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

July 26, 2012
Wyndham Garden Hotel
"Aztec Room"
3737 Sports Arena Blvd
San Diego, CA
(916) 263-2666

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
Claire Yazigi, Legal Counsel
Breanne Humphreys, Staff
Yvonne Crawford, Staff
Ily Mason, Staff

Board Members Present
Monty Martin, M.A.
Carol Murphy, M.A.

Guests Present
Cliff Johnson,
Tricia Hunter, HHP CA
Jacque Georgeson, SDSU
Don Tucker, HHP

I. Call to Order

Chairperson Manning called the meeting to order at 1:15 p.m.

II. Introductions

Those present introduced themselves.

III. Approval of the January 13, 2012 Hearing Aid Dispensers Committee Meeting Minutes

The Committee made minor edits to the minutes.

M/S/C: Grimes/Danz

The Committee voted to approve the minutes as amended.

IV. Review Public Comments to Amendments to the Hearing Aid Dispenser's Advertising Regulations and Related Guidelines (California Code of Regulations Section 1399.127)

Ms. Del Mugnaio reviewed the public comments and recent Board discussion regarding suggested changes to the advertising regulations. The following changes were discussed:

- Place restrictions on advertisements that appear to be a medical research study instead of a marketing strategy.
- Use of the term Audioprosthologist
- Add provisions for including the licensee's name and license number on the advertisements for a specific hearing aid location
- Provide greater clarity on advertising pricing for hearing aids
- Clarify the manner in which professional certifications should be represented to the public

Ms. Del Mugnaio explained that the goal of the Committee is to develop language or advertising concepts that will clarify existing advertising expectations. She stated that she sought comments and suggestions regarding amendments to the advertising regulations from consumer groups, senior groups, members of the Hearing Healthcare Providers (HHP), and members of the California Academy of Audiology (CAA).

Ms. Grimes stated that one of the more egregious misleading advertisements are those which claim that a particular hearing aid can completely eliminate background noise as no existing product has the technology to do that.

Ms. Del Mugnaio responded that any advertisement which makes false claims or creates a false or unjustified expectation of a favorable result is a violation of law pursuant to Business and Professions Code Section 651.

Ms. Grimes inquired regarding the number of complaints the Board receives regarding false or misleading advertisements and whether such complaints are levied by consumers.

Ms. Del Mugnaio stated that a large majority of the complaints received about hearing aid dispensers are relative to misleading advertising, however, such complaints are typically levied by industry professionals.

The Committee determined that the examples as currently provided in regulation are confusing and should be eliminated.

The Committee delegated to Ms. Yazigi and Ms. Del Mugnaio the task of crafting clarifying advertising regulations for review by the Committee members.

Ms. Yazigi asked the Committee for some guiding principles in order to craft amended provisions.

The Committee requested the proposed language be general but provide for implementing language of B&P Code Section 651 regarding misleading advertisements.

Ms. Yazigi stated that she will provide the Committee members with the text of B&P Code Section 651 for reference prior to the next Committee meeting.

V. Update Regarding the Exemption Request of the Federal Drug Administration on Mail Order and Catalog Sales of Hearing Aids (Business & Professions Code Section 2539.2)

Ms. Del Mugnaio stated that the exemption request was mailed to the Federal Drug Administration (FDA) on May 30, 2012 and there has been no response received to date.

Ms. Yazigi commented that the FDA has a regulatory obligation to respond to an exemption request within sixty (60) days.

Ms. Del Mugnaio agreed to follow-up with the FDA.

Ms. Del Mugnaio reported that she has shared the Board's exemption request letter with hearing aid dispensers licensing agencies' in other states as well as the International Hearing Society.

Chairperson Manning adjourned the meeting at 2:10 p.m.

Title 16 California Code of Regulations

Division 13.3

Proposed changes to Section 1399.127 ("Advertising")

10/01/12 Draft

***Bold indicates language currently in Section 1399.127**

(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) False or misleading advertising includes but is not limited to advertising which violates any provision of Article 8 of Chapter 5.3 of Division 2 of the Business and Professions Code or which does not comply with any one of the following requirements. Advertisement on behalf of a licensee must do all of the following:

(1) Include the following information:

(A) The dispenser's name and address as they appear on the hearing aid dispenser license;

(B) License number, including the letters 'HAD' or 'DAU', as appropriate; and

(C) Licensee telephone number. If a telephone number appears in an advertisement or on an advertising sign, this number shall be the same number as that listed for the dispenser's firm name and address in the telephone directory, or in the telephone company records if such number is assigned to the dispenser subsequent to the publication of such telephone directory;

(2) If advertising a hearing test, state that such test is not diagnostic but only to properly fit and sell hearing aids;

(3) If including an educational degree, specify the **degree and field**. The use of the title "Dr." is not sufficient for purposes of specifying the degree where the degree is a non-medical doctorate;

(4) If including a job title or dispenser's certification by a professional organization, include the entire, fully-spelled name of the job title or certification and certifying organization. Any job title, certification, or words of like import listed in an advertisement must represent an

actual job title, credential, or certification, and must not be misleading. [Possible additional language: Any certifications claimed must be those issued upon successful completion of an oral and written examination based on psychometric principles; and training and experience subsequent to such examinations, to assure competent practice in the dispensing of hearing aids as determined by the professional organization granting the certification – or list the organizations whose certifications the Board will recognize];

(5) **Not utilize a business name that is so broad as to connote comprehensive and diagnostic hearing services**. Advertisements and business names must not include the word 'Hearing' without being immediately followed by the word 'Aid,' unless the dispenser is also licensed as a physician or audiologist;

(6) Not include information that suggests that the offer of new technology is part of a research project when it is not;

(7) **Not include the term "specialist" when referencing licensure without including the title "hearing aid dispenser";** and

(8) **Not include sending to a consumer preset appointment information or "rebate coupons" that resemble checks as part of a direct mail solicitation.**

(c) An advertisement of price must do all of the following:

(1) Be **exact**, and disclose **any conditions or other variables to an advertised price**;

(2) If including price comparison, base such comparison on **verifiable data.** Such data must be retained by the licensee for one year after the advertisement is published;

(3) Specify whether the hearing aids are one-size-fits all or will be made to conform to an ear mold; and

(4) Not have the capacity to mislead the public as to the extent that anticipated goods or services are included in the advertised price. If consumers will likely need to purchase additional related goods or services, the advertisement must disclose this fact. [Possible additional language: Any such disclosure statement shall indicate that many instances of performance of the service involve extra cost and, if the dispenser reasonably expects that the extra cost will be more than 25% of the advertised costs, that the extra cost may be substantial. The type size of the disclosure statement shall be at least1/2 the type size used in the advertised price, but no smaller than 8 point font, and the statement shall either be shown near the

price or shall be prominently footnoted through use of an asterisk or similar reference. The advertisement must also disclose any additional services not part of the procedure but for which the consumer will be charged, together with the fees for such services.].

(d) An advertisement of discount must:

(1) List either the dollar amount of the non-discounted fee for the hearing aid or provide consumers with a method to ascertain the actual price, like Manufacturer's Suggested Retail Price;

(2) List either the dollar amount of the discount fee or the percentage of the discount for the specific device;

(3) Inform the public of the **dates on which the sale or discount price will be in effect if the sale or discount price is a limited time offer**; and

(4) Identify specific groups who qualify for the discount or any other terms and conditions or restrictions for qualifying for the discount.

(e) An advertisement shall not be used to entice the consumer into a more costly transaction than the advertised item or service at the advertised price.

(f) **Any national advertisement published in California shall comply with all applicable state and federal laws and regulations.**

NOTE: Authority Cited: Section 651, 2531.06 and 2531.95, Business and Professions Code. Reference: Sections 651 and 17500, Business and Professions Code.

Comments: Sandra Danz

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Division 13.3

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(1) Include the following information:

(A) The dispenser's name and address as they appear on the hearing aid dispenser license; *(There are some forms of advertising that may cover a number of office locations, thus include many different licensees. In the case of a large National corporation, there may be one letter signed only by the President of the company. Prospective buyers would then call a number and be directed to the office location closest to their residence. Again, I do not see how this is a consumer protection issue. The financial burden placed on large corporations to customize advertising for each office location, on the other hand, seems unreasonable).*

(B) License number, including the letters 'HAD' or 'DAU', as appropriate; and

(C) Licensee telephone number. If a telephone number appears in an advertisement or on an advertising sign, this number shall be the same number as that listed for the dispenser's firm name and address in the telephone directory, or in the telephone company records if such number is assigned to

the dispenser subsequent to the publication of such telephone directory; *(I see this as problematic as many corporations utilize unique telephone numbers that enable their marketing departments to track the success of various types of advertising. I fail to see how this is a consumer protection issue. I seem to recall that, when discussed at the last board meeting, we were all in agreement on this matter).*

(2) If advertising a hearing test, state that such test is not diagnostic but only to properly fit and sell hearing aids;

(3) If including an educational degree, specify the **degree and field**. The use of the title "Dr." is not sufficient for purposes of specifying the degree where the degree is a non-medical doctorate;

(4) If including to a job title or dispenser's certification by a professional organization, include the entire, fully-spelled name of the job title or certification and certifying organization. Any job title, certification, or words of like import listed in an advertisement must represent an actual job title, credential, or certification, and must not be misleading. [Possible additional language: Any certifications claimed must be those issued upon successful completion of an oral and written examination based on psychometric principles; and training and experience subsequent to such examinations, to assure competent practice in the dispensing of hearing aids as determined by the professional organization granting the certification – or list the organizations whose certifications the Board will recognize];

(5) **Not utilize a business name that is so broad as to connote comprehensive and diagnostic hearing services**. Advertisements and business names must not include the word 'Hearing' without being immediately followed by the word 'Aid,' unless the dispenser is also licensed as a physician or audiologist; *(Again, problematic as we are seeing more and more blended practices and corporations that employ both Audiologists and Dispensers. If an Audiologist and a Dispenser are working in the same practice they may call the practice a "Hearing Center" yet if they Audiologists should leave, even temporarily, the practice would be in violation, based on this definition. I once again fail to see this as a consumer protection issue)*

(6) Not include information that suggests that the offer of new technology is part of a research project when it is not;

(7) **Not include the term "specialist" when referencing licensure without including the title "hearing aid dispenser";** and

(8) **Not include sending to a consumer preset appointment information or "rebate coupons" that resemble checks as part of a direct mail solicitation.**

(c) An advertisement of price must do all of the following:

(1) Be **exact**, and disclose **any conditions or other variables to an advertised price**;

(2) If including price comparison, base such comparison on **verifiable data.** Such data must be retained by the licensee for one year after the advertisement is published;

(3) Specify whether the hearing aids are one-size-fits all or will be made to conform to an ear mold; and

(4) Not have the capacity to mislead the public as to the extent that anticipated goods or services are included in the advertised price. If consumers will likely need to purchase additional related goods or services, the advertisement must disclose this fact. [Possible additional language: Any such disclosure statement shall indicate that many instances of performance of the service involve extra cost and, if the dispenser reasonably expects that the extra cost will be more than 25% of the advertised costs, that the extra cost may be substantial. The type size of the disclosure statement shall be at least1/2 the type size used in the advertised price, but no smaller than 8 point font, and the statement shall either be shown near the price or shall be prominently footnoted through use of an asterisk or similar reference. The advertisement must also disclose any additional services not part of the procedure but for which the consumer will be charged, together with the fees for such services.].

(d) An advertisement of discount must:

(1) List either the dollar amount of the non-discounted fee for the hearing aid or provide consumers with a method to ascertain the actual price, like Manufacturer’s Suggested Retail Price;

(2) List either the dollar amount of the discount fee or the percentage of the discount for the specific device;

(3) Inform the public of the **dates on which the sale or discount price will be in effect if the sale or discount price is a limited time offer**; and

(4) Identify specific groups who qualify for the discount or any other terms and conditions or restrictions for qualifying for the discount.

(e) An advertisement shall not be used to entice the consumer into a more costly transaction than the advertised item or service at the advertised price.

(f) **Any national advertisement published in California shall comply with all applicable state and federal laws and regulations.**

NOTE: Authority Cited: Section 651, 2531.06 and 2531.95, Business and Professions Code. Reference: Sections 651 and 17500, Business and Professions Code.

Comments: Deane Manning

Title 16 California Code of Regulations

Division 13.3

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10/01/12 Draft

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(A) The dispenser's name and address as they appear on the hearing aid dispenser license; *(There are some forms of advertising that may cover a number of office locations, thus include many different licensees. In the case of a large National corporation, there may be one letter signed only by the President of the company. Prospective buyers would then call a number and be directed to the office location closest to their residence. Again, I do not see how this is a consumer protection issue. The financial burden placed on large corporations to customize advertising for each office location, on the other hand, seems unreasonable).*

(B) License number, including the letters 'HAD' or 'DAU', as appropriate; and

(C) Licensee telephone number. If a telephone number appears in an advertisement or on an advertising sign, this number shall be the same number as that listed for the dispenser's firm name and address in the telephone directory, or in the telephone company records if such number is assigned to the dispenser subsequent to the publication of such telephone directory; *(I see this as problematic as many*

corporations utilize unique telephone numbers that enable their marketing departments to track the success of various types of advertising. I fail to see how this is a consumer protection issue. I seem to recall that, when discussed at the last board meeting, we were all in agreement on this matter).

(2) If advertising a hearing test, state that such test is not diagnostic but only to properly fit and sell hearing aids; I don't see this as a consumer protection issue but as a source of discord between doctors, audiologists and dispensers. I think we should leave it as is and not try to introduce diagnostics to the discussion.

(3) If including an educational degree, specify the **degree and field**. The use of the title "Dr." is not sufficient for purposes of specifying the degree where the degree is a non-medical doctorate;

(4) If including to a job title or dispenser's certification by a professional organization, include the entire, fully-spelled name of the job title or certification and certifying organization. Any job title, certification, or words of like import listed in an advertisement must represent an actual job title, credential, or certification, and must not be misleading. [Possible additional language: Any certifications claimed must be those issued upon successful completion of an oral and written examination based on psychometric principles; and training and experience subsequent to such examinations, to assure competent practice in the dispensing of hearing aids as determined by the professional organization granting the certification – or list the organizations whose certifications the Board will recognize]; Due to the length of the wording that would be required, this kind of rule seems like a roundabout way of not allowing certain certifications in advertising such as business cards.

(5) **Not utilize a business name that is so broad as to connote comprehensive and diagnostic hearing services**. Advertisements and business names must not include the word 'Hearing' without being immediately followed by the word 'Aid,' unless the dispenser is also licensed as a physician or audiologist; *(Again, problematic as we are seeing more and more blended practices and corporations that employ both Audiologists and Dispensers. If an Audiologist and a Dispenser are working in the same practice they may call the practice a "Hearing Center" yet if they Audiologists should leave, even temporarily, the practice would be in violation, based on this definition. I once again fail to see this as a consumer protection issue)*

(6) Not include information that suggests that the offer of new technology is part of a research project when it is not;

(7) **Not include the term "specialist" when referencing licensure without including the title "hearing aid dispenser";** I have never understood why this has been a consumer protection issue. In most of the states hearing aid specialist is the term that is used and I can't imagine how the public is harmed.

(8) **Not include sending to a consumer preset appointment information or "rebate coupons" that resemble checks as part of a direct mail solicitation.**

(c) An advertisement of price must do all of the following:

(1) Be **exact**, and disclose **any conditions or other variables to an advertised price**;

(2) If including price comparison, base such comparison on **verifiable data.** Such data must be retained by the licensee for one year after the advertisement is published;

(3) Specify whether the hearing aids are one-size-fits all or will be made to conform to an ear mold; Would we consider the receiver in the canal aids to be one size fits all? and

(4) Not have the capacity to mislead the public as to the extent that anticipated goods or services are included in the advertised price. If consumers will likely need to purchase additional related goods or services, the advertisement must disclose this fact. [Possible additional language: Any such disclosure statement shall indicate that many instances of performance of the service involve extra cost and, if the dispenser reasonably expects that the extra cost will be more than 25% of the advertised costs, that the extra cost may be substantial. The type size of the disclosure statement shall be at least1/2 the type size used in the advertised price, but no smaller than 8 point font, and the statement shall either be shown near the price or shall be prominently footnoted through use of an asterisk or similar reference. The advertisement must also disclose any additional services not part of the procedure but for which the consumer will be charged, together with the fees for such services.]. Certain organizations are now pushing unbundling. Seems very hard to make rules for that which will be clear enough to work.

(d) An advertisement of discount must:

(1) List either the dollar amount of the non-discounted fee for the hearing aid or provide consumers with a method to ascertain the actual price, like Manufacturer's Suggested Retail Price;

(2) List either the dollar amount of the discount fee or the percentage of the discount for the specific device;

(3) Inform the public of the **dates on which the sale or discount price will be in effect if the sale or discount price is a limited time offer**; and

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Comments: Alison Grimes

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Proposed changes to Section 1399.127 ("Advertising")

10/01/12 Draft

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1. add language under the "misleading" category that stipulates that advertising that states that hearing aids "block out" background noise.
2. I like the idea of certifications being limited to those which are based on an actual, psychometrically-tested exam and/or refer to the organization offering the certification
3. c(3) Specify whether the hearing aids are one-size-fits all or may **require the use of a custom-made earmold**. (often we don't know in advance whether a person needs a custom-made earmold until we see the ear)
4. the language in c(4) is confusing to me. I think the idea is "if additional devices or services are required to fit and dispense the hearing aids, the estimated cost of such devices and services must be published"
5. section (e)—I agree BUT how do you avoid this? This happens ALL the time in "Lyric" ads, because we know that fewer than half of the people who come in for Lyric are actually candidates (the ear canal must be large enough, the patient can't be on blood-thinners, the hearing loss cannot be too severe, there can't be past history of external ear disease, the person shouldn't be diabetic, etc etc). so is Lyric advertising really a bait-and-switch?

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Deane Manning, Hearing Aid Dispenser
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Carol Murphy, M.A.
Jaime Lee, Esq.
Rodney Diaz, M.D.

Staff Present
Annemarie Del Mugnaio, Executive Officer
Claire Yazigi, Legal Counsel
Breanne Humphreys, Staff

Guests Present
Cliff Johnson,
Tricia Hunter, HHP CA
Jacque Georgeson, SDSU
Don Tucker, HHP

I. Call to Order

Chairperson Grimes called the meeting to order at 4:10 p.m.

II. Introductions

Those present introduced themselves.

III. Approval of Full Board Meeting Minutes of April 20, 2012

The Board discussed minor edits to the meeting minutes of April 20, 2012.

M/S/C: Murphy Martin
The Board voted to adopt the April 20, 2012 Board meeting minutes as amended.

IV. Executive Officer's Report
A. Budget Update

Ms. Del Mugnaio provided a budget expenditure report through the end of fiscal year 2011/2012. She stated that the Board has little reversion of funds at the close of FY 2011/2012 and that the mid-fiscal year change combining the funding of the two programs was challenging from an accounting perspective. Ms. Del Mugnaio stated that the 2012/2013 budget will be much easier to monitor as the Board will be managing one funding source, but will maintain two accounting

records to track spending for the hearing aid dispensing program costs versus costs for licensing and enforcement of speech-language pathologists and non-dispensing audiologists.

B. **Status of Proposed Regulations**

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

Ms. Del Mugnaio reported that the Consumer Protection Enforcement Initiative regulations have been approved by the Board and the Department and are currently being reviewed by the Department of Finance.

2. **Supervision Qualifications for Speech-Language Pathology Assistants (SLPA) & Required Professional Experience (RPE) Temporary License Holders and SLPA Educational Program Changes (California Code of Regulations Section 1399.153, 1399.170, 1399.170.6, 1399.170.10, 1399.170.11, & 1399.170.15)**

Ms. Del Mugnaio requested the Board to review a proposed change to the SLPA supervision requirements which would change the current requirement of SLPA supervisors obtaining supervision training once every two years to obtaining supervision training once every four years, which would make the requirement consistent with that of Supervisors of RPE temporary license holders.

M/S/C: Murphy/Lee

The Board approved the proposed change to Section 1399.170.15(b)(4) of the California Code of Regulations, which would require SLPA supervisors to obtain three (3) hours of supervision training once every four (4) years.

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

Ms. Del Mugnaio stated that she has yet to publish the notice for the regulations and that she will pursue the public notice in early January 2013. Ms. Del Mugnaio stated that the effective date of the new Continuing Education requirements needs to reflect, January 31, 2014 in order to provide ample time for the regulations to take effect and for licensees to be notified of the changes.

Ms. Hunter requested that the implementation date of the Continuing Education regulation be established a year from the implementation date to allow licensees ample time to accumulate the requisite hours.

M/S/C: Manning/Danz

The Board approved the proposed change to the effective date of the continuing education regulations for hearing aid dispensers and to set the proposed regulations for a forty-five (45) day comment period…..

C. **Administrative Updates: Occupational Analysis for Hearing Aid Dispensers Examination, BreEze, Personnel Changes,**

Ms. Humphreys provided the following administrative update:

- Occupational Analysis for Hearing Aid Dispensing – Survey was distributed to licensing professionals and Office of Professional Examination Services (OPES) is currently reviewing the results of the surveys. Two additional expert workshops will be held to analyze the results of the survey data and to draw conclusions regarding the content of the hearing aid dispenser examinations.
- The next hearing aid dispenser's practical examination will be held August 25, 2012 in Sacramento.
- The Board's new website will be live in mid-August.
- Personnel Changes- Still recruiting for the Administrative Assistant position. Recruiting has been difficult due to budget cuts, position reductions, and a limited pool of eligible candidates. An Executive Order has been issued eliminating the use of Student Assistants.
- BreEze- Board is in the second phase roll-out which was original scheduled for February 2013 and has now been postponed to April 2013.

D. **Project Plan for Reviewing the English Language International Testing System (IELTS) Examination**

Ms. Murphy has identified a group of six subject matter expert speech-language pathologists to take the IELTS examination and work with the OPES to determine whether the examination is appropriate for testing applicant's English-language competency. Several of the experts are scheduled to take the examination in August 2012.

V. Legislation Update

Ms. Del Mugnaio reported the status of the following legislation:

A. Senate Bill 1444 - Anderson – Assistive Devices: Warranty

SB 1444, the Song Beverly Consumer Warranty Act (SBCWA) amendments was pulled from the legislative calendar as Senator Anderson's Office has suggested the Board work with the Senate Business, Professions, and Economic Development Committee during Sunset Review to address necessary amendments to the SBCWA.

B. Assembly Bill 1454- Solorio- Worker's Compensation: Audiologists

AB 1454 would include audiologists who hold the doctoral degree, as qualified medical examiners for the purpose of worker's compensation claims. The Board does not have a position on the bill as the amendments are not pertinent to consumer protection.

C. Other Legislation of Interest to the Board

- AB 1588 – Impact all healing arts professions and waives renewal fees and continuing education requirements for active military personnel.
- AB 1904 – Requires a board to expedite the licensure process for an applicant who holds a license in the same profession or vocation in another jurisdiction, and is married to, an active duty member of the Armed Forces of the United States.
- AB 2570 – Prevents a licensee or an agent acting on behalf of a licensee from including a gag clause in a settlement agreement. The Board has addressed this issue in its proposed CPEI regulations.

VI. Review and approval of the 2012 Strategic Plan

M/S/C: Murphy/Danz

The Board voted to adopt the 2012 Strategic Plan and to post the plan on its website.

Chairperson Grimes adjourned the meeting at 4:50 p.m. to be reconvened July 27, 2012.

Chairperson Grimes reconvened the meeting at 9:15 a.m. on July 27, 2012.

VII. Committee Meeting Reports

A. Hearing Aid Dispensers Committee Report on the Exemption Request of the Federal Drug Administration and Recommendations on Amendments to the Hearing Aid Dispenser's Advertising Regulations

Mr. Manning presented the HAD report and requested the Board approve a motion to delegate to Ms. Yazigi and Ms. Del Mugnaio the task of amending the HAD advertising regulations to make the regulations more clear and concise and bring suggested language before the HAD Committee at the next scheduled meeting.

Mr. Manning stated that the other item discussed during the Committee meeting was the exemption request before the Federal Drug Administration (FDA) regarding the remote acquisition of hearing aids. Mr. Manning reported that the FDA has not responded to the Board's exemption request and therefore, Ms. Del Mugnaio would follow-up with the FDA.

M/S/C: Murphy/Martin

The Board accepted the report of the Committee and delegated to Ms. Yazigi and Ms. Del Mugnaio the task of providing suggested amendments to the Hearing Aid Dispensers advertising regulations for consideration by the Committee at its next meeting.

B. Sunset Review Committee Report and Recommendations on the 2012 Report and Project Plan

Chairperson Grimes presented the Sunset Review Committee report:

- Reviewed materials from the 1998 Sunset Report
- Committee agreed to address six new issues in the Sunset Report: 1) Pediatric Audiology standards, 2) English-language competency standards for internationally trained applicants, 3) Amendments to the Song-Beverly Consumer Warranty Act, 4) Task Force to address services for speech and hearing impairments as provided by Regional Centers, 5) Violation of the terms and conditions of a provisional license is deemed unprofessional conduct, and 6) Uniform licensing standards and the elimination of exempt settings,

M/S/C: Manning/Diaz

The Board accepted the report of the Committee.

Mr. Manning inquired whether we need to address each of these items as issues during the sunset process or are these items the Board needs to address as part of our normal course of business and policy making responsibility.

Chairperson Grimes responded and indicated that some of the items may be appropriately addressed by the Board. However, issues related to the need for new training programs in audiology, and cross-cutting issues related to programs under California Children Services, addressing practice issues within exempt settings, etc. needs legislative attention and support as the Board does not have enough influence to effect changes within these systems.

Ms. Del Mugnaio commented that the meat of the report should address those issues that pose a risk to the public or amending statutes that prevent qualified persons from being licensed.

The Board discussed potential new issues to be addressed in the Sunset Report.
Ms. Del Mugnaio commented that several of the issues being discussed, that is exempt settings, the lack of audiology training programs in the state, standards related to internationally trained applicants may be covered under the existing issues raised before the Board in the 1998 Sunset Report document. She suggested that the new issues include: amend the Song-Beverly Consumer Warranty Act, amend the language in the unprofessional conduct codes related to violations of a conditional and probationary license, and comprise a task force to address speech and hearing services provided within regional centers.

M/S/C: Lee/Murphy

The Board adopted a motion to address the new issues outlined above and to further expand on the existing issues raised in the 1998 Sunset Report regarding doctoral training for audiologists, consideration of new pediatric audiology standards, issues surrounding settings exempt from licensure requirements, and provisions for internationally trained applicants.

VIII. 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 Sections1399.131 & 1399.155)

Ms. Yazigi provided an overview of the history of the Uniform Standards for Substance Abusing Licensees as mandated by Business and Professions Code 315. She stated that the Legislative Council issued an opinion that concluded the Uniform Standards must be adopted for all healing arts' boards. Ms. Yazigi added that the Office of the Attorney General issued a similar opinion stating that the standards are mandatory and must be adopted by regulation for each respective board.

Ms. Yazigi provided three options for how to enforce or implement the standards:

1. Presume that whenever a licensee has a substance related violation, the licensee has a substance abuse problem until the licensee proves otherwise.
2. Enforcement of the Uniform Standards is contingent upon the outcome of a clinical diagnostic evaluation and if the evaluation reveals the licensee has a substance abuse problems, the Uniform Standards are enforced.
3. Any time there is a case involving a substance abuse act or violation, a hearing is held to determine whether the licensee has a substance abuse issue. The hearing would include testimony by experts both for the Board and the respondent who would make recommendations regarding the licensee's fitness to practice.

Members of the Board inquired about who pays the cost of the clinical diagnostic evaluation and would the Board be in the position to select the diagnostician.

Ms. Del Mugnaio responded and stated the language is silent on which party must cover the costs of the evaluation, but stated that the Board would select or approve the clinical diagnostic evaluator.

A long discussion ensued regarding the automatic suspension of the license that would occur in Option #2 above and whether the suspension is appropriate pending the outcome of the clinical diagnostic evaluation.

Ms. Yazigi stated that the suspension could only be enforced if it were part of a decision ordering the Uniform Standards or pursuant to a settlement agreement between the Board and the licensee. The Board inquired about the investigatory process and how staff triages a case to determine whether it should be referred to discipline.

Ms. Del Mugnaio explained the case review process and stated that each case is independently analyzed taking into consideration the age of the occurrence, patterns of abuse, incident surrounding the arrest or conviction, and rehabilitation efforts on the part of the licensee. She commented that implementing the Uniform Standards does not change the triage phase or discretion of the staff as to whether or not to elevate a case. The Uniform Standards are specific to disciplinary terms and conditions for substance abusing licensees.

Ms. Yazigi mentioned that the Board already has the authority pursuant to Business and Professions Code Section 820 to compel a licensee to undergo a mental and/or physical evaluation if the Board suspects a licensee may not be fit to practice.

Ms. Del Mugnaio explained that if the staff encounters a case where a licensee may pose an immediate threat to the public, the staff would pursue actions such as, Interim Suspension Orders or Penal Code Section 23 Orders, which are ordered by an Administrative Law Judge based on a summary of facts and which immediately suspend a license pending an administrative hearing.

Ms. Yazigi stated that the proposed Consumer Protection Enforcement Initiative regulations would provide the Board the authority to compel applicants to undergo a mental and/or physical examination prior to being issued a license, if the Board suspects the applicant may not be fit to practice.

Ms. Yazigi reviewed Option #2 with the Board and explained that should the Board adopt the policy by regulation, the language should include a process whereby the licensee may contest or appeal the findings of the clinical diagnostic evaluation.

The Board further discussed the options presented by Ms. Yazigi and requested that Ms. Del Mugnaio present statistical information at the next meeting regarding how many cases involve substance abuse and how many of those cases are referred to discipline.

Ms. Del Mugnaio stated that she would also survey other healing arts' boards to determine their respective processes and policies.

Ms. Yazigi referenced the proposed Uniform Standards for Substance Abusing Licensees and the Disciplinary Guidelines document in the Board packet and outlined the following proposed changes:

- Incorporate the language of Option #2 and add language regarding the licensee's opportunity to contest the outcome of the clinical diagnostic evaluation.

- Include that during the licensee suspension phase, pending the outcome of the clinical diagnostic evaluation, the licensee must submit to random drug testing 2x's a week.
- Minor grammatical changes to the language.

Ms. Yazigi reviewed the language regarding the suggested penalties and the proposed minimums and maximums for each violation.

M/S/C: Manning/Diaz

The Board voted to approve the proposed Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines and delegated to the Executive Officer to notice the language for a forty-five (45) day public comment period, to make any non-substance changes to the language as deemed necessary, and to adopt the language and file it with the Office of Administrative Law.

IX. Discussion Regarding Changes to the National Examination in Audiology and Speech-Language Pathology as Reported by the Educational Testing Service

Ms. Del Mugnaio referenced an email in the Board meeting materials sent by the Educational Testing Service (ETS) which provided statistical data on the new audiology examination. She stated that she requested ETS to provide an overview of the changes made to the previous audiology examination which phased out November 2011. Ms. Del Mugnaio explained that according to ETS the new audiology examination focuses more on practice and application over foundational knowledge and includes more test questions embedded in case studies of audiologic patients. She stated that the development of the new examination stemmed from an American Speech-Language-Hearing Association Audiology Practice Analysis completed in 2008.

Chairperson Grimes stated that the information provided by ETS is incomplete in that it is difficult to ascertain the scoring changes and weighting of the new examination.

Ms. Del Mugnaio stated that the new scoring scale will not be implemented by ETS until January 2013.

Chairperson Grimes expressed concern that ETS completely revamped the audiology examination with no input from state licensing boards, or other professional bodies and there is no method for lay persons to determine how the examination has changed in terms of content, rigor, and scoring. She inquired whether the Board could contract with the OPES to analyze the new examination and conduct an abbreviated validation study.

Ms. Del Mugnaio responded that she would contact OPES to determine the office's availability to conduct the study for the Board. She stated that there is a resource component in that the Board must be able to fund the study by OPES and that she would work with budget staff to determine the available resources.

X. Status of the Correspondence with Department of Developmental Services Regarding the Need for Further Services Provided by Regional Centers for Deaf/Hard of Hearing Children

Chairperson Grimes provided background regarding services provided to children who have a disability impacting their access to an appropriate education. Under Part C, of the IDEA, children

birth to 36 months, who are deaf or hard of hearing, receive services through the Local Education Agency or the public school as provided by Educational Audiologists and Teachers of the Deaf and Hard of Hearing (D/HH). She stated that if a child who is D/HH also has an additional disability, such as Autism or a motor impairment, their services are provided through the Regional Center. The Regional Centers can vendor with outside agencies to provide services, however, such outsourcing requires funding. Due to budget cuts and limited funding, the Regional Centers are providing services within their own provider resources.

Chairperson Grimes commented that the concern raised by many professionals who treat children who are D/HH is that the Regional Centers are not providing appropriate services to these children and are employing unqualified personnel to address such hearing impairments.

Ms. Del Mugnaio referenced a letter from the Department of Developmental Services (DDS), dated July 14, 2010, as included in the meeting packets, where DDS was responding to concerns raised by the Board surrounding services provided by regional centers to children with significant hearing loss. She stated that DDS committed to investigating the concerns raised by the Board. However, she commented that the problem appears more pervasive than one incident or one particular regional center and that addressing it case-by-case will not solve the systemic problem. Ms. Del Mugnaio recommended that the issue be addressed before the Legislature in the Sunset Review Report.

Chairperson Grimes agreed to spearhead the issue and provide a summary of the problem for inclusion in the Sunset Report.

XI. Statistical Data on Licensing & Enforcement

The Board reviewed the statistical data as provided by the staff.

Ms. Del Mugnaio reported that the enforcement and licensing statistics will be included on the Board's new website.

XII. Public Comment on Items Not on the Agenda

There were no further public comments.

XIII. Announcements – Next Board Meeting October 4-5, 2012 (Locations TBD)

An announcement was made that the next Board meeting will be held in Los Angeles on October 4-5, 2012.

XIV. Adjournment

Chairperson Grimes adjourned the meeting at 1:05 p.m.

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DEPARTMENT OF CONSUMER AFFAIRS

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Meeting Notice and Agenda
October 4-5, 2012
Sheraton Los Angeles Downtown
California Room
711 South Hope Street
Los Angeles, CA 90017
Phone: (213)612-3130
Fax: (213)612-3163

Board Members Present
Alison Grimes, Au.D., Vice Chairperson
Sandra Danz, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Monty Martin, M.A.
Carol Murphy, M.A.
Patti Solomon-Rice, Ph.D.
Jaime Lee, Esq.
Rodney Diaz, M.D.

Staff Present
Annemarie Del Mugnaio, Executive Officer
Claire Yazigi, Legal Counsel
Breanne Humphreys, Staff

Guests Present
Bob Holmgren, OPES

I. Call to Order

Chairperson Grimes called the meeting to order at 1:37 p.m.

II. Introductions

Those present introduced themselves.

III. Appointment of Board Members to Committees

Chairperson Grimes appointed new Board Member, Patti Solomon-Rice to the Speech-Language Pathology Practice Committee.

IV. Review Amendments to the Hearing Aid Dispenser's Advertising Regulations and Related Guidelines (California Code of Regulations Section 1399.127)

Chairperson Grimes referenced the documents in the meeting packets, text of Business and Professions Code Section 651, and the amended (by Ms. Yazigi) hearing aid dispenser advertising regulations for the Hearing Aid Dispensers Committee's review and comment.

Ms. Del Mugnaio stated the purpose for bringing the draft before the Board was to provide the Board with the conceptual direction of the regulations and to have Ms. Yazigi explain the prevailing advertising statutes (B&P Section 651) prior to the Board making a final decision on the proposed amendments.

Ms. Yazigi explained that the amendments before the Board are based on the discussion and guiding principles articulated at the Hearing Aid Dispensers Committee meeting on July 26, 2012.

She stated that all the examples currently included in regulation text have been removed; however, the principle provisions were left in tact.

Chairperson Grimes stated that the provisions regarding the advertising of professional credentials or certifications are indeed necessary and provide greater consumer protection.

Ms. Del Mugnaio stated that the amendments to the hearing aid dispensers advertising regulations should assist in educating our hearing aid dispenser providers as well as reduce the complaint activity surrounding advertising violations.

The Board discussed the requirement for an advertisement to include the name and phone number of a licensed hearing aid dispenser responsible for the advertisement. Comments reflected that many large hearing aid companies or manufacturers publish advertisements for their licensed hearing aid providers and therefore, it is difficult to associate all advertisements with a single licensed provider.

Chairperson Grimes inquired whether the Board has any regulatory oversight of hearing aid companies.

Ms. Yazigi stated that the Board may not have direct authority over hearing aid dispensing corporations; however, under Business and Professions Code Section 17500, advertising restrictions extend to corporate entities that make false or misleading statements in trying to dispose of real or personal property. She stated corporate advertising violations may be pursued by the County District Attorney's Office and not the Board.

Ms. Danz stated that there are issues with hearing aid dispensing providers who do not have permanent locations, but instead set-up a temporary establishment at a hotel. She commented that this presents a consumer protection issue in that there is no permanent location for a consumer to return for follow-up services.

Ms. Del Mugnaio cited Business and Professions Code Section 2538.34 which authorizes a hearing aid dispenser to temporarily provide services at a location other than the primary or branch location provided the dispenser notifies the Board in advance in writing of the dates and addresses of those locations.

The Board requested that Ms. Del Mugnaio email the suggested regulation language as crafted by Ms. Yazigi to the Hearing Aid Dispensers Committee members so that the members may provide comments on the language. Ms. Del Mugnaio will bring before the Committee in January 2013.

V. Closed Session (pursuant to Government Code Section 11126 Subsection (c)(3)- Proposed Decisions/Stipulations/ Other APA Enforcement Actions- Proposed Stipulation and Settlement of Probation In the Matter of the Accusation Against Marshall Leigh Shoquist, AU 461 (Dispensing Audiologist)

The Board convened in closed session to deliberate the proposed stipulation and settlement of probation for Marshall Leigh Shoquist, AU 461 at 2:27 p.m.

RETURN TO OPEN SESSION

The Board returned to open session at 3:45 p.m.

VI. **Review Draft Sunset Review Report**

Ms. Del Mugnaio reviewed the final Draft Sunset Review Report with the Board.

The Board reviewed the responses to questions raised by the Joint Legislative Sunset Review Committee in 1998, which was the last review of the Board.

The Board provided technical and grammatical edits to the report.

Chairperson Grimes adjourned the meeting at 5:14 p.m.

9:00 a.m. October 5, 2012

I. **Call to Order**

Chairperson Grime reconvened the Board meeting at 9:17 a.m.

II. **Introductions**

Those present introduced themselves.

III. **Consideration of the Adoption of the Validation Report for the Hearing Aid Dispensers**

Ms. Del Mugnaio explained the examination validation process and provided an overview of the subject expert workshops and tasks.

Bob Holmgren addressed the Board and provided more specific information and data regarding the results of the validation study. He stated there were changes in the 2012 validation report from the 2007 study related to task and knowledge statements. Mr. Holmgren provided an explanation regarding the validation process including: in-person and telephone interviews of providers, focus-group workshops where subject matter experts develop task and knowledge statements, development of a survey instrument for all licensees to complete, compilation of survey results, linkage of tasks to the associated knowledge statement, development of the examination plan (blueprint), and finally development of the Validation Report for the Hearing Aid Dispensers. Mr. Holmgren stated that the weighting of the examination tasks are dependent on the number of questions for each examination (written or practical). He stated that the Department's recommendation is that validation studies be performed every five years, however, if the industry undergoes any major changes, a validation study should be conducted to analyze such changes.

Mr. Holmgren explained that examination development and review is an on-going process where subject matter experts are continually analyzing test questions, writing new test questions, and eliminating those which are no longer relevant, and setting passing scores for the examination based on the weighting of the new test questions.

Chairperson Grimes inquired whether each test question must be linked to a resource document.

Mr. Holmgren stated that every question is linked to a resource document or a law and/or regulation and referred to application type questions where the knowledge is tested but so is the application of that knowledge for the specific practice.

Ms. Danz stated that she has been involved in the hearing aid dispensers examination development as an expert and that it was critical for each question to be linked to a resource document.

The Board inquired how subject matter experts are selected.

Ms. Del Mugnaio explained the application process as included on the website and stated that workshops are comprised of experts who are from various geographic locations, practice settings, and have varying levels of professional experience.

Ms. Del Mugnaio stated that notification of the on-line survey was sent to all licensed hearing aid dispensers and dispensing audiologists and the Board received over a 20% response rate from the licensee population. She stated that typically OPES expects somewhere around a 13% response rate. Ms. Del Mugnaio commented that the Board awarded two (2) hours of continuing education to licensees who completed the survey which was a motivating factor and likely contributed to the higher than expected response rate.

Chairperson Grimes commented on the use of the term verification versus validation in the report and stated that the terms are not interchangeable and mean very different things in terms of hearing aid dispenser practice. She stated that verification is when a provider confirms that a particular hearing aid is meeting the needs of the client in terms of fitting whereas validation happens much later and determines whether the client is satisfied with the hearing aids in terms of wear, amplification, and functionality after using the aids.

Mr. Holmgren referenced context within the report where verification and validation are defined independently, specific to Chairperson Grimes comments.

The Board discussed examination weighting and passage rates.

Mr. Holmgren explained the specific changes made to the examination based on the validation study and reminded the Board that the examination must be designed to test for minimum competency.

Chairperson Grimes inquired whether a consumer information piece could be constructed and posted on the website to explain what consumers should expect from hearing aid dispenser and the selected hearing aids.

Ms. Del Mugnaio stated the Board discussed using the information from the examination study to prepare a hearing aid dispenser supervisory manual to assist with training their trainees.

Ms. Danz stated that there is an examination outline provided on the PSI website to assist candidates with what to expect from the examination in terms of content areas covered.

M/S/C: Manning/Lee

The Board voted to adopt the 2012 Validation Report for the Hearing Aid Dispensers.

IV. Continue Review of the Draft Sunset Report

The Board continued its review of the Draft Sunset Review Report.

M/S/C: Murphy/Danz

The Board voted to adopt the 2012 Sunset Review Report as amended and delegated to Ms. Del Mugnaio the authority to make technical edits and non-substantive changes as necessary.

Ms. Del Mugnaio stated that the final version of the report will be sent to each board member, fifteen (15) copies will be sent to the Business Professions and Economic Development (BP&ED) Committee, a copy to the Department of Consumer Affairs, and a copy to State and Consumer Services Agency. She stated the final report will also be posted to the Board's website. Ms. Del Mugnaio stated that the BP&ED Committee will devise a series of questions based on the review of the report and the Board will be charged with responding to the questions in writing within 10-14 days. A hearing will be held before the BP&ED Committee sometime in March/April 2013, where the executive officer, the Board Chair, and possibly other members of the Board will be present to testify.

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

There were no further public comments.

The Board discussed future agenda items as follows:

- Continuing competency versus continuing education
- Formal education for hearing aid dispensers
- How to align the Commission on Teacher Credentialing requirements with licensure requirement
- Speech-Language Pathology Assistants & Speech-Language Pathology Aides and the difference in their scope of responsibility.

VI. Schedule Future 2013 Board Meetings – January/April/July/Oct

An announcement was made that the Board meeting schedule for 2013 will be: January 10-11, 2013 to be held in San Francisco, April 25-26, 2013 to be held in Sacramento, July 25-26, 2013 to be held in Los Angeles, and October 10-11, 2013 to be held in San Diego.

VII. Adjournment

Chairperson Grimes adjourned the Board meeting at 12:42 p.m.

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Draft

TELEPHONIC BOARD MEETING MINUTES
November 26, 2012

Department of Consumer Affairs
Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board
2005 Evergreen Street, Ste. 2100 Sacramento, CA 95815
(916) 263-2909

200 UCLA Medical Plaza, Suite 540, Rm. 21
Los Angeles, CA 90095
(310) 267-4650

700 S. Flower Street, Suite 1100
Los Angeles, CA
(213) 232-1173

1600 Holloway Ave, Burk Hall, Rm 101
San Francisco, CA
(415) 338-7652

4340 Golden Center Drive, Suite E
Placerville, CA
(530) 622-2020

200 Babe Thompson Road
La Selva Beach
(831) 728-1078

28071 Bradley Rd.
Sun City, CA
(951) 679-1139

400 Hoover Lane
Nevada City, CA 95959
(530) 265-0611 x233

Board Members Present
Sandra Danz, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Monty Martin, M.A., Public Member
Carol Murphy, M.A., Speech-Language Pathologist
Alison Grimes, Au.D., Audiologist
Jaime Lee, J.D., Public Member
Patti Solomon-Rice, Ph.D., Speech-Language Pathologist

Staff Present
Annemarie Del Mugnaio, Executive Officer
Claire Yazigi, Legal Counsel

Board Members Absent
Rodney Diaz, M.D., Public Member

Guests Present
Trisha Hunter, Hearing Health Care Providers of CA

I. Call to Order

Ms. Del Mugnaio called the meeting to order at 2:35 p.m.

II. Introductions

Those present introduced themselves.

III. **Proposed Regulations**

Consideration and Possible Approval of the Modified Text for the Consumer Protection Enforcement Initiative (California Code of Regulations 1399.110, 1399.130, 1399.130.1, 1399.131, 1399.150.3, 1399.151, 1399.155, 1399.156, & 1399.156.5)

Ms. Del Mugnaio reported that the Office of Administrative Law (OAL) had issued a Decision of Disapproval of Regulation Action on October 30, 2012, in response to the Board's rulemaking file regarding enforcement program enhancements/consumer protection enforcement initiative. The OAL cited in there decision that the proposed language failed to meet the clarity, authority, and reference standards for promulgating regulations. Ms. Del Mugnaio reviewed the proposed language that required further modification based on OAL's decision. She referenced the proposed modified text for consideration by the Board and outlined each change:

- Amending both subdivision (a) of Section 1399.130 and subdivision (d) of Section1399.156 removing the term "sexual misconduct" and replacing the text with a reference to Sections 1399.131 and 1399.155, respectively as the sections include concise definitions of the term "sex offense," and with the proposed changes to subdivision (a) of Section 1399.130 and subdivision (d) of Section1399.156 a "sex offense" will be deemed a violation of law or unprofessional conduct.
- Several "authority" and "reference" citations cited by the Board in the initial text were cited incorrectly, or additional "reference" citations needed to be added to the regulation text. The Board in consult with OAL made the appropriate revisions to the authority and reference citations fore each regulation in the proposed action.
- Amending subdivision (b) of Section 1399.130 and subdivision (e) of Section 1399.156 to reflect a new statute enacted through the passage of Assembly Bill 2570, in 2012, which added Section 143.5 to the Business and Professions Code. The statute prohibits a licensee who is regulated by the Board from including a provision in an agreement to settle a civil dispute that prohibits the other party in the dispute from contacting, filing a complaint with, or cooperating with the Board, or that requires the other party to withdraw a complaint from the board. A licensee in violation of these provisions would be subject to disciplinary action by the Board. Since the new statute will take effect on January 1, 2013 and the language initially proposed in subdivision (b) of Section 1399.130 and subdivision (e) of Section 1399.156 was consistent with the new statute, modifying the text of these two sections to reflect a "violation" or act of "unprofessional conduct" to include a violation of Section 143.5 of the Code will avoid redundancy in regulation.
- Amending subdivision (c) of Section 1399.130 and subdivision (f) of Section 1399.156 regarding the requirement for a license to produce to the Board, lawfully requested *documents* provided the licensee has access to, and control over, said documents. In the initial proposed language the term "record" and "medical records" was used, however, OAL questioned whether the Board's intent was to limit the requirement to produce information to solely medical records.

The Board discussed the proposed change to broaden the provision to use the term "documents" in the provisions so that it may apply to any requested information, e.g., medical records, time sheets, performance evaluations, etc.

M/SC: Murphy/Danz

The Board adopted the proposed modified language and delegated the authority to Ms. Del Mugnaio to file the final rulemaking file with the Office of Administrative Law if no substantive comments in opposition to the modified text was received during the 15-day public comment period.

IV. **Announcement of 2013 Board Meeting Schedule as Revised – January 10-11, 2013 San Francisco; April 4-5, 2013 Sacramento; July 25-26, 2013 Los Angeles; October 10-11, 2013 Location to be Determined.**

The Board reviewed and confirmed the 2013 meeting calendar and inquired about the dates for the scheduled sunset hearings. Ms. Del Mugnaio indicated that the dates are not yet confirmed, but that the Business Professions and Economic Development Committee indicated the sunset hearings will likely be held in March 2013

V. **Public Comments on Items Not on the Agenda**

None.

VI. **Adjournment**

Meeting was adjourned at 2:58 p.m.

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SUPPLEMENTAL FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Enforcement Program Enhancements

Section(s) Affected: Title 16, Division 13.4, California Code of Regulations Sections 1399.110; 1399.130; 1399.130.1; 1399.131; 1399.150.3; 1399.151; 1399.155; 1399.156; & 1399.156.5

Updated Information

On September 18, 2012, the Board filed rulemaking # Z-2012-0918-045 proposing changes to provisions related to enforcement matters. On October 30, 2012, the Office of Administrative Law (OAL) issued a Decision of Disapproval of Regulation Action (attached) citing that the proposed language failed to meet the clarity, authority, and reference standards of Government Code Section 11349.1. The following clarity and authority and reference issues were addressed in the 15-day notice and modified text:

Clarity Issue Raised by OAL

The term “sexual misconduct” as initially proposed in subdivision (a) of Section 1399.130 and subdivision (d) of Section 1399.156 was not clearly defined and therefore, may be interpreted to mean a varying range of acts.

15-Day Changes as Proposed by the Board

The Board amended the language in both subdivision (a) of Section 1399.130 and subdivision (d) of Section1399.156. It removed the term “sexual misconduct” and instead refers to Sections 1399.131 and 1399.155, respectively, to define prohibited “sexual contact” and “sex offense.” With the proposed changes to subdivision (a) of Section 1399.130 and subdivision (d) of Section1399.156, commission of a “sex offense” or sexual contact with a patient will be a violation of law and deemed unprofessional conduct.

Authority and Reference Standards – Issue Raised by OAL

Several “authority” and “reference” citations cited by the Board in the initial text were cited incorrectly, or “reference” citations needed to be added to the regulation text.

15-Day Changes as Proposed by the Board

The Board in consult with OAL, made the appropriate revisions to the authority and reference citations for each regulation in the proposed action.

Other Changes as Proposed by the Board

Legislation passed in 2012, Assembly Bill 2570, added Section 143.5 to the Code, effective January 1, 2013, which prohibits a licensee who is regulated by the Board from including a provision in an agreement to settle a civil dispute that prohibits the other party in the dispute

from contacting, filing a complaint with, or cooperating with the Board, or that requires the other party to withdraw a complaint from the board. A licensee in violation of these provisions would be subject to disciplinary action by the Board. Since the new statute will take effect on January 1, 2013 and the language initially proposed in subdivision (b) of Section 1399.130 and subdivision (e) of Section 1399.156 was consistent with the new statute, the Board modified the text of these two sections to reflect a "violation" or act of "unprofessional conduct" to include a violation of Section 143.5 of the Code. The proposed change will avoid redundancy with new statutes.

15-Day Changes as Proposed by the Board

OAL discussed with the Board the need to clarify the proposed language in subdivision (c) of Section 1399.130 and subdivision (f) of Section 1399.156 regarding the requirement for a license to produce to the Board, lawfully requested *documents* provided the licensee has access to, and control over, said documents. In the initial proposed language the term "record" and "medical records" was used, however, after further deliberation of the Board, the Board decided to change the language to reflect the term "documents" so that it may apply to any requested information, e.g., medical records, time sheets, performance evaluations, etc.

Summary of Comments Received During the 15-Day Comment Period: November 30, 2012 through December 17, 2012.

The Board did not receive any comments during the 15-day public comment period. Public Interest Law in support of the proposed regulations.

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UPDATED INFORMATIVE DIGEST

During the 2011 legislative session, the hearing aid dispensers' statutes previously codified in Chapter 7.5 of the Business and Professions Code commencing with Section 3300 et. seq., merged with the speech-language pathology and audiology provisions under Chapter 5.3. This consolidated and renumbered all the hearing aid dispensers' statutes. Thus, references included in the proposed regulatory language and the authority and reference citations were updated to reflect the new statutes. The references to the statutes have been updated in the proposed text as contained in the Order of Adoption.

In addition, the Board issued a 15-day Notice of Availability of Modified Text to address clarity, authority, and reference issues as raised by the Office of Administrative Law in its October 30, 2012 Decision of Disapproval of Regulatory Action.

The Board amended the language in both subdivision (a) of Section 1399.130 and subdivision (d) of Section1399.156. It removed the term "sexual misconduct" and instead refers to Sections 1399.131 and 1399.155, respectively to define prohibited "sexual contact" and "sex offense." With the proposed changes to subdivision (a) of Section 1399.130 and subdivision (d) of Section1399.156, commission of a "sex offense" or sexual contact with a patient is violation of law and deemed unprofessional conduct.

The Board in consult with OAL, made the appropriate revisions to the authority and reference citations for each regulation in the proposed action.

Prior to the close of the rulemaking action, new Section 143.5 was added to Business and Professions Code pursuant to AB 2570, Stats 2012 (attached). The new statute will take effect on January 1, 2013. Since the language initially proposed in subdivision (b) of Section 1399.130 and subdivision (e) of Section 1399.156 was consistent with the new statute, the Board modified the text of these two sections to reflect a "violation" or act of "unprofessional conduct" to include a violation of Section 143.5 of the Code. The proposed change will avoid redundancy with new statutes.

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

Order of Adoption

TITLE 16 CALIFORNIA CODE OF REGULATIONS
DIVISION 13.3

ARTICLE 2
APPLICATIONS

§ 1399.110. Applications.

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

NOTE: Authority cited: Sections ~~3328~~ 2531.95, Business and Professions Code. Reference: Sections ~~3352~~ 2538.24 and ~~3357~~ 2538.28, Business and Professions Code.

ARTICLE 6
ENFORCEMENT

§ 1399.130. Violations

Notwithstanding the causes for action listed under 2533 of the Code, the Board may deny, issue subject to terms and conditions, suspend, or revoke a license, or impose conditions of probation upon a licensee, for any of the following causes:

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

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

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

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

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

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

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

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

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

(2) The arrest of the licensee.

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

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

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

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

§ 1399.130.1. Required Actions Against Registered Sex Offenders

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

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

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

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

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

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

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph

shall prohibit the board from exercising its discretion to deny a license or discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

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

NOTE:**Authority cited**: Sections 475, 480, & 2531.95, Business and Professions Code. Reference: Section 2533 Business and Professions Code; Section 11500, Government Code; and Section 290, Penal Code.

1399.131. Disciplinary Guidelines.

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

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

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

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

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

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

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

NOTE: Authority cited: Sections ~~3328~~ 475, 2531.95, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code. Reference: Sections 729, ~~3400~~, 2533.2 ~~3401~~, 2533 ~~3402~~ 2538.40 and ~~3403~~, 2533.1 Business and Professions Code; ~~and~~ Sections 11400.20, ~~and~~ 11425.50(e), and 11500, Government Code; and Section 44010, Education Code.

DIVISION 13.4

ARTICLE 1
GENERAL PROVISIONS

§ 1399.150.3. Delegation of Functions.

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

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

NOTE: Authority cited: Sections 475, 480, 496, and 2531.95, Business and Professions Code. Reference: Sections 2531.4 and 2531.5, Business and Professions Code.

ARTICLE 2
APPLICATION

§ 1399.151. Applications for License.

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

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

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

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

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

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

ARTICLE 6
DISCIPLINARY GUIDELINES

1399.155 Disciplinary Guidelines.

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

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

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

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

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

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

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

NOTE: Authority cited: Sections 475, 480, and 2531.95, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 729, 2533 and 2533.1, Business and Professions Code; ~~and~~ Sections 11400.20, ~~and~~ 11425.50(e), and 11500, Government Code; and Section 44010, Education Code.

ARTICLE 7
DENIAL, SUSPENSION AND REVOCATION OF LICENSURE

§ 1399.156. Unprofessional Conduct.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The arrest of the licensee.

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

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

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

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

§ 1399.156.5. Required Actions Against Registered Sex Offenders

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

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

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

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

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

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

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

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

NOTE: Authority cited: Sections 475, 480, and 2531.95, Business and Professions Code. Reference: Section 2533, Business and Professions Code; Section 11500, Government Code; and Section 290, Penal Code.

Dated: March 27, 2012

_____

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

State of California
Office of Administrative Law

In re:
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

Regulatory Action: Title 16 California Code of Regulations

Adopt sections: **1399.110, 1399.130, 1399.130.1, 1399.156.5**
Amend sections: **1399.131, 1399.150.3, 1399.151, 1399.155, 1399.156**
Repeal sections:

DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2012-0918-04 S

SUMMARY OF REGULATORY ACTION

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) proposed this regulatory action to amend five sections and adopt four sections under title 16 of the California Code of Regulations to enhance the Board's mandate of consumer protection. Among other things, the proposed regulations establish additional grounds for denying an application for licensure or for taking disciplinary action against a licensee.

DECISION

On October 30, 2012, the Office of Administrative Law (OAL) disapproved the proposed regulatory action because the regulations failed to meet the clarity, authority, and reference standards of Government Code section 11349.1.

DISCUSSION

Any regulatory action a state agency adopts through the exercise of quasi-legislative power delegated to the agency by statute is subject to the requirements of the Administrative Procedure Act (APA) unless a statute expressly exempts or excludes the act from compliance with the APA. (Gov. Code, sec. 11346.) Accordingly, regulations adopted by the Board must be adopted pursuant to the APA. No exception or exclusion applies to the regulatory action under review. Thus, before the proposed regulatory action may become effective, it is subject to a review by OAL for compliance with the procedural requirements and substantive standards of the APA. (Gov. Code, sec. 11349.1(a).)

CLARITY

OAL is mandated to review each regulation adopted pursuant to the APA to determine whether the regulation complies with the "clarity" standard. (Gov. Code, sec. 11349.1(a)(3).) "Clarity," as defined by Government Code section 11349(c), means, "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them."

The Board proposed adoption of identical regulatory provisions in subdivision (a) of section 1399.130 and subdivision (d) of section 1399.156 to make it a violation or unprofessional conduct, subject to disciplinary action, the "[c]ommission of an act of sexual abuse or misconduct." The term "sexual abuse" is clear. However, the term "sexual misconduct" is vague. In order for the term to be clear, the Board needs to define the term "sexual misconduct" because different people could interpret it as meaning a varying range of acts. Actions that might be considered sexual misconduct by some people would not be considered sexual misconduct by others. As a result, licensees would not easily understand the meaning of the regulatory provisions.

The initial statement of reasons for this action does not elucidate what is intended by the term "sexual misconduct." If anything, it underscores the seriousness of such actions and the potential for disciplinary action brought against a licensee for committing any such actions. The initial statement of reasons states on page five:

> Because licensees committing acts of sexual abuse or misconduct pose a potential threat to consumers, this proposal would also include as 'unprofessional conduct' or establish as a violation, the commission of <u>any</u> act of sexual abuse or misconduct. (Emphasis added)

The two proposed regulatory provisions establishing sexual misconduct as grounds for disciplinary action cite Business and Professions Code section 726 as a reference. The language in Business and Professions Code section 726 is somewhat clearer as far as what constitutes sexual misconduct because it ties any such conduct to acts committed "with a patient, client, or customer." Otherwise, the statutory language is still vague in describing what constitutes sexual misconduct. Business and Professions Code section 726 provides:

> The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.
>
> This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

The Board will need to provide a definition of sexual misconduct in order to make the regulatory provision clear. OAL discussed this issue with the Board's staff, and the Board may determine to change the two regulatory provisions to refer to another standard. Whatever the Board determines, the regulatory provisions in subdivision (a) of section 1399.130 and subdivision (d) of section 1399.156 will need to be changed to meet the clarity standard. The change to the

regulations is substantial and will require a 15-day notice and public comment period pursuant to Government Code section 11346.8(c) and title 1, California Code of Regulations, section 44.

AUTHORITY AND REFERENCE

OAL is mandated to review each regulation adopted pursuant to the APA to determine whether the regulation complies with the "authority" and "reference" standards. (Gov. Code, sec. 11349.1(a)(2) and (a)(5).) Both standards are discussed here because the Board's authority and reference citations for most regulations of this action were improperly cited.

"Authority," as defined by Government Code section 11349(b), means "the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation." A reference citation is different from an authority citation. "Reference," as defined by Government Code section 11349(e), means "the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation."

For most regulations in this action, the Board cited as "authority" Business and Professions Code sections that did not meet the definition of an authority but met the definition of a reference. Additionally, the Board cited as "reference" Business and Professions Code sections or sections from other parts of the California codes that did not meet the definition of a reference. Finally, in some regulations, the Board cited as "reference" Business and Professions Code sections that met the definition of a reference but did not fully support the regulation for which it was being cited, i.e., the regulation implemented, interpreted, or made specific other statutes or provisions of law that were not cited as a reference. As a result, the Board needs to add additional references to these regulations.

OAL discussed this issue with the Board's staff and determined appropriate revisions to the authority and reference citations for each regulation to this action.

CONCLUSION

For the reasons set forth above, OAL has disapproved the Board's rulemaking action because it failed to comply with the "clarity," "authority," and "reference" standards in Government Code section 11349.1.

Date: November 6, 2012

Richard L. Smith
Richard L. Smith
Senior Counsel

FOR: DEBRA M. CORNEZ
Director

Original: Annemarie Del Mugnaio

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

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

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

Section 1399.140 - Continuing Education Required.

(a) Any hearing aid license that expires on or after January 31, 2014, ~~Each dispenser~~ is required to complete at least ~~six (6)~~ twelve (12) hours of continuing education from a provider approved under Section 1399.141 below during each ~~calendar year~~ preceding one-year renewal period. ~~For all licenses which expire on and after January 1, 1997, all holders of licenses shall complete nine (9) hours of continuing education per year, and n~~ .

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

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

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

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

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

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

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

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

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

Section 1399.140.1 - Continuing Education Course Content

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

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

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

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

1399.141. Approval of Continuing Education Providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1399.142. Sanctions for Noncompliance.

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

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

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

1399.143. Repetition of Courses.

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

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

1399.144. Waiver of Requirement.

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

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

Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

Draft

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

~~July 16, 2004~~ _____, 2013

~~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.

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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. 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

SPEECH-LANGUAGE PATHOLOGISTS, AND AUDIOLOGISTS AND HEARING AID DISPENSERS

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

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

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

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In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the board shall ~~consider the disciplinary guidelines entitled~~ comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines Revised January 2012, (hereinafter "Guidelines") ~~July 16, 2004~~," that are hereby incorporated by reference. The Disciplinary Guidelines apply to all matters; the Uniform Standards describe the orders that shall be imposed upon a substance abusing licensee.

Deviation from the~~se~~ guidelines and orders, including the standard terms and conditions of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; and evidentiary problems. Neither the board nor an administrative law judge may impose any terms or conditions of probation that are less restrictive than the Uniform Standards Related to Substance Abuse. If a licensee has not been identified as a substance abusing licensee (for example, through stipulation) in a case involving drugs or alcohol, a clinical diagnostic evaluation shall be ordered and the remaining provisions of the Uniform Standards may be made contingent upon a clinical diagnostic evaluator's report that the licensee has a substance abuse problem. The clinical diagnostic evaluator's report shall be submitted in its entirety to the board.

**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 and 11425.50(e) Government Code. Reference: Sections 475, 480, 2533 and 2533.1, 2533.2 and 2538.40 Business and Professions Code; Sections 11400.20, and 11425.50(e), Government Code.

*Italicized text reflects proposed regulatory language that is part of another rulemaking file.

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

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.

Clinical Diagnostic Evaluations/ Group Support Meetings:

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 three (3) 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:

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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 or other relationship that could reasonably be expected to compromise the ability of the evaluator to render an impartial and unbiased report, 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 evaluations, 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 order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the Board's probation monitor

The Board's probation monitor shall review the clinical diagnostic evaluation to

determine whether or not the licensee is safe to return to either part-time or full-time practice 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.

While the license is suspended, pending the results of the clinical diagnostic evaluation, the respondent shall submit to two random drug tests per week.

Treatment:

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.

Group Support Meetings:

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If the Board requires the licensee to participate in group support meetings, the Board shall consider the following in determining the frequency of group meeting attendance: the license history, the documented length of sobriety, the recommendation of the clinical evaluator, the scope and pattern of use, the licensee's treatment history; and, the nature, duration, and severity of substance abuse.

The meeting facilitator must have a minimum of three (3) years of experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organization.

The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the past five (5) years.

The group meeting facilitator shall provide the Board with documentation evidencing the licensee's attendance at the group support meetings.

The group meeting facilitator shall report any unexcused absence to the Board within twenty-four (24) hours.

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.

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;

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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.

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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. A Board may direct a licensee to be drug tested at any time. Additionally, 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.
d) If the Board finds that a major violation, as defined in the Uniform Standards, has occurred, the licensee shall be subject to the drug testing frequency as identified in subsection (a) above.

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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 the discipline by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.
   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, may bypass the testing frequency noted in the first year of probation.
   c) The Board may reduce the testing frequency to a minimum of twelve (12) times per year for any person who is not practicing or working in any health care field. Prior to returning to healthcare or a licensed profession, the Board may increase the testing frequency for at least sixty (60) days.
   d) The Board may postpone the testing for any licensee whose probation is placed on 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 completing a full year of drug testing standards equivalent to the first year standards for drug testing, otherwise the drug testing standards for the second year shall apply.
   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 then twenty-four times per year.

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

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

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

6. Collection of specimens shall be observed.

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

Positive Drug Tests

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.

DISCIPLINARY GUIDELINES

Guidelines to Consider When Rendering Descipline

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

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.

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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 REINSTATEMENT OF LICENSE~~ ~~INITIAL LICENSURE AND~~

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.~~:"~~

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~~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.

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Probationary Term

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

Probationary Conditions

Conditions of probation are divided into two categories:

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

List of Probation Terms and Conditions

Standard Probation Terms and Conditions

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

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

Additional Probation Terms and Conditions

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

16) Submit to Examination by Physician
17) Psychological Evaluation
18) Psychotherapy
19) Clinical Diagnostic Evaluation
20) Attend Inpatient/Outpatient Treatment
21) Attend Chemical Dependency Support and Recovery Groups
22) Abstain from Controlled Substances
23) Abstain from the Use of Alcohol
24) Submit Biological Fluid Samples
25) Take and Pass Licensure Examination
26) Practice Restrictions: Serving As a Supervisor
27) Supervised Practice
28) Worksite Monitor
29) Restrictions on Licensed Practice
30) Actual Suspension of License

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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.*

~~1~~2. OBEY ALL LAWS:

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

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

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

~~2~~3. COMPLY WITH PROBATION PROGRAM

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

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Rationale: *Respondent must understand and comply with the probation terms to ensure consumer protection is upheld. Respondent shall be prohibited from making contact with any persons involved in the complaint, with the exception of the Board or its legal representatives, to protect the victims, complainants and witnesses from harassment by the Respondent*

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

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

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

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

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

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

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

5. SUBMIT QUARTERLY WRITTEN DECLARATIONS

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

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

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

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

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

The respondent shall complete 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

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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 plan of education. The plan shall specify the areas and hours of education required, and may also dictate the institution(s) where the education will be received. Such educational coursework is usually required prior to allowing the licensee to return to the identified deficient area of practice, and requires prior approval by the Board. The educational plan is for licensees who have demonstrated deficiencies in skill but do not constitute a present danger to patients in other areas of practice. Respondent shall not receive continuing education credit for license renewal for any courses taken pursuant to a disciplinary order or settlement agreement.*

10. CONSUMER RESTITUTION FOR HEARING AID WARRANTY ISSUES

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*

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

Draft

~~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 respondent 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 for a speech-language pathologist, audiologist, or speech-language pathology assistant, 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.~~

Draft

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 based on the factual circumstances surrounding that particular request, and notify Respondent in writing whether is has been granted. Upon formal acceptance of the license surrender, Respondent's license will no longer be subject to the terms and conditions of probation. Respondent shall return the pocket license(s) and wall certificate(s) to the Board within ten (10) days of the effective date of the surrender.

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

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

1~~2~~4. VIOLATION OF PROBATION

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

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

1~~3~~5. COMPLETION OF PROBATION

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

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

Draft

~~OPTIONAL~~ ADDITIONAL TERMS AND CONDITIONS OF PROBATION (~~14-26~~ 16-30)

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

Within sixty (60) days of the effective date of the Decision, Respondent shall submit to a physical examination by a physician and surgeon of his or her choice who meets minimum criteria established by the Board. The physician and surgeon shall ~~must~~ be licensed in California and Board certified in Family Practice, Internal Medicine, or a related specialty. The purpose of this examination shall be to determine Respondent's ability to safely perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician and surgeon with a copy of the Board's Decision prior to the examination. Cost of such examination shall be paid by Respondent.

Respondent shall cause the physician and surgeon to complete a written medical report. This report shall be submitted by the physician and surgeon to the Board within ninety (90) days of the effective date of the Decision. If the examining physician and surgeon finds that Respondent is not physically fit to practice or can only practice with restrictions, the ~~examining~~ physician and surgeon shall notify the Board within three (3) working days. The Board shall notify the respondent in writing of the ~~examining~~ physician~~'s~~ and surgeon's determination of unfitness to practice and shall order the

Respondent to cease practice or place restrictions on Respondent's practice. ~~licensed activities as a condition of probation.~~ Respondent shall comply with any order to cease practice or restriction of his or her practice ~~this condition~~ until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent in writing. ~~Respondent shall document compliance in the manner required by the Board.~~

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

1~~5~~7. PSYCHOLOGICAL EVALUATION

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

Within twenty (20) days of the effective date of the Decision, ~~Respondent shall submit to~~ the Board shall provide to the Respondent, the name of one or more proposed evaluators ~~for prior approval by the Board~~ approved to conduct the psychological evaluation. Respondent must notify the Board if the evaluator has a familial, has or used to have a financial, personal or business relationship, or other relationship with the Respondent that could reasonably be expected to compromise the ability of the evaluator to render an impartial and unbiased report.

Draft

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

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

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

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

1~~6~~8. PSYCHOTHERAPY

Respondent shall participate in ongoing psychotherapy with a California licensed ~~psychiatrist~~ physician and surgeon who is Board certified in Psychiatry, or a clinical psychologist, or a marriage, family, and child counselor, or a licensed clinical social worker approved by the Board. Respondent must notify the Board if the evaluator has a familial, has or used to have a financial, personal or business relationship, or other relationship with the Respondent that could reasonably be expected to compromise the ability of the evaluator to render an impartial and unbiased report. 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~~ approved~~al.~~ to provide on-going therapy ~~Upon approval by the Board,~~ Respondent shall commence psychotherapy within ten (10) days of receiving notification by the Board of the name's of approved therapists. Respondent shall provide the therapist with a copy of the Board's Decision no later than the first counseling session.

Draft

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, the respondent 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.*

Draft

~~17.~~ 20. ATTEND INPATIENT OR OUTPATIENT TREATEMENT ~~REHABILITATION PROGRAM~~

Within fifteen (15) days of the effective date of this decision, Respondent shall submit to the Board or its designee for its prior approval the name of an (inpatient) (outpatient) treatment program of Respondent's choice. Upon approval, Respondent shall undergo and continue the treatment program until the Board or its designee deems that no further participation in the treatment program is necessary. Respondent shall have the program director submit quarterly status reports to the Board or its designee indicating whether Respondent is capable of practicing safe practice.

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

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

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

~~18~~21. 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. In the case of a substance abusing licensee, Respondent shall cause the group meeting facilitator to provide the Board with a signed document showing Respondent's name, group name, the date and location of the meeting, respondent's attendance and level of participation and progress. Respondent shall notify the group meeting facilitator of the facilitator's obligation to report to the Board any unexcused absence within twenty-four (24) hours.

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

~~19~~22. 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.

Draft

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

2~~0~~3. ABSTAIN FROM USE OF ALCOHOL

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

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

2~~1~~4. 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 fifty-two (52) random tests per year within the first year of probation, or an appropriate testing frequency as determined by the Board, and at minimum of thirty-six (36) 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 so that the Board can monitor whether or not the Respondent is abstaining from the use of banned substances or alcohol.*

2~~2~~5. 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.

Draft

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).*

2~~3~~6. PRACTICE RESTRICTIONS: SERVING AS A SUPERVISOR

~~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, or any registered paraprofessional or trainee during the period of probation or until approved by the Board.

27. SUPERVISED PRACTICE

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](e.g. *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.

Draft

The supervisor shall be independent, with no prior business, or professional relationship, other relationship that could reasonably be expected to compromise the ability of the supervisor provide impartial and unbiased supervision of the 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 and necessary documents are filed with 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.*

28. 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 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 and the other conditions as set forth in this paragraph are fulfilled.

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

24~~9~~. 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.*

Draft

~~25. RECOVERY OF COSTS~~

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

~~26~~30. 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 and shall provide his or her employer with a copy of the Board's decision, and the reasons for the length of suspension. Prior to the lifting of the actual suspension of license, the Board shall receive pertinent documentation from the professionals evaluating the respondent, confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board. ~~Respondent shall provide documentation of completion of educational courses or treatment rehabilitation if required.~~

Rationale: *This should be imposed when it is appropriatefor the licensee to complete other*

terms and conditions to ensure consumer protection before the licensee is safe to resume practice.

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

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

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

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

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

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

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

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

Draft

Recommended Action by Violation

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

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

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

PENALTIES FOR DISCIPLINARY ACTIONS

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

UNPROFESSIONAL CONDUCT (GENERAL)

Sections 480 & 2533 of the Business and Professions Code
~~Section 1399.156 of the California Code of Regulations, Title 16~~

MAXIMUM — Revocation or Denial

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

Draft

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

UNPROFESSIONAL CONDUCT -- SECURING LICENSE UNLAWFULLY

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

MINIMUM — Revocation or Denial

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

MENTAL OR PHYSICAL ILLNESS

Section 820 of the Business and Professions Code

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

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

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

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

Draft

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

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

action, multiple violations and patient harm.

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

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

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

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

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

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

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms and Conditions of Probation (1-1~~3~~5) Clinical Diagnostic Evaluation (17) Attend Chemical Dependency Support and Recovery Groups (~~18~~20)

Draft

Abstain from ~~Drugs~~Controlled Substances and Alcohol (~~19~~ -2~~0~~1-22)
Submit Biological Fluid~~s~~ Samples (2~~1~~3)
Worksite Monitor (24)
Actual Suspension of License (2~~7~~8)
If warranted:
Submit to ~~Physical~~ Examination by Physician (14~~6~~)
Psychological Evaluation (1~~5~~7)
~~Drug and Alcohol Rehabilitation (17)~~
Supervis~~ion~~ed Practice (2~~3~~5)
Restrict~~ed~~ions on Licensed Practice (2~~5~~7)
~~Suspension (26)~~

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

UNPROFESSIONAL CONDUCT -- COMMITTING A DISHONEST OR FRAUDULENT ACT SUBSTANTIALLY RELATED TO QUALIFICATIONS, FUNCTIONS, OR DUTIES OF LICENSEES (Non-Drug Related)
Section 2533(e) of the Business and Professions Code

Draft

MAXIMUM — Revocation or Denial

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

UNPROFESSIONAL CONDUCT- INCOMPETENCE OR NEGLIGENCE
~~Section 1399.156(c) of the California Code of Regulations, Title 16~~
Section 2533(f) of the Business and Professions Code

MAXIMUM — Revocation or Denial

MINIMUM — ~~3~~ 5 Years Probation
Standard Terms and Conditions of Probation (1-1~~3~~5)
Supervis~~ion~~ed Practice (2~~3~~5)
If warranted:
Psychological Evaluation (1~~5~~7)
Psychotherapy (1~~6~~8)

Restrict~~ed~~ions on Licensed Practice (2~~5~~7)
Actual Suspension of License (2~~7~~8)

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

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

DISCIPLINARY ACT BY FOREIGN JURISDICTION

Section 141 of the Business and Professions Code

Draft

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

SEXUAL MISCONDUCT

Section 726 of the Business and Professions Code

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

Psychological Evaluation (1~~5~~7)
Psychotherapy (1~~6~~8)
Restrict~~ed~~ions on Licensed Practice (2~~5~~7)
Actual Suspension of License (2~~7~~8)

CRIMINAL CONVICTION
Sections 480 and 2533(a) of the Business and Professions Code

MAXIMUM Revocation

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

OBTAINING A LICENSE BY FRAUD
Section 2533(b) of the Business and Professions Code

MINIMUM Revocation

Draft

FRAUD OR MISREPRESENTATION IN PRACTICE
Section 2533(e) of the Business and Professions Code

MAXIMUM Revocation

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

EMPLOYING AN UNLICENSED PERSON
Section 2533(e) of the Business and Professions Code

MAXIMUM Revocation

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

ILLEGAL ADVERTISING

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

MAXIMUM	Revocation
MINIMUM	Public Reproval

LETTING ANOTHER USE HIS OR HER LICENSE

Section 2533(e) of the Business and Professions Code

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

DOING ANY ACT WHICH WOULD BE GROUNDS FOR LICENSE DENIAL

Section 2533(j) of the Business and Professions Code

Draft

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

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

UNPROFESSIONAL CONDUCT -- ADVERTISING

Section 1399.156.4 of the California Code of Regulations, Title 16

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

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

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

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

UNPROFESSIONAL CONDUCT-CORRUPT OR ABUSIVE ACT AGAINST A PATIENT

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

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

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

UNPROFESSIONAL CONDUCT BY SPEECH-LANGUAGE PATHOLOGY CORPORATION OR AUDIOLOGY CORPORATION

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

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

VIOLATION OF REQUIRED PROFESSIONAL EXPERIENCE (RPE) REGULATIONS

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

Draft

MAXIMUM Revocation or Denial

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

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

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

MAXIMUM Revocation or Denial

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

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

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

Draft

MAXIMUM Revocation or Denial

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

PENALTIES FOR DISCIPLINARY ACTIONS

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

UNLICENSED PRACTICE

Section 2538.20* of the Business and Professions Code

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

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

Section 2538.30 of the Business and Professions Code

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

Draft

PRACTICING WITHOUT NOTIFYING THE BOARD OF BUSINESS ADDRESS

Section 2538.33* of the Business and Professions Code

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

PRACTICING 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)

Draft

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

Section 2538.37* of the Business and Professions Code

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

FAILURE TO MAINTAIN REQUIRED RECORDS

Section 2538.38 of the Business and Professions Code

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

MINIMUM Public Reproval

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

MAXIMUM Revocation

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

USING THE TERM "DOCTOR", "PHYSICIAN" OR "AUDIOLOGIST" UNLESS AUTHORIZED
Section 2533(h) of the Business and Professions Code

MAXIMUM Revocation

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

Draft

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)

Draft

LYING ON THE LICENSE APPLICATION
Section 2538.47 of the Business and Professions Code

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

PRACTICING WITHOUT A VALID LICENSE
Section 2538.48* of the Business and Professions Code

MAXIMUM Revocation

MINIMUM Public Reproval

UNLAWFUL PRACTICE

Section 2538.49 of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms and Conditions of Probation (1-15) If warranted: Take and Pass Licensure Examination (23) Supervised Practice (25) Actual Suspension of License (28)

ADVERTISING WITHOUT A VALID LICENSE

Section 2538.50* of the Business and Professions Code

MAXIMUM	Revocation/Denial of Licensure
MINIMUM	Public Reproval

PRACTICING WITHOUT A BUSINESS ADDRESS

Section 2538.51 of the Business and Professions Code

MAXIMUM	5 Years Probation
MINIMUM	Public Reproval

Draft

**Does not apply to a Dispensing Audiologist*

Dear:

I write in response to your recent inquiries to the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board ("Board"). I include your original questions here for ease of reference.

1. Q: Can a professional medical corporation employ a hearing aid dispenser or a dispensing audiologist, solely for the purpose of fitting and selling hearing aids?

A: No. The provisions of the Moscone-Knox Professional Corporation Act ("Moscone-Knox") limit the practice of a professional corporation to a single profession unless the rendering of other professional services is expressly authorized in section 13401.5 of the California Corporations Code (Corp. Code section 13401(d)). Hearing aid dispensers and dispensing audiologists offer 'professional services' as defined in Corporations Code section 13401(a), and yet are not among the licensees listed in the subdivision that lists the professionals able to work for medical corporations (Corp. Code section 13401.5(a)). Business and Professions Code section 2538.20, then, would allow for the employment of hearing aid dispensers by general, not professional, corporations.

2. Q: Can a general law corporation employ a dispensing audiologist for the purpose of providing only hearing aid dispenser services?

A: Yes. A general corporation that does not otherwise run afoul of the Moscone-Knox may employ a dispensing audiologist for the purpose of providing *only hearing aid dispenser services*. As mentioned above, Business and Professions Code section 2538.20 allows general corporations to employ hearing aid dispensers. When limiting one's practice to the dispensing of hearing aids, the dispensing audiologist occupies the same position as a hearing aid dispenser. Both the dispensing audiologist and the general corporation must, however, exercise great care in ensuring that the dispensing audiologist not stray into providing audiology services. To do so would be a violation of the Corporations Code as well as the Speech-Language Pathology, Audiology and Hearing Aid Dispensers' Practice Act, subjecting the licensee to discipline by the Board as well as possible criminal penalty.

3. Q: Can a general law corporation employ a dispensing audiologist for the purpose of providing audiology services and dispensing services where the unlicensed corporation does not direct or otherwise interfere in any manner with the audiologist's provision of audiology services to patients?

A: No. It is of no consequence that the corporation will agree not to direct or otherwise interfere with the audiologist's provision of audiology services to patients.

Moscone-Knox sets forth the *only* allowable corporate form for professionals licensed under the Business and Professions Code.

At common law, professionals could not form corporations. *People v. California Protective Corporation* (1926) 76 Cal.App. 354. Moscone-Knox is a statutory exception carved out to this common law rule. As such, an express provision prohibiting general corporate practice of audiology is unnecessary. In order for a corporation to deal in a licensed profession, a statute must *specifically authorize* the same. Moscone-Knox states that:

> "A corporation may be formed under the General Corporation Law …for the purposes of qualifying as a professional corporation in the manner provided in this part and rendering professional services." (Corp. Code section 13404).

In other words, unless the corporation is qualified 'as a professional corporation,' it may not render professional services. Furthermore, Business and Professions Code section 2536 states, in part:

> "A speech-language pathology corporation or an audiology corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are speech-language pathologists or audiologists are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs…"

The September 1995 opinion to which you refer does not accurately reflect California law. Audiology may not be practiced in a corporation that does not meet the requirements of Moscone-Knox.

4. Q: Can a general law corporation employ an audiologist for the purpose of providing audiology services where no unlicensed person directs or otherwise interferes in any manner with the audiologist's provision of audiology services to patients?

   A: No. See response to Question 3.

I hope you find the foregoing helpful. Thank you for your patience in awaiting a response. Please do not hesitate to contact me with any additional questions you may have.

[signature block]

Dear :

I write in response to your recent inquiries to the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board ("Board"). I include your original questions here for ease of reference.

1. Q: Can a professional medical corporation employ a CA licensed dispensing audiologist who fits and sells hearing aids as a part of the audiologist's practice to patients of the medical corporation's practice (when no hearing aid dispenser is employed by the medical corporation?

A: No. The provisions of the Moscone-Knox Professional Corporation Act ("Moscone-Knox") limit the practice of a professional corporation to a single profession (Corp. Code section 13401(d)). The exception to this rule is if the rendering of other professional services is expressly authorized in section 13401.5 of the California Corporations Code. Hearing aid dispensers and dispensing audiologists offer 'professional services' as defined in Corporations Code section 13401(a), but are not among the licensees listed in the subdivision that lists the professionals able to work for medical corporations (Corp. Code section 13401.5(a)). Business and Professions Code section 2538.20, then, would allow for the employment of hearing aid dispensers by general, not professional, corporations.

2. Q: Are there any requirements that all the physicians in the medical corporation also be licensed to dispense hearing aids if the audiologist is licensed to dispense?

A: N/A. Your question presupposes the ability of a medical corporation to employ an audiologist. Please see above.

3. Q: Does the exception in the second part of Bus. & Prof. Code section 655.2 apply to any medical group that contracts with any Knox-Keene licensed health care service plan or just to a Kaiser and Kaiser-like organizations?

A: The restrictions in Section 655.2 do not apply to "…any physician and surgeon or medical corporation which contracts with or is affiliated with" a Knox-Keene-licensed comprehensive group practice health care service plan.

I hope you find the foregoing helpful. Thank you for your patience in awaiting a response. Please do not hesitate to contact me with any additional questions you may have.

CLOSED COMPLAINTS FOR FISCAL YEAR 2012-2013
QUARTER 1 (Jul - Sep)

HEARING AID DISPENSING

Incompetence/Negligence	5	No Violation (1) Insufficient Evidence (3) Withdrawn (1)
Unprofessional Conduct	2	No Violation (1) No Response from Complainant (1)
Refund (Song Beverly)	4	Refund Issued (1) Referred to Attorney General (2) Deceased Complaintant (1)
Advertising	1	Cease and Desist Issued (1)
Unlicensed Activity	3	Cited; Referred to Attorney General (1) Non-jurisdictional (1) No Violation (1)

SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY

Unprofessional Conduct	2	No Response from Complainant (1), SP Withdrawn (1), SP
Refund (Song Beverly)	2	Refund Issued (2), DAU-2
Refund	1	Refund Issued, SP
Criminal Charges/Convictions	1	Referred to Attorney General, DAU

SP - Speech-Language Pathologist
DAU - Dispensing Audiologist

*** *** Run Details to 92 to get case # and record final action.

CLOSED COMPLAINTS FOR FISCAL YEAR 2012-2013
QUARTER 2 (Oct - Dec)

HEARING AID DISPENSING

Incompetence/Negligence	1	Insufficient Evidence
Fraud	1	Withdrawn
Unprofessional Conduct	4	No Violation (1) No Response from Complainant (1) Insufficient Evidence (1) Withdrawn (1)
Song Beverly	4	Refund Issued (2) Purchasing Agreement Corrected (1) Insufficient Evidence (1)
Advertising	5	Cease and Desist Issued
Unlicensed Activity	1	Referred to Attorney General
Criminal Charges/Convictions	2	Info on File - DUI, Licensee (1) Referred to Attorney General (1) *License Denied HAD Trainee* *Multiple Convictions*

SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY

Fraud	1	Referred to Attorney General SP-Felony Arrest Warrant
Criminal Charges/Convictions	2	Referred to Attorney General *License Denied - Failure to Disclose* *SP and SLPA Applicants*

SP - Speech-Language Pathologist
DAU - Dispensing Audiologist

*** *** Run Details to 92 to get case # and record final action.

ENFORCEMENT STATISTICS
FISCAL YEAR JULY 1, 2012 - JUNE 30, 2013

	QTR 1		QTR 2		QTR 3		QTR 4	
	HAD	SP-AU	HAD	SP-AU	HAD	SP-AU	HAD	SP-AU
	Jul - Sep		Oct - Dec		Jan - Mar		Apr - Jun	
COMPLAINTS/CONVICTIONS								
Complaints Received	24	7	16	5				
Convictions Received	2	11	3	1				
Closed	15	6	18	3				
Pending	126	73	126	75				
Average Days to Intake	1	2	2	4				

Average Days to Intake - Average cycle time from complaint received, to the date the complaint was assigned to an investigator.

INVESTIGATIONS								
DESK								
Assigned	26	17	19	7				
Closed	14	5	17	3				
Average Days to Complete*	296	325	251	5				
Pending	102	65	98	68				

Average Days to Complete Desk Investigations - Average cycle time from complaint receipt to closure of the investigation process.

NON SWORN								
Assigned								
Closed	1							
Average Days to Complete*	316							
Pending	8	2	8	2				

Average Days to Complete Non Sworn Investigations - Average cycle time from complaint receipt to closure of the investigation process.

SWORN								
Assigned	8		6					
Closed		1	2					
Average Days to Complete*		260	668					
Pending	16	5	20	5				

Average Days to Complete Sworn Investigations - Average cycle time from complaint receipt to closure of the investigation process.

CITATIONS

Citations Issued				
Average Days to Complete				

Average Days to Issue a Citation - Average cycle time from complaint receipt to the effective date of the citation.

ATTORNEY GENERAL CASES

Referred to the Attorney General	3 1	2 3		
Pending at the AG	11 13	12 15		
Accusations Filed	1	1		
Accusations Withdrawn/Dismissed/Declined	1			
Statement of Issues (SOI) Filed	1			
SOI Withdrawn/Dismissed/Declined				
Closed Without Discipline				

ATTORNEY GENERAL OUTCOMES

Probation		1		
Public Letter of Reprimand				
Surrender of License	1			
Suspension of License				
License Revoked				
License Denied				
Conditional License				
Average Days to Close	603	2147		

Average Days to Close a Discipline Case - Average cycle time from complaint receipt to the effective date of the disciplinary order.

VIOLATION TYPE

Substance Abuse	1			
Aiding or Abetting		1		

PROBATION

Active Cases	2 13	2 14		
Tolled	1 9	1 9		
Conditional License	4	4		

Pending Agenda Items 2013

1) HAD Advertising Amendments – Board to provide input prior to January Meeting

2) FDA Regulations regarding the internet sale of HA's
   a) Follow-up on Board exemption request
   b) Contact ASHA/HIS regarding response to letter of Aug. 31, 2012

3) Evaluating Equivalency of Internationally Trained Applicants/ CAPSCD, CTC
   -Also incorporating item 8.

4) HAD Entry-level licensing requirements- AA/BA/Formalized Training
   a) Other states' provisions
   b) Reliance on a national examination
   c) HIS data

5) Formulating Supervisory Training Manual

6) HAD Standard of Care Guidelines

7) Conduct the OA/Validation Study for SLP Examination

8) CE Courses for HAD/DAUs- Board approval?
   a) Courses on Cochlear Implants/Pediatric Audiology/HAD Manufacturer

9) Discussion on Credentialing- vs- Licensure (Table from CM)

10) Difference between SLP Aides – vs.- SLPAs

11) Audiology Aide Regulations- Supervision Standards