR DISCIPLINARY ACTIONS

Except where otherwise indicated, the following penalties apply to speech-language pathologists, audiologists, dispensing audiologists and speech-language pathology assistants.

UNPROFESSIONAL CONDUCT (GENERAL)

Sections 480 & 2533 of the Business and Professions Code

Section 1399.156 of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5) If warranted: Psychological Evaluation (1~~5~~7) Supervis~~ion~~ed Practice (2~~3~~5) Restrict~~ed~~ions on Licensed Practice (2~~5~~7) Actual Suspension of License (2~~7~~8)

UNPROFESSIONAL CONDUCT -- CONVICTION OF A CRIME OR ACT INVOLVING DISHONESTY, FRAUD, OR DECEIT

Sections 480(a)(1), 480(a)(2), 490 & 2533(a) of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5) If warranted: Psychological Evaluation (1~~5~~7) Supervis~~ion~~ed Practice (2~~3~~5) Restrict~~ed~~ions on Licensed Practice (2~~5~~7) Actual Suspension of License (2~~7~~8)

Draft

UNPROFESSIONAL CONDUCT -- SECURING LICENSE UNLAWFULLY

Sections 498 & 2533(b) of the Business and Professions Code

MINIMUM	Revocation or Denial

Note: The severity of this offense warrants revocation or denial in all cases.

MENTAL OR PHYSICAL ILLNESS

Section 820 of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms and Conditions of Probation (1-15) Submit to Examination by Physician (16) Psychological Evaluation (17) If warranted: Psychotherapy (18)

Worksite Monitor (26)
Actual Suspension of License (28)

Note: *In some instances public safety can only be assured by removing the licensee from practice.*

UNPROFESSIONAL CONDUCT -- USE OR ADMINISTERING TO ONESELF ANY CONTROLLED SUBSTANCE

Section 2533(c)(1) of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms and Conditions of Probation (1-1~~3~~5) Submit to Examination by Physician ~~Exam~~ (1~~4~~6) Clinical Diagnostic Evaluation (19) Attend Chemical Dependency Support and Recovery Groups (~~18~~20) Abstain from ~~Drugs~~Controlled Substances and Alcohol (~~19-~~20~~1~~-22) Submit Biological Fluid~~s~~ Samples (2~~1~~3) Worksite Monitor (26) Supervis~~ioned~~ Practice (2~~3~~5) Actual Suspension of License (2~~7~~8) If warranted: Psychological Evaluation (1~~5~~7) Psychotherapy (1~~6~~8) ~~Drug and Alcohol Rehabilitation (17~~) Restrict~~ed~~ions on Licensed Practice (2~~5~~7) ~~Suspension (26)~~

Note: *In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: insufficient evidence of rehabilitation, denial of problem, unstable employment history, significant diversion of patients' medications, prior disciplinary action, multiple violations and patient harm.*

UNPROFESSIONAL CONDUCT -- USE OF ANY DANGEROUS DRUGS SPECIFIED IN SECTION 4022 OF BUSINESS AND PROFESSION CODE, OR USE OF ALCOHOLIC BEVERAGES EXTENT IMPAIRS ABILITY TO PRACTICE SAFELY

Section 2533(c)(2) of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms and Conditions of Probation (1-1~~3~~5)

Draft

Submit to Examination by Physician ~~Exam~~ (1~~4~~6)
Clinical Diagnostic Evaluation (19)
Attend Chemical Dependency Support and Recovery Groups (~~18~~20)
Abstain from ~~Drugs~~Controlled Substances and Alcohol (~~19-~~2~~0~~1-22)
Submit Biological Fluid~~s~~ Samples (2~~1~~3)
Supervis~~ion~~ed Practice (235)
Worksite Monitor (24)
Actual Suspension of License (2~~7~~8)
If warranted:
Psychological Evaluation (1~~5~~7)
Psychotherapy (1~~6~~8)
~~Drug and Alcohol Rehabilitation (17)~~
Restrict~~ed~~ions on Licensed Practice (2~~5~~7)
~~Suspension (26)~~

***Note**: In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: insufficient evidence of rehabilitation, denial of problem, unstable employment history, significant diversion of patients' medications, prior disciplinary action, multiple violations and patient harm.*

Draft

UNPROFESSIONAL CONDUCT -- MORE THAN ONE MISDEMEANOR OR ANY FELONY INVOLVING USE, CONSUMPTION, OR SELF-ADMINISTRATION OF ANY CONTROLLED SUBSTANCES, ALCOHOL, OR DANGEROUS DRUG

Section 2533(c)(3) of the Business and Professions Code

MAXIMUM — Revocation or Denial

MINIMUM — 18 Months Probation
Standard Terms and Conditions of Probation (1-1~~3~~5)
Clinical Diagnostic Evaluation (17)
Attend Chemical Dependency Support and Recovery Groups (~~18~~20)
Abstain from ~~Drugs~~Controlled Substances and Alcohol (~~19-~~2~~0~~1-22)
Submit Biological Fluid~~s~~ Samples (2~~1~~3)
Worksite Monitor (24)
Actual Suspension of License (2~~7~~8)
If warranted:
Submit to ~~Physical~~ Examination by Physician (1~~4~~6)
Psychological Evaluation (1~~5~~7)
~~Drug and Alcohol Rehabilitation (17)~~
Supervis~~ion~~ed Practice (2~~3~~5)
Restrict~~ed~~ions on Licensed Practice (2~~5~~7)

~~Suspension (26~~)

***Note**: In some instances public safety can only be assured by removing the licensee from practice. Factors to consider are; conviction of possession of drugs for sale, contribution to delinquency of minors, and other similar offenses.*

UNPROFESSIONAL CONDUCT -- ADVERTISING

Section 1399.156.4 of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5) If warranted: Supervis~~ion~~ed Practice (2~~3~~5)

UNPROFESSIONAL CONDUCT -- COMMITTING A DISHONEST OR FRAUDULENT ACT SUBSTANTIALLY RELATED TO QUALIFICATIONS, FUNCTIONS, OR DUTIES OF LICENSEES (Non-Drug Related)

Section 2533(e) of the Business and Professions Code

Draft

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5) Supervis~~ion~~ed Practice (2~~3~~5) If warranted: Submit to ~~Physician~~ Examination by Physician(1~~4~~6) Psychological Evaluation (1~~5~~7) Restrict~~ed~~ions on Licensed Practice (2~~5~~7) Actual Suspension of License (2~~7~~8)

UNPROFESSIONAL CONDUCT AIDING AND ABETTING IN THE COMMISSION OF A VIOLATION OF AN ACT OR REGULATION

Section 1399.156(a) of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5)

UNPROFESSIONAL CONDUCT-CORRUPT OR ABUSIVE ACT AGAINST A PATIENT

Section 1399.156(b) of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms and Conditions of Probation (1-1~~3~~5) Supervis~~ion~~ed Practice (2~~3~~5) If warranted: Psychological Evaluation (1~~5~~7) Psychotherapy (1~~6~~8) Restrict~~ed~~ions on Licensed Practice (2~~5~~7) Actual Suspension of License (2~~7~~8)

Note: *In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are; insufficient evidence of rehabilitation, denial of problem, prior disciplinary action, multiple violations and patient harm.*

UNPROFESSIONAL CONDUCT- INCOMPETENCE OR NEGLIGENCE

Section 1399.156(c) of the California Code of Regulations, Title 16

Draft

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms and Conditions of Probation (1-1~~3~~5) Supervis~~ion~~ed Practice (2~~3~~5) If warranted: Psychological Evaluation (1~~5~~7) Psychotherapy (1~~6~~8) Restrict~~ed~~ions on Licensed Practice (2~~5~~7) Actual Suspension of License (2~~7~~8)

Note: *In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are; insufficient evidence of rehabilitation, denial of problem, prior disciplinary action, multiple violations and patient harm.*

UNPROFESSIONAL CONDUCT BY SPEECH-LANGUAGE PATHOLOGY CORPORATION OR AUDIOLOGY CORPORATION

Section 2537, 2537.2, 2537.3 & 2537.4 of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5)

DISCIPLINARY ACT BY FOREIGN JURISDICTION

Section 141 of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5) If warranted: ~~Support and Recovery Groups (18)~~ ~~Abstain from Drugs and Alcohol (19-20)~~ ~~Submit Biological Fluids (21)~~ ~~Physical Examination (14)~~ ~~Psychological Evaluation (15)~~ ~~Drug and Alcohol Rehabilitation (17)~~ ~~Supervision (23)~~ ~~Restricted Practice (25)~~ ~~Suspension (27)~~ Additional Probation Terms and Conditions (16-28)

SEXUAL MISCONDUCT

Section 726 of the Business and Professions Code

Draft

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms and Conditions of Probation (1-1~~3~~5) Supervisi~~on~~ed Practice (2~~3~~5) If warranted: Psychological Evaluation (1~~5~~7) Psychotherapy (1~~6~~8) Restrict~~ed~~ions on Licensed Practice (2~~5~~7) Actual Suspension of License (2~~7~~8)

VIOLATION OF REQUIRED PROFESSIONAL EXPERIENCE (RPE) REGULATIONS

Sections 1399.153 – 1399.153.10 of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5)

VIOLATION OF LAWS AND REGULATIONS RELATING TO SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AIDES

Section 2530.6 of the Business and Professions Code
Sections 1399.154 – 1399.154.7 of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5)

VIOLATION OF LAWS AND REGULATIONS RELATING TO SPEECH-LANGUAGE PATHOLOGY ASSISTANTS

Sections 2533 & 2538.1 of the Business and Professions Code
Sections 1399.170.19 of the California Code of Regulations, Title 16

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5) If warranted: ~~Physician Exam (14)~~ ~~Psychological Examination (15)~~ ~~Psychotherapy (16)~~ ~~Drug and Alcohol Rehabilitation (17)~~ ~~Abstain from Drugs and Alcohol (19-20)~~ ~~Submit Biological Fluids (21)~~ ~~Supervision (23)~~ ~~Restricted Practice (24)~~ ~~Suspension (26)~~ Additional Terms and Conditions of Probation (16-28)

Draft

PENALTIES FOR DISCIPLINARY ACTIONS

Except where otherwise indicated, the following terms and conditions apply to hearing aid dispensers and dispensing audiologists unless noted

SEXUAL MISCONDUCT

Section 726 of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms and Conditions of Probation (1-15) Supervised Practice (25)

If warranted:
- Psychological Evaluation (17)
- Psychotherapy (18)
- Restrictions on Licensed Practice (27)
- Actual Suspension of License (28)

MENTAL OR PHYSICAL ILLNESS

Section 820 of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	5 Years Probation Standard Terms and Conditions of Probation (1-15) Submit to Examination by Physician (16) Psychological Evaluation (17) If warranted: - Psychotherapy (18) - Supervised Practice (25) - Actual Suspension of License (28)

Note: *In some instances public safety can only be assured by removing the licensee from practice. Factors to be considered are: denial of problem, unstable employment history, prior disciplinary action, multiple violations, patient harm and danger to self and/or others.*

Draft

UNLICENSED PRACTICE

Section 2538.20* of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	2 Years Probation Standard Terms and Conditions of Probation (1-15) If warranted: - Actual Suspension of License (28)

TEMPORARY LICENSEE AS SOLE PROPRIETOR, MANAGER, OR OPERATOR OR CLAIMING TO HOLD LICENSE AS A HEARING AID DISPENSER

Section 2538.30 of the Business and Professions Code

MAXIMUM	License Denied
MINIMUM	License Issued, 2 Years Probation Standard Terms and Conditions of Probation (1-15)

PRACTICING WITHOUT NOTIFYING THE BOARD OF BUSINESS ADDRESS
Section 2538.33* of the Business and Professions Code

MAXIMUM 2 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Actual Suspension of License (28)

MINIMUM Public Reproval

PRACTICING WITHOUT PROPERLY POSTING LICENSE
Section 2532.5 of the Business and Professions Code

MAXIMUM 2 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Actual Suspension of License (28)

MINIMUM Public Reproval

PRACTICING FROM A BRANCH OFFICE WHICH IS NOT LICENSED
Section 2538.34 of the Business and Professions Code

Draft

MAXIMUM 2 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Actual Suspension of License (28)

MINIMUM Public Reproval

FAILURE TO DELIVER PROPER RECEIPT
Section 2538.35 of the Business and Professions Code

MAXIMUM 3 Years Probation
If warranted:
Standard Terms and Conditions of Probation (1-15)
Actual Suspension of License (28)

MINIMUM Public Reproval

FAILURE TO MAKE PHYSICIAN REFERRAL
Section 2538.36 of the Business and Professions Code

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Supervised Practice (25)
Actual Suspension of License (28)

UNAUTHORIZED SELLING OF A HEARING AID TO A PERSON UNDER SIXTEEN(16) YEARS OF AGE

Section 2538.37***** of the Business and Professions Code

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Take and Pass Licensure Examination (24)
Supervised Practice (25)
Restrictions on Licensed Practice (27)
Actual Suspension of License (28)

Draft

FAILURE TO MAINTAIN REQUIRED RECORDS

Section 2538.38 of the Business and Professions Code

MAXIMUM 1 year suspension, stayed with 3 years probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Supervised Practice (25)
Actual Suspension of License (28)

MINIMUM Public Reproval

THE IMPROPER OR UNNECESSARY FITTING OF A HEARING AID

Section 2533(f) of the Business and Professions Code

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Take and Pass Licensure Examination (24)
Supervised Practice (25)
Actual Suspension of License (28)

GROSS NEGLIGENCE

Section 2533(f) of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms and Conditions of Probation (1-15) If warranted: Take and Pass Licensure Examination (24) Supervised Practice (25) Actual Suspension of License (28)

REPEATED NEGLIGENT ACTS

Section 2533(f) of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms and Conditions of Probation (1-15) If warranted: Take and Pass Licensure Examination (24) Supervised Practice (25) Actual Suspension of License (28)

Draft

CRIMINAL CONVICTION

Section 2533(a) of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms and Conditions of Probation (1-15) If warranted: Additional Terms and Conditions of Probation (16-28)

OBTAINING A LICENSE BY FRAUD

Section 2533(b) of the Business and Professions Code

MINIMUM	Revocation

USING THE TERM "DOCTOR", "PHYSICIAN" OR "AUDIOLOGIST" UNLESS AUTHORIZED

Section 2533(h) of the Business and Professions Code

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Actual Suspension of License (28)

FRAUD OR MISREPRESENTATION IN PRACTICE

Section 2533(e) of the Business and Professions Code

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Psychological Evaluation (17)
Supervised Practice (25)
Actual Suspension of License (28)

Draft

EMPLOYING AN UNLICENSED PERSON

Section 2533(e) of the Business and Professions Code

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Supervised Practice (25)
Actual Suspension of License (28)

ILLEGAL ADVERTISING

Section 2533(d) & (i)* of the Business and Professions Code

MAXIMUM Revocation

MINIMUM Public Reproval

LETTING ANOTHER USE HIS OR HER LICENSE

Section 2533(e) of the Business and Professions Code

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Supervised Practice (25)
Actual Suspension of License (28)

DOING ANY ACT WHICH WOULD BE GROUNDS FOR LICENSE DENIAL
Section 2533(j) of the Business and Professions Code

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Additional Terms and Conditions of Probation (16-28)

VIOLATION OF SECTION 1689.6 OR 1793.02 OF THE CIVIL CODE
Section 2533(k) of the Business and Professions Code

Draft

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Take and Pass Licensure Examination (24)
Supervised Practice (25)
Actual Suspension of License (28)

SALE OR BARTER OF A LICENSE OR OFFER TO SELL OR BARTER A LICENSE
Section 2538.43 of the Business and Professions Code

MAXIMUM Revocation

MINIMUM 5 Years Probation
Standard Terms and Conditions of Probation (1-15)
If warranted:
Psychological Evaluation (17)
Actual Suspension of License (28)

PURCHASE OR PROCURE BY BARTER A LICENSE WITH THE INTENT TO PRACTICE

Section 2538.44 of the Business and Professions Code

MINIMUM	Denial of right to seek licensure as a hearing aid dispenser pursuant to B& P480(a).

ALTER WITH FRAUDULENT INTENT ANY MATERIAL ISSUED BY THE BOARD

Section 2538.45 of the Business and Professions Code

If done by a temporary licensee:

MINIMUM	Revocation of temporary license and denial of permanent licensure.

If done by a permanent licensee:

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms and Conditions of Probation (1-15) If warranted: Psychological Evaluation (17) Supervised Practice (25) Actual Suspension of License (28)

Draft

LYING ON THE LICENSE APPLICATION

Section 2538.47 of the Business and Professions Code

MINIMUM	Revocation/License denial pursuant to B&P 480 (c)

PRACTICING WITHOUT A VALID LICENSE

Section 2538.48* of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	Public Reproval

UNLAWFUL PRACTICE

Section 2538.49 of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation

Standard Terms and Conditions of Probation (1-15)
If warranted:
Take and Pass Licensure Examination (23)
Supervised Practice (25)
Actual Suspension of License (28)

ADVERTISING WITHOUT A VALID LICENSE

Section 2538.50* of the Business and Professions Code

MAXIMUM	Revocation/Denial of Licensure
MINIMUM	Public Reproval

PRACTICING WITHOUT A BUSINESS ADDRESS

Section 2538.51 of the Business and Professions Code

MAXIMUM	5 Years Probation
MINIMUM	Public Reproval

**Does not apply to a Dispensing Audiologist*

Draft

From: Robert Powell [mailto:robthpowell@gmail.com]
Sent: Wednesday, October 05, 2011 3:23 PM
To: DelMugnaio, Annemarie@DCA
Subject: Re: SLP Licensing timelines, delays, and solutions

Annemarie -

Thank you for the thoughtful response. CSHA members and licensing applicants need to feel that their concerns are being heard and issues addressed. Hopefully an expedited online system along with a review of relevant forms will improve timelines and delays.

CSHA and ASHA would be interested in surveying the foreign graduates with International Recognition of their CCCs to determine how many applied and had their British Commonwealth country's programs deemed equivalent to the to California SLP licensing masters degree standards.

Additionally, if there are any issues that the SLPAHAD board and CSHA can agree need addressing legislatively, CSHA would offer to sponsor same.

Thanks again for your dedicated and continuing diligent efforts on behalf of those with communication challenges and their service providers.

See you on the 20th.

RP

On Oct 5, 2011, at 1:27 PM, DelMugnaio, Annemarie@DCA wrote:

Hi Bob-

The questions posed below will be discussed at the October 20-21, Board meeting to be held in Sacramento. The agenda will be finalized this week and posted to the website.

Some of the issues you raise may appear to involve only changes to internal procedures, however, established procedures have been audited by a DCA independent audit team and exist because we as a licensing agency are required to confirm credentials through direct source verification. I agree that there may be a more efficient electronic transfer of data to accomplish this and I'm quite confident that the Board is receptive to exploring available options.

In terms of recognizing internationally educated and trained applicants as "equivalent" to the standards of education and training within the US, the Board reviewed this issue several years ago when ASHA first introduced the Mutual Recognition Agreement, and I recall there were issues with the international standards not being exactly equivalent to state licensing requirements. The law currently provides for the licensure of an individual who holds the CCC as issued by AHSA, as long as the standards for the issuance of the CCC are in fact, equivalent to the requirement for licensure in California.

Again, the Board recognizes the existing delays in processing new applications and issuing licenses and is committed to improving it's internal processes to address the issue. The action items outlined below will be discussed further at the October 21, 2011 Board meeting:

Existing Issues

* Licensees are not notified of file deficiencies until 8 weeks from application received date and then are waiting another 2 weeks + for processing.
* Mail receipt issues- Applicants claim to have mailed items to the Board that are not received.
* Delays in issuing RPE's permanent license if final verification form is submitted near expiration of temp RPE license
* Significant delays in receiving fingerprint clearance from DOJ on illegible prints

Solutions

* Recruited another full-time licensing analyst; to begin October 2011
* Begin using prompt email notification to confirm receipt of submitted documents
* Process Verification Forms Upon Receipt- No 8-week timeframe-
* Propose changes to entry-level requirements; legislative/regulatory

Thank you.

Annemarie Del Mugnaio
Executive Officer
Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

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From: Robert Powell [mailto:robthpowell@gmail.com]
Sent: Wednesday, September 28, 2011 7:16 PM
To: DelMugnaio, Annemarie@DCA
Subject: SLP Licensing timelines, delays, and solutions

RE: SLP Licensing timelines, delays and solutions

Annemarie -

1. Several CSHA board members are of the opinion that someone with valid evidence of their CCCs should be able to come into CA and if fingerprint requirements have been satisfied, receive expedited and immediate licensing as a SLP.

2. A second question was asked as to simplifying forms for recent university SLP applicants for their RPE. This in order to work with future "online" processing.

3. Another question has been asked as to a CA SLP masters degree graduate who desires to obtain their CFY and RPE under supervision of a CCC SLP -- but outside the US. (see response from your office below). The critical need for multilingual SLPs was noted in this discussion. (In reviewing the law, I do not see anything that would prevent same. Comment appreciated.)

4. At the recent CSHA board meeting, the question was asked why not clarify the law so that anyone with their CCCs (CA graduate, out of state graduate, and even foreign grads with their ASHA CCCs under the Mutual Recognition Agreement with British Commonwealth countries)?

CSHA would thus like to initiate a discussion with the SLPAHAD licensing board over these issues.

Thank you for consideration by the SLPAHAD board. We look forward to discussions at the upcoming October SLPAHAD board meeting.

Robert Powell
CSHA Counsel
www.csha.org

The California Business & Professions Code 2632.1
(d) Submit evidence of no less than 36 weeks of satisfactorily completed supervised professional full–time experience or 72 weeks
of professional part–time experience obtained under the supervision of a licensed speech– language pathologist or audiologist or
a speech–language pathologist or audiologist having qualifications deemed equivalent by the board. This experience shall be
evaluated and approved by the board. The required professional experience shall follow completion of the requirements listed in
subdivisions (a), (b), and (c). Full time is defined as at least 36 weeks in a calendar year and a minimum of 30 hours per week.
Part time is defined as a minimum of 72 weeks and a minimum of 15 hours per week.

CCR Title 16 Section
1399.153.1. Approved RPE.
(a) RPE shall provide the RPE temporary license holder with broad clinical experience in evaluation, habilitation and
rehabilitation of patients.
(b) Activities which consist of academic teaching, clinical supervision, research or administration shall not be creditable toward the RPE requirement. A maximum of 5% per week of hearing screening services provided by an
RPE temporary license holder in speech-language pathology shall be creditable toward the experience. Only those
activities which directly concern the management of specific patients shall be creditable toward that requirement.
§ 1399.153.2. Application and Fees.
(a) All persons desiring to begin their required professional experience shall file an RPE temporary license application
with the board as provided in Section 1399.151. No person shall commence any RPE in a setting in which licensure
is required in the Act until he or she has been issued a required professional experience temporary license. Upon receipt of the RPE temporary license application, the board will immediately review the RPE plan and notify the
applicant of its approval or disapproval. As soon as possible thereafter the board will review the applicant's credentials and notify the applicant as to the approval of his or her credentials for licensure.
(b) All RPE temporary license applicants shall submit at the time of filing the RPE temporary license application a
non-refundable fee of $35.00 which is applicable to the application fee as required in Section 1399.157(a).
(c) Any experience gained prior to the issuance of the RPE temporary license will not be counted toward licensure,

unless the RPE temporary license holder is practicing in a setting exempt under Section 2530.5 of the code, or in
another state.
(d) Application under this section shall constitute temporary licensure of the RPE applicant under Section 2530.5 of
the code.
§ 1399.153.3. Responsibilities of RPE Supervisors.
An RPE supervisor's responsibilities shall include, but are not limited to:
(a) Legal responsibility for the health, safety and welfare of the patients treated by the RPE temporary license holder.
(b) Insuring that the extent, kind, and quality of functions performed by an RPE temporary license holder under the
supervisor's supervision is in compliance with these regulations and is consistent with the RPE temporary license
holder's education and training.
(c) Insuring that such supervision consists of direct monitoring for a minimum of eight hours per month for each full-
time RPE temporary license holder and four hours per month for each part-time RPE temporary license holder.
(d) "Direct monitoring" of the RPE temporary license holder may consist of the personal observation of the following:
(1) evaluation and assessment procedures; (2) treatment procedures; (3) record keeping, evaluation or assessment
reports, correspondence,
plans for management, and summaries of case conferences; (4) participation in case conferences. At least 50% of
the supervisor's observation shall be of the RPE temporary
license holder's evaluation, assessment and treatment procedures. (e) Reviewing and evaluating the RPE temporary
license holder's performance on a monthly basis for the purpose of improving his or her professional expertise. The
RPE supervisor shall discuss the evaluations with the RPE temporary license holder and maintain written
documentation of these evaluations and reviews. The written evaluations shall be signed by both the RPE supervisor
and the RPE temporary license holder. If the supervisor determines the RPE temporary license holder is not
minimally competent for licensure, the RPE temporary license holder shall be so notified orally and in writing. A
written statement documenting the basis for the supervisor's determination shall be submitted with the final verification of
experience to the board. (f) Reviewing and countersigning all evaluation and assessment reports,
treatment plans, progress and discharge reports drafted by the RPE temporary license holder.
§ 1399.153.4. Maximum Number of RPE Temporary License Holders.
An RPE supervisor shall not supervise more than three (3) RPE temporary license holders. The board may authorize
more than three supervisees if, in its discretion, the supervisor demonstrates that the public health and safety would
not be jeopardized and that he or she can adequately supervise more than three RPE temporary license holders
while maintaining the standards of experience required in this article.
Authority Cited: Sections 2531.95 and 2530.5, Business and Professions Code. Reference: Section 2532.2, Business
and Professions Code.
§ 1399.153.5. Multiple RPE Supervisors.

If, during the required professional experience, the RPE temporary license holder is supervised by two or more RPE
supervisors, then the supervisor having the most frequent contacts with the RPE temporary license holder shall be
the responsible supervisor for the purpose of these regulations. That supervisor shall consult with any other RPE supervisors when evaluating the RPE temporary license holder's performance.
Authority Cited: Sections 2531.95 and 2530.5, Business and Professions Code. Reference: Section 2532.2, Business
and Professions Code.
History
1. Change without regulatory effect renumbering former section 1399.165 to section 1399.153.5 filed 12-6-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 50).
2. Amendment of section heading and section and new Note filed 1-23-2003; operative 1-23-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 4).
§ 1399.153.6. Compensation for RPE Supervisor Prohibited.
No RPE supervisor may accept any remuneration or other consideration from an RPE temporary license holder for
supervision of the RPE temporary license holder.
Authority Cited: Section 2531.95, Business and Professions Code. Reference: Sections 2530.5 and 2532.2, Business
and Professions Code.
§ 1399.153.7. Supervision by RPE Temporary License Holder' Prohibited.
No RPE temporary license holder shall supervise aides or students receiving supervised clinical experience.
§ 1399.153.8. Final Evaluation of Experience.
(a) In order for the RPE supervisor to evaluate the RPE temporary license holder for verification to the board, each
supervisor shall evaluate the following activities of the RPE temporary license holder:
(1) evaluation and assessment procedures; (2) treatment procedures; (3) record keeping, evaluation and assessment
reports, correspondence,
plans for management and summaries of case conferences; (4) participation in case conferences; (5) professional
meetings and publications. (b) The monitoring of audio and video tape recordings is an acceptable
method of evaluation provided that such monitoring shall not be substituted for direct observation and supervision of
the RPE temporary license holder.
Authority Cited: Section 2531.95, Business and Professions Code. Reference: Section 2532.2, Business and Professions Code.

B&P Code 2532.8. Persons deemed to meet requirements
(a) The board shall deem a person who holds a valid certificate of clinical competence in speech–language pathology
or audiology issued by the American Speech–Language–Hearing Association's Council for Clinical Certification to
have met the educational and experience requirements set forth for speech– language pathologists or audiologists in
Section 2532.2.

ASHA Mutual Recognition Agreements CCCs
The signatory associations examined the educational and other requirements expected of each other's
certificate holders, including academic course content, the amount and distribution of clinical practice

hours prior to certification being awarded, degree designations, accreditation of academic programs, experience, and assessment mechanisms. This examination resulted in a determination that the associations have many, but not all, substantially equivalent requirements. Therefore, you will likely have to meet certain additional requirements.

--- On Wed, 9/28/11, Slpab@DCA <Slpab@dca.ca.gov> wrote:

From: Slpab@DCA <Slpab@dca.ca.gov>
Subject: RE: CA Temporary SLP License RPE with supervision abroad?
To: "Laura Vaughan" <lauravaughan1@yahoo.com>
Date: Wednesday, September 28, 2011, 2:31 PM

Thank you for contacting the Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board. No, we can not accept a CFY's completed outside the United States and we can not issue a temporary license to allow you to complete the RPE outside the United States.

Thank you,
Lori Pinson
Licensing Analyst
Speech-Language Pathology & Audiology &
Hearing Aid Dispensers Board
2005 Evergreen Street, Suite 2100
Sacramento, CA 95815
(916) 263-2666
(916) 263-2668 - fax
www.speechandhearing.ca.gov

Senate Bill No. 933

CHAPTER 449

An act to amend Sections 205, 2530, 2530.1, 2531.02, 2531.06, 2533, 2533.3, 2534, 2539.1, and 2539.14 of, to amend the heading of Article 9 (commencing with Section 2539.1) of, and to add Article 8 (commencing with Section 2538.10) to, Chapter 5.3 of, and to repeal Chapter 7.5 (commencing with Section 3300) of, Division 2 of, the Business and Professions Code, relating to professions and vocations.

[Approved by Governor October 3, 2011. Filed with Secretary of State October 3, 2011.]

legislative counsel's digest

SB 933, Runner. Speech-language pathology and audiology: hearing aid dispensers.

Existing law, the Speech-Language Pathologists and Audiologists Licensure Act, provides for the licensure and regulation of speech-language pathologists and audiologists by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. Existing law, the Hearing Aid Dispensers Law, also provides for the licensure and regulation of hearing aid dispensers by the board. Existing law establishes the Speech-Language Pathology and Audiology Fund for the purposes of carrying out the provisions of the Speech-Language Pathologists and Audiologists Licensure Act and the Hearing Aid Dispensers Law. Existing law establishes the Hearing Aid Dispensers Account in the fund and requires fees collected pursuant to the Hearing Aid Dispensers Law to be deposited in the account for the purposes of carrying out the provisions of that law and the Speech-Language Pathologists and Audiologists Licensure Act.

This bill would repeal the Hearing Aid Dispensers Law, abolish the Hearing Aid Dispensers Account, rename the Speech-Language Pathologists and Audiologists Licensure Act as the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act, and revise that act to include the licensing, regulatory, and disciplinary provisions applicable to hearing aid dispensers under the Hearing Aid Dispensers Law. The bill would make various technical changes relative to combining the laws applicable to speech-language pathologists and audiologists and hearing aid dispensers.

This bill would incorporate additional changes in Section 205 of the Business and Professions Code proposed by SB 543, to be operative only if SB 543 and this bill are both chaptered and become effective January 1, 2012, and this bill is chaptered last.

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The people of the State of California do enact as follows:

SECTION 1. Section 205 of the Business and Professions Code is amended to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

(1) Accountancy Fund.
(2) California Architects Board Fund.
(3) Athletic Commission Fund.
(4) Barbering and Cosmetology Contingent Fund.
(5) Cemetery Fund.
(6) Contractors' License Fund.
(7) State Dentistry Fund.
(8) State Funeral Directors and Embalmers Fund.
(9) Guide Dogs for the Blind Fund.
(10) Home Furnishings and Thermal Insulation Fund.
(11) California Architects Board-Landscape Architects Fund.
(12) Contingent Fund of the Medical Board of California.
(13) Optometry Fund.
(14) Pharmacy Board Contingent Fund.
(15) Physical Therapy Fund.

(16) Private Investigator Fund.
(17) Professional Engineers' and Land Surveyors' Fund.
(18) Consumer Affairs Fund.
(19) Behavioral Sciences Fund.
(20) Licensed Midwifery Fund.
(21) Court Reporters' Fund.
(22) Veterinary Medical Board Contingent Fund.
(23) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
(24) Electronic and Appliance Repair Fund.
(25) Geology and Geophysics Fund.
(26) Dispensing Opticians Fund.
(27) Acupuncture Fund.
(28) Physician Assistant Fund.
(29) Board of Podiatric Medicine Fund.
(30) Psychology Fund.
(31) Respiratory Care Fund.
(32) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
(33) Board of Registered Nursing Fund.
(34) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
(35) Animal Health Technician Examining Committee Fund.
(36) State Dental Hygiene Fund.
(37) State Dental Assistant Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.
SEC. 1.5. Section 205 of the Business and Professions Code is amended to read:
205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:
(1) Accountancy Fund.
(2) California Architects Board Fund.
(3) Athletic Commission Fund.
(4) Barbering and Cosmetology Contingent Fund.
(5) Cemetery Fund.
(6) Contractors' License Fund.
(7) State Dentistry Fund.
(8) State Funeral Directors and Embalmers Fund.
(9) Guide Dogs for the Blind Fund.
(10) Home Furnishings and Thermal Insulation Fund.
(11) California Architects Board-Landscape Architects Fund.
(12) Contingent Fund of the Medical Board of California.
(13) Optometry Fund.
(14) Pharmacy Board Contingent Fund.
(15) Physical Therapy Fund.
(16) Private Investigator Fund.
(17) Professional Engineer's and Land Surveyor's Fund.
(18) Consumer Affairs Fund.
(19) Behavioral Sciences Fund.
(20) Licensed Midwifery Fund.
(21) Court Reporters' Fund.
(22) Veterinary Medical Board Contingent Fund.

(23) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
(24) Electronic and Appliance Repair Fund.
(25) Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund.
(26) Dispensing Opticians Fund.
(27) Acupuncture Fund.
(28) Physician Assistant Fund.
(29) Board of Podiatric Medicine Fund.
(30) Psychology Fund.
(31) Respiratory Care Fund.
(32) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
(33) Board of Registered Nursing Fund.

(34) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
(35) Animal Health Technician Examining Committee Fund.
(36) State Dental Hygiene Fund.
(37) State Dental Assistant Fund.
(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.
SEC. 2. Section 2530 of the Business and Professions Code is amended to read:
2530. This act may be cited as the "Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act."
SEC. 3. Section 2530.1 of the Business and Professions Code is amended to read:
2530.1. The Legislature finds and declares that the practice of speech-language pathology and audiology and hearing aid dispensing in California affects the public health, safety, and welfare and there is a necessity for those professions to be subject to regulation and control.
SEC. 4. Section 2531.02 of the Business and Professions Code is amended to read:
2531.02. Protection of the public shall be the highest priority for the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.
SEC. 5. Section 2531.06 of the Business and Professions Code is amended to read:
2531.06. (a) The board is vested with the duties, powers, purposes, responsibilities, and jurisdiction over the licensing and regulation of hearing aid dispensers as provided under Article 8 (commencing with Section 2538.10).
(b) In the performance of the duties and the exercise of the powers vested in the board under this chapter, the board may consult with hearing aid dispenser industry representatives.
(c) For the performance of the duties and the exercise of the powers vested in the board under this chapter, the board shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the former Hearing Aid Dispensers Bureau.
(d) All regulations in Division 13.3 (commencing with Section 1399.100)

of Title 16 of the California Code of Regulations are continued in existence under the administration of the board.
SEC. 6. Section 2533 of the Business and Professions Code is amended to read:

2533. The board may refuse to issue, or issue subject to terms and conditions, a license on the grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon the license of any licensee for any of the following:
(a) Conviction of a crime substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist or hearing aid dispenser, as the case may be. The record of the conviction shall be conclusive evidence thereof.
(b) Securing a license by fraud or deceit.
(c) (1) The use or administering to himself or herself, of any controlled substance; (2) the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in a manner as to be dangerous or injurious to the licensee, to any other person, or to the public, or to the extent that the use impairs the ability of the licensee to practice speech-language pathology or audiology safely; (3) more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section; or (4) any combination of paragraph (1), (2), or (3). The record of the conviction shall be conclusive evidence of unprofessional conduct.
(d) Advertising in violation of Section 17500. Advertising an academic degree that was not validly awarded or earned under the laws of this state or the applicable jurisdiction in which it was issued is deemed to constitute a violation of Section 17500.
(e) Committing a dishonest or fraudulent act that is substantially related to the qualifications, functions, or duties of a licensee.
(f) Incompetence, gross negligence, or repeated negligent acts.
(g) Other acts that have endangered or are likely to endanger the health, welfare, and safety of the public.
(h) Use by a hearing aid dispenser of the term “doctor” or “physician” or “clinic” or “audiologist,” or any derivation thereof, except as authorized by law.
(i) The use, or causing the use, of any advertising or promotional literature in a manner that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.
(j) Any cause that would be grounds for denial of an application for a license.
(k) Violation of Section 1689.6 or 1793.02 of the Civil Code.
SEC. 7. Section 2533.3 of the Business and Professions Code is amended to read:
2533.3. Except as provided in Section 2538.42, any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or both.
SEC. 8. Section 2534 of the Business and Professions Code is amended to read:
2534. The board shall report to the Controller at the beginning of each month for the month preceding the amount and source of all revenue received

by it pursuant to this chapter and shall pay the entire amount thereof to the Treasurer for deposit in the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund, which fund is hereby created to carry out the purposes of this chapter.
SEC. 9. Article 8 (commencing with Section 2538.10) is added to

Chapter 5.3 of Division 2 of the Business and Professions Code, to read:
Article 8. Hearing Aid Dispensers
2538.10. For the purposes of this article, the following definitions shall apply:
(a) “Advertise” and its variants include the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio, or television announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of fitting or selling of hearing aids.
(b) “License” means a hearing aid dispenser’s license issued pursuant to this article and includes a temporary license.
(c) “Licensee” means a person holding a license.
(d) “Hearing aid” means any wearable instrument or device designed for, or offered for the purpose of, aiding or compensating for impaired human hearing.
(e) “Fund” means the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
2538.11. (a) “Practice of fitting or selling hearing aids,” as used in this article, means those practices used for the purpose of selection and adaptation of hearing aids, including direct observation of the ear, testing of hearing in connection with the fitting and selling of hearing aids, taking of ear mold impressions, fitting or sale of hearing aids, and any necessary postfitting counseling.
The practice of fitting or selling hearing aids does not include the act of concluding the transaction by a retail clerk.
When any audiometer or other equipment is used in the practice of fitting or selling hearing aids, it shall be kept properly calibrated and in good working condition, and the calibration of the audiometer or other equipment shall be checked at least annually.
(b) A hearing aid dispenser shall not conduct diagnostic hearing tests when conducting tests in connection with the practice of fitting or selling hearing aids.
(c) Hearing tests conducted pursuant to this article shall include those that are in compliance with the Food and Drug Administration Guidelines for Hearing Aid Devices and those that are specifically covered in the licensing examination prepared and administered by the board.
2538.12. A licensee may conduct hearing screenings at a health fair or similar event by the application of a binary puretone screening at a preset

intensity level for the purpose of identifying the need for further hearing or medical evaluation.
Upon the conclusion of each hearing screening, the licensee shall present to the person whose hearing was screened a written statement containing the following provisions:
“Results of a hearing screening are not a medical evaluation of your ear nor a diagnosis of a hearing disorder but are only the identification of the need for further medical or hearing evaluation.”
A licensee conducting hearing screenings pursuant to this section shall not make or seek referrals for testing, fitting, or dispensing of hearing aids.
2538.13. In fitting hearing aids, a hearing aid dispenser shall not take facial measurements or fit, adjust, or adapt lenses or spectacle frames, except that a hearing aid dispenser may replace the temple or temples of a person’s spectacle frames with a temple or temples incorporating hearing aid components.
2538.14. “Hearing aid dispenser,” as used in this article, means a person engaged in the practice of fitting or selling hearing aids to an individual with impaired hearing.

2538.15. “Sell” or “sale” means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.
2538.16. The board shall keep a record of all prosecutions for violations of this article and of all examinations held for applicants for licenses together with the names and addresses of all persons taking examinations and of their success or failure to pass them.
2538.17. The board may recommend the preparation of and administration of a course of instruction concerned with the fitting and selection of hearing aids. The board may require applicants to first complete the required course of instruction or otherwise satisfy the board that the applicant possesses the necessary background and qualifications to fit or sell hearing aids. If the board promulgates regulations to implement this section to require a course of instruction concerned with fitting and selling hearing aids, the board shall obtain the advice of persons knowledgeable in the preparation and administration of a course of instruction.
The board may publish and distribute information concerning the examination requirements for obtaining a license to engage in the practice of fitting and selling hearing aids within this state.
2538.18. All holders of licenses to sell or fit hearing aids shall continue their education after receiving the license. The board shall provide by regulation, as a condition to the renewal of a license, that licensees shall submit documentation satisfactory to the board that they have informed themselves of current practices related to the fitting of hearing aids by having pursued courses of study satisfactory to the board or by other means defined as equivalent by the board.
Continuing education courses shall be subject to monitoring to ensure compliance with the regulations adopted by the board pursuant to this section.

2538.19. (a) The board may prosecute any and all persons for any violation of this article.
(b) The board shall hear and decide all matters, including, but not limited to, any contested case or any petition for reinstatement or modification of probation, or may assign any of those matters to an administrative law judge in accordance with the Administrative Procedure Act. Except as otherwise provided in this chapter, all hearings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
2538.20. It is unlawful for an individual to engage in the practice of fitting or selling hearing aids, or to display a sign or in any other way to advertise or hold himself or herself out as being so engaged without having first obtained a license from the board under the provisions of this article.
Nothing in this article shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of fitting or selling, or offering for sale, hearing aids at retail without a license, provided that any and all fitting or selling of hearing aids is conducted by the individuals who are licensed pursuant to the provisions of this article. A person whose license as a hearing aid dispenser has been suspended or revoked shall not be the proprietor of a business that engages in the practice of fitting or selling hearing aids nor shall that person be a partner, shareholder, member, or fiduciary in a partnership, corporation, association, or trust that maintains or operates that business, during the period of the suspension or revocation. This restriction shall not apply to stock ownership in a corporation that is listed on a stock exchange regulated by the Securities and Exchange Commission if the stock is acquired in a transaction conducted through that stock exchange.
2538.21. This article does not apply to a person engaged in the practice

of fitting hearing aids if his practice is for a governmental agency, or private clinic, or is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public, charitable institution or other nonprofit organization, and who does not engage directly or indirectly in the sale or offering for sale of hearing aids.
2538.22. This article does not apply to nor affect any physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 who does not directly or indirectly engage in the sale or offering for sale of hearing aids, nor to any audiologist licensed under this chapter, or to an individual supervised by the audiologist in conducting fitting procedures, and who does not directly or indirectly engage in the sale or offering for sale of hearing aids.
2538.23. (a) Hearing aids may be sold by catalog or direct mail provided that:
(1) The seller is licensed as a hearing aid dispenser in this state.
(2) There is no fitting, selection, or adaptation of the instrument and no advice is given with respect to fitting, selection, or adaptation of the instrument and no advice is given with respect to the taking of an ear impression for an earmold by the seller.

(3) The seller has received a statement which is signed by a physician and surgeon, audiologist, or a hearing aid dispenser, licensed by the State of California which verifies that Section 2538.36 and subdivision (b) of Section 2538.49 have been complied with.
(b) A copy of the statement referred to in paragraph (3) of subdivision (a) shall be retained by the seller for the period provided for in Section 2538.38.
(c) A licensed hearing aid dispenser who sells a hearing aid under this section shall not be required to comply with subdivision (b) of Section 2538.49.
2538.24. Each person desiring to obtain a license to engage in the practice of fitting or selling hearing aids shall make application to the board. The application shall be made upon a form and shall be made in the manner as is provided by the board and shall be accompanied by the fee provided for in Section 2538.57.
2538.25. (a) The board shall prepare, approve, grade, and conduct examinations of applicants for a hearing aid dispenser's license. The board may provide that the preparation and grading of the examination be conducted by a competent person or organization other than the board, provided, however, that the board shall establish the guidelines for the examination and shall approve the actual examination.
(b) Each applicant shall take and pass a written examination and a practical examination compiled at the direction of the board covering the critical tasks involved in the practice of fitting and selling hearing aids and the knowledge, skills, and abilities needed to perform those tasks safely and competently.
2538.26. The board shall issue a license to all applicants who have satisfied this chapter, who are at least 18 years of age, who possess a high school diploma or its equivalent, who have not committed acts or crimes constituting grounds for denial of licensure under Section 480, and who have paid the fees provided for in Section 2538.57. No license shall be issued to any person other than an individual.
2538.27. (a) An applicant who has fulfilled the requirements of Section 2538.24 and has made application therefor, may have a temporary license issued to him or her upon satisfactory proof to the board that the applicant holds a hearing aid dispenser's license in another state, that the licensee has not been subject to formal disciplinary action by another licensing authority, and that the applicant has been engaged in the fitting and sale of hearing

aids for the two years immediately prior to application.
(b) A temporary license issued pursuant to this section shall be valid for one year from date of issuance and is not renewable. A temporary license shall automatically terminate upon issuance of a license prior to expiration of the one-year period.
(c) The holder of a temporary license issued pursuant to this section who fails either license examination shall be subject to and shall comply with the supervision requirements of Section 2538.28 and any regulations adopted pursuant thereto.

2538.28. (a) An applicant who has fulfilled the requirements of Section 2538.24, and has made application therefor, and who proves to the satisfaction of the board that he or she will be supervised and trained by a hearing aid dispenser who is approved by the board may have a temporary license issued to him or her. The temporary license shall entitle the temporary licensee to fit or sell hearing aids as set forth in regulations of the board. The supervising dispenser shall be responsible for any acts or omissions committed by a temporary licensee under his or her supervision that may constitute a violation of this chapter.
(b) The board shall adopt regulations setting forth criteria for its refusal to approve a hearing aid dispenser to supervise a temporary licensee, including procedures to appeal that decision.
(c) A temporary license issued pursuant to this section is effective and valid for six months from date of issue. The board may renew the temporary license for an additional period of six months. Except as provided in subdivision (d), the board shall not issue more than two renewals of a temporary license to any applicant. Notwithstanding subdivision (d), if a temporary licensee who is entitled to renew a temporary license does not renew the temporary license and applies for a new temporary license at a later time, the new temporary license shall only be issued and renewed subject to the limitations set forth in this subdivision.
(d) A new temporary license may be issued pursuant to this section if a temporary license issued pursuant to subdivision (c) has lapsed for a minimum of three years from the expiration or cancellation date of the previous temporary license. The bureau may issue only one new temporary license under this subdivision.
2538.29. A temporary licensee under Section 2538.28 shall take the license examination within the first 10 months after the temporary license is issued. Failure to take the license examination within that time shall result in expiration of the temporary license, and it shall not be renewed unless the temporary licensee has first taken the licensure examination. The board, however, may in its discretion renew the temporary license if the licensee failed to take the necessary examination due to illness or other hardship.
2538.30. (a) A temporary licensee shall not be the sole proprietor of, manage, or independently operate a business which engages in the fitting or sale of hearing aids.
(b) A temporary licensee shall not advertise or otherwise represent that he or she holds a license as a hearing aid dispenser.
2538.31. Practical examinations shall be held by the board at least twice a year. The time and place of any practical examination shall be fixed by the board at least 45 days prior to the date it is to be held.
2538.32. Every applicant who obtains a passing score determined by the Angoff criterion-referenced method of establishing the point in each examination shall be deemed to have passed that examination. An applicant shall pass the written examination before he or she may take the practical examination. An applicant shall obtain a passing score on both the written and the practical examination in order to be issued a license.

2538.33. (a) Before engaging in the practice of fitting or selling hearing aids, each licensee shall notify the board in writing of the address or addresses where he or she is to engage, or intends to engage, in the practice of fitting or selling hearing aids, and of any changes in his or her place of business within 30 days of engaging in that practice.
(b) If a street address is not the address at which the licensee receives mail, the licensee shall also notify the board in writing of the mailing address for each location where the licensee is to engage, or intends to engage, in the practice of fitting or selling hearing aids, and of any change in the mailing address of his or her place or places of business.
2538.34. (a) Every licensee who engages in the practice of fitting or selling hearing aids shall have and maintain an established retail business address to engage in that fitting or selling, routinely open for service to customers or clients. The address of the licensee's place of business shall be registered with the bureau as provided in Section 2538.33.
(b) Except as provided in subdivision (c), if a licensee maintains more than one place of business within this state, he or she shall apply for and procure a duplicate license for each branch office maintained. The application shall state the name of the person and the location of the place or places of business for which the duplicate license is desired.
(c) A hearing aid dispenser may, without obtaining a duplicate license for a branch office, engage on a temporary basis in the practice of fitting or selling hearing aids at the primary or branch location of another licensee's business or at a location or facility that he or she may use on a temporary basis, provided that the hearing aid dispenser notifies the board in advance in writing of the dates and addresses of those businesses, locations, or facilities at which he or she will engage in the practice of fitting or selling hearing aids.
2538.35. A licensee shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser a written receipt, signed by or on behalf of the licensee, containing all of the following:
(a) The date of consummation of the sale.
(b) Specifications as to the make, serial number, and model number of the hearing aid or aids sold.
(c) The address of the principal place of business of the licensee, and the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.
(d) A statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, as the case may be, if that is the fact.
(e) The number of the licensee's license and the name and license number of any other hearing aid dispenser or temporary licensee who provided any recommendation or consultation regarding the purchase of the hearing aid.
(f) The terms of any guarantee or written warranty, required by Section 1793.02 of the Civil Code, made to the purchaser with respect to the hearing aid or hearing aids.
2538.36. (a) Whenever any of the following conditions are found to exist either from observations by the licensee or on the basis of information

furnished by the prospective hearing aid user, a licensee shall, prior to fitting or selling a hearing aid to any individual, suggest to that individual in writing that his or her best interests would be served if he or she would consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to a duly licensed physician:
(1) Visible congenital or traumatic deformity of the ear.
(2) History of, or active drainage from the ear within the previous 90 days.
(3) History of sudden or rapidly progressive hearing loss within the previous 90 days.

(4) Acute or chronic dizziness.
(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
(6) Significant air-bone gap (when generally acceptable standards have been established).
(7) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal.
(8) Pain or discomfort in the ear.
(b) No referral for medical opinion need be made by any licensee in the instance of replacement only of a hearing aid that has been lost or damaged beyond repair within one year of the date of purchase. A copy of the written recommendation shall be retained by the licensee for the period provided for in Section 2538.38. A person receiving the written recommendation who elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensee for the period provided for in Section 2538.38. Nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by the provisions of this code.
2538.37. No hearing aid shall be sold by an individual licensed under this chapter, to a person 16 years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by both a board-certified, or a board-eligible physician specializing in otolaryngology, and by a state licensed audiologist. A replacement of an identical hearing aid within one year shall be an exception to this requirement.
2538.38. A licensee shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his or her office or place of business at all times and each record shall be kept and maintained for a seven-year period. All records related to the sale and fitting of hearing aids shall be open to inspection by the bureau or its authorized representatives upon reasonable notice. The records kept shall include:
(a) Results of test techniques as they pertain to fitting of the hearing aid.
(b) A copy of the written receipt required by Section 2538.35 and the written recommendation and receipt required by Section 2538.36 when applicable.

(c) Records of maintenance or calibration of equipment used in the practice of fitting or selling hearing aids.
2538.39. A hearing aid dispenser who is the owner, manager, or franchisee at a location where hearing aids are fit or sold, shall be responsible for the adequacy of the fitting or selling of any hearing aid fit and sold by any licensee or licensees at that location.
2538.40. Upon denial of an application for license, the board shall notify the applicant in writing, stating (1) the reason for the denial and (2) that the applicant has a right to a hearing under Section 2533.2 if he or she makes written request therefor within 60 days after notice of denial. Service of the notice required by this section may be made by certified mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise.
2538.41. Before setting aside the revocation or suspension of any license or modifying the probation of any licensee, the board may require the petitioner to pass the regular examination given for applicants for licenses.
2538.42. Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than 10 days nor more than one year, or by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

2538.43. It is unlawful to sell or barter, or offer to sell or barter, any license issued by the board.
2538.44. It is unlawful to purchase or procure by barter any license issued by the board with intent to use the same as evidence of the holder's qualification to practice the fitting or selling of hearing aids.
2538.45. It is unlawful to alter with fraudulent intent in any material regard a license issued by the board.
2538.46. It is unlawful to use or attempt to use any license issued by the board that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid license.
2538.47. It is unlawful to willfully make any false statement in a material regard in an application for an examination before the board for a license.
2538.48. It is unlawful to engage in the practice of fitting or selling hearing aids in this state without having at the time of so doing a valid, unrevoked, and unexpired license or temporary license.
2538.49. It is unlawful for a licensed hearing aid dispenser to fit or sell a hearing aid unless he or she first does all of the following:
(a) Complies with all provisions of state laws and regulations relating to the fitting or selling of hearing aids.
(b) Conducts a direct observation of the purchaser's ear canals.
(c) Informs the purchaser of the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.
2538.50. It is unlawful to advertise by displaying a sign or otherwise or hold himself or herself out to be a person engaged in the practice of fitting

or selling hearing aids without having at the time of so doing a valid, unrevoked license or temporary license.
2538.51. It is unlawful to engage in the practice of fitting or selling hearing aids without the licensee having and maintaining an established business address, routinely open for service to his or her clients.
2538.52. When tests are conducted by persons licensed under this article in connection with the fitting and selling of hearing aids, the provisions of this article shall apply.
2538.53. (a) A license issued under this article expires at midnight on its assigned renewal date.
(b) To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.
(c) Temporary license holders shall renew their licenses in accordance with Section 2538.27, and apply for that renewal on a form provided by the board, accompanied by the prescribed renewal fee for temporary licenses.
(d) Each duplicate license issued for a branch office shall expire on the same date as the permanent license of the hearing aid dispenser to whom the duplicate license was issued. These duplicate licenses shall be renewed according to subdivision (b).
2538.54. Except as otherwise provided in this article, an expired license may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of all accrued and unpaid renewal fees. If the license is renewed after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this article. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 2538.53 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

2538.55. A license which has been suspended is subject to expiration and shall be renewed as provided in this article but such renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the fitting or selling of hearing aids, or in any other activity or conduct in violation of the order or judgment by which the license was suspended. A license which has been revoked is subject to expiration, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.
2538.56. A license that is not renewed within three years after its expiration may not be renewed, restored, reissued, or reinstated thereafter, but the holder of the expired license may apply for and obtain a new license if all of the following apply:

(a) He or she has not committed acts or crimes constituting grounds for denial of licensure under Section 480.
(b) He or she pays all the fees that would be required of him or her if he or she were then applying for a license for the first time.
(c) He or she takes and passes the examination that would be required of him or her if he or she were then applying for a license for the first time, or otherwise establishes to the satisfaction of the board that he or she is qualified to engage in the practice of fitting or selling hearing aids. The board may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a license is issued without an examination under this section.
2538.57. The amount of fees and penalties prescribed by this article shall be those set forth in this section unless a lower fee is fixed by the board:
(a) The fee for applicants applying for the first time for a license is seventy-five dollars ($75), which shall not be refunded, except to applicants who are found to be ineligible to take an examination for a license. Those applicants are entitled to a refund of fifty dollars ($50).
(b) The fees for taking or retaking the written and practical examinations shall be amounts fixed by the board, which shall be equal to the actual cost of preparing, grading, analyzing, and administering the examinations.
(c) The initial temporary license fee is one hundred dollars ($100). The fee for renewal of a temporary license is one hundred dollars ($100) for each renewal.
(d) The initial permanent license fee is two hundred eighty dollars ($280). The fee for renewal of a permanent license is not more than two hundred eighty dollars ($280) for each renewal.
(e) The initial branch office license fee is twenty-five dollars ($25). The fee for renewal of a branch office license is twenty-five dollars ($25) for each renewal.
(f) The delinquency fee is twenty-five dollars ($25).
(g) The fee for issuance of a replacement license is twenty-five dollars ($25).
(h) The continuing education course approval application fee is fifty dollars ($50).
(i) The fee for official certification of licensure is fifteen dollars ($15).
SEC. 10. The heading of Article 9 (commencing with Section 2539.1) of Chapter 5.3 of Division 2 of the Business and Professions Code is amended to read:
Article 9. Dispensing Audiologists
SEC. 11. Section 2539.1 of the Business and Professions Code is amended to read:

2539.1. (a) (1) On and after January 1, 2010, in addition to satisfying the licensure and examination requirements described in Sections 2532 and

2532.2, no licensed audiologist shall sell hearing aids unless he or she completes an application for a dispensing audiology license, pays all applicable fees, and passes an examination, approved by the board, relating to selling hearing aids.
(2) The board shall issue a dispensing audiology license to a licensed audiologist who meets the requirements of paragraph (1).
(b) (1) On and after January 1, 2010, a licensed audiologist with an unexpired license to sell hearing aids pursuant to Article 8 (commencing with Section 2538.10) may continue to sell hearing aids pursuant to that license until that license expires pursuant to Section 2538.53, and upon that expiration the licensee shall be deemed to have satisfied the requirements described in subdivision (a) and may continue to sell hearing aids pursuant to his or her audiology license subject to the provisions of this chapter. Upon the expiration of the audiologist's license to sell hearing aids, the board shall issue him or her a dispensing audiology license pursuant to paragraph (2) of subdivision (a). This paragraph shall not prevent an audiologist who also has a hearing aid dispenser's license from maintaining dual or separate licenses if he or she chooses to do so.
(2) A licensed audiologist whose license to sell hearing aids, issued pursuant to Article 8 (commencing with Section 2538.10), is suspended, surrendered, or revoked shall not be authorized to sell hearing aids pursuant to this subdivision and he or she shall be subject to the requirements described in subdivision (a) as well as the other provisions of this chapter.
(c) A licensed hearing aid dispenser who meets the qualifications for licensure as an audiologist shall be deemed to have satisfied the requirements of paragraph (1) of subdivision (a) for the purposes of obtaining a dispensing audiology license.
(d) For purposes of subdivision (a), the board shall provide the hearing aid dispenser's examination provided by the former Hearing Aid Dispensers Bureau until such time as the next examination validation and occupational analysis is completed by the Department of Consumer Affairs pursuant to Section 139 and a determination is made that a different examination is to be administered.
SEC. 12. Section 2539.14 of the Business and Professions Code is amended to read:
2539.14. The provisions of subdivisions (b) and (c) of Section 2538.11 and the provisions of Section 2538.12 do not apply to a licensed audiologist who satisfies the requirements of Section 2539.1.
SEC. 13. Chapter 7.5 (commencing with Section 3300) of Division 2 of the Business and Professions Code is repealed.
SEC. 14. Section 1.5 of this bill incorporates amendments to Section 205 of the Business and Professions Code proposed by both this bill and Senate Bill 543. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2012, (2) each bill amends Section 205 of the Business and Professions Code, and (3) this bill is enacted

after Senate Bill 543, in which case Section 1 of this bill shall not become operative.
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COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 933
AUTHOR : Runner
TOPIC : Speech-language pathology and audiology: hearing aid dispensers.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
2011
Oct. 3 Chaptered by Secretary of State. Chapter 449, Statutes of 2011.
Oct. 3 Approved by the Governor.
Sept. 14 Enrolled and presented to the Governor at 3:30 p.m.
Sept. 8 Assembly amendments concurred in. (Ayes 40. Noes 0. Page 2418.) Ordered to engrossing and enrolling.
Sept. 7 In Senate. Concurrence in Assembly amendments pending.
Sept. 7 Read third time. Passed. (Ayes 76. Noes 0. Page 3005.) Ordered to the Senate.
Aug. 31 Read third time and amended. (Page 2712.) Ordered to third reading.
Aug. 30 Action rescinded whereby the bill was read a third time, passed, and ordered to Senate. Ordered to third reading.
Aug. 29 In Assembly. Held at Desk.
Aug. 29 Ordered to the Assembly.
Aug. 18 In Senate. Concurrence in Assembly amendments pending.
Aug. 18 Read third time. Passed. (Ayes 74. Noes 0. Page 2456.) Ordered to the Senate.
Aug. 15 Read second time. Ordered to consent calendar.
July 14 Read second time and amended. Ordered to second reading.
July 13 From committee: Do pass as amended. Ordered to consent calendar. (Ayes 16. Noes 0.) (July 13).
June 28 From committee: Do pass and re-refer to Com. on APPR. with recommendation: To consent calendar. (Ayes 9. Noes 0.) (June 28). Re-referred to Com. on APPR.
June 14 Hearing postponed by committee.
May 19 Referred to Com. on B., P. & C.P.
May 9 In Assembly. Read first time. Held at Desk.
May 9 Read third time. Passed. (Ayes 40. Noes 0. Page 907.) Ordered to the Assembly.
May 4 Read second time. Ordered to third reading. Ordered to special consent calendar.
May 3 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
Apr. 13 Set for hearing May 2.
Apr. 12 From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 0. Page 617.) (April 11). Re-referred to Com. on APPR.
Apr. 5 From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 1 Set for hearing April 11.
Mar. 31 Set for hearing April 11.
Mar. 30 Hearing postponed by committee.
Mar. 18 Set for hearing April 4.
Mar. 10 Referred to Com. on B., P. & E.D.
Feb. 20 From printer. May be acted upon on or after March 22.
Feb. 18 Introduced. Read first time. To Com. on RLS. for assignment. To print.

Senate Bill No. 541

CHAPTER 339

An act to add Section 40 to the Business and Professions Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 2011. Filed with Secretary of State September 26, 2011.]

legislative counsel's digest

SB 541, Price. Regulatory boards: expert consultants.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 40 is added to the Business and Professions Code, to read:

40. (a) Subject to the standards described in Section 19130 of the Government Code, any board, as defined in Section 22, the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California may enter into an agreement with an expert consultant to do any of the following:

(1) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.

(2) Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses.

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(3) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.

(b) An executed contract between a board and an expert consultant shall be exempt from the provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(c) Each board shall establish policies and procedures for the selection and use of expert consultants.

(d) Nothing in this section shall be construed to expand the scope of practice of an expert consultant providing services pursuant to this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.

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COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 541
AUTHOR : Price
TOPIC : Regulatory boards: expert consultants.

TYPE OF BILL :
Inactive
Urgency
Non-Appropriations
2/3 Vote Required
Non-State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
2011
Sept. 26 Chaptered by Secretary of State. Chapter 339, Statutes of 2011.
Sept. 26 Approved by the Governor.
Sept. 12 Enrolled and presented to the Governor at 3:30 p.m.
Sept. 6 Assembly amendments concurred in. (Ayes 40. Noes 0. Page 2318.) Ordered to engrossing and enrolling.
Aug. 31 Ordered to special consent calendar.
Aug. 25 In Senate. Concurrence in Assembly amendments pending.
Aug. 25 Read third time. Urgency clause adopted. Passed. (Ayes 78. Noes 0. Page 2596.) Ordered to the Senate.
Aug. 22 Read second time. Ordered to consent calendar.
Aug. 18 From committee: Do pass. Ordered to consent calendar. (Ayes 17. Noes 0.) (August 17).
June 28 From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (June 28). Re-referred to Com. on APPR.
June 21 From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & C.P.
June 2 Referred to Com. on B., P. & C.P.
May 23 In Assembly. Read first time. Held at Desk.
May 23 Read third time. Urgency clause adopted. Passed. (Ayes 39. Noes 0. Page 1065.) Ordered to the Assembly.
May 18 Read second time. Ordered to third reading. Ordered to special consent calendar.
May 17 From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
May 6 Set for hearing May 16.
May 3 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0. Page 848.) (May 2). Re-referred to Com. on APPR.
Apr. 13 From committee with author's amendments. Read second time and amended. Re-referred to Com. on B., P. & E.D.
Apr. 12 Set for hearing May 2.
Apr. 11 Hearing postponed by committee.
Apr. 4 Set for hearing April 25.
Mar. 3 Referred to Com. on B., P. & E.D.
Feb. 18 From printer. May be acted upon on or after March 20.
Feb. 17 Introduced. Read first time. To Com. on RLS. for assignment. To print.

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81 Ops. Cal. Atty. Gen. 128, 1998 WL 117404 (Cal.A.G.)

Office of the Attorney General
State of California

Opinion No. 97-1208

March 17, 1998

THE HONORABLE MARTHA M. ESCUTIA
MEMBER OF THE CALIFORNIA STATE ASSEMBLY

THE HONORABLE MARTHA M. ESCUTIA, MEMBER OF THE CALIFORNIA STATE ASSEMBLY, has requested an opinion on the following question:

When the retail seller of a **hearing aid** fails to adjust or replace the device so that it is specifically fit for the particular needs of the buyer and the transaction is deemed rescinded, may the seller retain a portion of the total amount paid on the basis that such part payment was for fitting the device or other ancillary service or for one or more of the component parts that the seller refuses to take back?

CONCLUSION

When the retail seller of a **hearing aid** fails to adjust or replace the device so that it is specifically fit for the particular needs of the buyer and the transaction is deemed rescinded, the seller may not retain any portion of the total amount paid on the basis that such part payment was for fitting the device or other ancillary service or for one or more of the component parts that the seller refuses to take back.

ANALYSIS

The question presented concerns the extent of the refund which must be provided to one who returns a **hearing aid** pursuant to Civil Code section 1793.02. [FN1]/ Contained in the **Song-Beverly Consumer Warranty Act** (§§ 1790-1793.2; "Act"), section 1793.02 provides in pertinent part as follows:

> "(a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: 'This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws.' In lieu of the words '30 days' the retail seller may specify any longer period.
> "(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.
> "(c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device, or, if appropriate, replace it with a device that is specifi-

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> cally fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be canceled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.
> ***2** ". . . . . ."

Section 1792.2, subdivision (b), provides that "[e]very sale of an assistive device sold at retail in this state shall be accompanied by the retail seller's implied warranty that the device is specifically fit for the particular needs of the buyer." A hearing aid is an "assistive device" (§ 1791, subd. (s)).

We are asked to determine whether the seller of a hearing aid may, upon recision of the transaction, retain any portion of the total amount paid by claiming that part of the payment was for fitting the device or other ancillary service or for one or more component parts that the seller refuses to take back. We conclude that all payments made in connection with the purchase of the hearing aid must be refunded.

We are informed that, in addition to the amount charged for the hearing aid itself, other separately stated charges are often set forth in the purchase agreement. These additional charges are for services, such as administering a hearing test or making an ear mold, that are necessarily performed in dispensing the hearing aid to the consumer. Such incidental charges are variously denominated as a "laboratory fee," "impression fee," an "instruction, delivery and counseling fee," or "return fee." May the amounts paid for these separately stated items be retained by the seller?

In arriving at our determination we are guided by well-established principles of statutory construction. "When interpreting a statute our primary task is to determine the Legislature's intent." (*Freedom Newspapers, Inc.* v. *Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826.) "To determine the intent of legislation, we first consult the words themselves, giving them their usual and ordinary meaning." (*DaFonte* v. *Up-Right, Inc.* (1992) 2 Cal.4th 593, 601.) "Every word, phrase, and sentence in a statute should, if possible, be given significance. [Citation.]" (*Larson* v. *State Personnel Bd.* (1994) 28 Cal.App.4th 265, 276-277.) "[C]ourts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions. [Citation.]" (*Wells Fargo Bank* v. *Superior Court* (1991) 53 Cal.3d 1082, 1097.) A statute should be construed to "defeat subterfuges, expediencies, or evasions employed to continue the mischief sought to be remedied by the statute . . . or any attempt to accomplish by indirection what the statute forbids." (*Freedland* v. *Greco* (1955) 45 Cal.2d 462, 468.) Finally, we note that "the Act is manifestly a remedial measure, intended for the protection of the consumer; it should be given a construction calculated to bring its benefits into action." (*Kwan* v. *Mercedes-Benz of North America* (1994) 23 Cal.App.4th, 174, 184.)

Looking first to the words of the statute, we observe that a refund is to be made "[i]f the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer." (§ 1793.02, subd. (c).) The refund is to be "the total amount paid," and "the seller shall promptly return to the buyer all payments . . . ." (*Ibid.*) "[T]he transaction shall be deemed rescinded," and the seller "shall promptly cancel . . . all contracts . . . executed by the buyer in connection with the sale." (*Ibid.*) Finally, "[w]hen a sale is rescinded under this section, *no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.*" (*Ibid*; italics added.) The "assistive device" includes "any component or part thereof or accessory thereto." (§ 1791, subd. (p).)

***3** The language chosen by the Legislature in section 1793.02 is unambiguous and encompasses the fees and charges in question that are separately listed by hearing aid sellers. The fact that these fees and charges are made to appear independent of the "basic" charge for the hearing aid does not support the view that they may be retained by the dispenser when the sale is deemed rescinded pursuant to the terms of the statute. Such recision is allowed because the hearing aid does not meet the requirement under the implied warranty that the device "be specifically fit for the particular needs of . . . the buyer." (§ 1793.02, subd. (a).) The dispenser is made to bear the economic risk in the trans-

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action since “the buyer is relying on the skill and judgment of the seller to select and furnish suitable goods. . . .” (§ 1791.1, subd. (b).)

Any item made in the course of preparing the hearing aid or any service rendered in that regard is part of the overall cost of ensuring that the consumer receives a hearing aid that conforms to his or her particular needs. The dispenser's skill and judgment are critical in determining which of those items or services is required in order to satisfy the particular needs of the consumer.

We find no indication in the relevant statutes that the Legislature contemplated exclusion of the items or services in question from the “total amount paid” that must be refunded to the consumer when the purchase agreement is deemed rescinded pursuant to section 1793.02, subdivision (c). We have examined the legislative histories of the relevant statutes and find them to be consistent with the unambiguous statutory language used by the Legislature.

We therefore conclude that when the retail seller of a hearing aid fails to adjust or replace the device so that it is specifically fit for the particular needs of the buyer and the transaction is deemed rescinded, the seller may not retain any portion of the total amount paid by claiming that part of the payment was for fitting the device or other ancillary service or for one or more of the component parts that the seller refuses to take back.

Daniel E. Lungren
Attorney General

Gregory L. Gonot
Deputy Attorney General

[FN1]. All references hereafter to the Civil Code are by section number only.

81 Ops. Cal. Atty. Gen. 128, 1998 WL 117404 (Cal.A.G.)

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Assembly Bill No. 415

CHAPTER 547

An act to repeal and add Section 2290.5 of the Business and Professions Code, to repeal and add Section 1374.13 of the Health and Safety Code, to repeal and add Section 10123.85 of the Insurance Code, and to amend Sections 14132.72 and 14132.725 of the Welfare and Institutions Code, relating to telehealth.

[Approved by Governor October 7, 2011. Filed with Secretary of State October 7, 2011.]

legislative counsel's digest

AB 415, Logue. Healing arts: telehealth.

(1) Existing law provides for the licensure and regulation of various healing arts professions by various boards within the Department of Consumer Affairs. A violation of specified provisions is a crime. Existing law defines telemedicine, for the purpose of its regulation, to mean the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Existing law requires a health care practitioner, as defined, to obtain verbal and written informed consent from the patient or the patient's legal representative before telemedicine is delivered. Existing law also imposes various requirements with regard to the provision of telemedicine by health care service plans, health insurers, or under the Medi-Cal program, including a prohibition on requiring face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to certain contracts or policies. Existing federal regulations, for the purposes of participation in the Medicare and Medicaid programs, authorize the governing body of a hospital whose patients are receiving telemedicine services to grant privileges based on its medical staff recommendations that rely on information provided by the distant-site hospital. Existing state regulations require medical staff, appointed by the governing body of a hospital, to adopt procedures for the evaluation of staff applications for credentials and privileges. Existing law provides that health care service plans and health insurers shall not be required to pay for consultations provided by telephone or facsimile machines. Existing law provides that a willful violation of the provisions governing health care service plans is a crime.

This bill would delete the provisions of state law regarding telemedicine as described above, and would instead set forth provisions relating to telehealth, as defined. This bill would require a health care provider, as defined, prior to the delivery of health care via telehealth, to verbally inform the patient that telehealth may be used and obtain verbal consent from the

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patient. This bill would provide that failure to comply with this provision constitutes unprofessional conduct. This bill would, subject to contract terms and conditions, also preclude health care service plans and health insurers from imposing prior to payment, certain requirements regarding the manner of service delivery. This bill would establish procedures for granting privileges to, and verifying and approving credentials for, providers of telehealth services. By changing the definition of a crime applicable to health care service plans, the bill would impose a state-mandated local program.

(2) Existing law prohibits a requirement of face-to-face contact between a health care provider and a patient under the Medi-Cal program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the Medi-Cal program to compensate licensed health care providers who provide health care services, that are otherwise covered by the Medi-Cal program, through telemedicine.

This bill would, instead, prohibit a requirement of in-person contact between a health care provider and patient under the Medi-Cal program for any service otherwise covered by the Medi-Cal program when the service

is appropriately provided by telehealth, as defined, and would make related changes.
(3) Existing law, until January 1, 2013, and to the extent that federal financial participation is available, authorizes, under the Medi-Cal program, teleophthalmology and teledermatology by store and forward, as defined.
This bill would delete the repeal of the above-described authorization.
(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.
This bill would provide that no reimbursement is required by this act for a specified reason.
The people of the State of California do enact as follows:
SECTION 1. This act shall be known, and may be cited, as the Telehealth Advancement Act of 2011.
SEC. 2. The Legislature finds and declares all of the following:
(a) Lack of primary care providers, specialty providers, and transportation continue to be significant barriers to access to health services in medically underserved rural and urban areas.
(b) Parts of California have difficulty attracting and retaining health professionals, as well as supporting local health facilities to provide a continuum of health care.
(c) Many health care providers in medically underserved areas are isolated from mentors, colleagues, and the information resources necessary to support them personally and professionally.
(d) It is the intent of the Legislature to create a parity of telehealth with other health care delivery modes, to actively promote telehealth as a tool to

advance stakeholders' goals regarding health status and health system improvement, and to create opportunities and flexibility for telehealth to be used in new models of care and system improvements.
(e) Telehealth is a mode of delivering health care services and public health utilizing information and communication technologies to enable the diagnosis, consultation, treatment, education, care management, and self-management of patients at a distance from health care providers.
(f) Telehealth is part of a multifaceted approach to address the problem of inadequate provider distribution and the development of health systems in medically underserved areas by improving communication capabilities and providing convenient access to up-to-date information, consultations, and other forms of support.
(g) The use of information and telecommunication technologies to deliver health services has the potential to reduce costs, improve quality, change the conditions of practice, and improve access to health care, particularly in rural and other medically underserved areas.
(h) Telehealth will assist in maintaining or improving the physical and economic health of medically underserved communities by keeping the source of medical care in the local area, strengthening the health infrastructure, and preserving health care-related jobs.
(i) Consumers of health care will benefit from telehealth in many ways, including expanded access to providers, faster and more convenient treatment, better continuity of care, reduction of lost work time and travel costs, and the ability to remain with support networks.
(j) It is the intent of the Legislature that the fundamental health care provider-patient relationship cannot only be preserved, but can also be augmented and enhanced, through the use of telehealth as a tool to be integrated into practices.
(k) Without the assurance of payment and the resolution of legal and policy barriers, the full potential of telehealth will not be realized.
SEC. 3. Section 2290.5 of the Business and Professions Code is repealed.

SEC. 4. Section 2290.5 is added to the Business and Professions Code, to read:
2290.5. (a) For purposes of this division, the following definitions shall apply:
(1) “Asynchronous store and forward” means the transmission of a patient’s medical information from an originating site to the health care provider at a distant site without the presence of the patient.
(2) “Distant site” means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.
(3) “Health care provider” means a person who is licensed under this division.
(4) “Originating site” means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) “Synchronous interaction” means a real-time interaction between a patient and a health care provider located at a distant site.
(6) “Telehealth” means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient’s health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.
(b) Prior to the delivery of health care via telehealth, the health care provider at the originating site shall verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. The verbal consent shall be documented in the patient’s medical record.
(c) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.
(d) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.
(e) All laws regarding the confidentiality of health care information and a patient’s rights to his or her medical information shall apply to telehealth interactions.
(f) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.
(g) (1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.
(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).
(3) For the purposes of this subdivision, “telehealth” shall include “telemedicine” as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.
SEC. 5. Section 1374.13 of the Health and Safety Code is repealed.
SEC. 6. Section 1374.13 is added to the Health and Safety Code, to read:
1374.13. (a) For the purposes of this section, the definitions in

subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.
(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care

services from a health care provider without in-person contact with the health care provider.
(c) No health care service plan shall require that in-person contact occur between a health care provider and a patient before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider groups.
(d) No health care service plan shall limit the type of setting where services are provided for the patient or by the health care provider before payment is made for the covered services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, and between the health care service plan and its participating providers or provider groups.
(e) The requirements of this subdivision shall also be operative for health care service plan contracts with the department pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.81 (commencing with Section 14087.96), or Article 2.91 (commencing with Section 14089) of Chapter 7, or Chapter 8 (commencing with Section 14200) of, Part 3 of Division 9 of the Welfare and Institutions Code.
(f) Notwithstanding any other provision, this section shall not be interpreted to authorize a health care service plan to require the use of telehealth when the health care provider has determined that it is not appropriate.
SEC. 7. Section 10123.85 of the Insurance Code is repealed.
SEC. 8. Section 10123.85 is added to the Insurance Code, to read:
10123.85. (a) For purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.
(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the health care provider.
(c) No health insurer shall require that in-person contact occur between a health care provider and a patient before payment is made for the services appropriately provided through telehealth, subject to the terms and conditions of the contract entered into between the policyholder or contractholder and the insurer, and between the insurer and its participating providers or provider groups.
(d) No health insurer shall limit the type of setting where services are provided for the patient or by the health care provider before payment is made for the covered services appropriately provided by telehealth, subject to the terms and conditions of the contract between the policyholder or contract holder and the insurer, and between the insurer and its participating providers or provider groups.

(e) Notwithstanding any other provision, this section shall not be interpreted to authorize a health insurer to require the use of telehealth when the health care provider has determined that it is not appropriate.
SEC. 9. Section 14132.72 of the Welfare and Institutions Code is amended to read:
14132.72. (a) For purposes of this section, the definitions in subdivision

(a) of Section 2290.5 of the Business and Professions Code shall apply.
(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the provider.
(c) In-person contact between a health care provider and a patient shall not be required under the Medi-Cal program for services appropriately provided through telehealth, subject to reimbursement policies adopted by the department to compensate a licensed health care provider who provides health care services through telehealth that are otherwise reimbursed pursuant to the Medi-Cal program. Nothing in this section or the Telehealth Advancement Act of 2011 shall be construed to conflict with or supersede the provisions of Section 14091.3 of this code or any other existing state laws or regulations related to reimbursement for services provided by a noncontracted provider.
(d) The department shall not require a health care provider to document a barrier to an in-person visit for Medi-Cal coverage of services provided via telehealth.
(e) For the purposes of payment for covered treatment or services provided through telehealth, the department shall not limit the type of setting where services are provided for the patient or by the health care provider.
(f) Nothing in this section shall be interpreted to authorize the department to require the use of telehealth when the health care provider has determined that it is not appropriate.
(g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this section by means of all-county letters, provider bulletins, and similar instructions.
SEC. 10. Section 14132.725 of the Welfare and Institutions Code is amended to read:
14132.725. (a) Commencing July 1, 2006, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward. Services appropriately provided through the store and forward process are subject to billing and reimbursement policies developed by the department.
(b) For purposes of this section, “teleophthalmology and teledermatology by store and forward” means an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology or, for teleophthalmology, by an optometrist who is licensed pursuant to Chapter 7 (commencing with

Section 3000) of Division 2 of the Business and Professions Code, where the physician or optometrist at the distant site reviews the medical information without the patient being present in real time. A patient receiving teleophthalmology or teledermatology by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician or optometrist, and shall receive an interactive communication with the distant specialist physician or optometrist, upon request. If requested, communication with the distant specialist physician or optometrist may occur either at the time of the consultation, or within 30 days of the patient’s notification of the results of the consultation. If the reviewing optometrist identifies a disease or condition requiring consultation or referral pursuant to Section 3041 of the Business and Professions Code, that consultation or referral shall be with an ophthalmologist or other appropriate physician and surgeon, as required.
(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may

implement, interpret, and make specific this section by means of all-county letters, provider bulletins, and similar instructions.

(d) On or before January 1, 2008, the department shall report to the Legislature the number and type of services provided, and the payments made related to the application of store and forward telemedicine as provided, under this section as a Medi-Cal benefit.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 415
AUTHOR : Logue
TOPIC : Healing arts: telehealth.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
2011
Oct. 7 Chaptered by Secretary of State - Chapter 547, Statutes of 2011.
Oct. 7 Approved by the Governor.
Sept. 22 Enrolled and presented to the Governor at 12:30 p.m.
Sept. 8 Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 79. Noes 0. Page 3074.).
Sept. 7 In Assembly. Concurrence in Senate amendments pending.
Sept. 7 Read third time. Passed. Ordered to the Assembly. (Ayes 35. Noes 0. Page 2355.).
Sept. 6 Read second time. Ordered to third reading.
Sept. 2 Read third time and amended. Ordered to second reading.
Aug. 29 Read second time. Ordered to third reading.
Aug. 25 From committee: Do pass. (Ayes 9. Noes 0.) (August 25).
Aug. 15 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on APPR. In committee: Referred to APPR. suspense file.
July 7 Read second time and amended. Re-referred to Com. on APPR.
July 6 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (July 6).
June 30 From committee: Do pass and re-refer to Com. on B., P. & E.D. (Ayes 8. Noes 0.) (June 29). Re-referred to Com. on B., P. & E.D.
June 8 Referred to Coms. on HEALTH and B., P. & E.D.
June 1 In Senate. Read first time. To Com. on RLS. for assignment.
June 1 Read third time. Passed. Ordered to the Senate. (Ayes 76. Noes 0. Page 1723.)
May 31 Read second time. Ordered to third reading.
May 27 From committee: Do pass as amended. (Ayes 17. Noes 0.) (May 27). Read second time and amended. Ordered to second reading.
May 18 In committee: Set, first hearing. Referred to APPR. suspense file.
May 11 Re-referred to Com. on APPR.
May 10 Read second time and amended.
May 9 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 16. Noes 0.) (May 3).
Apr. 26 Re-referred to Com. on HEALTH.
Apr. 25 From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Apr. 4 Re-referred to Com. on HEALTH.
Mar. 31 Referred to Com. on HEALTH. From committee chair, with author's amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.
Feb. 15 From printer. May be heard in committee March 17.
Feb. 14 Read first time. To print.

Assembly Bill No. 136

CHAPTER 404

An act to amend Section 2881 of the Public Utilities Code, relating to telecommunications.

[Approved by Governor October 2, 2011. Filed with Secretary of State October 2, 2011.]

legislative counsel's digest

AB 136, Beall. Telecommunications: universal service: speech disabilities.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to oversee administration of the state's universal service programs, including the deaf and disabled programs. The existing deaf and disabled universal service program, among other things, requires the commission to design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired.

This bill would require the commission to expand the program to include assistance to individuals with speech disabilities, including assistance to purchase speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment. The bill would require the commission to design and implement a program to provide access to a speech-generating device to any subscriber who is certified as having a speech disability at no charge additional to the basic exchange rate. The bill would require the commission to adopt rules to implement the program by January 1, 2014. The bill would require the commission to evaluate options for controlling the program costs of providing speech-generating devices, and include information on any barriers to participation in the program by eligible subscribers, as part of an existing report to the Legislature.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime. Because the bill would require the commission to adopt rules, the violation of which would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Certain speech-generating devices are classified by the United States Department of Health and Human Services guidelines as durable medical equipment.

(b) The provision of durable medical equipment traditionally has been a function of public and private health insurance programs.

(c) It is the intent of the Legislature that public and private health insurance programs continue to the be the provider of first resort for speech-generating devices that are classified as durable medical equipment and that the Public Utilities Commission only provide access to those devices when funding from traditional public and private health insurance policies and programs is unavailable.

SEC. 2. Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to a subscriber who is certified as an individual who is deaf or hearing impaired by a licensed

physician and surgeon, audiologist, or a qualified state or federal agency, as determined by the commission, and to a subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (h). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification. In addition, a physician assistant may certify the needs of an individual who has been diagnosed by a physician and surgeon as being deaf or hearing impaired to participate in the program after reviewing the medical records or copies of the medical records containing that diagnosis.

(b) The commission shall also design and implement a program to provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (h), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system that will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of

the deaf, during the development and implementation of the system. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of visual or medical need for specialized telecommunications equipment, shall be provided by a licensed optometrist, physician and surgeon, or physician assistant, acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) (1) The commission shall also design and implement a program to provide access to a speech-generating device to any subscriber who is certified as having a speech disability at no charge additional to the basic exchange rate. The certification shall be provided by a licensed physician, licensed speech-language pathologist, or qualified state or federal agency. The commission shall provide to a certified subscriber access to a speech-generating device that is all of the following:

(A) A telecommunications device or a device that includes a telecommunications component.

(B) Appropriate to meet the subscriber's needs for access to, and use of, the telephone network, based on the recommendation of a licensed speech-language pathologist.

(C) Consistent with the quality of speech-generating devices available for purchase in the state.

(2) The commission shall adopt rules to implement this subdivision and subdivision (e) by January 1, 2014.
(e) All of the following apply to any device or equipment described in this section that is classified as durable medical equipment under guidelines established by the United States Department of Health and Human Services:
(1) It is the intent of the Legislature that the commission be the provider of last resort and that eligible subscribers first obtain coverage from any available public or private insurance.
(2) The commission may require the subscriber to provide information about coverage for any or all of the cost of the device or equipment that is available from any public or private insurance, the cost to the subscriber of any deductible, copayment, or other relevant expense, and any related benefit cap information.
(3) The total cost of any device or equipment provided to a subscriber under this section shall not exceed the rate of reimbursement provided by Medi-Cal for that device or equipment.

(f) Nothing in this section requires the commission to provide training to a subscriber on the use of a speech-generating device.
(g) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow providers of the equipment and service specified in subdivisions (a), (b), (c), and (i), to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2014. The commission shall require that the programs implemented under this section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.
(h) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired that shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office.
(i) (1) The commission shall expand the program created by this section to include assistance to individuals with speech disabilities that impair the individual's access to, and use of, the telephone network. The commission shall ensure that speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment, including infrared telephones, speaker phones, and telephone interface devices, are funded through the program.
(2) The commission shall ensure that only individuals who are both residents of the state and speech impaired as certified by a licensed physician, licensed speech-language pathologist, or qualified state or federal agency are eligible.
(3) The commission shall provide to each eligible applicant the appropriate equipment consistent with the recommendation of a licensed speech-language pathologist.
(4) The commission shall ensure that the equipment provided pursuant to this subdivision is consistent with the economy, efficiency, and quality of equipment that is available for purchase in the state.
(j) The commission may direct a telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.
(k) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (g). Until January

1, 2014, the commission may make, within the limits set by subdivision (g), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance that is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(*l*) The commission shall prepare and submit to the Legislature, on or before December 31 of each year, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (g) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:
(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.
(2) If and to the extent not prohibited under Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll-call rates, and, for usage in excess of those basic requirements, at rates that recover the full costs of service.
(3) More efficient means for obtaining and distributing equipment to qualified subscribers.
(4) The establishment of quality standards for increasing the efficiency of the relay system.
(m) The report described in subdivision (*l*) that is due no later than December 31, 2013, shall evaluate options for controlling the program costs of providing speech-generating devices and include information on any barriers to participation in the program by eligible subscribers.
(n) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.
(o) The commission shall structure the programs required by this section so that a charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.
(p) (1) The requirement for submitting a report imposed under subdivision (*l*) is inoperative on January 1, 2016, pursuant to Section 10231.5 of the Government Code.
(2) A report submitted pursuant to subdivision (*l*) shall be submitted in compliance with Section 9795 of the Government Code.
SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.
O

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 136
AUTHOR : Beall
TOPIC : Telecommunications: universal service: speech disabilities.

TYPE OF BILL :
Inactive
Non-Urgency
Non-Appropriations
Majority Vote Required
State-Mandated Local Program
Fiscal
Non-Tax Levy

BILL HISTORY
2011
Oct. 2 Chaptered by Secretary of State - Chapter 404, Statutes of 2011.
Oct. 2 Approved by the Governor.
Sept. 22 Enrolled and presented to the Governor at 12:30 p.m.
Sept. 8 In Assembly. Concurrence in Senate amendments pending. Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 77. Noes 2. Page 3126.).
Sept. 8 Read third time. Passed. Ordered to the Assembly. (Ayes 38. Noes 0. Page 2387.).
Sept. 6 Read second time. Ordered to third reading.
Sept. 2 Read third time and amended. Ordered to second reading.
Aug. 30 Read second time and amended. Ordered to third reading.
Aug. 29 From committee: Do pass as amended. (Ayes 9. Noes 0.) (August 25).
Aug. 15 In committee: Referred to APPR. suspense file.
June 30 Read second time and amended. Re-referred to Com. on APPR.
June 29 From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 8. Noes 0.) (June 29).
June 14 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on E., U., & C.
June 8 Referred to Com. on E., U., & C.
May 31 In Senate. Read first time. To Com. on RLS. for assignment.
May 31 Read third time. Passed. Ordered to the Senate. (Ayes 77. Noes 1. Page 1639.)
May 27 From committee: Do pass. (Ayes 17. Noes 0.) (May 27). Read second time. Ordered to third reading.
May 4 In committee: Set, first hearing. Referred to APPR. suspense file.
Apr. 27 Re-referred to Com. on APPR.
Apr. 26 From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
Apr. 5 From committee: Do pass and re-refer to Com. on APPR. (Ayes 15. Noes 0.) (April 4). Re-referred to Com. on APPR.
Mar. 15 Re-referred to Com. on U. & C.
Mar. 14 Referred to Com. on U. & C. From committee chair, with author's amendments: Amend, and re-refer to Com. on U. & C. Read second time and amended.
Jan. 13 From printer. May be heard in committee February 12.
Jan. 12 Read first time. To print.

BILL ANALYSIS


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-------------------------------------------------------------
|SENATE RULES COMMITTEE            |                AB 136|
|Office of Senate Floor Analyses   |                      |
|1020 N Street, Suite 524          |                      |
|(916) 651-1520        Fax: (916) |                      |
|327-4478                          |                      |
-------------------------------------------------------------
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THIRD READING

Bill No: AB 136
Author: Beall (D), et al.
Amended: 9/2/11 in Senate
Vote: 21

SENATE ENERGY, UTILITIES & COMMUNIC. COMM : 8-0, 06/21/11
AYES: Padilla, Fuller, Berryhill, Corbett, De León, DeSaulnier, Rubio, Simitian
NO VOTE RECORDED: Pavley, Strickland, Wright

SENATE APPROPRIATIONS COMMITTEE : 9-0, 08/25/11
AYES: Kehoe, Walters, Alquist, Emmerson, Lieu, Pavley, Price, Runner, Steinberg

ASSEMBLY FLOOR : 77-1, 05/31/11 - See last page for vote

SUBJECT : Telecommunications: universal service: speech disabilities

SOURCE : Author

DIGEST : This bill expands the California Public Utilities Commission (PUC) Deaf and Disabled Telecommunications Program (DDTP) to include assistance to individuals with speech disabilities, by January 1, 2014.

Senate Floor Amendments of 9/2/11 specify January 1, 2014, as the deadline for the PUC to adopt the regulations required by this bill.

ANALYSIS : Existing law:

1.Requires the PUC to design and implement a universal service program to provide a telecommunications device or dual-party relay system to enable persons who are deaf or hearing impaired to use the telecommunications network at no charge additional to the basic exchange rate.

2.Requires the PUC to design and implement a program to provide specialized or supplemental telephone communications equipment to subscribers who are disabled at no charge additional to the basic exchange rate.

3.Requires the PUC to recover the costs of the deaf and disabled universal service program through a customer surcharge of not more than one-half of 1 percent of charges for intrastate telephone service, effective until January 1, 2014.

4.Requires that persons eligible for these programs be certified as deaf or hearing impaired by a licensed physician and surgeon, audiologist, licensed hearing aid dispenser, or physician assistant, or certified as disabled with a visual or medical need for specialized telecommunications equipment by a licensed optometrist, physician and surgeon, physician assistant or a qualified state or federal agency, as determined by the PUC.

5.Authorizes the PUC to expand the deaf and disabled program consistent with evolving telecommunications technology in order to meet the access needs of individuals with functional limitations on hearing, vision, movement, manipulation and interpretation of information.

6.Requires the PUC to submit an annual report to the Legislature on the deaf and disabled program with an evaluation of options for controlling program expenses, including establishing a means test for qualifying for

the program.

This bill:

1.Requires the PUC to expand the deaf and disabled program

to include assistance to individuals with speech disabilities that impair access to and use of the telephone network and ensure funding for speech-generating devices, accessories, and mounting systems and specialized telecommunications equipment, including infrared telephones, speaker phones, and telephone interface devices.

2.Requires the PUC to evaluate options for controlling the program costs of providing speech-generating devices, as part of an existing report to the Legislature.

3.Requires the PUC to ensure that eligibility for speech-generating devices is limited to state residents who are certified as speech impaired by a licensed physician, licensed speech-language pathologist, or qualified state or federal agency.

4.Requires the PUC to provide appropriate speech-generating equipment consistent with the recommendation of a licensed speech-language pathologist and with the economy, efficiency, and quality of equipment available for purchase in the state.

5.Requires the PUC to be the provider of last resort and limit device costs to the Medi-Cal rate.

Background

Current Deaf and Disabled Program . The deaf and disabled program is one of several universal service programs designed to ensure that affordable telecommunications service is ubiquitously available to all members of society. Under this program, the PUC provides deaf and disabled Californians with a "telecommunications device" or "specialized telecommunications equipment" and relay

services that enable communications via telephone. Program services and equipment are provided to eligible persons by vendors under contract with the CPUC. The CPUC also conducts pilot programs with new technologies, including a current pilot involving wireless phones for the hearing impaired.

Devices for Speech Disabilities . According to the

author's office, devices currently provided through the deaf and disabled program do not enable persons with severe speech disabilities to utilize the telephone. However, new technologies have resulted in speech-generating devices that enable telephone communication. DynaVox, a major provider of these devices and supporter of this bill, estimates that statewide demand for these devices is about 1,000 to 1,250 per year. Estimates of the cost per device range from $7,000 to $11,000.

Devices Covered by Insurance . Because speech-generating devices enable communication generally, they are considered durable medical equipment and may be covered by public and private insurance. DynaVox claims the devices are covered by Medi-Cal, Medi-Care and most private insurance companies. Disability Rights California, on the other hand, claims that this specialized equipment is cost-prohibitive and not always covered by insurance or Medi-Cal.

Request for PUC Pilot . In response to a request to conduct a pilot on speech-generating devices, the CPUC determined that these devices do not fit within the parameters of the deaf and disabled program because they are primarily medical equipment rather than telecommunications devices. According to the CPUC, its research revealed that, while all the speech generating devices it examined facilitated speech communication, only a subset of those devices had a telecommunications component, and none of them were designed solely for use as a telecommunications device. Moreover, the CPUC claims that speech-generating devices are customized to each user, making competitive procurement as required by state contracting procedures a complicated

and lengthy process.

Comments

According to the author's office, this bill will help ensure that no one is prevented from making or receiving a telephone call if technology exists to make it possible. The author claims that this bill is necessary because "the CPUC has refused to make newly developed technology (e.g., speech-generating devices) available to people with the most severe communications disabilities."

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

Major Provisions	2011-12	2012-13	2013-14	Fund
Program oversight	$165	$330	$330	Special *
Outside contracting for program delivery	$130		$130	Special *
Providing devices to disabled customers	Potential costs of $7,000 to $9,500 per year			Special *

* Deaf and Disabled Telecommunications Program Administrative Committee Fund.

SUPPORT : (Verified 9/6/11)

California ALS Advocacy Committee
California Speech-Language-Hearing Association
Disability Rights California
Occupational Therapy Association of California

The Arc and United Cerebral Palsy of California
Unites States Society for Augmentative and Alternative Communication

ARGUMENTS IN SUPPORT : The California ALS Advocacy Committee writes in support, "AB 136 expands the California Telephone Access Program to include individuals with speech disabilities, such as ALS, that impair the individual's access to and use of the telephone. The bill provides that the PUC shall ensure that accessories and mounting systems of speech generating devices are funded through the CTAP ÝCalifornia Telephone Access Program] program."

Disability Rights California writes in support, "Many

people with speech disabilities need specialized equipment to communicate. Purchasing this equipment can be cost prohibitive and is not always covered by insurance or Medi-Cal. Further, such equipment means individuals can function independently in the community and will not have to rely on others for assistance."

ASSEMBLY FLOOR :
AYES: Achadjian, Alejo, Allen, Ammiano, Atkins, Beall, Bill Berryhill, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Campos, Carter, Cedillo, Chesbro, Conway, Cook, Davis, Dickinson, Donnelly, Eng, Feuer, Fletcher, Fong, Fuentes, Furutani, Beth Gaines, Galgiani, Garrick, Gatto, Gordon, Grove, Hagman, Hall, Harkey, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Jeffries, Jones, Knight, Lara, Logue, Bonnie Lowenthal, Ma, Mansoor, Mendoza, Miller, Mitchell, Monning, Morrell, Nestande, Nielsen, Norby, Olsen, Pan, Perea, V. Manuel Pérez, Portantino, Silva, Skinner, Smyth, Solorio, Swanson, Torres, Valadao, Wagner, Wieckowski, Williams, Yamada, John A. Pérez
NOES: Halderman
NO VOTE RECORDED: Charles Calderon, Gorell

RM:nl 9/6/11 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

LICENSING WORKLOAD REPORT

LICENSES ISSUED	FY09/10	FY10/11	FY11/12	Jul	Aug	Sep	Q1	Oct	Nov	Dec	Q2	Jan	Feb	Mar	Q3	Apr	May	Jun	Q4
AU	43	57	25	9	10	6	25				0				0				0
DAU	946	73	14	0	12	2	14				0				0				0
SLP	692	734	246	66	107	73	246				0				0				0
SLPA - *(Registered)*	290	312	145	34	61	50	145				0				0				0
RPE'S	566	555	286	65	115	106	286				0				0				0
SLP Issued	529	513	269	53	112	104	269				0				0				0
AU Issued	37	42	17	12	3	2	17				0				0				0
AIDES - *(Approved)*	63	52	4	2	0	2	4				0				0				0
SLP Issued	27	24	1	1	0	0	1				0				0				0
AU Issued	36	28	3	1	0	2	3				0				0				0
CPD PROVIDERS - *(Approved)*	14	16	6	1	4	1	6				0				0				0
HAD	89	50	26	0	22	4	26				0				0				0
HAD Trainees	98	77	26	8	11	7	26				0				0				0
HAD Temporary	15	12	0	0	0	0	0				0				0				0
APPLICANTS (hand count)	*no count*	*no count*	20	5	8	7	20				0				0				0
HAD Branch Office	192	205	46	13	20	13	46				0				0				0

ENFORCEMENT STATISTICS

	FY 09/10		FY10/11		FY 11/12		QTR 1		QTR 2		QTR 3		QTR 4	
COMPLAINT ACTIVITY	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
Opened	**122**	**165**	**72**	**166**	**12**	**40**	12	40						
Closed	**99**	**131**	**113**	**172**	**7**	**44**	7	44						
Pending	**61**	**88**	**43**	**103**	**49**	**104**	49	104						

	FY 09/10		FY10/11		FY 11/12		QTR 1		QTR 2		QTR 3		QTR 4	
VIOLATION TYPE OF OPENED COMPLAINTS	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
Discipline by Another State/Agency	**0**	**0**	**1**	**0**	**0**	**0**	0	0						
Incompletence/Negligence	**4**	**10**	**6**	**11**	**7**	**2**	7	2						
Unprofessional Conduct	**14**	**123**	**19**	**113**	**17**	**25**	17	25						
Unlicensed/Unregistered Activity	**16**	**16**	**7**	**16**	**5**	**6**	5	6						
Criminal Charges/Convictions	**33**	**5**	**26**	**18**	**10**	**2**	10	2						
Substance Abuse	**0**	**0**	**1**	**0**	**0**	**0**	0	0						
Fraud	**3**	**6**	**7**	**6**	**9**	**3**	9	3						
Non-Jurisdictional	**1**	**5**	**0**	**0**	**0**	**1**	0	1						
Other	**51**	**0**	**5**	**2**	**1**	**1**	1	1						
TOTAL	**122**	**165**	**72**	**166**	**49**	**40**	**49**	**40**	**0**	**0**	**0**	**0**	**0**	**0**

Advertising Violations: FY 09/10-62, FY 10/11-58

CLOSED COMPLAINT'S PROCESSING TIMES	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
0 - 3 Months	**66**	**84**	**23**	**43**	**0**	**12**	0	12						
4 - 6 Months	**9**	**8**	**12**	**31**	**1**	**5**	1	5						
7 - 12 Months	**6**	**1**	**13**	**50**	**0**	**13**	0	13						
13 - 24 Months	**2**	**1**	**27**	**38**	**0**	**13**	0	13						
15 - 36 Months	**13**	**3**	**16**	**10**	**0**	**1**	0	1						

ENFORCEMENT STATISTICS

	FY 09/10		FY10/11		FY 11/12		QTR 1		QTR 2		QTR 3		QTR 4	
INVESTIGATION ACTIVITY	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
Opened	**15**	**28**	**12**	**19**	**11**	**4**	11	4						
Closed	**3**	**34**	**15**	**11**	**6**	**9**	6	9						
Pending	**23**	**19**	**8**	**20**	**40**	**19**	40	19						

CLOSED INVESTIGATION'S PROCESSING TIMES	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
0 - 3 Months	**0**	**0**	**4**	**0**	**0**	**0**	0	0						
4 - 6 Months	**1**	**2**	**4**	**2**	**3**	**2**	3	2						
7 - 12 Months	**0**	**20**	**12**	**2**	**0**	**4**	0	4						
13 - 24 Months	**0**	**9**	**5**	**6**	**3**	**2**	3	2						
15 - 36 Months	**2**	**3**	**1**	**1**	**0**	**1**	0	1						

	FY 09/10		FY10/11		FY 11/12		QTR 1		QTR 2		QTR 3		QTR 4	
COMPLAINT DISPOSITION & CLOSED INVESTIGATIONS	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
No Violation	**13**	**11**	**21**	**18**	**1**	**8**	1	8						
Information on File	**21**	**14**	**29**	**36**	**0**	**5**	0	5						
Insufficient Evidence	**4**	**8**	**5**	**10**	**0**	**2**	0	2						
Subject Educated	**9**	**38**	**5**	**42**	**0**	**7**	0	7						
Non-Jurisdictional	**0**	**7**	**0**	**2**	**0**	**1**	0	1						
Compliance Obtained	**0**	**1**	**1**	**0**	**0**	**1**	0	1						
Referred to Gov't Agency	**0**	**0**	**0**	**0**	**0**	**1**	0	1						
Other	**9**	**23**	**17**	**33**	**1**	**7**	1	7						
Citation	**34**	**2**	**17**	**5**	**4**	**5**	4	5						
Conditional Licenses	**1**	**0**	**1**	**0**	**0**	**0**	0	0						
Referred tp AG/DA	**8**	**21**	**16**	**19**	**1**	**3**	1	3						
Mediated	**0**	**6**	**1**	**7**	**0**	**4**	0	4						
TOTAL	**99**	**131**	**113**	**172**	**7**	**44**	**7**	**44**	**0**	**0**	**0**	**0**	**0**	**0**

ENFORCEMENT STATISTICS

	FY 09/10		FY10/11		FY 11/12		QTR 1		QTR 2		QTR 3		QTR 4	
PROBATION CASES	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
Opened	**10**	**4**	**31**	**7**	**0**	**2**	0	2						
Tolled	**6**	**0**	**28**	**3**	**6**	**1**	6	1						
Conditional Licenses	**8**	**0**	**26**	**0**	**0**	**0**	0	0						
TOTAL	**24**	**4**	**85**	**10**	**6**	**3**	**6**	**3**	**0**	**0**	**0**	**0**	**0**	**0**

CITATIONS ISSUED	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
	34	**2**	**17**	**5**	**4**	**5**	4	5						

	FY 09/10		FY10/11		FY 11/12		QTR 1		QTR 2		QTR 3		QTR 4	
AG CASE ACTIVITY	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
Opened	**7**	**19**	**17**	**2**	**1**	**3**	1	3						
Closed	**7**	**5**	**3**	**2**	**0**	**1**	0	1						
Pending	**11**	**7**	**23**	**7**	**21**	**6**	21	6						

CLOSED AG CASE'S PROCESSING TIMES	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
0 - 1 Years	**3**	**4**	**1**	**0**	**0**	**0**	0	0						
1 - 2 Years	**3**	**1**	**1**	**0**	**0**	**0**	0	0						
2 - 3 Years	**0**	**0**	**1**	**1**	**0**	**0**	0	0						
3 - 4 Years	**0**	**0**	**0**	**1**	**0**	**0**	0	0						
4+ Years	**1**	**0**	**0**	**0**	**0**	**1**	0	1						

	FY 09/10		FY10/11		FY 11/12		QTR 1		QTR 2		QTR 3		QTR 4	
ADMINISTRATIVE FILINGS	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
Accusations	**3**	**2**	**6**	**2**	**6**	**0**	6	0						
Statement of Issues	**0**	**0**	**0**	**1**	**0**	**0**	0	0						
Petition for Penalty Relief	**1**	**0**	**1**	**0**	**0**	**0**	0	0						
Petition for Psychiatric Evaluation	**0**	**0**	**0**	**0**	**0**	**0**	0	0						
TOTAL	**4**	**2**	**7**	**3**	**6**	**0**	**6**	**0**	**0**	**0**	**0**	**0**	**0**	**0**

ENFORCEMENT STATISTICS

	FY 09/10		FY10/11		FY 11/12		QTR 1		QTR 2		QTR 3		QTR 4	
ADMINISTRATIVE FIINAL DECISIONS	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
Revocation	**0**	**0**	**0**	**0**	**0**	**0**	0	0						
Revocation, Stayed, Prob	**3**	**1**	**0**	**1**	**0**	**0**	0	0						
Rev, Stayed, Prob, Susp	**0**	**0**	**0**	**0**	**0**	**0**	0	0						
License Surrender	**1**	**0**	**2**	**1**	**0**	**0**	0	0						
License Denied	**0**	**2**	**0**	**0**	**0**	**0**	0	0						
Petition for Penalty Relief Denied	**0**	**0**	**2**	**0**	**0**	**0**	0	0						
Petition for Penalty Relief Granted	**0**	**0**	**0**	**0**	**0**	**0**	0	0						
Petition for Penalty Relief Withdrawn	**0**	**0**	**0**	**0**	**0**	**0**	0	0						
Reprimands/Reprovals	**0**	**0**	**1**	**0**	**0**	**0**	0	0						
Stipulated Settlement	**1**	**0**	**0**	**0**	**0**	**0**	0	0						
ISO's Ordered	**0**	**0**	**0**	**0**	**0**	**0**	0	0						
Declined by AG	**2**	**1**	**0**	**0**	**0**	**1**	0	1						
Conditional License	**0**	**1**	**0**	**0**	**0**	**0**	0	0						
TOTAL	**7**	**5**	**5**	**2**	**0**	**1**	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**0**

	FY 09/10		FY10/11		FY 11/12		QTR 1		QTR 2		QTR 3		QTR 4	
DECISIONS - TYPE OF VIOLATION	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**	**SP/AU**	**HAD**
Discipline by Another State/Agency	**0**	**0**	**0**	**0**	**0**	**0**	0	0						
Incompetence/Negligence	**4**	**0**	**1**	**0**	**0**	**0**	0	0						
Unprofessional Conduct	**0**	**1**	**0**	**0**	**0**	**0**	0	0						
Unlicensed/Unregisterd Activity	**1**	**0**	**0**	**0**	**0**	**1**	0	1						
Criminal Charges/Convictions	**1**	**3**	**1**	**0**	**0**	**0**	0	0						
Fraud	**0**	**1**	**1**	**2**	**0**	**0**	0	0						
Other	**1**	**0**	**1**	**0**	**0**	**0**	0	0						
TOTAL	**7**	**5**	**4**	**2**	**0**	**1**	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**0**

CURRENT LICENSE POPULATION

AS OF 9/30/2011

AU / DAU	
Active AU	605
Active DAU	918
Inactive	127
Renewal Hold	23
Delinquent	256

SLP	
Active	11,379
Inactive	1,045
Renewal Hold	236
Delinquent	1,883

SLP ASSISTANTS	
Active	1,410
Inactive	68
Renewal Hold	30
Delinquent	270

RPE TEMP	
Active	700
Delinquent	62

REGISTERED AIDES	
Active	200
Delinquent	62

HAD	
Active	939
Inactive	57
Delinquent	136

HAD TEMP TRAINEES	
Active	89
Inactive	2
Delinquent	19

HAD TEMPORARY	
Active	9
Delinquent	0

HAD BRANCH OFFICE	
Active	598
Delinquent	114