



**Date: December 15, 2011**

**To: Interested Parties: Hearing Aid Dispensing**

**Re: Hearing Aid Dispensing Advertising Provisions**

The Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board (SLPAHADB) is proposing changes to its advertising provisions to improve clarity and to address common industry advertising practices that may be misleading to the public.

Since the advertisements of such products and services have a direct impact on the choices our consumers make, our goal is to construct advertising provisions that conform to current law and require informative, clear and concise statements that enable consumers to make informed decisions regarding their hearing healthcare needs. To that end, we are seeking input from consumer groups and industry professionals on practical amendments to our current advertising provisions.

We are requesting your input on the following advertising issues that have been presented to the Board by the public in the form of a complaint or general concern. Also, please review the actual advertising provisions that follow and note the underline and *italicized* text which reflects proposed changes to the current advertising regulations. When reviewing the proposed changes, please reference existing law, Business and Professions Code Section 651 (attached) as regulations regarding hearing aids and hearing aid dispensing must conform to the enabling law.

Comments may be submitted via email at [speechandhearing@dca.ca.gov](mailto:speechandhearing@dca.ca.gov), facsimile at (916) 263-2668, or by regular mail at the Board office address above. Please send your comments to the Board no later than January 31, 2012.

Advertising Issues for Consideration:

- A requirement that advertisements include a statement indicating that a *hearing test* is not a medical diagnosis.
- A restriction on advertisements that invite a specified number of people to participate in a “trial offer” for new hearing aids/new technology with an offer of “discounted” hearing aids.  
Note: Such advertisements may be misinterpreted as research studies when in fact these offers are marketing strategies.
- Address advertising guidelines for using the title “Audioprosthologist.”
- Add provisions requiring hearing aid dispensers to include their name and license number on advertisements for the specific hearing aid location listed.
- Further clarify existing regulations regarding the manner which discount pricing for hearing aids should be advertised to the public, e.g., restrict the terms “as low as” or “up to \$\_\_\_.”  
{Section B&P Code 651(c)}
- Clarify the manner in which professional certifications should be represented to the public. {See CCR Section 1399.127 item 9}

## California Code of Regulations- Hearing Aid Dispensers: Advertising

### **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  
                  BC-HIS, Certified by the National Board of Certification in Hearing  
                  Instrument Sciences

Incorrect:      John Doe, 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 for a specific location shall include a hearing aid dispenser's name and license number.

Example:      Jack Doe, HA-1234

**Attachment: Business and Professions Code Section 651**



SENIOR ASSEMBLY PROPOSAL NO. 25

INTRODUCED BY SENIOR ASSEMBLY MEMBER LUCERO

LEGISLATIVE COUNSEL'S DIGEST

AP 25: OVER-THE-COUNTER HEARING AIDS.

EXISTING LAW PROVIDES FOR THE LICENSURE AND REGULATION OF HEARING AID DISPENSERS, WHO FIT OR SELL HEARING AIDS, BY THE HEARING AID DISPENSERS BUREAU. EXISTING LAW MAKES IT UNLAWFUL TO FIT OR SELL HEARING AIDS WITHOUT A LICENSE ISSUED BY THE BUREAU.

THIS MEASURE WOULD MEMORIALIZE THE LEGISLATURE AND THE GOVERNOR TO ENACT LEGISLATION THAT WOULD AUTHORIZE THE OVER-THE-COUNTER SALE OF HEARING AIDS TO THE EXTENT CONSISTENT WITH FEDERAL LAW, ENCOURAGE MANUFACTURERS OF HEARING AIDS TO MAKE HIGH-QUALITY HEARING AIDS AVAILABLE FOR OVER-THE-COUNTER SALES TO CALIFORNIA CUSTOMERS, AND ENCOURAGE EACH MANUFACTURER OF HEARING AIDS THAT OFFERS HEARING AIDS FOR SALE IN THIS STATE TO SUBMIT TO THE HEARING AID AND DISPENSERS BUREAU A PLAN FOR THE PRODUCTION AND SALE OF OVER-THE-COUNTER HEARING AIDS FOR THE CALIFORNIA MARKET.

VOTE: MAJORITY.

AP 25: RELATING TO OVER-THE-COUNTER HEARING AIDS

WHEREAS, ALTHOUGH HEARING DISORDERS MAY AFFLICT ANY PERSON, SENIOR CITIZENS AND THE NEEDY CAN LEAST AFFORD MEDICAL PROCEDURES TO IMPROVE THEIR HEARING; AND

WHEREAS, MOST SENIOR CITIZENS LIVE ON A FIXED INCOME AND CANNOT AFFORD THE EXTRA COSTS OF HEARING AIDS; AND

WHEREAS, SENIORS WHO CANNOT HEAR ARE RENDERED UNABLE TO FUNCTION SOCIALLY, AND WITHOUT COMMUNICATION THEY LIVE IN A LONELY, NONPRODUCTIVE WORLD AND CANNOT BE A CONTRIBUTING MEMBER OF SOCIETY. THEY DESERVE TO LIVE A BETTER LIFESTYLE THAN THIS; AND

WHEREAS, THE COST OF A HIGH-QUALITY HEARING AIDS OBTAINED THROUGH AN AUDIOLOGIST TYPICALLY EXCEEDS AN EXORBITANT AMOUNT OF \$6,000; AND

WHEREAS, THE ELECTRONICS IN A HIGH-QUALITY HOME ENTERTAINMENT SYSTEM WITH THE ABILITY TO RECEIVE AND AMPLIFY AUDIO FREQUENCIES AND REPRODUCE DISTORTION-FREE SOUND AT ALL FREQUENCIES AND LEVELS ARE MORE SOPHISTICATED THAN THE ELECTRONICS IN A HEARING AID, AND COST SIGNIFICANTLY LESS THAN A TYPICAL HEARING AID THAT IS SOLD THROUGH AN AUDIOLOGIST; AND

WHEREAS, THE MANUFACTURING COST OF HIGH-QUALITY INTEGRATED CIRCUITS FOR CURRENT HEARING AIDS IS LESS THAN \$12.50; AND

WHEREAS, HEARING AIDS OF THE SAME QUALITY AS THOSE HEARING AIDS THAT SELL FOR \$2,500 PER EAR CAN BE PRODUCED WITH REPLACEABLE BATTERIES AND OFFERED OVER-THE-COUNTER FOR APPROXIMATELY \$100 PER EAR; AND

WHEREAS, HEARING AID MANUFACTURERS HAVE STATED THAT THE MOST EXPENSIVE HEARING AID CAN BE SOLD BETWEEN \$100 TO \$300 AND EVERYONE WOULD MAKE A PROFIT; AND

WHEREAS, HEARING AID MANUFACTURERS HAVE STATED, AND ARE WILLING TO TESTIFY, THAT OVER-THE-COUNTER HEARING AIDS ARE SAFE FOR THE CUSTOMER; AND

WHEREAS, HEARING TEST UNITS THAT ALLOW SENIOR CITIZENS TO DETERMINE WHICH OVER-THE-COUNTER HEARING AID IS BEST FOR THEM CAN BE INSTALLED IN DRUGSTORES; AND

WHEREAS, CALIFORNIA SENIOR LEGISLATURE MEMBERS HAVE VOTED THE OVER-THE-COUNTER HEARING AID PROPOSAL IN THE TOP 10 EVERY TIME IT IS PRESENTED; NOW, THEREFORE, BE IT

RESOLVED, BY THE SENIOR ASSEMBLY AND THE SENIOR SENATE, JOINTLY, THAT THE SENIOR LEGISLATURE OF THE STATE OF CALIFORNIA AT ITS 2010 REGULAR SESSION, A MAJORITY OF THE MEMBERS VOTING THEREFOR, HEREBY PROPOSES THAT OVER-THE-COUNTER HEARING AIDS BE AUTHORIZED AND ENCOURAGED TO THE FULLEST EXTENT CONSISTENT WITH FEDERAL LAW; AND BE IT FURTHER

RESOLVED, THAT EACH HEARING AID MANUFACTURER OFFERING HEARING AIDS IN CALIFORNIA BE ENCOURAGED TO

PRODUCE HIGH-QUALITY HEARING AIDS AVAILABLE FOR OVER-THE-COUNTER SALES TO CALIFORNIA CUSTOMERS; AND BE IT FURTHER

RESOLVED, THAT EACH HEARING AID MANUFACTURER OFFERING HEARING AIDS IN CALIFORNIA BE ENCOURAGED TO SUBMIT TO THE HEARING AID AND DISPENSERS BUREAU A PLAN FOR THE PRODUCTION AND SALE OF OVER-THE-COUNTER HEARING AIDS FOR THE CALIFORNIA MARKET; AND BE if FURTHER

RESOLVED, THAT THE SENIOR LEGISLATURE OF THE STATE OF CALIFORNIA RESPECTFULLY MEMORIALIZES THE LEGISLATURE AND THE GOVERNOR TO ENACT APPROPRIATE LEGISLATION THAT WOULD ADDRESS THE CONCERNS SET FORTH IN THIS MEASURE; AND BE IT FURTHER

RESOLVED, THAT A COPY OF THIS MEASURE BE TRANSMITTED TO THE SPEAKER OF THE ASSEMBLY, THE PRESIDENT PRO TEMPORE OF THE SENATE, AND THE GOVERNOR OF THE STATE OF CALIFORNIA.

RN 10 13564

## **Catalog Sales**

**3351.5.** (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 ear mold 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 427.5 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.

(Repealed and added by Stats. 1990, Ch. 514.)

## **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.)

# 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

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**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.

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**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.
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**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:

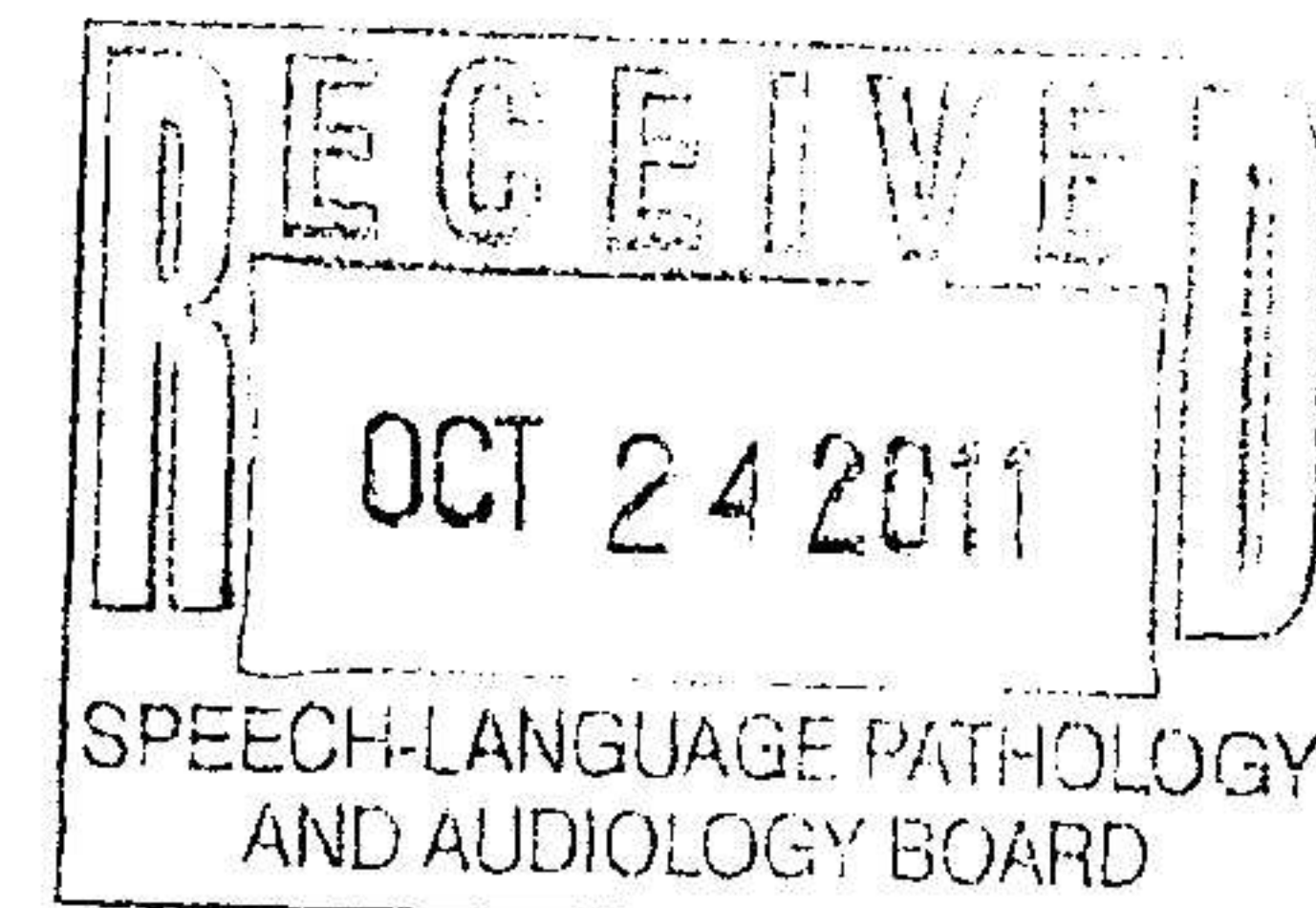
1. Companies engaging in the sale of hearing aids over the Internet contract with licensed hearing aid dispensers or dispensing audiologists, or require licensees to join their Network in order to provide such services as testing, selection, fitting, etc. Payment for the hearing aid(s) is made directly 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.
-



October 21, 2011



**VIA ELECTRONIC MAIL ATTACHMENT AND U.S. MAIL**

Yvonne Crawford  
Enforcement Analyst  
Speech-Language Pathology & Audiology & Hearing Dispensers Board  
2005 Evergreen Street  
Suite 2100  
Sacramento, CA 95815

**Re: Wal-Mart**  
**File #: 1C-2010-79**

Dear Ms. Crawford:

We represent Wal-Mart Stores, Inc. ("Wal-Mart"), in connection with, and respond to, your letter addressed to "Walmart Corporate Offices" dated August 2, 2011 (the "Letter"), which concerns Internet sales of hearing aids by walmart.com to California residents.<sup>1</sup> The Letter seeks specific information and advises Wal-Mart to "... be aware that California law states catalog and mail order sales of hearing aids (which includes Internet sales of hearing aids) in California may take place only through licensed hearing aid dispensers/dispensing audiologists and under specified circumstances." It includes a document that references California Business and Professions Code Section 3351.5. We have reviewed this statute and other relevant law.

We respectfully conclude both that Wal-Mart's Internet sales of hearing aids are not subject to California Business and Professions Code Section 3351.5 or other related provisions regulating hearing aid dispensers and that federal law specifically preempts Section 3351.5. Wal-Mart appreciates the need to protect consumers, and, to that end, Wal-Mart sells hearing aids in compliance with applicable federal law.

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<sup>1</sup> We do not understand the scope of your inquiry to include sales of hearing aids by walmart.com to individuals residing outside of California or to sales by or other business activities of Wal-Mart's out-of-state business units, such as samsclub.com. Such extraterritorial conduct, in our view, is not subject to California regulation. That said, we note that the analysis and arguments in this letter apply equally to these sales and business activities. Wal-Mart hereby reserves the right to assert these arguments, together with additional arguments, with respect to such extraterritorial sales and business activities, as necessary.



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**I. Wal-Mart's Internet Sales of Hearing Aids Are Not Subject to California Statutes Governing Hearing Aid Dispensers**

The Letter contends that Wal-Mart's Internet sales of hearing aids are subject to California's hearing aid dispenser licensing laws. However, a review of the relevant statutes does not support such an assertion. In general, the retail fitting and dispensing of hearing aids is governed by California's hearing aid statutes. In 1990 the Legislature amended the hearing aid statutes to add restrictions on mail order and catalog sales. Although the Letter suggests that the mail order and catalog sales restrictions apply, it is Wal-Mart's view that neither the basic licensing statute nor the explicit restrictions on mail order and catalog sales apply to Wal-Mart's Internet sales of hearing aids.

**A. The "Practice of Fitting or Selling Hearing Aids" Means Specific Professional Activities Undertaken for the Purpose of Selecting and Adapting Hearing Aids for an Individual With Impaired Hearing**

The basic rule with regard to hearing aid dispensers is set forth in Business and Professions Code Section 3350, which requires a license "for an individual to engage in the practice of fitting or selling hearing aids . . ." (emphasis added). A "[h]earing aid dispenser" is a person engaged in the "fitting or selling of hearing aids" to an individual with impaired hearing. Business and Professions Code Section 3307. Importantly, the "practice of fitting or selling hearing aids" is defined by statute to mean, "those practices used for the purpose of selection and adaptation of hearing aids . . .". Business and Professions Code Section 3306. When undertaken for the purpose of selection and adaptation of hearing aids, these practices include "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." *Id.* Importantly, "[t]he practice of fitting or selling hearing aids does not include the act of concluding the transaction by a retail clerk." *Id.*

Fundamentally, then, the practice of fitting or selling hearing aids is a set of specific professional activities undertaken for the distinct purpose of selecting and adapting hearing aids for an individual with impaired hearing. What is not included, and indeed is explicitly excluded, is the mere sale of a hearing aid by a retail clerk.

This interpretation of the statute is consistent with and indeed suggested by the statute requiring an applicant for a hearing aid dispenser license to pass written and practical examinations and the Board's own related regulatory guidance. For example, Business and Professions Code Section 3353(a) requires the Board to "conduct examinations for a hearing aid dispenser's license." Section 3353(b), in turn, requires each applicant to pass "a written examination and a practical examination covering the critical tasks involved in the fitting and



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selling of hearing aids and the knowledge, skills, and abilities needed to perform those tasks safely and competently.” (emphasis added). According to the Board’s Candidate Information Bulletin (“Bulletin”), the critical tasks involved in the fitting and selling of hearing aids can be divided “. . . into *ten* content areas that are weighted in terms of their proportion of importance in practice.” These are listed at page 9 of the Bulletin as: client history (13%), ear inspection (8%), audiometric assessment (10%), audiometric interpretation (17%), candidacy (10%), selection (8%), ear impression (4%), evaluating hearing instruments (10%), fitting (11%), and postfitting care (9%). Not surprisingly, while all of these tasks are critical to the selection and adaptation of a hearing aid for an individual with impaired hearing, none pertain to the mere sale of the device by a retail clerk.

Likewise, the Board’s requirements for the practical examination all relate to the selection and adaptation of the hearing aid to the prospective hearing aid consumer:

“The practical examination shall cover the procedures and use of instruments and equipment commonly employed in the fitting and selling of hearing aids, including but not limited to:

- (1) Otoscope for the visual examination of the entire ear canal;
- (2) Pure tone discreet or sweep frequency threshold type audiometer with air and bone conduction and appropriate masking circuitry;
- (3) Appropriate equipment for establishing speech reception threshold and speech discrimination scores through headphones and/or sound field media by recorded or live voice;
- (4) Calibrated sound pressure instruments, master hearing aids, and any and all types of hearing aid simulators;
- (5) Equipment designed for the evaluation and testing of hearing aid performance;
- (6) Stethoscope or other listening device.”

16 CCR Section 1399.120(f) (emphasis added).



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**B. Wal-Mart Does Not Engage in Professional Activities Related to Selecting and Adapting Hearing Aids**

Wal-Mart does not engage in any statutorily listed activity for the purpose of selecting and adapting hearing aids for an individual with impaired hearing. Indeed, as described below, the sole activity in which Wal-Mart engages is the statutorily excluded activity of retail hearing aids sale transactions, in accordance with the express requirements of federal law, without any attempt to select or adapt the hearing aids to any individual.

Wal-Mart sells only hearing aids that are intended for use by persons with mild to moderate hearing loss. Individuals with bone conduction hearing loss or malformation of the ear canal are not served by these devices. In Wal-Mart's Internet sales of hearing aids, the devices are listed on the relevant web page along with device characteristics and other information required by federal law. The prospective Wal-Mart hearing aid purchaser navigates to the web page, searches for "hearing aid" or identifies hearing aid offerings by reviewing product availability by department/class, selects the desired product, and proceeds through a review of the product description. The on line product description for the hearing aid products notifies purchasers that "This product is designed for adults and is not to be worn by individuals under the age of 18." The product description contains the federally required disclosures, warnings, and waiver information.<sup>2</sup> Selection, if any, of hearing aids is made exclusively by the customer. No person affiliated with Wal-Mart, whether individual or corporate, engages in any activity for the purpose of "selection and adaptation of hearing aids."

Wal-Mart does not engage in any of the professional activities included in the definition of "practice of fitting or selling hearing aids", let alone any activity intended for the purpose of selecting and adapting a hearing aid to the needs of an individual with impaired hearing. Instead, Wal-Mart's activities consist solely of consummating retail sales transactions. These activities are nothing more than "concluding the transaction by a retail clerk" and thus is conduct that explicitly is excluded from the definition of "practice of fitting or selling hearing aids" under Business and Professions Code Section 3306. As such, the requirements of the hearing aid dispenser law do not apply to Wal-Mart.

**C. Wal-Mart's Internet Sales Are Not Catalog or Direct Mail Sales**

Business and Professions Code Section 3351.5 ("Section 3351.5") regulates hearing aid sales by "catalog or direct mail." Nothing in Section 3351.5's plain language or intent includes hearing aid sales via the Internet.

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<sup>2</sup> The federal requirements are discussed in Section II of this letter.



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In construing the meaning of a statute, it is fundamental to “ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.” *Day v. City of Fontana*, 25 Cal. 4th 268, 272 (2001). The analysis starts by examining the actual words of the statute, giving them their usual, ordinary meaning. *Garcia v. McCutchen*, 16 Cal.4th 469, 476 (1997). *See also Flannery v. Prentice*, 26 Cal. 4th 572, 577 (2001) (Unless the statute specifically defines the words to give them a special meaning, the plain words of a statute must be given “a plain and commonsense meaning”). The California Supreme Court has often reiterated the rule that “courts should give statutory words their plain or literal meaning unless that meaning is inconsistent with the legislative intent apparent in the statute.” *People v. Allen*, 21 Cal. 4th 846, 859 (1999). Where statutory language is clear and unambiguous – such as here – there is no need to construe the statute, or to resort to legislative materials or other external sources. *See Quarterman v. Kefauver*, 55 Cal. App. 4th 1366, 1371 (1997). Only “when the plain meaning of the statutory text is insufficient to resolve the question of its interpretation” will courts look at the legislative history and “wider historical circumstances of its enactment” to ascertain the legislative intent. *Mejia v. Reed*, 31 Cal. 4th 657, 663 (2003).

Section 3351.5’s language is unambiguous. The words “catalog or direct mail” refer to just that: sales via catalogs or direct mail. Nowhere in Section 3351.5 are the words “catalog or direct mail” given any meaning beyond their plain language, or defined to include Internet sales.

An analysis of the Legislature’s intent when it drafted the statute likewise affirms that it is not meant to include Internet sales. Section 3351.5 was enacted in 1990, prior to the development of Internet commerce, making it impossible for the Legislature to have intended to include Internet sales. Nor has the Legislature amended the statute at any time since then to encompass Internet sales, further evidencing its intent to limit the statute’s application only to catalog or direct mail sales.

Notably, although California’s Legislature was prompted to amend the statutory framework in 1990 by the increased proliferation of catalog and direct mail sales, the Legislature has not made a similar effort to address Internet sales, a telling omission in light of other efforts of the Legislature to address Internet sales explicitly when it perceives the need to do so. For example, in 1996, the Legislature amended Business and Professions Code Section 17538, which imposes certain consumer protection requirements on telephone, mail order, catalog and Internet sellers. Before its amendment in 1996, this statute addressed sales by telephone, mail order and catalog. The statute was amended by Assembly Bill 3320 to explicitly add Internet sales. The legislative history makes clear that the Legislature’s view was that a statute addressed to telephone, mail order and catalog did not cover Internet sales. *E.g.*, Senate Floor Analysis on AB 3320 at page 3 (Aug. 7, 1996) (“Under current law, sales or leases of goods or services conducted by telephone, mail order or catalog are regulated by a comprehensive statutory scheme which is designed to protect consumers in their dealings with these types of vendors.



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Present law, however, does not afford any protections to consumers who purchase from vendors through the Internet.” (emphasis added). *See also* Business and Professions Code Section 17539.55(b)(7) and (b)(8) (separate references to Internet transmissions and direct mail solicitations in same statute); Vehicle Code Section 11614(f)(2) (separate references to direct mail publication and Web site on the Internet in the same statute); Vehicle Code Section 11713.1(c)(3) (same).

In short, Section 3351.5, by its plain meaning, enactment context and expressed legislative intent, does not regulate hearing aid sales by Internet. Thus the statute’s requirements cannot be imposed on Wal-Mart’s sales of hearing aids.

## **II. Federal Laws Governing Hearing Aids Preempt Business and Professions Code Section 3351.5.**

Even if Business and Professions Code Section 3351.5 can be read to otherwise regulate the sale of hearing aids by Wal-Mart, this statute is preempted by federal law.

### **A. Hearing Aids Are Class I Restricted Devices, the Sale and Labeling of Which Are Regulated by the United States Food and Drug Administration**

#### **1. Federal Regulation of Medical Devices**

Hearing aids are devices within the meaning of the Federal Food, Drug and Cosmetic Act (“FDCA”) because they are instruments intended to affect the structure or function of the body and which mitigate and treat the condition of hearing loss. *See* 21 U.S.C. Section 321(h). Thus, they are required to meet relevant standards for safety and effectiveness established by the FDCA and set out more fully by the Food and Drug Administration (“FDA”) in the Code of Federal Regulations. The FDCA establishes a three-tiered, safety-based regulatory scheme for devices.

The lowest or least restrictive level of regulation applies to Class I devices. 21 U.S.C. 360(c)(a)(1)(A). This low level of regulation is justified because a device in this class:

“(I) is not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, and (II) does not present a potential unreasonable risk of illness or injury . . . ”



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21 U.S.C. Section 360(c)(a)(1)(A)(ii).<sup>3</sup> Class II devices, on the other hand, are more rigorously regulated and require special controls to assure safety and effectiveness – usually clearance by FDA of a marketing submission setting out the device’s compliance with the special controls. The highest classification of medical devices, Class III devices, require premarket approval by FDA because they are used for supporting or sustaining human life and present a potential unreasonable risk of illness or injury. In sharp contrast with these higher classified devices, Class I devices are low-risk and may be sold without pre-clearance or approval by FDA.

Even though Class I devices have the least amount of regulation, they are still subject to general controls, including the adulteration and misbranding provisions of the FDCA, registration and listing with FDA, premarket notification in a limited number of cases, notification and repair, replacement or refund, records and reports, and current good manufacturing practices (unless exempt). Through designation as a Class I device, these general regulatory controls are deemed sufficient to assure the safety and effectiveness of hearing aids.

## **2. Federal Regulation of Hearing Aids**

Air conduction hearing aids of the type sold by Wal-Mart are regulated by FDA as Class I devices. As such, they are considered by FDA to be safe and effective when subject to general controls such as the prohibition on adulteration and misbranding. Moreover, the devices are exempt from premarket notification procedures and premarket review by FDA and are available “over the counter” or “OTC.” See 21 C.F.R. Section 874.3300.

FDA has established by regulation, however, additional labeling standards for hearing aids because the agency concluded that additional labeling can best assure their safety and effectiveness. These conditions are set out in two FDA regulations, 21 C.F.R. Section 801.420 and 801.421. The regulations – promulgated under FDA’s “restricted device” authority<sup>4</sup> – establish warnings, precautions, and labeling requirements governing the “conditions for sale” of hearing aids.

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<sup>3</sup> As the district court explained in *Ginocchio v. Surgikos, Inc.*, 864 F. Supp. 948 (N.D. Cal. 1994), “Class I devices are generally simple devices, such as tongue depressors and crutches; they pose little or no threat to public health and safety, and general controls are deemed sufficient to provide reasonable assurance of their safety and effectiveness.” *Id.* at 950.

<sup>4</sup> The FDCA allows FDA to restrict access to certain devices either through distribution by prescription or by “other conditions” imposed by regulation. See 21 U.S.C. Section 360j(e) (restricted devices are limited to “sale, distribution, or use (A) on the written or oral authorization of a . . . [licensed practitioner,] or (B) upon such other conditions as the Secretary may prescribe by regulation.”). In other words, a device can be restricted either because FDA believes licensed practitioner oversight is necessary (i.e., a prescription is required) or because other conditions should apply by regulation (i.e., the product can be sold without a prescription so long as other conditions are met).



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The federal regulation establishes detailed labeling requirements governing statements and warnings that must be included in consumer-directed instructions for the hearing aid. These include very specific requirements; for example, statements that a hearing aid will not restore normal hearing and will not prevent or improve a hearing impairment resulting from organic conditions and that infrequent use of a hearing aid does not permit a user to attain full benefit from it. *See* 21 C.F.R. Section 801.420(c)(viii) and (ix).

Importantly, coupled with the labeling standards identified above, FDA has established specific conditions of sale for hearing aids. Hearing aid sellers must obtain evidence that the purchaser has received a medical evaluation from a physician within the six-month period prior to the sale or, if the purchaser is 18 or older, has made an informed waiver of the medical examination. *See* 21 C.F.R. Section 801.421(a).<sup>5</sup> For the waiver to be valid, the hearing aid seller must have informed the user that the waiver is not in the user's "best health interest", not actively encouraged the waiver, and have the user sign a statement provided in the regulations. *See id.*

In establishing these conditions of sale, FDA indicated that, although a medical evaluation can be useful, Class I hearing aids pose few, if any, risks to users, and FDA has made a policy determination that they should be readily accessible.<sup>6</sup>

### **3. Preemption of State Hearing Aid Regulations**

As part of the device provisions in the FDCA, Congress adopted an express preemption provision, which provides:

"Except as provided in subsection (b) of this section, no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement:

(1) which is different from, or in addition to, any requirement applicable under this chapter to the device, and

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<sup>5</sup> Wal-Mart's Internet sales process includes medical evaluation waiver provisions in accordance with the applicable federal regulations. As a condition of purchase, a prospective purchaser of a hearing aid from Wal-Mart on the Internet must first waive the medical evaluation as permitted by federal law.

<sup>6</sup> Significantly, the Class I hearing aids that Wal-Mart sells are intended for mild to moderate hearing loss only. Neither persons with bone conduction hearing loss nor those with severe malformation of the ear are served by these devices. The FDA regulations are designed, essentially, to assure that persons with such conditions are able to identify the need for a medical evaluation. In addition to providing hearing aids for persons with mild to moderate hearing loss only, Wal-Mart provides additional consumer protection by offering a generous returns policy and providing a mechanism for consumer complaints through both Wal-Mart and its hearing aid supplier.



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(2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under this chapter.”

21 U.S.C. Section 360k(a). Thus, the FDCA includes a two-prong test to determine whether state laws relating to medical devices are preempted by federal regulations. Under this test, a state law will be preempted if it both (1) establishes requirements that are different from and in addition to the federal requirements, and (2) relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device by the FDA. *See generally* 21 U.S.C. Section 360k. Notably, the FDA, and only the FDA, has the power to exempt state law from preemption by promulgating a regulation to that effect, after receipt of an application followed by notice and an opportunity for an oral hearing. The FDA may exempt a state statute or regulation from exemption only if the state’s regulation is “more stringent” than the federal regulations and the state regulation is “required by compelling local conditions.” 21 U.S.C. Section 360k(b). California has not asked FDA for, and the FDA has not granted, an exemption for Business and Professions Code Section 3351.5. In contrast, California did ask for, and the FDA did determine, that Business and Professions Code Sections 3365 and 3365.6 are not preempted because the state requirement that a licensed physician and audiologist participate in the dispensing of a hearing aid to a person 16 years of age or younger is not different from the FDA’s rule that precludes waiver of an examination by persons under 18 years of age (*see* 21 C.F.R. Section 801.421(a)(2)) and, neither of these sections requires that in all instances a purchaser must purchase a hearing aid from a seller with a license. 21 C.F.R. Section 808.55.

Since FDA finalized its hearing aid regulations in 1980, several courts and at least one state Attorney General have had occasion to consider whether state statutes establishing requirements for hearing aid fitters and dispensers are preempted.

In the most recent judicial opinion, the Eighth Circuit Court of Appeals held that a Missouri statute providing that “[n]o person shall . . . sell through the mails, hearing instruments without prior fitting and testing by a hearing instrument specialist” was preempted by the MDA. *Missouri Board of Examiners for Hearing Instrument Specialists v. Hearing Help Express*, 447 F.3d 1033 (8th Cir. 2006). The court reasoned that requiring an auditory exam, where it is optional under the federal regulations, imposed a requirement that is “in addition” to the federal requirement applicable to the sale of hearing aids, and that the Missouri statute related to the safety or effectiveness of hearing aids due to the fitting and testing requirements.

Importantly, the Eighth Circuit Court also found that the medical device amendments to the FDCA (“MDA”) were written in such a way to expressly preempt state regulations, holding that:



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“Since the language used in § 360k(a) expressly prohibits certain types of state regulation, we conclude this section of the MDA is an express preemption statute evincing congressional intent to prohibit states without a § 360k(b) exemption from regulating medical devices covered by the Act.”

*Id.* at 1036 (emphasis added).

The First Circuit Court of Appeals reached a similar conclusion in another case involving the issue of exemption. Massachusetts applied for exemption for a statute that required consumers to obtain a “hearing test evaluation” by a physician or audiologist and permitted a waiver only if a person’s religious beliefs precluded consultation with a physician. The First Circuit upheld FDA’s decision that the statute was preempted and held that the agency’s standards for preempting state regulations were valid. *Massachusetts v. Hayes*, 691 F.2d 57 (1st Cir. 1982). The court determined that “in the case of non-dangerous devices such as hearing aids it is eminently reasonable and consistent with over-riding public health goals to consider cost and availability when weighing the desirability of additional regulation” and that merely having a more stringent regulation than the federal regulation was not sufficient for an exemption from preemption. As with the Massachusetts attempt to require a hearing test, California’s “more stringent” requirements set forth in its statutes are also preempted.

Similarly, in 2007 the Attorney General of Texas evaluated a Texas statute that prohibited a person from dispensing or fitting “a hearing instrument on a person who has ordered the hearing instrument or device by mail unless the person dispensing or fitting is a license holder under” Texas law. The Attorney General determined that the Texas statute was preempted. Tex. Att’y Gen. Op. No. GA-0525(2007). Notably, in reaching that conclusion, the Texas Attorney General considered the fact that, when promulgating its regulatory scheme for hearing aids, the FDA considered but rejected a prohibition on sales of hearing aids through the mails. *Id.*, citing 42 Fed. Reg. 9286,9293 (Feb. 15, 1977) (“The Commissioner is not aware of any abuses in mail order sales of hearing aids . . . the Commissioner has determined not to prohibit mail order sales provided that all the requirements of the regulation have been met.”). Thus, because the Texas licensing requirement for mail order hearing aid sales established a requirement that was “different from or in addition to” the federal requirements, the Texas statute was deemed preempted.

**B. Business and Professions Code Section 3351.5 Imposes Requirements Different From and In Addition to Federal Requirements**

The Letter states that California law applicable to catalog and mail order sales “includes Internet sales of hearing aids.” As noted above, that statement presumably refers to Business and Professions Code Section 3351.5. To the extent Business and Professions Code Section 3351.5



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may be interpreted to require the seller of a hearing aid through the Internet to comply with its requirements, which we dispute for the reasons discussed above, it imposes requirements that are different from and in addition to the federal regulatory scheme and is preempted by federal law.

Business and Professions Code Section 3351.5 imposes numerous requirements on the sale of hearing aids by mail or catalog, specifically: (1) the receipt of a statement signed by a licensed healthcare professional, (2) that verifies that Business and Professions Code Sections 3365.5 and 3427.5(b) “have been complied with,” (3) as a result of “direct observation of the purchaser’s ear canals,” and (4) with retention of the statement for a period of seven years. In sharp contrast, federal law has no such requirements. In fact, as noted above, FDA specifically considered enacting regulations governing sales by mail, but ultimately rejected it. *See* 42 Fed. Reg. 9286, 9293 (Feb. 15, 1977). Therefore, like the Texas statute discussed above, the entirety of 3351.5 is both different from, and in addition to, the FDA requirements. The first prong of the preemption test under the FDCA is clearly met.

**C. Business and Professions Code Section 3351.5 Imposes Requirements That Relate to the Safety and Effectiveness of Hearing Aids or to Matters Already Regulated Under the Federal Scheme**

Business and Professions Code Section 3351.5 also clearly imposes requirements that relate to the safety or effectiveness of hearing aids and/or relate to other matters already regulated under the federal scheme. For example, as noted above, the prescribed subject matter of the hearing aid dispenser licensing examinations all relates to examination of the individual, determination of the individual’s suitability for a hearing aid, and fitting the hearing aid to the individual. The hearing aid dispenser examinations focus on the licensee applicant’s abilities in the physics of sound, the structure and function of hearing aids, the science of hearing, audiometry, taking earmold impressions, and such other skills as may be required for assessing an individual and for the fitting of a hearing aid to that individual. The imposition by Section 3351.5 (as implied in the Letter) of a requirement for the possession of these skills in the selling of hearing aids over the Internet is tantamount to stating that hearing aids sold through the Internet are unsafe and ineffective unless sold by a qualified, licensed individual who possesses certain knowledge and skills related to the fitting of hearing aids. Of course, the FDA has clearly indicated otherwise with respect to these Class I devices.

The legislative history of Business and Professions Code Section 3351.5 supports this interpretation of the statute. The statement in support of the bill that became Section 3351.5 by its sponsor confirms this focus on device safety:

“There is also a major issue of consumer safety, existing law requires that a licensee conduct a visual examination of the ear canals to ensure that there are no



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physical reasons such as an abnormal ear configuration or compacted ear wax that would preclude a fitting. One mail order firm recently conducted a mailing to Californians in which they included ear impression material along with instructions on how the individual would take his or her own ear impressions. This procedure should only be undertaken by trained professionals and can cause permanent damage if done improperly.”

Statement by Senator Rosenthal on SB 1916 to Assembly Committee On Health, June 19, 1990.

Thus, Business and Professions Code Section 3351.5 both imposes business requirements that are different from and in addition to the federal requirements and is clearly directed to safety and effectiveness of hearing aid devices. Accordingly, it is preempted by federal law and may not be enforced against Wal-Mart’s sales of hearing aids.

**III. Business and Professions Code Section 3351.5 Is Unenforceable Because It Is Irrational, Arbitrary and Capricious and Places an Undue Burden on Commerce That Outweighs Its Benefits**

As applied to Wal-Mart’s Internet sales, Section 3351.5 is unreasonable, arbitrary and capricious. Compliance with the statute would require a person who desires to sell hearing aids by “catalog or direct mail” to undergo written and practical examinations developed to evaluate the person’s professional skills and expertise in measuring human hearing as well as the use and calibration of the equipment required to do so. On the other hand, compliance with the statute would prohibit that same person, after demonstrating such skill and proficiency and receiving a license, from providing the very services for which the individual has been licensed.

Section 3351.5(a)(1) requires a seller to be a licensed hearing aid dispenser to sell hearing aids by direct mail or catalog. As noted earlier in this letter, to become licensed, each applicant must pass “a written examination and a practical examination covering the critical tasks involved in the fitting and selling of hearing aids and the knowledge, skills, and abilities needed to perform those tasks safely and competently.” Business and Professions Code Section 3353(b). Yet, Section 3351.5(a)(2) explicitly forbids the seller from “fitting, selection, or adaptation of the instrument” and the giving of “advice . . . with respect to the taking of an ear impression for an earmold.” The activities listed in Section 3351.5(a)(2) are the very activities for which the license examination tests competency.

When Sections 3351.5(a)(1) and 3351.5(a)(2) are taken together, they produce an irrational, arbitrary and capricious result that fails to support any legitimate legislative purpose. This is particularly evident in light of the preemption of the written statement requirement of Section 3351.5(a)(3) noted earlier in this letter because, with such preemption, what is left in



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Section 3351.5, put simply, is a statute that requires a license while prohibiting practice under that very license. Arbitrary and irrational governmental action is forbidden by the due process guarantee. *E.g., Daniels v. Williams*, 474 U.S. 327, 331 (1986). That the government's "flexibility and freedom" might be impacted is irrelevant. *First Eighth Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 321 (1987).

Further, to the extent that the license requirement is intended to achieve goals unrelated to the consumer protection usually associated with statutory schemes requiring professional licensing, such as seller registration or collection of taxes, these outcomes can be achieved by less burdensome means. *See Pike v. Bruce Church, Inc.* 397 U.S. 844 (1970). For example, where the constitutional jurisdiction nexus is present, a law requiring a tax on hearing aid sales and/or registration of hearing aid sellers would achieve the desired result without imposing the unnecessary burdens of a license requirement and the attendant costs associated with obtaining and maintaining a license whose expertise is never used. Consequently, Section 3351 places an unconstitutional burden on commerce.

\* \* \* \* \*

As indicated at the beginning of this letter, we have assumed that the Letter is directed to walmart.com's sales of hearing aids to persons within California. To the extent that the Letter is intended to address other transactions, we reserve the right to comment further and raise appropriate challenges.

Respectfully, Wal-Mart believes, based on the applicable law, that Wal-Mart's Internet sales of hearing aids do not fall within the scope of the California statutes. And further, even if those statutes are interpreted to apply to Wal-Mart's Internet sales, they are preempted by federal law.

Wal-Mart understands and values the Board's mission to educate, serve and protect consumers. We trust that the analysis set forth in this letter will resolve questions raised by the Letter. Of course, should you have any questions regarding the above, please to not hesitate to contact me to discuss.

Nothing in or omitted from this letter shall be deemed an admission or a waiver of any of

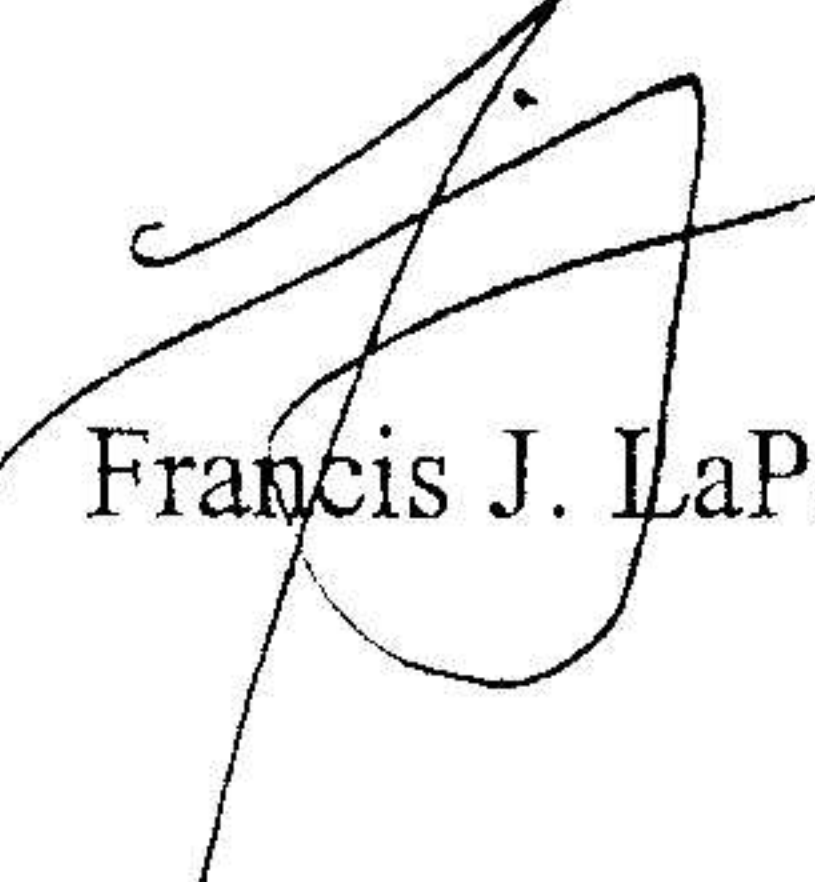


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Wal-Mart's rights, remedies or defenses, all of which are expressly reserved.

Thank you for your attention to this matter.

Very truly yours,



Francis J. LaPallo

cc: Karen Davila, Esq.

## EXCERPTS FROM THE CALIFORNIA BUSINESS AND PROFESSIONS CODE FOR SPEECH-LANGUAGE PATHOLOGY ASSISTANT

**2538.** A person seeking approval as a speech-language pathology assistant shall make application to the board for that approval.

**2538.1.** (a) The board shall adopt regulations, in collaboration with the State Department of Education, the Commission on Teacher Credentialing, and the Advisory Commission on Special Education, that set forth standards and requirements for the adequate supervision of speech-language pathology assistants.

(b) The board shall adopt regulations as reasonably necessary to carry out the purposes of this article, that shall include, but need not be limited to, the following:

(1) Procedures and requirements for application, registration, renewal, suspension, and revocation.

(2) Standards for approval of Associate Degree Speech-Language Pathology Assistant training programs based upon standards and curriculum guidelines established by the National Council on Academic Accreditation in Audiology and Speech-Language Pathology, or the American Speech-Language-Hearing Association, or equivalent formal training programs consisting of two years of technical education, including supervised field placements.

(3) Standards for accreditation of a Speech-Language Pathology Assistant Training program's institution by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges, or the Senior College Commission of the Western Association of Schools and Colleges, or equivalent accreditation.

(4) The scope of responsibility, duties, and functions of speech-language pathology assistants, that shall include, but not be limited to, all of the following:

(A) Conducting speech-language screening, without interpretation, and using screening protocols developed by the supervising speech-language pathologist.

(B) Providing direct treatment assistance to patients or clients under the supervision of a speech-language pathologist.

(C) Following and implementing documented treatment plans or protocols developed by a supervising speech-language pathologist.

(D) Documenting patient or client progress toward meeting established objectives, and reporting the information to a supervising speech-language pathologist.

(E) Assisting a speech-language pathologist during assessments, including, but not limited to, assisting with formal documentation, preparing materials, and performing clerical duties for a supervising speech-language pathologist.

(F) When competent to do so, as determined by the supervising speech-language pathologist, acting as an interpreter for non-English-speaking patients or clients and their family members.

(G) Scheduling activities and preparing charts, records, graphs, and data.

(H) Performing checks and maintenance of equipment, including, but not limited to, augmentative communication devices.

(I) Assisting with speech-language pathology research projects, in-service training, and family or community education.

The regulations shall provide that speech-language pathology assistants are not authorized to conduct evaluations, interpret data, alter treatment plans, or perform any task without the express knowledge and approval of a supervising speech-language pathologist.

(5) The requirements for the wearing of distinguishing name badges with the title of speech-language pathology assistant.

(6) Minimum continuing professional development requirements for the speech-language pathology assistant, not to exceed 12 hours in a two-year period. The speech-language pathology assistant's supervisor shall act as a professional development advisor. The speech-language pathology assistant's professional growth may be satisfied with successful completion of state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication and related disorders.

(7) Minimum continuing professional development requirements for the supervisor of a speech-language pathology assistant.

(8) The type and amount of direct and indirect supervision required for speech-language pathology assistants.

(9) The maximum number of assistants permitted per supervisor.

(10) A requirement that the supervising speech-language pathologist shall remain responsible and accountable for clinical judgments and decisions and the maintenance of the highest quality and standards of practice when a speech-language pathology assistant is utilized.

**2538.3.** (a) A person applying for approval as a speech-language pathology assistant shall have graduated from a speech-language pathology assistant associate of arts degree program, or equivalent course of study, approved by the board. A person who has successfully graduated from a board approved bachelor's degree program in speech-language pathology or communication disorders shall be deemed to have satisfied an equivalent course of study.

**2538.5.** This article shall not be construed to limit the utilization of a speech aide or other personnel employed by a public school working under the direct supervision of a credentialed speech-language pathologist as set forth in subdivision (c) of Section 3051.1 of Title 5 of the California Code of Regulations.

**2538.7.** (a) No person who is not registered as a speech-language pathology assistant shall utilize the title speech-language pathology assistant or a similar title that includes the words speech or language when combined with the term assistant.

(b) No person who is not registered as a speech-language pathology assistant shall perform the duties or functions of a speech-language pathology assistant, except as provided by this chapter.

## **TITLE 16 CALIFORNIA CODE OF REGULATIONS SPEECH-LANGUAGE PATHOLOGY ASSISTANT**

### **1399.170.** Definitions.

As used in this article:

(a) "Accountability" means being legally responsible and answerable for actions and inaction's of self or others during the performance of a task by the speech-language pathology assistant.

(b) "Client" shall have the same meaning and effect as the term "patient" and "student," when referring to services provided in a school setting, for purposes of interpreting the provisions in this Article.

(c) "Direct supervision" means ~~on-site~~ observation and guidance by the supervising speech-language pathologist provided on-site or via electronic means, while a clinical activity is performed by the speech-language pathology assistant. Direct supervision performed by the supervising speech-language pathologist may include, but is not limited to, the following: observation of a portion of the screening or treatment procedures performed by the speech-language pathology assistant, coaching the speech-language pathology assistant, and modeling for the assistant.

(d) "Immediate supervision" means the supervising speech-language pathologist is physically present during services provided to the client by the speech-language pathology assistant.

(e) "Indirect supervision" means the supervising speech-language pathologist is not at the same facility or in close proximity to the speech-language pathology assistant, but is available to provide supervision by electronic means. Indirect supervision activities performed by the supervising speech-language pathologist may include, but are not limited to, demonstration, record review, review, and evaluation of audio or video-taped sessions, interactive television, and supervisory conferences that may be conducted by telephone or electronic mail.

(f) "Medically fragile" is the term used to describe a client that is acutely ill and in an unstable condition and if treated by a speech-language pathology assistant, immediate supervision by a speech-language pathologist is required.

(g) "Screening" is a pass-fail procedure to identify, without interpretation, clients who may require further assessment following specified screening protocols developed by the supervising speech-language pathologist.

(h) "Supervision" for the purposes of this article, means the provision of direction and evaluation of the tasks assigned to a speech-language pathology assistant. Methods for providing supervision include direct supervision, immediate supervision, and indirect supervision.

(i) "Support personnel" means individuals who, following academic and/or on-the-job training, perform tasks as prescribed, directed, and supervised by a speech-language pathologist. There are different levels of support personnel based on training and scope of responsibilities.

### **1399.170.1.** Responsibilities, Duties, and Functions of a Speech-Language Pathology Assistant

(a) A speech-language pathology assistant shall be limited to the responsibilities, duties, and functions as provided in Section 2538.1 of the Code.



(b) A speech-language pathology assistant shall disclose while working, his or her name and registration status, as granted by the state, on a name tag in at least 18-point type.

**1399.170.2. Types of Supervision Required for Duties Performed by a Speech-Language Pathology Assistant**

(a) Duties performed by the speech-language pathology assistant that require immediate supervision may include, but are not limited to, any direct client activity involving medically fragile patients. In such instances, the speech-language pathology assistant shall act only under the direction of the supervisor.

(b) Duties performed by the speech-language pathology assistant that require direct supervision may include, but are not limited to, any new screening or treatment activity that the assistant has been trained to perform by the supervisor, but has not yet been performed by the speech-language pathology assistant in direct client care.

(c) Duties performed by the speech-language pathology assistant that require indirect supervision may include, but are not limited to, the following:

(1) Screening or treatment activities where the supervisor has previously given instructions as to how to perform the task, has observed the assistant in the conduct of these activities, and is satisfied that the activities can be competently performed by the speech-language pathology assistant, i.e., repetitive drill exercises, generalization or carryover activities;

(2) Clerical tasks such as record keeping, materials preparation, scheduling, equipment maintenance; and,

(3) Other non-client care activities.

**1399.170.3. Activities, Duties, and Functions Outside the Scope of Responsibilities of a Speech-Language Pathology Assistant.**

A speech-language pathology assistant may not conduct evaluations, interpret data, alter treatment plans, or perform any task without the express knowledge and approval of a supervising speech-language pathologist. The speech-language pathology assistant may not perform any of the following functions:

(a) Participate in parent conferences, case conferences, or inter-disciplinary team conferences without the supervising speech-language pathologist or another speech-language pathologist being present;

(b) Provide counseling or advice to a client or a client's parent or guardian which is beyond the scope of the client's treatment;

(c) Sign any documents in lieu of the supervising speech-language pathologist, i.e., treatment plans, client reimbursement forms, or formal reports;

(d) Discharge clients from services;

(e) Make referrals for additional services;

(f) Unless required by law, disclose confidential information either orally or in writing to anyone not designated by the supervising speech-language pathologist;

(g) Represent himself or herself as a speech-language pathologist; and,

(h) Perform procedures that require a high level of clinical acumen and technical skill, i.e., vocal tract prosthesis shaping or fitting, vocal tract imaging, and oropharyngeal swallow therapy with bolus material.

**1399.170.4. Application for Approval of Speech-Language Pathology Assistant Training Programs.**

(a) To be eligible for approval by the Board as a speech-language pathology assistant training program (hereinafter referred to as "program"), the sponsoring institution shall be accredited by the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.

(b) An educational institution seeking approval of a speech-language pathology assistant program shall:

(1) Notify the Board in writing, by submitting a request from the officially designated representative of the sponsoring institution and the speech-language pathology assistant program director, of who must hold valid and clear license in speech-language pathology or equivalent credentials, of its intent to offer a new program.

(2) No later than six (6) months prior to the enrollment of students, submit a formal proposal to the Board demonstrating how the program will meet the requirements of Sections 1399.170.5. through 1399.170.10. The Board, at its sole discretion, may retroactively approve programs that enrolled students prior to the effective date of the regulations.

(c) The Board shall review the request and formal proposal and may thereafter grant or deny approval. The Board may request additional information to evaluate the request for approval and shall notify the program of its decision in writing within sixty (60) days from receipt of all requested documents.

(d) A material misrepresentation by the program of any information required to be submitted to the Board may be grounds for denial of approval or removal of the program from the approved list.

**1399.170.5.** Approval Requirements for Programs

- (a) In order for the program to be approved by the Board or to retain its approval, it shall comply with all requirements set forth in this article.
- (b) The letter of approval shall be returned to the Board when the program's approval has been revoked.

**1399.170.6.** Requirements of the Sponsoring Institution.

- (a) Responsibilities of the sponsoring institution and of each field work site shall be clearly established by formal agreement or memorandum of understanding.
- (b) The sponsoring institution shall assume primary responsibility for receiving and processing applications for student admissions, curriculum planning, selection of course content, coordination of classroom teaching and supervised field work, appointment of faculty, and granting the completion certificate or degree, or otherwise documenting satisfactory completion of the program.
- (c) Student records including admission, enrollment, academic performance directed observation, field work clock hours, and demonstration of field work competencies shall be maintained by the sponsoring institution according to its policies. Grades and credits for courses must be recorded on students' transcripts and shall be maintained by the sponsoring institution. Hours for field work experiences and supervision shall be recorded and documented by supervisory staff.
- (d) The program director of the sponsoring institution shall be responsible for ensuring that the scope of responsibilities delegated to students during field work experiences are appropriate to the training received and the clients assigned, and consistent with the American Speech-Language-Hearing Association's Guidelines for the Training, Credentialing, Use, and Supervision of Speech-Language Pathology Assistants (1996, Spring ASHA 2004), incorporated herein by reference, and that all approved criteria for speech-language pathology assistant training has been met.

**1399.170.7.** Administration and Organization of the Program.

- (a) There shall be a written statement of program objectives which serves as a basis for curriculum structure. Such statement shall be nondiscriminatory with respect to race, color, creed, gender, age, or disabling conditions.
- (b) The policy and procedures by which the program is administered shall be in writing, shall reflect the objectives of the program, and shall be provided to all applicants. The policy and procedures shall include all of the following:
  - (1) Completion requirements that are accurately stated and published;
  - (2) Procedures for processing student and faculty grievances;
  - (3) Policies and procedures regarding student academic probation, field work suspension, and program dismissal;
  - (4) Provisions for the health and safety of clients, students, and faculty associated with training activities.
  - (5) Requirements to become registered by the Board as a speech-language pathology assistant.
- (c) The program shall have a written plan for evaluation of the effectiveness and outcomes of the program, including admission and selection procedures, attrition and retention of students, and measurements of student achievements. The results of the evaluation shall be reflected in the curricular changes and other modifications of the program.
- (d) The program shall have sufficient resources, including faculty, library, staff and support services, physical space and equipment to achieve the program's objectives.
- (e) The student/teacher ratio shall:
  - (1) Permit the achievement of the stated objectives of the program;
  - (2) Be compatible with accepted practices of the sponsoring institution;
  - (3) Ensure student and client safety, and quality training in laboratory and field work experiences by adjustment of faculty/student ratios when required; and
  - (4) Be consistent with available resources, i.e. faculty, field work sites, materials, and equipment.

**1399.170.8. Field Work Experience.**

(a) A program shall not utilize agencies and/or community facilities for field work experience without prior program approval by the Board. Each program must submit evidence that it has complied with the requirements of subdivision (b) and (c) of this section.

(b) A program that utilizes agencies and/or community facilities for field work experience shall maintain written objectives for students learning in such facilities, and shall assign students only to facilities that can provide the experience necessary to meet those objectives.

(c) Each such program shall maintain written agreements with such facilities and such agreements shall include the following:

(1) Assurance of the availability and appropriateness of the learning environment in relation to the program's written objectives;

(2) Provision for orientation of faculty and students;

(3) A specification of the responsibilities and authority of the facility's staff as related to the program and to the educational experience of the students;

(4) Assurance that staff is adequate in number and quality to insure safe and continuous health care services to patients;

(5) Provisions for continuing communication between the facility and the program; and

(6) A description of the responsibilities of faculty assigned to the facility utilized by the program.

**1399.170.9. Compliance with Site Visits.**

(a) The Board may, through its Executive Officer, inspect all programs and their respective field work facilities in this state at such time as the Board shall deem necessary.

(1) The program and/or institution shall fully cooperate with Board representatives during site visits, including but not limited to, providing access to all records which the Board deems necessary or appropriate to determine whether the program meets the standards of this chapter.

(2) The program and/or institution shall facilitate the Board's onsite visit including the inspection of records, inspection of all facilities and equipment, observation of class sessions, or interviews with officers, administrators, faculty, or students.

(b) Written reports of the Executive Officer's visits shall be made to the Board which shall thereupon approve the programs that meet the requirements defined in this Article.

**1399.170.10. Required Curriculum.**

(a) A program's curriculum shall not be implemented or revised until it has been approved by the Board.

(b) The curriculum shall be designed so that a speech-language pathology assistant who completes the program will have the knowledge and skills necessary to function in accordance with the minimum standards set forth in Section 2538.1(b)(3) of the Business and Professions Code.

(c) The curriculum shall consist of not less than sixty (60) semester units or ninety (90) quarter units, which shall include the following:

(1) Twenty (20) to thirty (30) semester units or thirty (30) to forty-five (45) quarter units in general education requirements, including but not limited to, basic communication skills, knowledge of mathematics, liberal arts, and biological, behavioral and health sciences.

(2) Thirty (30) to forty (40) semester units or forty-five (45) to sixty (60) quarter units in course work that satisfies the competencies curriculum defined in the American Speech-Language-Hearing Association's Guidelines for the Training, Credentialing, Use, and Supervision of Speech-Language Pathology Assistants Appendix-G B-Speech-Language Pathology Assistant Suggested Competencies Sample Course Work and Field Work for the Speech-Language Pathology Assistant (1996, Spring ASHA 2004) including the following observation and field work experiences:

(A) A minimum of fifteen (15) clock hours of directed observation; and

(B) A minimum of ~~seventy (70)~~ one-hundred (100) clock hours of field work experience.

(d) The course of instruction shall be presented in semester or quarter units under the following formula:

(1) One (1) hour of instruction in theory each week throughout a semester or quarter equals one (1) unit.

(2) Three (3) hours of field work practice each week throughout a semester or quarter equals one (1) unit.

**1399.170.11. Qualifications for Registration as a Speech-Language Pathology Assistant.**

To be eligible for registration by the Board as a speech-language pathology assistant, the applicant must possess at least one of the following qualifications:

(a) An associate of arts or sciences degree from a speech-language pathology assistant program accredited by the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges, and approved by the Board; or

(b) Evidence of completion of a bachelor's degree program in speech-language pathology or communication disorders from an institution listed in the "Accredited Institutions of Postsecondary Education" handbook issued by the American Council on Education, and completion of the field work experience as required in Section 1399.170.10(c)(2)(B) from a Board-approved program, or completion of a minimum of ~~seventy (70)~~ one-hundred (100) hours of field work experience or clinical experience equivalent to that required in Section 1399.170.10(c)(2)(B) in a bachelor's degree program as recognized in this subsection.

(1) The equivalent field work hours or clinical experience completed in a bachelor's degree program in speech-language pathology or communication disorders shall be evaluated for verification by the current training program director.

(2) In the event that the field work experience or clinical experience completed in the bachelor's degree program is deemed deficient by the authorized representative of a board-approved speech-language pathology assistant training program, the applicant may petition the Board for reconsideration.

(3) In lieu of completion of the ~~seventy (70)~~ one-hundred (100) hours of field work experience or clinical experience in a bachelor's degree program as defined in subsection (b) above, the Board may consider the completion of nine months of full-time work experience performing the duties of a speech-language pathology assistant enumerated in paragraph (4) of subsection (b) of Section 2538.1 of the Business and Professions Code as equivalent to the required clinical training.

(c) Evidence of completion of an equivalent speech-language pathology assistant associate of arts or science degree program, which includes the ~~competencies~~ curriculum in the American Speech-Language-Hearing Association's Guidelines for the Training, Credentialing, Use, and Supervision of Speech-Language Pathology Assistants, Appendix ~~C B– Speech-Language Pathology Assistant Suggested Competencies~~ Sample Course Work and Field Work for the Speech-Language Pathology Assistant (1996, Spring-ASHA 2004).

**1399.170.13. Application and Fees.**

(a) Each person desiring registration as a speech-language pathology assistant shall file application forms (77A-60 New 10/01 and, if applicable, 77A-61 New 04/01) and any required supporting documentation with the Board as provided in Section 1399.151.1. Upon receipt of the speech-language pathology assistant application, the Board will review the application for registration and notify the applicant of its approval or disapproval.

(b) All applicants shall submit at the time of filing the speech-language pathology assistant application, a non-refundable fee of \$50.00, which includes a non-refundable \$25.00 application fee and a non-refundable \$25.00 registration fee pursuant to Section 2534.2 of the Code.

**1399.170.14. Requirements for Renewal.**

(a) The renewal fee for registration as a speech-language pathology assistant is \$75.00 every two years pursuant to Section 2534.2 of the Code.

(b) When applying for renewal, a speech-language pathology assistant shall certify in writing, by signing a statement under penalty of perjury that, during the preceding two years, the speech-language pathology assistant has completed twelve (12) hours of continuing professional development through state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication disorders.

**1399.170.15. Requirements for the Supervision of the Speech Language Pathology Assistant.**

(a) The supervising speech-language pathologist is responsible for designing and implementing a supervisory plan that protects client care and maintains the highest possible standards of quality. The amount and type of supervision required should be consistent with the skills and experience of the speech-language pathology assistant, the needs of the clients, the service setting, the tasks assigned, and the laws and regulations that govern speech-language pathology assistants. Treatment of the client remains the responsibility of the supervisor.

b) Any person supervising a speech-language pathology assistant registered with the Board on or after April 10, 2001, (hereinafter called "supervisor") shall submit, within thirty (30) days of the commencement of such supervision, the "Responsibility Statement for Supervision of a Speech-Language Pathology Assistant" (77S-60, New 12/99), which requires that:

(1) The supervisor shall possess and maintain a current valid California license as a speech-language pathologist as required in Section 2532 of the Code and Section 1399.160.3 of California Code of Regulations or may hold a valid and current professional clear, clear, or life clinical or rehabilitative services credential in language, speech and hearing issued by the California Commission on Teacher Credentialing, and must have at least two years of full-time experience providing services as a speech-language pathologist.

(2) The supervisor shall immediately notify the assistant of any disciplinary action, including revocation, suspension (even if stayed), probation terms, inactive license, or lapse in licensure that affects the supervisor's ability or right to supervise.

(3) The supervisor shall ensure that the extent, kind and quality of the clinical work performed is consistent with the training and experience of the person being supervised, and shall be accountable for the assigned tasks performed by the speech-language pathology assistant. The supervisor shall review client/patient records, monitor and evaluate assessment and treatment decisions of the speech-language pathology assistant, and monitor and evaluate the ability of the assistant to provide services at the site(s) where he or she will be practicing and to the particular clientele being treated, and ensure compliance with all laws and regulations governing the practice of speech-language pathology.

(4) The supervisor shall complete not less than six (6) hours of continuing professional development in supervision training ~~in the initial two-year period from prior to~~ the commencement of supervision, and three (3) hours in supervision training of continuing professional development every two years thereafter. Continuing professional development training obtained by a Board-approved provider that meets the course content listed below, may be applied towards the continuing professional development requirement for licensees set forth in Section 1399.160.3 of the California Code of Regulations. The content of such training shall include, but is not limited to:

(A) Familiarity with supervision literature through reading assignments specified by course instructors; and

(B) Improving knowledge and understanding of the relationship between the speech-language pathologist and the assistant, and the relationship between the speech-language pathologist and the client.

(C) Structuring to maximize supervision, including times and conditions of supervision sessions, problem solving ability, and implementing supervisor interventions within a range of supervisory modalities including live, videotape, audiotape, and case report methods;

(D) Knowledge of contextual variables such as culture, gender, ethnicity, and economic issues; and

(E) The practice of clinical speech-language pathology including the mandated reporting laws and knowledge of ethical and legal issues.

(5) The supervisor shall maintain records of course completion for a period of two years from the speech-language pathology assistant's renewal date.

(6) The supervisor knows and understands the laws and regulations pertaining to supervision of speech-language pathology assistants.

(7) As the professional development advisor, the supervisor shall assist in the development of a plan for the speech-language pathology assistant to complete twelve (12) hours of continuing professional development every two years through state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication disorders.

(8) The supervisor shall communicate to the speech-language pathology assistant the manner in which emergencies will be handled.

(9) Upon written request of the Board, the supervisor shall provide the Board with any documentation which verifies the supervisor's compliance with the requirements set forth in this article.

#### **1399.170.16. Maximum Number of Support Personnel.**

A supervisor shall not supervise more than three (3) support personnel, not more than two of which hold the title of speech-language pathology assistant. Support personnel includes speech-language pathology assistants and speech-language pathology aides.

#### **1399.170.17. Multiple Supervision.**

If a speech-language pathology assistant has more than one supervisor, each supervisor shall submit a Supervisor Responsibility Statement. Of the multiple supervisors, one shall be designated as the lead supervisor for purposes of assisting the speech-language pathology assistant in his or her compliance with the continuing professional development requirement.

**1399.170.18. Notice of Termination.**

At the time of termination of supervision, the supervisor shall complete the "Termination of Supervision" form (77S-61 New 12/99). This original signed form shall be submitted to the Board by the supervisor within fourteen (14) days of termination of supervision.

**1399.170.19. Discipline of a Speech-Language Pathology Assistant Registration**

(a) Every registrant, including a registrant whose registration has expired or been placed in an inactive status, may be disciplined as provided in this article. The proceedings under this article 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, and the Board shall have all the powers granted herein.

(b) The Board may deny an application for a speech-language pathology assistant or take disciplinary action against a speech-language pathology assistant for any of the following:

(1) Unprofessional conduct, which includes, but is not limited to, the following:

(A) Incompetence or gross negligence in performing speech-language pathology assistant functions,

(B) Denial of licensure, voluntary surrender, revocation, suspension, restriction, or any other disciplinary action against a health care professional license, certificate, or registration by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(2) Procuring a license, certificate or registration by fraud, misrepresentation, or mistake.

(3) Making or giving any false statement or information in connection with the application as a speech-language pathology assistant.

(4) Conviction of a misdemeanor or felony substantially related to the qualifications, functions, and duties of a speech-language pathology assistant, in which event a copy of the record of conviction shall be conclusive evidence thereof.

(5) Impersonating another speech-language pathology assistant or licensed health care professional, or permitting or allowing another person to use his or her registration for the purpose of practicing or holding himself or herself out as a speech-language pathology assistant.

(6) Administering to himself or herself any controlled substance or using of dangerous drug specified in Section 4022 of the Code, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for or holding a registration to conduct with safety to the public the practice authorized by the registration or the conviction of a misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof.

(7) Violating or conspiring to violate or aiding or abetting any person to violate the provisions of this article or any regulation adopted by the Board.

(8) Misrepresentation as to the type or status of a registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliation to any person or entity.

(9) Intentionally or recklessly causing physical or emotional harm to any client.

(10) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a speech-language pathology assistant.

(11) Engaging in sexual relations with a client, or if the client is a minor, the client's parent.

(12) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(13) Advertising in a manner that is false, misleading, or deceptive.

(c) The Board may refuse to issue any registration whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 of the Code shall apply to any denial of a registration pursuant to this section.

(d) The Board may place a registration on probation under the following circumstances:

(1) In lieu of, or in addition to, any order of the Board suspending or revoking the license or registration of any registrant.

(2) Upon the issuance of a registration to an individual who has been guilty of unprofessional conduct, but who had otherwise completed all education and training and experience required for registration.

(3) As a condition upon the reissuance or reinstatement of any registration that has been suspended or revoked by the Board.

(e) The cost of probation or monitoring may be ordered to be paid by the registrant or applicant.

(f) The Board, in its discretion, may require any registrant who has been placed on probation, or whose registration has been suspended, to obtain additional professional training including, but not limited to, education, clinical work, or field work.



## **AUDIOLOGY PRACTICE COMMITTEE MEETING MINUTES**

**October 20, 2011**

Department of Consumer Affairs  
2005 Evergreen Street  
“Hearing Room”  
Sacramento, CA

### **Committee Members Present**

Alison Grimes, Au.D., Chair, Audiologist  
Robert Green, Au.D., Audiologist  
Sandra Danz, Hearing Aid Dispenser  
Rodney Diaz, M.D.

### **Staff Present**

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

### **Board Members Present**

Monty Martin, M.A.  
Lisa O'Connor, M.A.  
Carol Murphy, M.A.  
Jaime Lee, Esq. Public Member

### **Board Members Absent**

Deane Manning, Hearing Aid Dispenser

### **Guests Present**

Dennis Van Vliet, Audiologist  
Cynthia Peffers, HHP CA  
Tricia Hunter, HHP CA  
Gloria Peterson, HHP CA  
Marcia Raggio, CSHA, SFSU

### **I. Call to Order**

Chairperson Grimes called the meeting to order at 3:25 p.m.

### **II. Introductions**

Those in attendance introduced themselves.

### **III. Develop Proposed Regulatory Amendments for Audiology Aide Supervision Standards and Practice Limitations (California Code of Regulations 1399.154-1399.1354.4)**



Chairperson Grimes stated that the Board had previously begun working on developing draft regulations specifying the supervision standards and scope of responsibility for audiology aides pursuant to legislative changes that occurred in 2009 under SB 821. She stated that the legislative change provided a broader definition of supervision for audiology aides; therefore, the Board is tasked with defining the appropriate levels of supervision for aides and should consider whether exclusionary language regarding tasks that are outside the scope of responsibility for an audiology aide should be specified by regulation. Chairperson Grimes reported that the Board conducted a survey of all licensed audiologists a few years ago regarding the supervision of aides and the appropriate tasks that should be assigned to an audiology aide, but stated that the Board received very few responses and the responses received were largely critical of using audiology aides at all.

Ms. Del Mugnaio reported that the Board has researched national position documents on the use of audiology aides and commented that there are plenty of national and state regulatory documents the Board can reference to craft proposed language. She suggested referencing the supervision definitions in the speech-language pathology assistant regulations as the paraprofessional supervision standards should be relevant.

Chairperson Grimes expressed her interest in drafting regulations that would specify tasks that are not appropriate to assign to an audiology aide, as such tasks are complex in nature and require the expertise of a trained audiologist.

Ms. Del Mugnaio stated that she would craft supervision definitions for the Committee to review and the next Board meeting.

Chairperson Grimes agreed to provide language related to the scope of responsibility of the audiology aide and exclusionary language.

Chairperson Grimes adjourned the meeting at 4:00 p.m.



**October 20-21, 2011**  
Department of Consumer Affairs  
2005 Evergreen Street  
"Hearing Room"  
Sacramento, CA

## **MINUTES**

### **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.  
Jaime 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**

Dennis Van Vliet, Audiologist  
Cynthia Peffers, HHP CA  
Robert Powell, CSHA  
Bill Barnaby, Sr., CSHA  
Tricia Hunter, HHP CA  
Gloria Peterson, HHP CA  
Marcia Raggio, CSHA, SFSU  
Bill Barnaby Jr., CSHA

## **I. Call to Order**

Chairperson O'Connor called the meeting to order at 4:00 p.m.

## **II. Introductions**

Those in attendance introduced themselves.

## **III. Approval of Meeting Minutes July 15, 2011 Speech-Language Pathology Practice Committee & Full Board Meeting Minutes**

The Board discussed minor edits to the meeting minutes of the July 15, 2011 Speech-Language Pathology Practice Committee and full Board meeting minutes.

**M/S/C: Grimes/Green**

The Board voted to approve the meeting minutes as amended.

#### **IV. Executive Officer's Report**

##### **A. Budget Update**

Ms. Del Mugnaio reviewed the expenditure reports with the Board for both the Speech-Language Pathology and Audiology budget and the Hearing Aid Dispensers budget as of Month 03, ending on September 30, 2011. Ms. Del Mugnaio reported that there is not much activity reported on the current year expenditures as many of the expenses have not been processed through accounting and, therefore, the early year reporting is fairly inactive. She reported that due to the passage of Senate Bill 933, which is included as an item for discussion under "Legislation," the funds of the Speech-Language Pathology and Audiology account and the Hearing Aid Dispensers account will be merged into one funding source.

##### **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 (OAL) on June 14, 2011 and that no hearing is scheduled for the proposed regulations. Ms. Del Mugnaio reported that the public comment period closed on August 8, 2011, and one comment in support of the proposal was received by the Center for Public Interest Law, San Diego. She stated that she is in the process of preparing the final rulemaking documents to submit the complete package to OAL.

###### **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 reported that the proposed regulations for dispensing audiologists that are currently in effect as emergency provisions were filed with the Office of Administrative law OAL 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 ended on August 8, 2011, and no comments in opposition were received. She stated that the final rulemaking file was transmitted to the Department of Consumer Affairs for review on October 3, 2011. The Department has thirty (30) days to review the file. Once approved by the Department, the complete rulemaking file will be sent to the OAL, where OAL has thirty (30) days to review the file and approve or disapprove the proposed regulations.

###### **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. The notice and the proposed language will be posted on the Board's website for public input. The regulations have already been vetted with the Hearing Health Care Providers.

##### **C. Administrative Updates: Occupational Analysis for Hearing Aid Dispensers Examination, BreEze, Personnel Changes, Strategic Planning, Executive Orders**

Ms. Humphreys provided the administrative update as follows:

- Occupational Analysis of the Hearing Aid Dispensers Examinations: Conducted two workshops. Trying to recruit more dispensing audiologists to have a balanced number of subject matter experts (SMEs) of dispensing audiologists and hearing aid dispensers.
- Hearing Aid Dispensing Practical Examination: Fifty-five (55) candidates registered to take the November 5, 2011 examination in Sacramento.
- New Practical Examination Training for SMEs: Eight (8) SMEs will be trained on October 29, 2011.
- Update on BreEze Project: The Board is included in the 2<sup>nd</sup> Phase of the project and is scheduled to be onboard with the web-based data system as of February 2013.
- Board's Enforcement Analyst: Announced that Patty Rodriguez started on July 18, 2011.
- Board's new second Licensing Analyst position: Christy Small has been promoted to this position; however, the Board must back-fill Christy's position as the Administrative Assistant before she can transfer to her new assignment. It may take time to fill the vacancy, as the state hiring freeze is still in effect.
- Strategic Planning session: The Board is scheduled to participate in this on January 12, 2012, which will be facilitated by the DCA. Board members have been asked to complete an Environmental Scan in preparation for the planning session.
- Website Merge: The website information for speech-language pathologists, audiologists, and hearing aid dispensers will be merged into one site, with tabs specific to each profession. The website is being revamped to make access to applicant, licensing, enforcement, and consumer-related information easy to navigate.

Ms. Humphreys requested the Board review the proposed Board Mission and Vision statements. The Board made minor changes to the statements.

**M/S/C: Grimes/Manning**

**The Board adopted the proposed Board Mission and Vision statements as amended and delegated to the staff to post the statements on the Board's website.**

The Board meeting was adjourned at 4:25 p.m. to be continued on October 21, 2011.

**V. Call to Order**

Chairperson O'Connor reconvened the full Board meeting on October 21, 2011 at 9:10 a.m.

**VI. Introductions**

Those in attendance introduced themselves.

Items on the agenda were taken out of order:

**VII. Hearing on Petition for Early Termination of Probation- Kellie Henkel, SP 15547**

The Hearing on the Petition for Early Termination of Probation for Kellie Henkel was presided over by Administrative Law Judge Rebecca Westmore. Deputy Attorney General John-Pierre Francillette represented the State.

**VIII. Closed Session (pursuant to Government Code Section 11126 Subsection (c)(3)-  
Proposed Decisions/Stipulations/ Other APA Enforcement Actions  
To Deliberate Petition for Early Termination of Probation and Other Disciplinary  
Matters**

The Board adjourned into closed session at 11:42 am.

The Board reconvened in open session at 12:00 p.m.

**IX. Practice Committee Report**

**A. Hearing Aid Dispensers Committee Report and Recommendations for Proposed  
Advertising Regulations, Internet Sale of Hearing Aids & Proposed Regulatory  
Provisions for Song-Beverly Consumer Warranty Act**

Ms. Del Mugnaio provided the report of the Hearing Aid Dispensers Committee in Chairperson Manning's absence (included under the Hearing Aid Dispensers Committee Meeting Minutes). She stated that the following recommendations were made by the Committee:

- Seek public input (consumer and licensee) on proposed amendments to the Advertising Regulations for Hearing Aid Dispensers.
- Send letters of education to companies doing business via the Internet regarding current laws and regulations governing the sale of hearing aids in California through the Internet.
- Amend proposed legislative and regulatory changes for the Song-Beverly Consumer Warranty Act as identified and send forward to Tricia Hunter for assistance in seeking a legislative author.

**M/S/C: Grimes/Green**

**B. Audiology Practice Committee Report and Recommendations for Proposed  
Regulatory Amendments for Audiology Aide Supervision Standards and Practice  
Limitations**

Ms. Grimes provided an overview of the issues discussed at the Audiology Practice Committee meeting regarding the regulatory amendments for the audiology aide supervision standards and practice limitations (included under the Audiology Practice Committee Meeting Minutes).

**M/S/C: Green/Danz**

**The Board voted to adopt the recommendation of the Committee.**

**X. Review Proposed Amendments to the Uniform Standards Related to Substance  
Abuse and Disciplinary Guidelines for Speech-Language Pathologists, Audiologists  
& Hearing Aid Dispensers (California Code of Regulations 1399.131& 1399.155)**

Ms. Del Mugnaio provided background regarding the development of the uniform standards, including the history of the enactment of Senate Bill 1441 as previously discussed with the Board. She explained that many of the standards apply to diversion programs; however, the probationary terms for substance-abusing licensees must be amended into the Board's Disciplinary Guidelines (DGs) in order for these provisions to be included in disciplinary order and stipulated settlements.

Ms. Del Mugnaio explained that the proposed standards are prescriptive and leave no discretion to the Board in negotiating appropriate settlements. She stated that the provisions of SB 1441 direct the Board to adopt the uniform standards. Ms. Del Mugnaio outlined the most significant changes:

- Suspension of the license of a substance-abusing licensee pending the outcome of a diagnostic evaluation.
- Drug testing frequency.

Ms. Del Mugnaio referenced the terms in the uniform standards that require the Board to adhere to specific administrative procedures for drug testing and arranging clinical diagnostic evaluations.

Ms. Del Mugnaio inquired of legal counsel whether removing the administrative procedures in the DGs would pose an issue for the Board in enforcing the uniform standards.

Mr. Walker indicated that the policies regarding how the Board conducts the drug testing is procedural and does not impact the Board's authority to impose certain terms on a subject licensee. Mr. Walker stated that the uniform standards as adopted are prescriptive and not discretionary.

Ms. Tricia Hunter addressed the Board and stated that the Board of Registered Nursing is not adopting the uniform standards because the standards lack due process, especially where the standards require the automatic licensure suspension pending the clinical diagnostic evaluation. She commented that the standards leave no discretion for the Board to consider the mitigating facts of individual cases. Ms. Hunter explained how the BRN diversion program functions and indicated that licensees often volunteer to enter a diversion program in order to rehabilitate.

The Board requested that Ms. Del Mugnaio invite an expert on substance abuse treatment and monitoring to address the Board and explain how the uniform standards serve to rehabilitate substance abusing licensees.

Ms. Del Mugnaio stated that she would email the Board members the working documents from the Substance Abuse Coordination Committee, as the background documents may provide some insight into the development of the uniform standards.

#### **XI. Discussion Regarding Licensing Procedures – Document and Equivalency Verification, Internal Policies, and Opportunities for Electronic Document Submission**

Ms. Del Mugnaio referenced an email to Robert Powell of the California Speech-Language-Hearing Association (CSHA) outlining the internal processing timelines for applications and supporting documents and the issues with delays in issuing licenses. She stated that a number of proposed solutions, which are also included in the email, have been identified by Board staff.

#### **Existing Issues**

Licensees are not notified of file deficiencies until 8 weeks from the 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 an RPE's permanent license: May occur if the final verification form is submitted near expiration of the RPE temporary license.
- Significant delays in receiving fingerprint clearance from the Department of Justice: May occur due to illegible prints.

### **Solutions**

- Recruit 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 processing timeframe).
- Propose changes to entry-level requirements; legislative/regulatory.

Robert Powell addressed the Board and expressed his appreciation to Board staff for recognizing the delays and developing probable solutions. He stated that his hope, as the Board moves toward on-line application processing, is that some of the redundant steps involved in credential verification may be omitted and current application forms may be simplified. Mr. Powell commented on the application process for out-of-state applicants who possess the Certificate of Clinical Competence (CCC) from the American Speech-Language-Hearing Association (ASHA). He stated that the applicants are occasionally denied a state license due to an examination requirement. Mr. Powell stated that applicants must take and pass the same national examination for the CCC as is required for state licensure.

Ms. Del Mugnaio replied that the denial is typically based on the age of the examination scores and the fact the applicant has not been practicing in the field for a number of years prior to applying for a California license.

Chairperson O'Connor addressed the issuance of the CCC through the ASHA Quadrilateral Recognition Agreement and stated that the Board does not recognize the CCC for internationally trained applicants through the Agreement.

Mr. Powell stated that CSHA is working with ASHA to provide the verification of the CCC via electronic transmission to the Board. He again thanked the Board for working with CSHA to address the internal processing issues and is pleased that the new BreEze program will result in greater efficiencies.

## **XII. Legislation**

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

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

- Merger of the practice acts of speech-language pathologists, audiologists, 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 was signed by the Governor and will take effect on January 1, 2012.

### **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 bill was signed by the Governor and is an urgency measure so it takes effect immediately.

**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 was signed by the Governor and will take effect on January 1, 2012.

**D. Assembly Bill 136- Beall – Telecommunications: Universal Service: Speech Disabilities**

- AB 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 was signed by the Governor and requires the PUC to adopt regulations to implement the bill by January 1, 2014.
- CSHA supported the bill.

**E. Other Legislation of Interest to the Board**

No further legislation was discussed under this item.

**XIII. Licensing / Enforcement/Examination Statistical Data/ Enforcement Program Update**

The Board reviewed the statistical data as provided by staff.

Ms. Humphreys provided an overview of the statistical data.

The Board requested that enforcement data for support personnel be extracted and reported under separate headings.

**XIV. Public Comment on Items Not on the Agenda/Future Agenda Items**

There were no public comments.

Ms. Murphy requested the following items be included on the January meeting agenda:

- Speech-Language Pathology Assistant Supervisor Qualifications



- English Language Competency Standards for Internationally Trained Applicants

Ms. Del Mugnaio stated that the new Educational Testing Service Praxis Examination in Audiology will be a topic on the next meeting agenda, as the nationally recognized passing score has changed.

**XV. Announcements - Future 2011 Board Meetings January 12-13, 2012, April 19-20, 2012, July 19-20, 2012, October 18-19, 2012 (Locations TBD)**

The Board reviewed the meeting calendar and confirmed the dates.

**XVI. Adjournment**

Chairperson O'Connor adjourned the meeting at 12:32 p.m.



## **HEARING AID DISPENSERS PRACTICE COMMITTEE MEETING MINUTES**

**October 20, 2011**

Department of Consumer Affairs  
2005 Evergreen Street  
“Hearing Room”  
Sacramento, CA

### **Committee Members Present**

Deane Manning, Chair, Hearing Aid Dispenser  
Robert Green, Au.D.  
Sandra Danz, Hearing Aid Dispenser  
Alison Grimes, Au.D.  
Rodney Diaz, M.D.

### **Staff Present**

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

### **Board Members Present**

Monty Martin, M.A.  
Lisa O'Connor, M.A.  
Jaime Lee, Esq., Public Member

### **Board Members Absent**

Carol Murphy, M.A.

### **Guests Present**

Dennis Van Vliet, Audiologist  
Cynthia Peffers, HHP CA  
Tricia Hunter, HHP CA  
Gloria Peterson, HHP CA  
Marcia Raggio, CSHA, SFSU

## **I. Call To Order**

Deane Manning called the meeting to order at 1:20 p.m.

## **II. Introductions**

Those in attendance introduced themselves.

## **III. Discuss Proposed Amendments to the Hearing Aid Dispenser's Advertising Regulations and Related Guidelines (California Code of Regulations Section 1399.127)**

Chairperson Manning introduced the discussion item and asked Ms. Del Mugnaio to provide background on the issue.

Ms. Del Mugnaio reported that the Board receives inquiries and complaints regarding the advertising of hearing aid dispensers. She stated that staff believes some of the compliance issues result from a lack of understanding the current advertising provisions. Ms. Del Mugnaio explained that she reviewed the current advertising provisions with legal counsel and was advised that the provisions should be further clarified.

Ms. Del Mugnaio referenced an issue paper included in the meeting packets that outlined the major advertising violations.

Ms. Grimes commented that advertisements that imply that hearing aids can eliminate background noise should be restricted.

Chairperson Manning suggested that the advertising regulations should be broad in scope so that the Board is not tasked with attempting to address every advertising situation that may arise.

Ms. Del Mugnaio suggested that the Board publish the background document and proposed advertising amendments and seek public comment.

The Committee discussed advertisements published by large hearing aid companies where no mention of an individual dispenser is listed.

Ms. Del Mugnaio referenced the proposed advertising regulations, where proposed changes would require the hearing aid dispenser's name and license number to be on an advertisement for a specific hearing aid office location.

The Committee reviewed the proposed advertising changes.

**M/S/C: Grimes/Green**

**The Committee voted to recommend to the full Board that the proposed advertising amendments and issue paper be disseminated to both professional organizations and consumer groups to solicit public comment.**

#### **IV. Review Existing Laws on Internet Sale of Hearing Aid Devices- Discuss Relevant Consumer Protection Issues**

Ms. Del Mugnaio referenced an issue paper included in the meeting packets outlining current business models for Internet hearing aid sales and the related statutory restrictions in Business and Professions Code Section 3351.5 regarding catalog or direct mail sales.

Ms. Del Mugnaio stated that the current law requires a hearing aid license to be able to sell a hearing aid in California regardless of how the business transaction is conducted.

Ms. Grimes commented that she does not believe that selling a hearing aid via the Internet is necessarily a consumer protection issue, as it provides hearing impaired individuals access to assistive devices that may prompt them to seek further treatment from a hearing professional.

Chairperson Manning commented that consumers should be purchasing hearing aids from a trained and licensed professional who can appropriately select and fit a hearing aid for the individual's specific needs as well as refer a consumer to a medical professional if there is a suspected pathology. He stated this is especially critical for children.

The Committee unanimously agreed that children should not be provided hearing aids fit or sold via the Internet.

Ms. Danz commented on elderly individuals with profound hearing loss and raised the issue of auditory deprivation that has been misdiagnosed as early-onset dementia. She stated that the amplification selected for hearing aids purchased via the Internet will not likely address many of the age-related hearing deficits.

Mr. Green stated that the issue with purchasing a hearing aid over the Internet is that the consumer has no one to provide follow-up treatment, such as fitting adjustments or repairs.

Mr. Diaz argued that the issue is definitely a consumer protection issue, as consumers are purchasing assistive devices they know nothing about, are not custom fit for their individual needs, and which are likely not going to provide the level of assistance a hearing aid otherwise would. He commented that this experience will negatively skew the consumer's perception of what a hearing aid can and should do.

Ms. Del Mugnaio stated that some in the professional community are looking to California to take action against companies conducting business via the Internet. She explained that one particular company provides a web-based hearing test that a consumer may self-administer and then, based on the results of the test, the consumer is offered a programmed, "custom fit" hearing aid.

The Committee discussed the accuracy issues of a web-based hearing test.

Ms. Del Mugnaio stated that she will contact the Federal Drug Administration (FDA) to discuss federal regulation on hearing aid sales and whether enforcing California law is in direct conflict with federal rule. She also stated that she will work with legal counsel to craft a letter to companies participating in selling hearing aids via the Internet and will share the letter with the Board.

**V. Discuss Future Regulatory Action and Background Document for the Proposal Regarding the Song-Beverly Consumer Warranty Act (California Civil Code Section 1793.02)**

Ms. Del Mugnaio referenced a draft regulatory proposal related to the provisions of the Song-Beverly Consumer Warranty Act (SBCWA), which includes information provided by Committee members. She stated that the draft regulatory proposal outlines return and refund provisions and would provide an exception/exemption within the Civil Code for right-of-return provisions for hearing aids. Ms. Del Mugnaio stated that the draft proposal is a working document that the Board may present to the Legislature to explain the intent of the amendments to Civil Code Section 1793.02 (i), which would then provide the Board with regulatory authority to adopt specific provisions for return and refund policies related to the dispensing of hearing aids. Ms. Del Mugnaio indicated that the Board has adopted the current document for the purpose of seeking a legislative author to carry the proposal; however, the document does not address fees

charged to consumers if the purchase agreement for the hearing aid is cancelled by the consumer prior to the consumer receiving the device. She stated that the SBCWA does not address cancellation fees.

The Committee members indicated that charging a consumer a cancellation fee is not common practice in the industry.

Ms. Tricia Hunter addressed the Board and commented that cancellation charges are unfair to the consumer, especially elderly who agree to purchase hearing aids during an office visit but who are not able to read the lengthy purchase agreements or completely understand all of the contract terms. After consulting with family members, the elderly client may have buyer's remorse and then is responsible for exorbitant cancellation fees, often over \$1,000. Ms. Hunter reported that she is meeting with legislators to discuss carrying the SBCWA amendments in a bill during the 2012 session.

The Committee agreed that the proposed regulations, which provide for a \$200 maximum amount per hearing aid that may be retained by the hearing aid dispenser upon return of a hearing aid within the specified thirty-day (30) day right of return period, should include *upon return of the device or cancellation of the purchase agreement*.

Mr. Walker recommended clarifying changes to the proposed legislative amendments.

**M/S/C: Grimes/Danz**

**The Committee voted to recommend to the full Board to adopt the amendments to Civil Code Section 1793.02, the Song Beverly Consumer Warranty Act, as proposed by Legal Counsel and to amend the draft regulatory document to include language regarding cancellation of a hearing aid purchase agreement.**

Ms. Del Mugnaio stated that she will forward the amended regulatory document and the proposed statutory changes to Ms. Hunter.

The Committee adjourned at 3:20 p.m.

## **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 aide 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.

#### **1399.154.1 Supervision of Audiology Aide.**

For the purposes of the supervision of an audiology aide, the following supervision terms shall apply:

(a) "Direct supervision" means on-site observation and guidance by the audiology supervisor while the audiology aide is directly interacting with a patient or client. Direct supervision performed by the supervising audiologist may include, but is not limited to, the following: observation of a portion of the testing or treatment procedures performed by the audiology aide, coaching the audiology aide, and modeling for the aide, and overseeing the aide during pediatric evaluation or treatment.

(b) "Indirect supervision" means the supervising audiologist is not at the same facility or in close proximity to the audiology aide, but is available to provide supervision by electronic means. Indirect supervision activities performed by the supervising audiologist may include, but are not limited to, demonstration, record review, interactive television, and supervisory conferences that may be conducted by telephone or electronic mail. Indirect supervision may be provided to 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 completion of any puretone air conduction threshold audiograms, the supervisor reviews the patient histories and the audiograms and makes any necessary referrals for evaluation and treatment.

(c) "Immediate supervision" means the supervising audiologist is physically present during services provided to the patient or client by the audiology aide.

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 treatment. Provide the appropriate level of supervision to the speech-pathology or audiology aide when he or she is engaged in direct client or patient care or assisting with patients.~~
- (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.

#### **1399.154.3. Maximum Number of Aides.**

A supervisor shall not supervise more than three (3) speech-language pathology or audiology aides. 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 aides.

#### **1399.154.4. Training of Aides.**

Before a speech-language pathologist or audiologist allows an aide to assist in the practice of speech-language pathology or audiology under his or her supervision, a speech-language pathology or audiology aide shall complete a training program established by the supervisor. The training program shall include, but is not limited to:

- (a) Instruction in the skills necessary to perform any acts or services which are the practice of speech-language pathology or audiology as defined in Section 2530.2 of the code. The supervisor is not required to

repeat any training which may have already been received by the aide because of any prior education, training and experience.

(b) A supervisor shall require a speech-language pathology or audiology aide to demonstrate his or her competence to perform any acts or provide any services which are the practice of speech-language pathology or audiology as defined in Section 2530.2 of the code which may be assigned to the aide or which the aide may provide to patients. A supervisor shall allow a speech-language pathology or audiology aide only to perform those acts or to provide those services for which he or she has been provided training and has demonstrated competency.

(c) A supervisor shall instruct a speech-language pathology or audiology aide as to the limitations imposed upon his or her duties, acts or services by these regulations, by his or her training and skills and by the evaluation and treatment plan for any patient.

(d) In addition to the requirements of this section, an industrial audiology aide shall be provided training in the use of an audiometer and in the necessary techniques for obtaining valid and reliable audiograms.

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

#### **1399.154.5. Notice of Termination.**

Within 30 days after the termination of the supervision of a speech-language pathology or audiology aide, the supervisor shall notify the board, in writing, of such termination and the date thereof.

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

#### **1399.154.6. Noncompliance With Article.**

Failure of a supervising licensee to comply with the provisions of this article may result in a forfeiture of the privilege to supervise an aide.

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

#### **1399.154.7. Aide Experience Not Applicable to Qualifications for Licensure.**

Any experience obtained acting as a speech-language pathology or audiology aide shall not be creditable toward the supervised clinical experience required in Section 2532.2(c) of the code or the required professional experience required in Section 2532.2(d) of the code.

#### **1399.154.8. Activities, Duties, and Functions Outside the Scope of Responsibility of an Audiology Aide**

An audiology aide may not conduct evaluations, interpret data, alter treatment plans, or perform any task without the express knowledge and approval of a supervising audiologist. The audiology aide may not perform any of the following functions:

- (1) Provide counseling or advice to a client or a client's parent or guardian.
- (2) Sign any documents in lieu of the supervising audiologist i.e., treatment plans, client reimbursement forms, or formal reports;
- (3) Discharge clients from services;
- (4) Make referrals for additional services;
- (5) Unless required by law, disclose confidential information either orally or in writing to anyone not designated by the supervising audiologist;



(6) Represent himself or herself as an audiologist; and,

(7) Perform procedures that require a high level of clinical acumen and technical skill, i.e., tympanometry, otoacoustic emissions, screening ABR, earmold impressions, re-programming hearing aids or cochlear implant processors.

## **VI. B. Regulations**

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

The regulations will expand the Board's enforcement authority to: delegate to the Executive Officer to accept default decisions and approve settlement agreements for revocation, surrender, or interim suspension orders of a license, compel licensees to undergo a mental/physical examination if there is suspected mental illness; deny or revoke a license for committing an act of sexual abuse or misconduct; prohibit licensees from entering into settlements including gag clauses; take disciplinary action against a licensee for failing to provide the Board lawfully requested documents or information, including reporting felony convictions, arrests, or misdemeanors, or disciplinary action taken by another licensing entity. The proposed regulations include the authority for the Board to deny an application or revoke a license of a registered sex offender. The regulations were initially filed with the Office of Administrative Law (OAL) on June 14, 2011 no hearing was scheduled or requested. The public comment period closed on August 8, 2011, and one comment in support of the proposal was received by the Center for Public Interest Law, San Diego. The final rulemaking file is being prepared for submission to the OAL.

### **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**

Established the renewal fees and continuing professional development requirements for dispensing audiologists. Emergency regulations have been in effect since March 1, 2011. Final regulations were approved by the Office of Administrative Law on December 28, 2011 and will remain in effect unless later amended.

### **3. Continuing Education Requirements for Licensed Hearing Aid Dispensers- California Code of Regulations Sections 1399.140-1399.143**

Proposed amendments to the continuing education changes for hearing aid dispensers to include: A minimum of twelve (12) hours of CE due annually, with no grace period; no more than three (3) hours may be applied toward self-study courses; a licensee must maintain CE records evidencing course completion for a period of three years following the license renewal date; and, restrictions on courses where the content focuses on personal finance and business matters, marketing and sales, and office operations that are not for the benefit of the consumer. The notice package has been prepared and is being filed with the Office of Administrative Law.

### **4. Cleanup Regulations: Merger of Hearing Aid Provisions with Speech-Language Pathology & Audiology**

**SB 933** merged the Practice Acts of Speech-Language Pathologist and Audiologist B&P Chapter 5.3 (Sections 2530 et.seq.) and the Hearing Aid Dispensers Chapter 7.5 (Sections 3300 et.seq.) pursuant to the merger of the two oversight bodies under AB 1535. Since dispensing audiologists are subject to many of the provisions of both Acts, and the authority to carry out the mandates of the professions is under one Board, it was prudent to merge the statutes for clarity in administering and enforcing the provisions. The DCA Legal Office is in the process of assisting the Board with making the necessary amendments to regulations CCR 1399.100- 1399.144 (currently the regulatory provisions for HADs) to merge the

provisions to CCR Division 13.4 (where the provisions reside for SLP/AU) and change the enabling statutory references pursuant to the amendments in SB 933.

**HEARING AID DISPENSERS BOARD - 0208  
BUDGET REPORT  
FY 2011-12 EXPENDITURE PROJECTION**

November 30, 2011

| OBJECT DESCRIPTION                      | FY 2010-11                           |  | FY 2011-12                 |  |                  |                            |                         |
|---|--------------------------------------|--|----------------------------|--|------------------|----------------------------|-------------------------|
|   | ACTUAL<br>EXPENDITURES<br>(MONTH 13) | PRIOR YEAR<br>EXPENDITURES<br>11/30/2010 | BUDGET<br>STONE<br>2011-12 | CURRENT YEAR<br>EXPENDITURES<br>11/30/2011 | PERCENT<br>SPENT | PROJECTIONS<br>TO YEAR END | UNENCUMBERED<br>BALANCE |
| <b>PERSONNEL SERVICES</b>               |                                      |  |                            |  |                  |                            |                         |
| Salary & Wages (Staff)                  | 186,645                              | 71,878                                   | 116,658                    | 98,591                                     | 85%              | 241,916                    | (125,258)               |
| Temp Help Reg (Seasonals)               | 0                                    |  | 0                          |  |                  | 0                          | 0                       |
| Temp Help (Exam Proctors)               | 1,384                                | 533                                      | 0                          |  |                  | 0                          | 0                       |
| Board Member Per Diem                   |                                      |  | 0                          |  |                  |                            | 0                       |
| Committee Members (DEC)                 | 0                                    |  | 5,822                      | 600  | 10%              | 600                        | 5,222                   |
| Overtime                                | 2,185                                | 749                                      | 0                          | 5,393                                      |                  | 5,393                      | (5,393)                 |
| Staff Benefits                          | 65,138                               | 27,707                                   | 43,020                     | 32,935                                     | 77%              | 69,446                     | (26,426)                |
| Salary Savings                          | 0                                    |  | (4,000)                    | 0  | 0%               | 0                          | (4,000)                 |
| <b>TOTALS, PERSONNEL SVC</b>            | <b>255,352</b>                       | <b>100,867</b>                           | <b>161,500</b>             | <b>137,519</b>                             | <b>85%</b>       | <b>317,355</b>             | <b>(155,855)</b>        |
| <b>OPERATING EXPENSE AND EQUIPMENT</b>  |                                      |  |                            |  |                  |                            |                         |
| General Expense                         | 2,270                                |  | 13,496                     | 1,077                                      | 8%               | 2,000                      | 11,496                  |
| Fingerprint Reports                     | 129                                  |  | 9,000                      | 51   | 1%               | 100                        | 8,900                   |
| Minor Equipment                         | 1,113                                |  | 3,000                      |  | 0%               | 1,100                      | 1,900                   |
| Printing                                | 1,107                                | 899                                      | 9,429                      |  | 0%               | 1,100                      | 8,329                   |
| Communication                           | 1,792                                | 605                                      | 8,577                      | 155  | 2%               | 1,800                      | 6,777                   |
| Postage                                 | 14,119                               | 5,304                                    | 12,742                     | 4,639                                      | 36%              | 12,000                     | 742                     |
| Insurance                               |                                      |  | 144                        |  | 0%               | 0                          | 144                     |
| Travel In State                         | 4,072                                | 221                                      | 1,000                      | 4,393                                      | 439%             | 4,393                      | (3,393)                 |
| Travel Out-of-State                     |                                      |  | 0                          |  |                  | 0                          | 0                       |
| Training                                | 500                                  |  | 489                        |  | 0%               | 500                        | (11)                    |
| Facilities Operations                   | 51,806                               | 36,918                                   | 47,693                     | 5,117                                      | 11%              | 18,092                     | 29,601                  |
| Utilities                               |                                      |  | 0                          |  |                  | 0                          | 0                       |
| C & P Services - Interdept.             | 0                                    |  | 35,137                     |  | 0%               | 0                          | 35,137                  |
| C & P Services - External               |                                      |  | 0                          |  |                  | 0                          | 0                       |
| <b>DEPARTMENTAL SERVICES:</b>           |                                      |  |                            |  |                  |                            |                         |
| Departmental Pro Rata                   | 35,339                               | 16,669                                   | 36,463                     | 14,876                                     | 41%              | 36,463                     | 0                       |
| Admin/Exec                              | 44,385                               | 23,088                                   | 32,787                     | 18,494                                     | 56%              | 32,787                     | 0                       |
| Interagency Services                    | 0                                    |  | 96                         |  | 0%               | 96                         | 0                       |
| IA w/ OER                               | 113,858                              | 32,210                                   | 29,351                     |  | 0%               | 29,351                     | 0                       |
| DOI-ProRata Internal                    | 873                                  | 563                                      | 28                         | 411  | 1468%            | 28                         | 0                       |
| Public Affairs Office                   | 1,866                                | 1,292                                    | 2,245                      | 831  | 37%              | 2,245                      | 0                       |
| CCED                                    | 73,095                               | 24,099                                   | 456                        | 32,689                                     | 7169%            | 456                        | 0                       |
| <b>INTERAGENCY SERVICES:</b>            |                                      |  |                            |  |                  |                            |                         |
| Consolidated Data Center                | 330                                  | 6,000                                    | 2,555                      | 132  | 5%               | 132                        | 2,423                   |
| DP Maintenance & Supply                 | 8                                    |  | 271                        |  | 0%               | 0                          | 271                     |
| Central Admin Svc-ProRata               | 25,837                               | 12,919                                   | 49,578                     | 24,789                                     | 50%              | 49,578                     | 0                       |
| <b>EXAM EXPENSES:</b>                   |                                      |  |                            |  |                  |                            |                         |
| Exam Rent-Non State                     | 0                                    |  | 7,663                      |  | 0%               | 0                          | 7,663                   |
| C/P Svcs-External Expert Administrative | 6,759                                | 15,250                                   | 25,042                     | 10,168                                     | 41%              | 10,168                     | 14,874                  |
| C/P Svcs-External Expert Examiners      | 0                                    |  | 37,913                     |  | 0%               | 0                          | 37,913                  |
| C/P Svcs-External Subject Matter        | 34,249                               | 10,163                                   |                            | 19,925                                     |                  | 34,000                     | (34,000)                |
| <b>ENFORCEMENT:</b>                     |                                      |  |                            |  |                  |                            |                         |
| Attorney General                        | 23,343                               | 3,788                                    | 41,995                     | 28,071                                     | 67%              | 33,000                     | 8,995                   |
| Office Admin. Hearings                  | 0                                    |  | 16,637                     |  | 0%               | 0                          | 16,637                  |
| Court Reporters                         |                                      |  |                            |  |                  |                            | 0                       |
| Evidence/Witness Fees                   | 93                                   |  | 1,277                      |  | 0%               | 93                         | 1,184                   |
| DOI - Investigations                    | 175,790                              | 66,923                                   | 0                          | 80,297                                     |                  | 0                          | 0                       |
| Major Equipment                         | 0                                    |  |                            |  |                  | 0                          | 0                       |
| Special Items of Expense                |                                      |  |                            |  |                  |                            | 0                       |
| Other (Vehicle Operations)              | 0                                    |  | 15,000                     |  | 0%               | 0                          | 15,000                  |
| <b>TOTALS, OE&amp;E</b>                 | <b>612,733</b>                       | <b>256,911</b>                           | <b>440,064</b>             | <b>246,115</b>                             | <b>56%</b>       | <b>269,482</b>             | <b>170,582</b>          |
| <b>TOTAL EXPENSE</b>                    | <b>868,085</b>                       | <b>357,778</b>                           | <b>601,564</b>             | <b>383,634</b>                             | <b>141%</b>      | <b>586,837</b>             | <b>14,727</b>           |
| Sched. Reimb. - Fingerprints            | (118)                                | (16)                                     | (9,000)                    | (102)                                      | 1%               | (6,500)                    | (2,500)                 |
| Sched. Reimb. - Other                   | (235)                                | (235)                                    |                            |  |                  |                            | 0                       |
| Unsched. Reimb. - Other                 | (6,743)                              | (5,000)                                  |                            | (747)                                      |                  |                            | 0                       |
| <b>NET APPROPRIATION</b>                | <b>860,989</b>                       | <b>352,527</b>                           | <b>592,564</b>             | <b>382,785</b>                             |                  | <b>580,337</b>             | <b>12,227</b>           |
| <b>SURPLUS/(DEFICIT):</b>               |                                      |  |                            |  |                  |                            | <b>2.1%</b>             |

**Speech-Language Pathology and Audiology Board - 0376**  
**BUDGET REPORT**  
**FY 2011-12 EXPENDITURE PROJECTION**

November 30, 2011

| OBJECT DESCRIPTION                      | FY 2010-11     |                | FY 2011-12     |                |            |                |                |
|---|----------------|----------------|----------------|----------------|------------|----------------|----------------|
|   | ACTUAL         | PRIOR YEAR     | BUDGET         | CURRENT YEAR   | PERCENT    | PROJECTIONS    | UNENCUMBERED   |
|   | EXPENDITURES   | EXPENDITURES   | STONE          | EXPENDITURES   | SPENT      | TO YEAR END    | BALANCE        |
|   | (MONTH 13)     | 11/30/2010     | 2011-12        | 11/30/2011     |            |                |                |
| <b>PERSONNEL SERVICES</b>               |                |                |                |                |            |                |                |
| Salary & Wages (Staff)                  | 178,341        | 76,179         | 168,838        | 61,284         | 36%        | 89,168         | 79,670         |
| Statutory Exempt (EO)                   | 76,385         | 30,910         | 81,732         | 32,796         | 40%        | 80,473         | 1,259          |
| Temp Help Reg (Seasonals)               | 14,153         | 4,713          | 876            | 4,100          | 468%       | 11,652         | (10,776)       |
| Temp Help (Exam Proctors)               |                |                | 0              |                | #DIV/0!    | 0              | 0              |
| Board Member Per Diem                   | 0              |                | 5,854          |                | 0%         | 0              | 5,854          |
| Committee Members (DEC)                 | 3,000          |                | 0              | 2,100          | #DIV/0!    | 3,000          | (3,000)        |
| Overtime                                | 1,645          |                | 0              | 4,297          | #DIV/0!    | 4,297          | (4,297)        |
| Staff Benefits                          | 117,483        | 52,118         | 109,085        | 46,026         | 42%        | 103,943        | 5,142          |
| Salary Savings                          | 0              | 0              | (6,495)        | 0              | 0%         | 0              | (6,495)        |
| <b>TOTALS, PERSONNEL SVC</b>            | <b>391,007</b> | <b>163,920</b> | <b>359,890</b> | <b>150,603</b> | <b>42%</b> | <b>292,533</b> | <b>67,357</b>  |
| <b>OPERATING EXPENSE AND EQUIPMENT</b>  |                |                |                |                |            |                |                |
| General Expense                         | 7,877          | 302            | 33,798         | 2,466          | 7%         | 7,400          | 26,398         |
| Fingerprint Reports                     | 6,936          | 2,295          | 19,439         | 3,570          | 18%        | 10,000         | 9,439          |
| Minor Equipment                         | 452            |                | 0              |                | #DIV/0!    | 452            | (452)          |
| Printing                                | 2,743          | 1,320          | 14,964         |                | 0%         | 2,700          | 12,264         |
| Communication                           | 5,200          | 1,109          | 8,450          | 1,162          | 14%        | 3,500          | 4,950          |
| Postage                                 | 6,448          | 2,675          | 10,598         | 2,455          | 23%        | 7,300          | 3,298          |
| Travel In State                         | 7,913          | 235            | 10,999         | 2,884          | 26%        | 8,600          | 2,399          |
| Travel, Out-of-State                    |                |                | 0              |                | #DIV/0!    |                | 0              |
| Training                                | 393            |                | 2,313          | 828            | 36%        | 828            | 1,485          |
| Facilities Operations                   | 60,973         | 60,336         | 64,576         | 60,306         | 93%        | 60,306         | 4,270          |
| C & P Services - Interdept.             | 0              |                | 2,753          |                | 0%         | 0              | 2,753          |
| C & P Services - External               |                |                | 0              |                | #DIV/0!    | 0              | 0              |
| <b>DEPARTMENTAL SERVICES:</b>           |                |                |                |                |            |                |                |
| Departmental Pro Rata                   | 65,315         | 26,480         | 81,533         | 28,060         | 34%        | 81,533         | 0              |
| Admin/Exec                              | 42,805         | 17,444         | 41,694         | 17,835         | 43%        | 41,694         | 0              |
| Interagency Services                    | 0              |                | 93             |                | 0%         | 0              | 93             |
| IA w/ OER                               |                |                | 0              |                | #DIV/0!    | 0              | 0              |
| DOI-ProRata Internal                    | 1,479          | 703            | 1,688          | 697            | 41%        | 1,688          | 0              |
| Public Affairs Office                   | 3,146          | 1,615          | 2,866          | 1,401          | 49%        | 2,866          | 0              |
| CCED                                    | 2,045          | 850            | 2,942          | 852            | 29%        | 2,942          | 0              |
| <b>INTERAGENCY SERVICES:</b>            |                |                |                |                |            |                |                |
| Consolidated Data Center                | 755            | 2,000          | 5,460          | 259            | 5%         | 777            | 4,683          |
| DP Maintenance & Supply                 | 2,376          |                | 3,806          | 176            | 5%         | 2,300          | 1,506          |
| Central Admin Svc-ProRata               | 27,014         | 13,507         | 24,309         | 12,155         | 50%        | 24,309         | 0              |
| <b>EXAM EXPENSES:</b>                   |                |                |                |                |            |                |                |
| Exam Supplies                           |                |                | 0              |                | #DIV/0!    |                | 0              |
| Exam Freight                            |                |                | 0              |                | #DIV/0!    |                | 0              |
| Exam Site Rental                        |                |                | 0              |                | #DIV/0!    |                | 0              |
| C/P Svcs-External Expert Administrative |                |                | 0              |                | #DIV/0!    |                | 0              |
| C/P Svcs-External Expert Examiners      |                |                | 0              |                | #DIV/0!    |                | 0              |
| C/P Svcs-External Subject Matter        | 10,864         | 9,132          |                |                | #DIV/0!    | 10,864         | (10,864)       |
| <b>ENFORCEMENT:</b>                     |                |                |                |                |            |                |                |
| Attorney General                        | 47,135         | 13,170         | 48,572         | 33,529         | 69%        | 48,572         | 0              |
| Office Admin. Hearings                  | 3,960          | 125            | 5,112          | 3,012          | 59%        | 5,000          | 112            |
| Court Reporters                         | 585            |                |                |                | #DIV/0!    | 585            | (585)          |
| Evidence/Witness Fees                   | 5,263          | 94             | 6,428          | 563            | 9%         | 1,700          | 4,728          |
| DOI - Investigations                    | 32,176         |                | 79,245         | 14,697         | 19%        | 44,000         | 35,245         |
| Major Equipment                         |                |                | 0              |                | #DIV/0!    |                | 0              |
| Other - Clothing & Pers Supp            | 145            |                |                |                | #DIV/0!    | 145            | (145)          |
| Special Items of Expense                |                |                |                |                | #DIV/0!    |                | 0              |
| Other (Vehicle Operations)              |                |                | 0              |                | #DIV/0!    |                | 0              |
| <b>TOTALS, OE&amp;E</b>                 | <b>343,998</b> | <b>153,392</b> | <b>471,638</b> | <b>186,907</b> | <b>40%</b> | <b>370,061</b> | <b>101,577</b> |
| <b>TOTAL EXPENSE</b>                    | <b>735,005</b> | <b>317,312</b> | <b>831,528</b> | <b>337,510</b> | <b>81%</b> | <b>662,594</b> | <b>168,934</b> |
| Sched. Reimb. - Fingerprints            | (7,803)        | (2,446)        | (22,000)       | (3,570)        | 16%        | (7,800)        | (14,200)       |
| Sched. Reimb. - Other                   | (8,120)        | (2,400)        | (2,000)        | (2,840)        | 142%       | (8,100)        | 6,100          |
| Distributed                             |                | (4,306)        | (35,000)       |                | 0%         |                | (35,000)       |
| Unsched. Reimb. - Other                 | (6,916)        |                |                | (972)          | #DIV/0!    | (6,900)        | 6,900          |
| <b>NET APPROPRIATION</b>                | <b>712,166</b> | <b>308,160</b> | <b>772,528</b> | <b>330,128</b> | <b>43%</b> | <b>639,794</b> | <b>132,734</b> |
| <b>SURPLUS/(DEFICIT):</b>               |                |                |                |                |            |                | <b>17.2%</b>   |



*Speech-Language Pathology and Audiology  
and Hearing Aid Dispensers Board*

*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.



## **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 Section 1399.155 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.

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 these 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.

### **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:

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.

### **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 any time as directed by the Board. The following schedule of random drug testing frequency shall be imposed, unless any of the exceptions set forth below exists and support a less infrequent testing schedule:
  - a) The first year of probation a licensee shall be subject to a minimum of fifty-two (52) to one-hundred and four (104) tests per year.
  - b) Following the first year of probation and through the fifth year, a licensee shall be subject to a minimum of thirty-six (36) to one-hundred and four (104) tests per year.
  - c) Once the licensee has completed five years of probation with no positive drug tests, administration of one (1) test per month may be imposed.
2. The Board may consider the following exceptions to the testing frequency when imposing terms from drug testing:
  - a) Evidence the licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to discipline by the Board.
  - b) A licensee whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor.

c) The Board may postpone all testing for any licensee whose probation is placed on a tolling status. The licensee shall notify the board upon the licensee's return to practice and shall be subject to testing as provided in this standard. If the licensee returns to practice and has not previously completed the drug testing frequency standards as identified above, the licensee shall be subject to the established testing frequency schedule.

d) If no current substance use disorder diagnosis is made, the Board may adopt a lesser period of monitoring and drug testing, but not less than twenty-four times per year.

3. Drug testing may be required on any day, including weekends and holidays.
4. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.
5. Licensees shall be required to make daily contact to determine if drug testing is required.
6. Licensees shall be drug tested on the date of notification as directed by the board.
7. *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.*
8. *Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.*
9. *Testing locations shall comply with the Urine Specimen Collection Guidelines published U.S. Department of Transportation, regardless of the type of test administered.*
10. Collection of specimens shall be observed.
11. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.
12. *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 Discipline**

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

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**

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.

## **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:

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

### **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.

- |   |  |
|---|--|
| <u>16) Submit to Examination by Physician</u>                     | <u>24) Take and Pass Licensure Examination</u> |
| <u>17) Psychological Evaluation</u>                               | <u>25) Supervised Practice</u>                 |
| <u>18) Psychotherapy</u>  | <u>26) Worksite Monitor</u>                    |
| <u>19) Clinical Diagnostic Evaluation</u>                         | <u>27) Restrictions on Licensed Practice</u>   |
| <u>20) Attend Chemical Dependency Support and Recovery Groups</u> | <u>28) Actual Suspension of License</u>        |
| <u>21) Abstain from Controlled Substances</u>                     |  |
| <u>22) Abstain from the Use of Alcohol</u>                        |  |
| <u>23) Submit Biological Fluid Samples</u>                        |  |

## **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.

#### 42. 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.

#### 23. 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

#### 43. 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.~~

## 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 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.~~

**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.

## 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

## 102. 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 by 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.

***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.***

#### 124. 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.

***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.*

#### 135. 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 (146-268)**

#### 146. 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.*

## 157. 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~~ 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 days. 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.

#### 168. 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.

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 approval. 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.

***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.~~

#### **1820. 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.*

#### **1921. 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.*

## 202. ABSTAIN FROM USE OF ALCOHOL

Respondent shall completely abstain from the intake use of alcoholic 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.*

## 243. 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.

**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.*

## 224. 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.

***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).*

235. SUPERVISED 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.

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.*

## 247. 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.~~

## ~~268. 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 appropriate for 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:"~~

### **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<br>Standard Terms <u>and Conditions</u> of Probation (1-13 <u>5</u> )<br>If warranted:<br>Psychological Evaluation (15 <u>7</u> )<br>Supervision <u>ed</u> Practice (23 <u>5</u> )<br>Restrict <u>ed</u> ions on Licensed Practice (25 <u>7</u> )<br><u>Actual</u> Suspension of <u>License</u> (27 <u>8</u> ) |



**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<br>Standard Terms <u>and Conditions</u> of Probation (1-135)<br>If warranted:<br>Psychological Evaluation (157)<br>Supervised Practice (235)<br>Restrictions on Licensed Practice (257)<br>Actual Suspension of License (278) |

**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 | <u>Revocation</u>  |
| MINIMUM | <u>5 Years Probation</u><br><u>Standard Terms and Conditions of Probation (1-15)</u><br><u>Submit to Examination by Physician (16)</u><br><u>Psychological Evaluation (17)</u><br>If warranted:<br><u>Psychotherapy (18)</u><br><u>Worksite Monitor (26)</u><br><u>Actual Suspension of License (28)</u> |

**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 (1-135)  
Submit to Examination by Physician Exam (146)  
Clinical Diagnostic Evaluation (19)  
Attend Chemical Dependency Support and Recovery  
Groups (1820)  
Abstain from DrugsControlled Substances and  
Alcohol (19-201-22)  
Submit Biological Fluids Samples (243)  
Worksite Monitor (26)  
Supervised Practice (235)  
Actual Suspension of License (278)  
If warranted:  
    Psychological Evaluation (157)  
    Psychotherapy (168)  
    Drug and Alcohol Rehabilitation (17-)  
    Restrictions on Licensed Practice (257)  
    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 (1-135)  
Submit to Examination by Physician Exam (146)  
Clinical Diagnostic Evaluation (19)  
Attend Chemical Dependency Support and Recovery  
Groups (1820)  
Abstain from DrugsControlled Substances and  
Alcohol (19-201-22)  
Submit Biological Fluids Samples (243)  
Supervised Practice (235)  
Worksite Monitor (24)  
Actual Suspension of License (278)  
If warranted:  
    Psychological Evaluation (157)

Psychotherapy (168)  
~~Drug and Alcohol Rehabilitation (17)~~  
~~Restrictions on Licensed Practice (257)~~  
~~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 -- 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<br>Standard Terms and Conditions of Probation (1-135)<br><u>Clinical Diagnostic Evaluation (17)</u><br><u>Attend Chemical Dependency Support and Recovery Groups (1820)</u><br><u>Abstain from Drugs Controlled Substances and Alcohol (19-201-22)</u><br><u>Submit Biological Fluids Samples (243)</u><br><u>Worksite Monitor (24)</u><br><u>Actual Suspension of License (278)</u><br>If warranted:<br><u>Submit to Physical Examination by Physician (146)</u><br><u>Psychological Evaluation (157)</u><br><del>Drug and Alcohol Rehabilitation (17)</del><br><u>Supervised Practice (235)</u><br><del>Restrictions on Licensed Practice (257)</del><br><del>Suspension (26)</del> |

**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 (1-135)  
If warranted:  
Supervised Practice (235)

**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

MAXIMUM Revocation or Denial

MINIMUM 18 Months Probation  
Standard Terms and Conditions of Probation (1-135)  
Supervised Practice (235)  
If warranted:  
Submit to Physician Examination by Physician(146)  
Psychological Evaluation (157)  
Restrictions on Licensed Practice (257)  
Actual Suspension of License (278)

**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 (1-135)

**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 (1-135)  
Supervised Practice (235)  
If warranted:  
Psychological Evaluation (157)  
Psychotherapy (168)

~~Restrictedions on Licensed Practice (257)~~  
Actual Suspension of License (278)

**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

|         |   |
|---------|---|
| MAXIMUM | Revocation or Denial  |
| MINIMUM | 3 Years Probation<br>Standard Terms <u>and Conditions</u> of Probation (1-135)<br><u>Supervised Practice (235)</u><br>If warranted:<br>Psychological Evaluation (157)<br>Psychotherapy (168)<br><del>Restrictedions on Licensed Practice (257)</del><br><u>Actual Suspension of License (278)</u> |

**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<br>Standard Terms <u>and Conditions</u> of Probation (1-135) |

**DISCIPLINARY ACT BY FOREIGN JURISDICTION**

Section 141 of the Business and Professions Code

|         |   |
|---------|---|
| MAXIMUM | Revocation or Denial  |
| MINIMUM | 18 Months Probation<br>Standard Terms <u>and Conditions</u> of Probation (1-135)<br>If warranted:<br><del>Support and Recovery Groups (18)</del><br><del>Abstain from Drugs and Alcohol (19-20)</del><br><del>Submit Biological Fluids (21)</del> |

~~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

|         |  |
|---------|--|
| MAXIMUM | Revocation or Denial   |
| MINIMUM | 3 Years Probation<br>Standard Terms <u>and Conditions</u> of Probation (1-13 <u>5</u> )<br>Supervisioned Practice (23 <u>5</u> )<br>If warranted:<br>Psychological Evaluation (15 <u>7</u> )<br>Psychotherapy (16 <u>8</u> )<br>Restrictedions on Licensed Practice (25 <u>7</u> )<br><u>Actual Suspension of License</u> (27 <u>8</u> ) |

## **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<br>Standard Terms <u>and Conditions</u> of Probation (1-13 <u>5</u> ) |

## **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<br>Standard Terms <u>and Conditions</u> of Probation (1-13 <u>5</u> ) |

## **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<br>Standard Terms <u>and Conditions</u> of Probation (1-13 <u>5</u> )<br>If warranted:<br>Physician Exam (14)<br>Psychological Examination (15)<br>Psychotherapy (16)<br>Drug and Alcohol Rehabilitation (17)<br>Abstain from Drugs and Alcohol (19-20)<br>Submit Biological Fluids (21)<br>Supervision (23)<br>Restricted Practice (24)<br>Suspension (26)<br><u>Additional Terms and Conditions of Probation (16-28)</u> |

**PENALTIES FOR DISCIPLINARY ACTIONS**

|  |
|--|
| <p><i><u>Except where otherwise indicated, the following terms and conditions apply to hearing aid dispensers and dispensing audiologists unless noted</u></i></p> |
|--|

**SEXUAL MISCONDUCT**

Section 726 of the Business and Professions Code

|         |  |
|---------|--|
| MAXIMUM | Revocation or Denial   |
| MINIMUM | 3 Years Probation<br>Standard Terms and Conditions of Probation (1-15)<br><u>Supervised Practice (25)</u><br>If warranted:<br><u>Psychological Evaluation (17)</u><br><u>Psychotherapy (18)</u><br><u>Restrictions on Licensed Practice (27)</u><br><u>Actual Suspension of License (28)</u> |

**MENTAL OR PHYSICAL ILLNESS**

Section 820 of the Business and Professions Code

|         |                      |
|---------|----------------------|
| MAXIMUM | Revocation or Denial |
|---------|----------------------|

|                |  |
|----------------|--|
| <u>MINIMUM</u> | <u>5 Years Probation</u><br><u>Standard Terms and Conditions of Probation (1-15)</u><br><u>Submit to Examination by Physician (16)</u><br><u>Psychological Evaluation (17)</u><br><u>If warranted:</u><br><u>Psychotherapy (18)</u><br><u>Supervised Practice (25)</u><br><u>Actual Suspension of License (28)</u> |
|----------------|--|

*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.*

### **UNLICENSED PRACTICE**

Section 2538.20\* of the Business and Professions Code

|                |  |
|----------------|--|
| <u>MAXIMUM</u> | <u>Revocation</u>  |
| <u>MINIMUM</u> | <u>2 Years Probation</u><br><u>Standard Terms and Conditions of Probation (1-15)</u><br><u>If warranted:</u><br><u>Actual Suspension of License (28)</u> |

### **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

|                |  |
|----------------|--|
| <u>MAXIMUM</u> | <u>License Denied</u>  |
| <u>MINIMUM</u> | <u>License Issued, 2 Years Probation</u><br><u>Standard Terms and Conditions of Probation (1-15)</u> |

### **PRACTICING WITHOUT NOTIFYING THE BOARD OF BUSINESS ADDRESS**

Section 2538.33\* of the Business and Professions Code

|                |  |
|----------------|--|
| <u>MAXIMUM</u> | <u>2 Years Probation</u><br><u>Standard Terms and Conditions of Probation (1-15)</u><br><u>If warranted:</u><br><u>Actual Suspension of License (28)</u> |
|----------------|--|

|                |                        |
|----------------|------------------------|
| <u>MINIMUM</u> | <u>Public Reproval</u> |
|----------------|------------------------|

### **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

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

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

**FAILURE TO MAINTAIN REQUIRED RECORDS**  
**Section 2538.38 of the Business and Professions Code**

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

|                |                        |
|----------------|------------------------|
| <u>MINIMUM</u> | <u>Public Reproval</u> |
|----------------|------------------------|

**THE IMPROPER OR UNNECESSARY FITTING OF A HEARING AID**  
**Section 2533(f) of the Business and Professions Code**

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

**GROSS NEGLIGENCE**  
**Section 2533(f) of the Business and Professions Code**

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

**REPEATED NEGLIGENT ACTS**

Section 2533(f) of the Business and Professions Code

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

**CRIMINAL CONVICTION**

Section 2533(a) of the Business and Professions Code

|                |   |
|----------------|---|
| <u>MAXIMUM</u> | <u>Revocation</u>   |
| <u>MINIMUM</u> | <u>5 Years Probation</u><br><u>Standard Terms and Conditions of Probation (1-15)</u><br><u>If warranted:</u><br><u>Additional Terms and Conditions of Probation (16-28)</u> |

**OBTAINING A LICENSE BY FRAUD**

Section 2533(b) of the Business and Professions Code

|                |                   |
|----------------|-------------------|
| <u>MINIMUM</u> | <u>Revocation</u> |
|----------------|-------------------|

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

Section 2533(h) of the Business and Professions Code

|                |  |
|----------------|--|
| <u>MAXIMUM</u> | <u>Revocation</u>  |
| <u>MINIMUM</u> | <u>5 Years Probation</u><br><u>Standard Terms and Conditions of Probation (1-15)</u><br><u>If warranted:</u><br><u>Actual Suspension of License (28)</u> |

**FRAUD OR MISREPRESENTATION IN PRACTICE**

Section 2533(e) of the Business and Professions Code

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

### **EMPLOYING AN UNLICENSED PERSON**

Section 2533(e) of the Business and Professions Code

|                |   |
|----------------|---|
| <u>MAXIMUM</u> | <u>Revocation</u>   |
| <u>MINIMUM</u> | <u>5 Years Probation</u><br><u>Standard Terms and Conditions of Probation (1-15)</u><br><u>If warranted:</u><br><u>Supervised Practice (25)</u><br><u>Actual Suspension of License (28)</u> |

### **ILLEGAL ADVERTISING**

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

|                |                        |
|----------------|------------------------|
| <u>MAXIMUM</u> | <u>Revocation</u>      |
| <u>MINIMUM</u> | <u>Public Reproval</u> |

### **LETTING ANOTHER USE HIS OR HER LICENSE**

Section 2533(e) of the Business and Professions Code

|                |   |
|----------------|---|
| <u>MAXIMUM</u> | <u>Revocation</u>   |
| <u>MINIMUM</u> | <u>5 Years Probation</u><br><u>Standard Terms and Conditions of Probation (1-15)</u><br><u>If warranted:</u><br><u>Supervised Practice (25)</u><br><u>Actual Suspension of License (28)</u> |

### **DOING ANY ACT WHICH WOULD BE GROUNDS FOR LICENSE DENIAL**

Section 2533(j) of the Business and Professions Code

|                |                   |
|----------------|-------------------|
| <u>MAXIMUM</u> | <u>Revocation</u> |
|----------------|-------------------|

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**

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)

### **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 Reprimand

*\*Does not apply to a Dispensing Audiologist*

Draft



November 14, 2011

To Licensure Board Members:

It has come to the attention of ETS that reporting scores for the new Praxis Audiology test 0341 on the announced score scale of 100-200 will create difficulties because many licensure boards require a longer period of time to enact a new passing score within their state regulations or statutes. Therefore, ETS will continue to utilize the 250-990 score scale for all Audiology test 0341 administrations. The passing score will continue to be 600. This practice will continue until January 2013.

If you have any questions, please call Praxis at 866-243-4088.

Sincerely,

The Praxis Program



From: Pruner, Kathy <kpruner@ETS.ORG>  
Sent: Friday, October 14, 2011 7:48 AM  
To: abespa@mindspring.com; abespa@ipa.net; Slpab@DCA;  
angela.baisden@ct.gov; sandra.wagner@state.de.us;  
constance\_williams@doh.state.fl.us; lhtracy@sas.state.ga.us;  
pvl@dcca.hawaii.gov; lgoff@ibol.idaho.gov; msouthar@ildpr.com;  
pla5@pla.in.gov; jmanning@idph.state.ia.us; bkroll@kdhe.state.ks.us;  
karenm.robinson@ky.gov; jolie@lbespa.org; jennifer.l.mooney@maine.gov;  
curtisb@dhhm.state.md.us; ann.constable@state.ma.us;  
lclark@michigan.gov; web@HealthyMS.com; pam.borgmeyer@pr.mo.gov;  
hlee@mt.gov; susan.koperacumb@dhhs.ne.gov; nvaud@gbis.com;  
renee.clark@lps.state.nj.us; becky.armijo-lakey@state.nm.us;  
kpeterso@mail.nysed.gov; scapps@ncboeslpa.org; solseng@gfwireless.com;  
Thornton, Gregg; info@obespa.ok.gov; benjamin.boyd@state.or.us; st-  
speech@state.pa.us; donna.dickerman@health.ri.us;  
reynoldsv@mail.llr.state.sc.us; stacy.lannan@state.tn.us;  
joyce.parsons@dshs.state.tx.us; dfairhur@br.state.ut.us;  
carol.stamey@dhp.virginia.gov; wvbeslpa@mail.wvnet.edu;  
dbridg@state.wy.us; DelMugnaio, Annemarie@DCA;  
RamsdellR@michigan.gov  
Cc: anickerson@asha.org; Georgia McMann  
Subject: Program Update: ASHA Sets Required Score on Audiology Test 0341  
Attachments: Audiology TAAG 0341.pdf; Technical Report\_Praxis Audiology  
(0341)\_ASHA.pdf

Important Notice to all State Boards of Examination for Audiology:

This notice is to inform you of the decision made by ASHA's Council for Clinical Certification regarding the establishment of the required score for the new Audiology test (0341). Traditionally, state school personnel licensing agencies and state Boards of Examiners for audiology have adopted the ASHA passing score on the Praxis audiology test as their score for state licensure. As is their practice, ASHA is making their new Audiology Standard Setting Report available to all states and boards using these tests so these users can have a passing score in place for the first administration of the regenerated Audiology test launching November 12, 2011.

The new test was developed following a job analysis and rigorous test development process. Following internal analysis of the final results and report from the Standard Setting Session on the new test, ASHA has set a score requirement of 170 on Audiology test #0341 effective November 12, 2011. Please note that the new Audiology test has a scaled score range of 100-200. Because there are substantial changes to the test, professional standards (AERA, APA, NCME) require us to change the previous Audiology test score scale. The choice of the 100-200 scale was made to match the score scale used by the majority of other Praxis exams. As we previously informed you, the old test (0340) has been discontinued.

Attached, please find the technical report from the Praxis Audiology 0341 standard setting along with the final version of the Test at a Glance (TAAG). The TAAG has been available on the Praxis website for test takers since August. If you have any questions regarding the information in this communication, please contact me at my information below.

Sincerely,

Kathy R. Pruner  
Client Relations Director  
Teacher Licensure and Certification

Educational Testing Service  
Rosedale Rd.  
Princeton, NJ 08541  
kpruner@ets.org  
Office: 609-683-2694



*Listening. Learning. Leading.*

## Standard Setting Technical Report

### **PRAXIS<sup>™</sup> AUDIOLOGY (0341)**

Prepared for the American Speech-Language-Hearing Association

Educational and Credentialing Research

ETS

Princeton, New Jersey

August 2011

## **Executive Summary**

To support the decision-making process for the Council For Clinical Certification in Audiology and Speech-Language Pathology (henceforth referred to as the Council) with regards to establishing a passing score, or cut score, for the Praxis™ Audiology (0341) test, research staff from Educational Testing Service (ETS) designed and conducted a standard-setting study on August 6 and 7, 2011. The study also collected content-related validity evidence to confirm the importance of the content specifications for audiologists seeking American Speech-Language-Hearing Association (ASHA) certification.

### **Recommended Passing Score**

The recommended passing score is provided to help the Council determine an appropriate operational passing score. For the Praxis Audiology test, the average recommended passing score is 87 (on the raw score metric), which represents 73% of the total available 120 raw score points. The scaled score associated with a raw score of 87 is 170 (on a 100 to 200 scale).

### **Summary of Content Specification Judgments**

Panelists judged the extent to which the knowledge and/or skills reflected by the content specifications were important for audiologists seeking ASHA certification. The favorable judgments of the panelists provided evidence that the content of the test is important.

To support the decision-making process for the Council For Clinical Certification in Audiology and Speech-Language Pathology (henceforth referred to as the Council) with regards to establishing a passing score, or cut score, for the Praxis™ Audiology (0341) test, research staff from Educational Testing Service (ETS) designed and conducted a standard-setting study. The study also collected content-related validity evidence to confirm the importance of the content specifications for audiologists seeking American Speech-Language-Hearing Association (ASHA) certification.

The study involved an expert panel of 15 audiologists selected by ASHA. The panel was convened on August 6 and 7, 2011, in Rockville, Maryland. The following technical report is divided into three sections. The first section describes the content and format of the test. The second section describes the standard-setting processes and methods used. The third section presents the results of the standard-setting study.

The passing-score recommendation for the Praxis Audiology test is provided to the Council. The Council is responsible for establishing the final passing score. The study provides a recommended passing score, which represents the combined judgments of one group of audiologists. The full range of the Council's needs and expectations cannot likely be represented during the standard-setting study. The Council, therefore, may want to consider both the panel's recommended passing score and other sources of information when setting the final Praxis Audiology passing score (see Geisinger & McCormick, 2010). The Council may accept the recommended passing score, adjust it upward to reflect more stringent expectations, or adjust it downward to reflect more lenient expectations. There is no *correct* decision; the appropriateness of any adjustment may only be evaluated in terms of its meeting the Council's needs.

Two sources of information to consider when setting the passing score are the standard error of measurement (SEM) and the standard error of judgment (SEJ). The former addresses the reliability of Praxis Audiology scores and the latter, the reliability of panelists' passing-score recommendation. The SEM allows the Council to recognize that a Praxis Audiology score—any test score on any test—is less than perfectly reliable. A test score only approximates what a candidate *truly* knows or *truly* can do on the test. The SEM, therefore, addresses the question: How close of an approximation is the test score to the *true* score? The SEJ allows the Council to consider the likelihood that the recommended passing score from the current panel would be similar to passing scores recommended by other panels of

audiologists similar in composition and experience. The smaller the SEJ, the more likely is it that another panel would recommend a passing score consistent with the recommended passing score. The larger the SEJ, the less likely is it that the recommended passing score would be reproduced by another panel.

In addition to measurement error metrics (e.g., SEM, SEJ), the Council should consider the likelihood of classification error. That is, when adjusting a passing score, policymakers should consider whether it is more important to minimize a false positive decision or to minimize a false negative decision. A false positive decision occurs when a candidate's test score suggests he should receive a certificate, but his actual level of knowledge/skills indicates otherwise (i.e., the candidate does not possess the required knowledge/skills). A false negative occurs when a candidate's test score suggests that she should not receive a certificate, but she actually does possess the required knowledge/skills. The Council needs to consider which decision error may be more important to minimize.

### **Overview of the Praxis™ Audiology Test**

The Praxis Audiology *Test at a Glance* document (ETS, in press) describes the purpose and structure of the test. In brief, the test measures whether audiologists have the knowledge/skills believed necessary for independent practice. The results of a practice and curriculum analysis, Rosenfeld (2008), provided the foundation for the test.

The two-hour test contains 120 multiple-choice questions covering *Foundations* (approximately 12 questions); *Prevention and Identification* (approximately 12 questions); *Assessment* (approximately 48 questions); *Intervention* (approximately 36 questions); and *Professional Issues* (approximately 12 questions)<sup>1</sup>.

Candidate scores are reported as a total score; five category scores—one for each content area listed above—also are reported. The maximum total number of raw points that may be earned is 120. The reporting scale for the Praxis Audiology test (total score) ranges from 100 to 200 scaled-score points.

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<sup>1</sup> The number of questions for each content area may vary slightly from form to form of the test.

## **Processes and Methods**

The following section describes the processes and methods used to train panelists, gather panelists' judgments and to calculate a recommended passing score. (The agenda for the panel meeting is presented in the Appendix.)

The panelists were sent an e-mail explaining the purpose of the standard-setting study and requesting that they review the test content specifications (included in the *Test at a Glance* document, which was attached to the e-mail). The purpose of the review was to familiarize the panelists with the general structure and content of the test.

The standard-setting study began with a welcome and introduction from ASHA leadership. The ETS facilitator then explained how the test was developed, provided an overview of standard setting, and presented the agenda for the study.

### **Reviewing the Test**

The first activity was for the panelists to “take the test.” (Each panelist had signed a nondisclosure form.) The panelists were given approximately two hours to respond to the multiple-choice questions. The purpose of “taking the test” was for the panelists to become familiar with the test format, content, and difficulty. After “taking the test,” the panelists checked their responses against the answer key. How well the panelists did on the test was not shared with the panel.

The panelists then engaged in a discussion of the major content areas being addressed by the test; they were also asked to remark on any content areas that they thought would be particularly challenging for audiologists, and areas that addressed content that would be particularly important for audiologists.

### **Defining the Just Qualified Candidate**

Following the review of the test, panelists internalized the definition of the Just Qualified Candidate (JQC). The JQC is the candidate (test taker) who has the minimum level of knowledge/skills believed necessary to be a qualified audiologist. The JQC description is the operational definition of the passing score. The goal of the standard-setting process is to identify the test score that aligns with this definition of the JQC.

The panelists were split into smaller groups, and each group was asked to write down its definition of a JQC. Each group referred to the Praxis Audiology (0341) *Test at a Glance* to guide its

definition. Each group posted its definition on chart paper, and a full-panel discussion occurred to reach consensus on a final definition (see the consensus JQC definition in the Appendix).

### **Panelists' Judgments**

A probability-based Angoff method (Brandon, 2004; Hambleton & Pitoniak, 2006) was implemented to recommend the passing score. In this approach, for each multiple-choice question, a panelist decides on the likelihood (probability or chance) that a JQC would answer it correctly. Panelists made their judgments using the following rating scale: 0, .05, .10, .20, .30, .40, .50, .60, .70, .80, .90, .95, 1. The lower the value, the less likely it is that a JQC would answer the question correctly, because the question is difficult for the JQC. The higher the value, the more likely it is that a JQC would answer the question correctly.

The panelists were asked to approach the judgment process in two stages. First, they reviewed the definition of the JQC and the question and decided if, overall, the question was difficult for the JQC, easy for the JQC, or moderately difficult/easy. The facilitator encouraged the panelists to consider the following rule of thumb to guide their decision:

- Difficult questions for a JQC were in the 0 to .30 range.
- Moderately difficult/easy questions for a JQC were in the .40 to .60 range.
- Easy questions for a JQC were in the .70 to 1 range.

The second decision was for panelists to decide how they wanted to refine their judgment within the range. For example, if a panelist thought that a question was easy for a JQC, the initial decision located the question in the .70 to 1 range. The second decision was for the panelist to decide if the likelihood of answering it correctly was .70, .80, .90, .95, or 1.0. The two-stage decision-process was implemented to reduce the cognitive load placed on the panelists. The panelists practiced making their standard-setting judgments on three questions on the test.

### **Judgment of Content Specifications**

In addition to the standard-setting process, panelists judged the importance of the knowledge/skills stated or implied by the test content specifications for an audiologist seeking ASHA certification. These judgments addressed the perceived content-based validity of the test. Judgments



were made using a four-point scale—*Very Important*, *Important*, *Slightly Important*, and *Not Important*. Each panelist independently judged the importance of the knowledge/skills statements.

## Results

### Expert Panel

The panel included 15 ASHA-certified audiologists. In brief, seven were clinical service providers, two were educational audiologists, four were college/university faculty, one was a consultant audiologist and speech pathologist, and one was a school-based speech-language pathologist. Nine panelists held a clinical doctorate. Nearly half of the panel (7 of the 15 panelists) had between four and nine years of experience. Table 1 provides a more complete demographic description. (See Table A1 in the Appendix for a listing of panelists.)

**Table 1**  
***Panel Member Demographics***

|   | <i>N</i> | <i>%</i> |
|---|----------|----------|
| <b>Do you currently hold the ASHA Certificate of Clinical Competence (CCC) in audiology?</b>                              |          |          |
| Yes   | 15       | 100%     |
| No  | 0        | 0%       |
| <b>What is your primary employment function?</b>  |          |          |
| Clinical service provider   | 7        | 47%      |
| Educational audiologist   | 2        | 13%      |
| College/university faculty  | 4        | 27%      |
| Consultant audiologist & speech pathologist for rehab. hospital and skilled-nursing facility                              | 1        | 7%       |
| School speech-language pathologist  | 1        | 7%       |
| <b>What is your primary employment facility?</b>  |          |          |
| School (Public/private)   | 2        | 13%      |
| College/university  | 6        | 40%      |
| Hospital facility   | 1        | 7%       |
| Nonresidential health care facility (including private practice)  | 5        | 33%      |
| Hospital facility, residential health care facility, and nonresidential health care facility (including private practice) | 1        | 7%       |

**Table 1 (continued)*****Panel Member Demographics***

|   | <i>N</i> | <i>%</i> |
|---|----------|----------|
| <b>What is your highest educational level?</b>  |          |          |
| Master's Degree   | 3        | 20%      |
| Doctor of Philosophy  | 2        | 13%      |
| Doctor of Science   | 0        | 0%       |
| Clinical Doctorate  | 9        | 60%      |
| Doctor of Audiology   | 1        | 7%       |
| <b>Gender</b>   |          |          |
| Female  | 9        | 60%      |
| Male  | 6        | 40%      |
| <b>How many years of experience have you had as an audiologist?</b>   |          |          |
| 3 years or less   | 4        | 27%      |
| 4 - 6 years   | 5        | 33%      |
| 7 - 9 years   | 2        | 13%      |
| 10 - 12 years   | 1        | 7%       |
| 13 - 15 years   | 0        | 0%       |
| 16 years or more  | 3        | 20%      |
| <b>Have you had any experience supervising a newly graduated, entry-level audiologist in the past five (5) years?</b> |          |          |
| Yes   | 9        | 60%      |
| No  | 6        | 40%      |
| <b>Which one of the following best describes your ethnicity?</b>  |          |          |
| Hispanic or Latino  | 0        | 0%       |
| Not Hispanic or Latino  | 15       | 100%     |
| <b>Which of the following best describes your race?</b>   |          |          |
| Asian   | 2        | 13%      |
| Black or African American   | 2        | 13%      |
| White   | 11       | 73%      |

## **Initial Evaluation Forms**

The panelists completed an initial evaluation after receiving training on how to make standard-setting judgments. The primary information collected from this form was the panelists indicating if they had received adequate training to make their standard-setting judgments and were ready to proceed. All panelists indicated that they were prepared to make their judgments.

## **Summary of Standard-setting Judgments**

A summary of each round of standard-setting judgments is presented in Table 2. The numbers in each table reflect the recommended passing scores — the number of raw points needed to “pass” the assessment — of each panelist for the two rounds. The panel’s average recommended passing score and highest and lowest passing scores are reported, as are the standard deviations (SD) of panelists’ passing scores and the standard errors of judgment (SEJ). The SEJ is one way of estimating the reliability of the judgments<sup>2</sup>. It indicates how likely it would be for other panels of audiologists similar in makeup, experience, and standard-setting training to the current panel to recommend the same passing score on the same form of the test. A comparable panel’s passing score would be within 1 SEJ of the current average passing score 68 percent of the time and within 2 SEJs 95 percent of the time. The Round-2 SEJ is 1.99. One SEJ around the recommended passing score of 87 raw point spans 86 to 89 raw points, and two SEJs span 84 to 91 raw points.

Round-1 judgments are made without discussion among the panelists. The most variability in judgments, therefore, is typically present in the first round. Round-2 judgments, however, are informed by panel discussion; thus, it is common to see a decrease both in the standard deviation and SEJ. The Round-2 average total score is the panel’s recommended passing score.

The panel’s passing score recommendation for the Praxis Audiology test is 86.83 (see Table 2). The value was rounded to 87, the next highest whole number. The value of 87 represents approximately 73% of the total available 120 raw-score points that could be earned on the test. The scaled score associated with 87 raw points is 170 (on a 100 to 200 scale).

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<sup>2</sup> An SEJ assumes that panel members are randomly selected and that standard-setting judgments are independent. It is seldom the case that panel members are randomly sampled, and only Round-1 judgments may be considered independent. The SEJ, therefore, likely underestimates the uncertainty of passing scores (Tannenbaum & Katz, in press).

**Table 2*****Summary of Standard-setting Judgments***

| <b>Panelist</b> | <b>Round 1</b> | <b>Round 2</b> |
|-----------------|----------------|----------------|
| 1               | 66.45          | 74.10          |
| 2               | 65.10          | 83.30          |
| 3               | 78.70          | 79.90          |
| 4               | 84.25          | 85.95          |
| 5               | 88.00          | 89.10          |
| 6               | 69.35          | 78.50          |
| 7               | 91.85          | 92.65          |
| 8               | 98.90          | 98.35          |
| 9               | 93.30          | 94.90          |
| 10              | 95.25          | 94.90          |
| 11              | 91.10          | 91.30          |
| 12              | 83.15          | 85.35          |
| 13              | 78.65          | 82.55          |
| 14              | 72.05          | 75.95          |
| 15              | 98.45          | 95.60          |
| <b>Average</b>  | 83.64          | 86.83          |
| <b>SD</b>       | 11.50          | 7.70           |
| <b>SEJ</b>      | 2.97           | 1.99           |
| <b>Highest</b>  | 98.90          | 98.35          |
| <b>Lowest</b>   | 65.10          | 74.10          |

Table 3 presents the estimated conditional standard error of measurement (CSEM) around the recommended passing score. A standard error represents the uncertainty associated with a test score. The scaled scores associated with 1 and 2 CSEMs above and below the recommended passing score are provided. The conditional standard error of measurement provided is an estimate, given that the Praxis Audiology test (0341) has not yet been administered operationally.

**Table 3*****Passing Scores Within 1 and 2 CSEMs of the Recommended Passing Score***

| <b>Recommended Passing Score (CSEM)</b> |           | <b>Scale Score Equivalent</b> |
|---|-----------|-------------------------------|
|   | 87 (4.91) | 170                           |
| - 2 CSEMs                               | 78        | 160                           |
| -1 CSEM                                 | 83        | 166                           |
| +1 CSEM                                 | 92        | 176                           |
| + 2 CSEMs                               | 97        | 181                           |

*Note.* The unrounded CSEM value is added to or subtracted from the rounded passing-score recommendation. The resulting values are rounded up to the next highest whole number and the rounded values are converted to scaled scores.

**Summary of Content-specification Judgments**

Panelists judged the extent to which the knowledge/skills reflected by the Praxis Audiology (0341) content specifications were important audiologists seeking ASHA certification. Panelists rated the knowledge/skills statements on a four-point scale ranging from *Very Important* to *Not Important*. All of the statements (major content areas and sub-areas) were judged to be *Very Important* or *Important* by a majority of panelists. However, relative to the other major content areas, *Prevention and Identification* was judged to be of lesser importance; and two sub-areas, *Cochlear Implants* and *Tinnitus Management*, also were judged to be of lesser importance. The panelists' ratings are summarized in Table 4 (in Appendix).

## Summary of Final Evaluations

The panelists completed an evaluation form at the conclusion of the standard-setting study. The evaluation form asked the panelists to provide feedback about the quality of the standard-setting implementation. Table 5 (in Appendix) present the results of the final evaluations.

All panelists *strongly agreed* that they understood the purpose of the study; that the facilitator's instructions and explanations were clear; that they were prepared to make their standard-setting judgments; and that the process was easy to follow. Nine panelists indicated that they were *very comfortable* with the recommended passing score; and 11 panelists indicated that the recommended passing score was *about right*.

### Summary

To support the decision-making process for the Council with regards to establishing a passing score, or cut score, for Praxis Audiology (0341) test, research staff from Educational Testing Service (ETS) designed and conducted a standard-setting study. The study also collected content-related validity evidence to confirm the importance of the test content specifications for audiologists seeking ASHA certification.

The recommended passing score is provided to help the Council determine an appropriate operational passing score. For the Praxis Audiology test, the average recommended passing score is 87 (on the raw score metric), which represents 73% of the total available 120 raw score points. The scaled score associated with a raw score of 87 is 170 (on a 100 to 200 scale). The majority of panelists indicated that the recommended passing score was *about right*.

Panelists also judged the extent to which the knowledge/skills reflected by the content specifications were important for audiologists seeking ASHA certification. The favorable judgments of the panelists provided evidence that the content of the test is important.

## References

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## **Appendix**



## **AGENDA**

### **Standard-setting Study**

August 6, 2011

|          |  |
|----------|--|
| 8:30 am  | Welcome and Introduction<br><br><i>(Complete nondisclosure and biographical information forms)</i> |
| 8:45am   | Overview of Standard Setting and Workshop Events   |
| 9:15am   | Take the Audiology Assessment and Self Score<br><br><i>(Break, as needed)</i>                      |
| 11:30am  | Discuss the Audiology Assessment   |
| 12:00 pm | Lunch  |
| 12:45pm  | Define the Knowledge/Skills of a Just Qualified Candidate  |
| 3:00pm   | Break  |
| 3:15pm   | Standard-setting Training and Practice<br><br><i>(Complete ready-to-proceed form)</i>              |
| 4:00pm   | Round 1 Standard-setting Judgments   |
| 5:15pm   | Collect Materials; End of Day 1  |

## **AGENDA**

### **Standard-setting Study**

August 7, 2011

|          |  |
|----------|--|
| 9:00 am  | Overview of Day 2; Review Standard-setting Process |
| 9:30am   | Round 1 Standard-setting Judgments                 |
| 10:45am  | Break (Data analysis)                              |
| 11:15am  | Round 1 Feedback & Round 2 Judgments               |
| 12:00 pm | Lunch  |
| 12:45pm  | Round 1 Feedback & Round 2 Judgments               |
| 2:45pm   | Break  |
| 3:00pm   | Complete Specification Judgments                   |
| 3:30pm   | Feedback on Round 2 Recommended Passing Score      |
| 3:45pm   | Complete Final Evaluation                          |
| 4:00pm   | Collect Materials                                  |
| 4:15pm   | Closing Comments                                   |
| 4:30pm   | End of Study                                       |

**Description of a Just Qualified Candidate**  
(Developed by the Standard-setting Panel)

1. Explains anatomy, physiology, and development of auditory and vestibular systems.
2. Identifies relevant case history information for managing auditory and/or vestibular disorders and understand reports, interpret and appropriately respond to findings.
3. Understands hearing science including principles of sound and how it is processed through a normal and abnormal auditory system.
4. Understands pathologies/etiologies and risk factors underlying the breakdown of the normal functions of auditory/vestibular systems and can make appropriate preventive recommendations.
5. Uses best practices for infection control, calibrations, and equipment verification.
6. Selects appropriate (“Best Practice”) procedures and instrumentation for screening and assessing.
7. Makes best (EBP)/unbiased recommendations and/or referrals for intervention strategies.
8. Has in-depth understanding of principles and applications of re/habilitative treatments and/or technologies.
9. Validates and verifies measures of treatment provided.
10. Knows and applies counseling strategies for a diverse group of patients with respect to speech/hearing/balance disorders.
11. Is an educated consumer of research and chooses evidence-based practices as the highest standard of service.
12. Understands scope of practice, differentiating based on limitations due to education and training, coding and reimbursement, typical practices, and legal requirements.
13. Communicates verbal and written results and produces documentation consistent with audience and legal requirements (HIPAA).
14. Has basic knowledge of laws regarding educational and vocational settings.
15. Understands and follows legal standards and code of ethics set by ASHA and any/all other governing bodies (e.g., OSHA, IDEA, EHDI).
16. Has knowledge of the impact of hearing loss across the lifespan.

**Table A1*****Panelists Names and Affiliations***

| <b><u>Panelist</u></b> | <b><u>Affiliation</u></b>                       |
|------------------------|---|
| Tony Asay              | Sound Advice Hearing Doctors (AR)               |
| Gail S. Belus          | Arizona State University (AZ)                   |
| Christine E. Gibson    | Recovery School District (LA)                   |
| Elizabeth W. Graves    | Vanderbilt Bill Wilkerson Center (TN)           |
| John King              | Lowcountry Balance and Hearing, LLC (SC)        |
| Mithilesh Kumar        | Speech and Hearing Associates Inc. (TX)         |
| Nancy McKenna          | University of North Carolina – Chapel Hill (NC) |
| Donna Pitts            | Loyola University (MD)                          |
| Baljit Rehal           | Indiana University Health (IN)                  |
| Nathan A. Rhodes       | South Georgia Audiology and Hearing Center (GA) |
| Paul D. Rook           | Blount Hearing and Speech Services (TN)         |
| Laura Veazey           | University of Texas at Dallas (TX)              |
| Brian Vesely           | Sound Advice Hearing Doctors (MO)               |
| Kelly Wacker           | University of Nebraska at Lincoln (NE)          |
| Shani Whilby           | Lee County Schools (NC)                         |

**Table 4**  
*Specification Judgments*

|             |   | <b>Very<br/>Important</b> |             | <b>Important</b> |            | <b>Slightly<br/>Important</b> |           | <b>Not<br/>Important</b> |           |
|-------------|---|---------------------------|-------------|------------------|------------|-------------------------------|-----------|--------------------------|-----------|
|             |   | <i>N</i>                  | %           | <i>N</i>         | %          | <i>N</i>                      | %         | <i>N</i>                 | %         |
| <b>I.</b>   | <b>Foundations</b>                          | <b>12</b>                 | <b>80%</b>  | <b>3</b>         | <b>20%</b> | <b>0</b>                      | <b>0%</b> | <b>0</b>                 | <b>0%</b> |
| <b>II.</b>  | <b>Prevention and Identification</b>        | <b>10</b>                 | <b>67%</b>  | <b>5</b>         | <b>33%</b> | <b>0</b>                      | <b>0%</b> | <b>0</b>                 | <b>0%</b> |
|             | 1. Education and Prevention (Conservation)  | 8                         | 53%         | 7                | 47%        | 0                             | 0%        | 0                        | 0%        |
|             | 2. Screening and Risk Assessment            | 8                         | 53%         | 6                | 40%        | 1                             | 7%        | 0                        | 0%        |
| <b>III.</b> | <b>Assessment</b>                           | <b>15</b>                 | <b>100%</b> | <b>0</b>         | <b>0%</b>  | <b>0</b>                      | <b>0%</b> | <b>0</b>                 | <b>0%</b> |
|             | 1. Assessment Planning                      | 10                        | 67%         | 5                | 33%        | 0                             | 0%        | 0                        | 0%        |
|             | 2. Audiologic Evaluation - Behavioral       | 15                        | 100%        | 0                | 0%         | 0                             | 0%        | 0                        | 0%        |
|             | 3. Audiologic Evaluation - Physiologic      | 13                        | 87%         | 2                | 13%        | 0                             | 0%        | 0                        | 0%        |
|             | 4. Other Assessments and Evaluations        | 4                         | 27%         | 10               | 67%        | 1                             | 7%        | 0                        | 0%        |
|             | 5. Integrating Assessment Results           | 14                        | 93%         | 1                | 7%         | 0                             | 0%        | 0                        | 0%        |
|             | 6. Documentation and Communication          | 11                        | 73%         | 3                | 20%        | 1                             | 7%        | 0                        | 0%        |
| <b>IV.</b>  | <b>Intervention</b>                         | <b>14</b>                 | <b>93%</b>  | <b>1</b>         | <b>7%</b>  | <b>0</b>                      | <b>0%</b> | <b>0</b>                 | <b>0%</b> |
|             | 1. Treatment Planning                       | 9                         | 60%         | 5                | 33%        | 1                             | 7%        | 0                        | 0%        |
|             | 2. Device Selection                         | 10                        | 67%         | 5                | 33%        | 0                             | 0%        | 0                        | 0%        |
|             | 3. Hearing Aids                             | 11                        | 73%         | 4                | 27%        | 0                             | 0%        | 0                        | 0%        |
|             | 4. Cochlear Implants                        | 5                         | 33%         | 7                | 47%        | 3                             | 20%       | 0                        | 0%        |
|             | 5. Device Verification and validation       | 12                        | 80%         | 3                | 20%        | 0                             | 0%        | 0                        | 0%        |
|             | 6. Audiologic (Re)habilitation/Intervention | 8                         | 53%         | 6                | 40%        | 1                             | 7%        | 0                        | 0%        |
|             | 7. Tinnitus Management                      | 2                         | 13%         | 9                | 60%        | 4                             | 27%       | 0                        | 0%        |
|             | 8. Vestibular Rehabilitation                | 6                         | 40%         | 8                | 53%        | 1                             | 7%        | 0                        | 0%        |
|             | 9. Counseling                               | 9                         | 60%         | 5                | 33%        | 1                             | 7%        | 0                        | 0%        |
|             | 10. Documentation and Communication         | 10                        | 67%         | 4                | 27%        | 1                             | 7%        | 0                        | 0%        |
| <b>V.</b>   | <b>Professional Issues</b>                  | <b>13</b>                 | <b>87%</b>  | <b>1</b>         | <b>7%</b>  | <b>1</b>                      | <b>7%</b> | <b>0</b>                 | <b>0%</b> |
|             | 1. Professional Practice                    | 8                         | 53%         | 5                | 33%        | 2                             | 13%       | 0                        | 0%        |
|             | 2. Legal and Ethical Practice and Advocacy  | 14                        | 93%         | 0                | 0%         | 1                             | 7%        | 0                        | 0%        |
|             | 3. Evidence-Based Practice                  | 12                        | 80%         | 3                | 20%        | 0                             | 0%        | 0                        | 0%        |

**Table 5*****Final Evaluations***

|   | <b>Strongly agree</b> |      | <b>Agree</b> |     | <b>Disagree</b> |    | <b>Strongly disagree</b> |    |
|---|-----------------------|------|--------------|-----|-----------------|----|--------------------------|----|
|   | <i>N</i>              | %    | <i>N</i>     | %   | <i>N</i>        | %  | <i>N</i>                 | %  |
| • I understood the purpose of this study.   | 15                    | 100% | 0            | 0%  | 0               | 0% | 0                        | 0% |
| • The instructions and explanations provided by the facilitators were clear.  | 15                    | 100% | 0            | 0%  | 0               | 0% | 0                        | 0% |
| • The training in the standard-setting method was adequate to give me the information I needed to complete my assignment. | 15                    | 100% | 0            | 0%  | 0               | 0% | 0                        | 0% |
| • The explanation of how the recommended passing score is computed was clear.   | 14                    | 93%  | 1            | 7%  | 0               | 0% | 0                        | 0% |
| • The opportunity for feedback and discussion between rounds was helpful.   | 12                    | 80%  | 3            | 20% | 0               | 0% | 0                        | 0% |
| • The process of making the standard-setting judgments was easy to follow.  | 15                    | 100% | 0            | 0%  | 0               | 0% | 0                        | 0% |

**Table 5 (continued)*****Final Evaluations***

| How influential was each of the following factors in guiding your standard-setting judgments? | Very Influential |         | Somewhat Influential |         | Not Influential        |         |                    |         |
|---|------------------|---------|----------------------|---------|------------------------|---------|--------------------|---------|
|   | <i>N</i>         | Percent | <i>N</i>             | Percent | <i>N</i>               | Percent |                    |         |
| • The definition of the JQC   | 14               | 93%     | 1                    | 7%      | 0                      | 0%      |                    |         |
| • The between-round discussions   | 5                | 33%     | 10                   | 67%     | 0                      | 0%      |                    |         |
| • The knowledge/skills required to answer each test question                                  | 11               | 73%     | 4                    | 27%     | 0                      | 0%      |                    |         |
| • The passing scores of other panelists   | 0                | 0%      | 11                   | 73%     | 4                      | 27%     |                    |         |
| • My own professional experience  | 4                | 27%     | 10                   | 67%     | 1                      | 7%      |                    |         |
|   | Very Comfortable |         | Somewhat Comfortable |         | Somewhat Uncomfortable |         | Very Uncomfortable |         |
|   | <i>N</i>         | Percent | <i>N</i>             | Percent | <i>N</i>               | Percent | <i>N</i>           | Percent |
| • Overall, how comfortable are you with the panel's recommended passing score?                | 9                | 60%     | 5                    | 33%     | 1                      | 7%      | 0                  | 0%      |
|   | Too Low          |         | About Right          |         | Too High               |         |                    |         |
|   | <i>N</i>         | Percent | <i>N</i>             | Percent | <i>N</i>               | Percent |                    |         |
| • Overall, the recommended passing score is:  | 4                | 27%     | 11                   | 73%     | 0                      | 0%      |                    |         |

# CURRENT LICENSE POPULATION

AS OF 12/31/2011

## AU / DAU

|              |     |
|--------------|-----|
| Active AU    | 593 |
| Active DAU   | 920 |
| Inactive     | 121 |
| Renewal Hold | 25  |
| Delinquent   | 263 |

## HAD

|            |     |
|------------|-----|
| Active     | 930 |
| Inactive   | 56  |
| Delinquent | 136 |

## SLP

|              |        |
|--------------|--------|
| Active       | 11,482 |
| Inactive     | 1,036  |
| Renewal Hold | 218    |
| Delinquent   | 1,940  |

## HAD TEMP TRAINEES

|            |    |
|------------|----|
| Active     | 90 |
| Inactive   | 2  |
| Delinquent | 25 |

## SLP ASSISTANTS

|              |       |
|--------------|-------|
| Active       | 1,446 |
| Inactive     | 78    |
| Renewal Hold | 30    |
| Delinquent   | 312   |

## HAD TEMPORARY

|        |    |
|--------|----|
| Active | 10 |
|--------|----|

## RPE TEMP

|            |     |
|------------|-----|
| Active     | 731 |
| Delinquent | 79  |

## HAD BRANCH OFFICE

|            |     |
|------------|-----|
| Active     | 581 |
| Delinquent | 135 |

## REGISTERED AIDES

|            |     |
|------------|-----|
| Active     | 202 |
| Delinquent | 69  |



## 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 | 27       | 66  | 12    | 40  | 15    | 26  |       |     |       |     |
| Closed             | 99       | 131 | 113     | 172 | 20       | 62  | 7     | 44  | 13    | 18  |       |     |       |     |
| Pending            | 61       | 88  | 43      | 103 | 101      | 228 | 49    | 104 | 52    | 124 |       |     |       |     |

|  | FY 09/10   |            | FY10/11   |            | FY 11/12  |           | QTR 1     |           | QTR 2     |           | QTR 3    |          | QTR 4    |          |
|--|------------|------------|-----------|------------|-----------|-----------|-----------|-----------|-----------|-----------|----------|----------|----------|----------|
| VIOLATION TYPE OF<br>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<br>State/Agency  | 0          | 0          | 1         | 0          | 0         | 0         | 0         | 0         | 0         | 0         |          |          |          |          |
| Incompleteness/Negligence              | 4          | 10         | 6         | 11         | 13        | 3         | 7         | 2         | 6         | 1         |          |          |          |          |
| Unprofessional Conduct                 | 14         | 123        | 19        | 113        | 22        | 39        | 17        | 25        | 5         | 14        |          |          |          |          |
| Unlicensed/Unregistered<br>Activity    | 16         | 16         | 7         | 16         | 7         | 15        | 5         | 6         | 2         | 9         |          |          |          |          |
| Criminal<br>Charges/Convictions        | 33         | 5          | 26        | 18         | 12        | 2         | 10        | 2         | 2         | 0         |          |          |          |          |
| Substance Abuse                        | 0          | 0          | 1         | 0          | 0         | 0         | 0         | 0         | 0         | 0         |          |          |          |          |
| Fraud                                  | 3          | 6          | 7         | 6          | 9         | 3         | 9         | 3         | 0         | 0         |          |          |          |          |
| Non-Jurisdictional                     | 1          | 5          | 0         | 0          | 0         | 2         | 0         | 1         | 0         | 1         |          |          |          |          |
| Other                                  | 51         | 0          | 5         | 2          | 1         | 2         | 1         | 1         | 0         | 1         |          |          |          |          |
| <b>TOTAL</b>                           | <b>122</b> | <b>165</b> | <b>72</b> | <b>166</b> | <b>64</b> | <b>66</b> | <b>49</b> | <b>40</b> | <b>15</b> | <b>26</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

Advertising Violations: FY 09/10-62, FY 10/11-58

| CLOSED COMPLAINT'S<br>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  | 3     | 16  | 0     | 12  | 3     | 4   |       |     |       |     |
| 4 - 6 Months                           | 9     | 8   | 12    | 31  | 6     | 8   | 1     | 5   | 5     | 3   |       |     |       |     |
| 7 - 12 Months                          | 6     | 1   | 13    | 50  | 3     | 18  | 0     | 13  | 3     | 5   |       |     |       |     |
| 13 - 24 Months                         | 2     | 1   | 27    | 38  | 2     | 19  | 0     | 13  | 2     | 6   |       |     |       |     |
| 15 - 36 Months                         | 13    | 3   | 16    | 10  | 0     | 1   | 0     | 1   | 0     | 0   |       |     |       |     |

## ENFORCEMENT STATISTICS

|                           | FY 09/10 |     | FY10/11 |     | FY 11/12 |     | QTR 1 |     | QTR 2 |     | QTR 3 |     | QTR 4 |     |
|---------------------------|----------|-----|---------|-----|----------|-----|-------|-----|-------|-----|-------|-----|-------|-----|
| INVESTIGATION<br>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  | 12       | 14  | 11    | 4   | 1     | 10  |       |     |       |     |
| Closed                    | 3        | 34  | 15      | 11  | 6        | 15  | 6     | 9   | 0     | 6   |       |     |       |     |
| Pending                   | 23       | 19  | 8       | 20  | 47       | 42  | 40    | 19  | 7     | 23  |       |     |       |     |

| CLOSED<br>INVESTIGATION'S<br>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     | 1   | 0     | 0   | 0     | 1   |       |     |       |     |
| 4 - 6 Months                                  | 1     | 2   | 4     | 2   | 3     | 2   | 3     | 2   | 0     | 0   |       |     |       |     |
| 7 - 12 Months                                 | 0     | 20  | 12    | 2   | 0     | 6   | 0     | 4   | 0     | 2   |       |     |       |     |
| 13 - 24 Months                                | 0     | 9   | 5     | 6   | 3     | 5   | 3     | 2   | 0     | 3   |       |     |       |     |
| 15 - 36 Months                                | 2     | 3   | 1     | 1   | 0     | 1   | 0     | 1   | 0     | 0   |       |     |       |     |

|  | FY 09/10  |            | FY10/11    |            | FY 11/12  |           | QTR 1    |           | QTR 2     |           | QTR 3    |          | QTR 4    |          |
|--|-----------|------------|------------|------------|-----------|-----------|----------|-----------|-----------|-----------|----------|----------|----------|----------|
| COMPLAINT<br>DISPOSITION &<br>CLOSED<br>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         | 4         | 11        | 1        | 8         | 3         | 3         |          |          |          |          |
| Information on File                                    | 21        | 14         | 29         | 36         | 0         | 8         | 0        | 5         | 0         | 3         |          |          |          |          |
| Insufficient Evidence                                  | 4         | 8          | 5          | 10         | 3         | 7         | 0        | 2         | 3         | 5         |          |          |          |          |
| Subject Educated                                       | 9         | 38         | 5          | 42         | 1         | 8         | 0        | 7         | 1         | 1         |          |          |          |          |
| Non-Jurisdictional                                     | 0         | 7          | 0          | 2          | 1         | 2         | 0        | 1         | 1         | 1         |          |          |          |          |
| Compliance Obtained                                    | 0         | 1          | 1          | 0          | 0         | 1         | 0        | 1         | 0         | 0         |          |          |          |          |
| Referred to Gov't Agency                               | 0         | 0          | 0          | 0          | 0         | 1         | 0        | 1         | 0         | 0         |          |          |          |          |
| Other  | 9         | 23         | 17         | 33         | 1         | 8         | 1        | 7         | 0         | 1         |          |          |          |          |
| Citation   | 34        | 2          | 17         | 5          | 4         | 8         | 4        | 5         | 0         | 3         |          |          |          |          |
| Conditional Licenses                                   | 1         | 0          | 1          | 0          | 0         | 0         | 0        | 0         | 0         | 0         |          |          |          |          |
| Referred tp AG/DA                                      | 8         | 21         | 16         | 19         | 5         | 3         | 1        | 3         | 4         | 0         |          |          |          |          |
| Mediated   | 0         | 6          | 1          | 7          | 1         | 5         | 0        | 4         | 1         | 1         |          |          |          |          |
| <b>TOTAL</b>   | <b>99</b> | <b>131</b> | <b>113</b> | <b>172</b> | <b>20</b> | <b>62</b> | <b>7</b> | <b>44</b> | <b>13</b> | <b>18</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

## 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         | 2         | 4        | 0        | 2        | 2         | 2        |          |          |          |          |
| Tolled               | 6         | 0        | 28        | 3         | 12        | 2        | 6        | 1        | 6         | 1        |          |          |          |          |
| Conditional Licenses | 8         | 0        | 26        | 0         | 2         | 0        | 0        | 0        | 2         | 0        |          |          |          |          |
| <b>TOTAL</b>         | <b>24</b> | <b>4</b> | <b>85</b> | <b>10</b> | <b>16</b> | <b>6</b> | <b>6</b> | <b>3</b> | <b>10</b> | <b>3</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

| 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     | 8   | 4     | 5   | 0     | 3   |       |     |       |     |

|                  | 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   | 4        | 3   | 1     | 3   | 3     | 0   |       |     |       |     |
| Closed           | 7        | 5   | 3       | 2   | 2        | 2   | 0     | 1   | 2     | 1   |       |     |       |     |
| Pending          | 11       | 7   | 23      | 7   | 40       | 13  | 21    | 6   | 19    | 7   |       |     |       |     |

| 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   | 0     | 0   |       |     |       |     |
| 1 - 2 Years                       | 3     | 1   | 1     | 0   | 0     | 0   | 0     | 0   | 0     | 0   |       |     |       |     |
| 2 - 3 Years                       | 0     | 0   | 1     | 1   | 0     | 1   | 0     | 0   | 0     | 1   |       |     |       |     |
| 3 - 4 Years                       | 0     | 0   | 0     | 1   | 2     | 0   | 0     | 0   | 2     | 0   |       |     |       |     |
| 4+ Years                          | 1     | 0   | 0     | 0   | 0     | 1   | 0     | 1   | 0     | 0   |       |     |       |     |

|                                     | 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        | 0        | 0        |          |          |          |          |
| Statement of Issues                 | 0        | 0        | 0        | 1        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| Petition for Penalty Relief         | 1        | 0        | 1        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| Petition for Psychiatric Evaluation | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| <b>TOTAL</b>                        | <b>4</b> | <b>2</b> | <b>7</b> | <b>3</b> | <b>6</b> | <b>0</b> | <b>6</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

## ENFORCEMENT STATISTICS

|  | FY 09/10 |          | FY10/11  |          | FY 11/12 |          | QTR 1    |          | QTR 2    |          | QTR 3    |          | QTR 4    |          |
|--|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| ADMINISTRATIVE<br>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        | 0        | 0        |          |          |          |          |
| Revocation, Stayed, Prob                 | 3        | 1        | 0        | 1        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| Rev, Stayed, Prob, Susp                  | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| License Surrender                        | 1        | 0        | 2        | 1        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| License Denied                           | 0        | 2        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| Petition for Penalty Relief<br>Denied    | 0        | 0        | 2        | 0        | 1        | 0        | 0        | 0        | 1        | 0        |          |          |          |          |
| Petition for Penalty Relief<br>Granted   | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| Petition for Penalty Relief<br>Withdrawn | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| Reprimands/Reprovals                     | 0        | 0        | 1        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| Stipulated Settlement                    | 1        | 0        | 0        | 0        | 2        | 0        | 0        | 0        | 2        | 0        |          |          |          |          |
| ISO's Ordered                            | 0        | 0        | 0        | 0        | 1        | 0        | 0        | 0        | 1        | 0        |          |          |          |          |
| Declined by AG                           | 2        | 1        | 0        | 0        | 0        | 1        | 0        | 1        | 0        | 0        |          |          |          |          |
| Conditional License                      | 0        | 1        | 0        | 0        | 2        | 0        | 0        | 0        | 2        | 0        |          |          |          |          |
| Discipline Suspended                     | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 1        |          |          |          |          |
| <b>TOTAL</b>                             | <b>7</b> | <b>5</b> | <b>5</b> | <b>2</b> | <b>6</b> | <b>2</b> | <b>0</b> | <b>1</b> | <b>6</b> | <b>1</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

|                                       | FY 09/10 |          | FY10/11  |          | FY 11/12 |          | QTR 1    |          | QTR 2    |          | QTR 3    |          | QTR 4    |          |
|---------------------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| DECISIONS - TYPE OF<br>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<br>State/Agency | 0        | 0        | 0        | 0        | 1        | 0        | 0        | 0        | 1        | 0        |          |          |          |          |
| Incompetence/Negligence               | 4        | 0        | 1        | 0        | 0        | 0        | 0        | 0        | 0        | 0        |          |          |          |          |
| Unprofessional Conduct                | 0        | 1        | 0        | 0        | 0        | 1        | 0        | 0        | 0        | 1        |          |          |          |          |
| Unlicensed/Unregisterd<br>Activity    | 1        | 0        | 0        | 0        | 1        | 1        | 0        | 1        | 1        | 0        |          |          |          |          |
| Criminal<br>Charges/Convictions       | 1        | 3        | 1        | 0        | 2        | 0        | 0        | 0        | 2        | 0        |          |          |          |          |
| Fraud                                 | 0        | 1        | 1        | 2        | 1        | 0        | 0        | 0        | 1        | 0        |          |          |          |          |
| Other                                 | 1        | 0        | 1        | 0        | 1        | 0        | 0        | 0        | 1        | 0        |          |          |          |          |
| <b>TOTAL</b>                          | <b>7</b> | <b>5</b> | <b>4</b> | <b>2</b> | <b>6</b> | <b>2</b> | <b>0</b> | <b>1</b> | <b>6</b> | <b>1</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> |

## HAD Practical Exam - November 2011

| Candidate Type |           | Passed | Percentages | Failed | Percentages |
|----------------|-----------|--------|-------------|--------|-------------|
| HAD Applicants | 27        | 16     | 59%         | 11     | 41%         |
| AU             | 23        | 12     | 52%         | 11     | 48%         |
| RPE            | 1         | 1      | 100%        | 0      | 0%          |
| Aide           | 0         | 0      |             | 0      |             |
| M.D.           | 3         | 1      | 33%         | 2      | 66%         |
| <b>TOTAL</b>   | <b>54</b> | 30     |             | 24     |             |

### PASSED

HAD Applicants    10 candidates passed the 1st time  
                              3 candidates took 2 times to pass  
                              3 candidates took 3- 5 times to pass

AU                    10 candidates passed the 1st time  
                              1 candidate took 2 times to pass  
                              1 candidate took 4 times to pass

RPE                  1 candidates passed the 1st time

MD                   1 candidate passed the 1st time

### FAILED

HAD Applicants    9 candidates failed for the 1st time  
                              1 candidates failed for the 2nd time  
                              1 candidates failed for the 4th time

AU                    10 candidates failed for the 1st time  
                              1 candidates failed for the 3rd time

MD                   2 candidates failed for the 1st time

## 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              | 37      | 9   | 10  | 6   | 25  | 8   | 3   | 1   | 12  |     |     |     | 0  |     |     |     | 0  |
| DAU                               | 946             | 73              | 14      | 0   | 12  | 2   | 14  | 0   | 0   | 0   | 0   |     |     |     | 0  |     |     |     | 0  |
| SLP                               | 692             | 734             | 430     | 66  | 107 | 73  | 246 | 38  | 90  | 56  | 184 |     |     |     | 0  |     |     |     | 0  |
| SLPA - <i>(Registered)</i>        | 290             | 312             | 239     | 34  | 61  | 50  | 145 | 43  | 37  | 14  | 94  |     |     |     | 0  |     |     |     | 0  |
| RPE'S                             | 566             | 555             | 494     | 65  | 115 | 106 | 286 | 92  | 69  | 47  | 208 |     |     |     | 0  |     |     |     | 0  |
| SLP Issued                        | 529             | 513             | 475     | 53  | 112 | 104 | 269 | 91  | 68  | 47  | 206 |     |     |     | 0  |     |     |     | 0  |
| AU Issued                         | 37              | 42              | 19      | 12  | 3   | 2   | 17  | 1   | 1   | 0   | 2   |     |     |     | 0  |     |     |     | 0  |
| AIDES - <i>(Approved)</i>         | 63              | 52              | 25      | 2   | 0   | 2   | 4   | 5   | 7   | 9   | 21  |     |     |     | 0  |     |     |     | 0  |
| SLP Issued                        | 27              | 24              | 10      | 1   | 0   | 0   | 1   | 1   | 5   | 3   | 9   |     |     |     | 0  |     |     |     | 0  |
| AU Issued                         | 36              | 28              | 15      | 1   | 0   | 2   | 3   | 4   | 2   | 6   | 12  |     |     |     | 0  |     |     |     | 0  |
| CPD PROVIDERS - <i>(Approved)</i> | 14              | 16              | 9       | 1   | 4   | 1   | 6   | 1   | 2   | 0   | 3   |     |     |     | 0  |     |     |     | 0  |
| HAD Permanant                     | 89              | 50              | 36      | 0   | 22  | 4   | 26  | 1   | 0   | 9   | 10  |     |     |     | 0  |     |     |     | 0  |
| HAD Trainees                      | 98              | 77              | 47      | 8   | 11  | 7   | 26  | 4   | 8   | 9   | 21  |     |     |     | 0  |     |     |     | 0  |
| HAD Licensed in Another State     | 15              | 12              | 2       | 0   | 0   | 0   | 0   | 0   | 1   | 1   | 2   |     |     |     | 0  |     |     |     | 0  |
| APPLICANTS (hand count)           | <i>no count</i> | <i>no count</i> | 35      | 5   | 8   | 7   | 20  | 3   | 6   | 6   | 15  |     |     |     | 0  |     |     |     | 0  |
| HAD Branch Office                 | 192             | 205             | 83      | 13  | 20  | 13  | 46  | 5   | 16  | 16  | 37  |     |     |     | 0  |     |     |     | 0  |