STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY& HEARING AID DISPENSERS BOARD
2005 Evergreen Street, Suite 2100, Sacramento, CA 95815
Phone: (916) 263-2666 Fax: (916) 263-2668 | www.speechandhearing.ca.gov

BOARD MEETING NOTICE AND AGENDA

Hilton Garden Inn
4200 Taylor Street
San Diego, CA 92110
(916) 263-2666

Board Members

Alison Grimes, Dispensing Audiologist, Board Chair
Patti Solomon-Rice, Speech-Language Pathologist, Vice Chair
Dee Parker, Speech-Language Pathologist
Debbie Snow, Public Member
Jaime Lee, Public Member
Deane Manning, Hearing Aid Dispenser
Amnon Shalev, Hearing Aid Dispenser
Marcia Raggio, Dispensing Audiologist
Rodney Diaz, Otolaryngologist

February 4, 2016 1:00 p.m. – until close of business

1. Call to Order / Roll Call / Establishment of Quorum

2. Public Comment for Items not on the Agenda

3. Review and Approval of the November 6, 2015 Board Meeting Minutes, November 22, 2015 Board Meeting Minutes, and December 22, 2015 Board Meeting Minutes

4. Proposed Regulations – Discussion and Possible Action
   a. Title 16, CCR, Sections 1399.152 – Supervised Clinical Experience Clock Hours
   b. Title 16, CCR, Section 1399.140 – Hearing Aid Dispensers Continuing Education
   c. Title 16, CCR, Sections 1399.131 & 1399.155 - Disciplinary Guidelines and Uniform Standards for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers

5. Executive Officer's Report
   a. Administration Update
   b. Budget Report
   c. Licensing Report
   d. Practical Examination Report
   e. Enforcement Report
   f. Strategic Plan Update

6. Recess until February 5, 2016 9:00 a.m.

February 5, 2016 Reconvene at 9:00 a.m.

7. Call to Order / Roll Call / Establishment of Quorum

8. Swearing-in of Reappointed Board Members

9:15 a.m. – Petition Hearing

9. Hearing on Petition for Early Termination of Probation – Kathryn Ellis, SLP, License # 15760

Closed Session

10. Pursuant to Government Code Section 11126 (c) (3), the Board will Meet in Closed Session to Deliberate on above Petition

Open Session

11. Review and Approve Support Letter for Legislation to Allow Additional Audiology Doctoral Programs through the California State University System

12. Discussion and Possible Action to Eliminate Speech-Language Pathology Aide Designation

13. Update and Discussion on Requirements and Processes on Foreign-educated Speech-Language Pathology Applicants

14. Discussion and Possible Action of Outreach/Education to Audiologists on Aide Registration

15. Review and Approve Board Letter to California Children's Services (CCS) Regarding the Lack of Access to Audiology Services for CCS Participants

16. Update on President's Council of Advisors on Science and Technology Report: Aging America and Hearing Loss: Imperative of Improved Hearing Technologies

17. Presentation and Discussion Regarding Recent Guidance on the North Carolina State Board of Dental Examiners v. Federal Trade Commision (North Carolina)

18. Future Agenda Items and Future Board Meeting Dates
    a. May 12-13, 2016 -Bay Area or Sacramento
    b. August 11-12, 2016 – Sacramento
    c. November (TBD) 2016 – (TBD)
    d. February 9-10, 2017 – TBD
    e. May 10-11, 2017 - TBD

19. Adjournment

Agendas and materials can be found on the Board's website at www.speechandhearing.ca.gov.

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board Chair and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. The Board plans to webcast the meeting on the website https://thedcapage.wordpress.com/webcasts/. Webcast availability cannot be guaranteed due to limited resources or technical difficulties that may arise. The meeting will not be cancelled if webcast is not available. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board Chair may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).

The meeting facility is accessible to persons with a disability. Any person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting the Board office at (916) 263-2666 or making a written request to Breanne Humphreys, Board Operations Manager, 2005 Evergreen Street, Suite 2100, Sacramento, California 95815. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.

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Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

BOARD MEETING MINUTES – DRAFT
November 6, 2015

Sacramento, CA

1. Call to Order / Roll Call / Establishment of Quorum

Alison Grimes, Board Chair, called the Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board meeting to order at 9:10 a.m. Ms. Grimes called roll; six members of the Board were present and thus a quorum was established.

Board Members Present
Alison Grimes, Board Chair
Patti Solomon-Rice, Vice Chair
Marcia Raggio, Board Member
Dee Parker, Board Member
Amnon Shalev, Board Member
Debbie Snow, Public Board Member

Board Member Absent
Rodney Diaz, MD, Public Board Member
Jaime Lee, Public Board Member
Deane Manning, Board Member

Staff Present
Paul Sanchez, Executive Officer
Breanne Humphries, Program Manager
Sabina Knight, Legal Counsel
Lou Galiano, DCA Web Cast
Anita Joseph, Enforcement Coordinator
Karen Robison, Enforcement Analyst
Marti Shaffer, Enforcement Analyst

Guests Present
William Barnaby, Sr.
William Barnaby, Jr.
Becky Bingea, California Academy of Audiology (CAA)
Vanessa Cajina, KP Public Affairs for Hearing Healthcare Providers (HHP)
Bill Forrest
Shelly Jones, DCA Executive Office
Dennis Zanchi, SOLID

2. Hearing on Petition for Early Termination of Probation – Kathryn Ellis, SLP, License # 15760

The Hearing on Petition for Early Termination of Probation – Kathryn Ellis has been postponed.

3. The Board went into closed session.

1I-2011- 57
Stipulated settlement - Adopted

Open Session

4. Public Comment for Items not on the Agenda

Becky Bingea informed the Board that the California Academy of Audiology (CAA) would be meeting with Assembly Member Kevin Mullin on December 1, 2015, regarding sponsoring a bill to allow for CSU stand-alone AuD program(s). There are two AuD programs in California and additional programs are needed to meet the growing needs of the aging and newborn populations. The CAA is requesting Board support, in the form of a formal letter, by early January requesting that the California State University (CSU) system be allowed to offer stand –alone AuD programs.

5. Approval of the June 19, 2015 Meeting Minutes and August 20-21, 2015 Meeting Minutes

M/S/C Ms. Solomon-Rice/Raggio

- **Approve the June 19, 2015 and the August 20-21, 2015, Board meeting minutes as amended.**

6. Review and Approval of Strategic Plan

The Board worked line by line and discussed edits to the Strategic Plan. Dennis Zanchi will make the changes the Board brought forth during the board meeting. Ms. Grimes noted the document is laid out clear and reads fabulously. The Board will meet by teleconference to approve the changes.

7. Update on the Council of Academic Programs in Communication Sciences and Disorders Meeting

Ms. Solomon-Rice informed the Board and the public who the Council of Academic Programs in Communication Sciences and Disorders (CAPSCD) is, what they do, and how often the council meets. She noted that William Hattrick with the California Commission on Teacher Credentialing (CTC) gave a presentation regarding the credentialing restructuring process the CTC is undertaking. Ms. Solomon-Rice stated there is a new AuD program at the University of the Pacific (UOP) in San Francisco with a class size of twenty-two. Loma Linda University in the fall of 2015 started a clinical doctorate program in Speech-Language Pathology which has a class size of 4-6 students. Ms. Raggio gave a presentation at the CAPCSD

meeting regarding increasing the amount of Speech-Language and Audiology programs offered in California. Universities receive 200-300 graduate applications each year and accept 25-35 students.

8. Update from National Council of State Boards of Examiners of Speech-Language Pathology and Audiology Conference

Ms. Grimes attended the National Council of State Boards of Examiners of Speech-Language Pathology and Audiology (NCSB) Conference. She suggested that the Board re-establish a connection with this organization as they are a valuable resource regarding the SLP and AuD trends across the country. Important topics discussed at the conference were license portability, hearing aid dispensing allowable as a part of an AuD license, exempt licensure settings, and the North Carolina Dental Board Decision.

9. Proposed Regulations – Discussion and Possible Action
   a. Title 16, CCR, Sections 1399.152 - RPE Clock Hours

The Board discussed the proposed language increasing the clock hour experience required for licensure as a SLP or AuD. Confusion arose as to why audiologists were included in the regulation since they are required to obtain a higher amount of experience. It was pointed out that one section speaks to supervised clinical experience and the other addresses supervised professional experience. Additional research will be conducted and the information gathered will be brought to the February Board meeting.

   b. Title 16, CCR, Sections 1399.154.1-1399.154.8 - Speech-Language Pathology or Audiology Aides

Ms. Knight informed the Board the Audiology Aide (Aide) issue started before she became our legal counsel. The list started as a list of what duties aides could perform then changed to a list of what duties an aide could not perform. Aide duties cannot be limited because statue allows them to perform them under supervision. The Board could look into changing the Aides scope of practice or the Aide supervisory requirements, if there is a need. The Board discussed publishing an educational piece expressing the necessity of registering aides.

   c. Title 16, CCR, Sections 1399.160.1, 1399.160.2,1399.160.3, and 1399.160.7 - Self-study Hours

The Board reviewed the proposed language line by line and approved the proposed text.

M/S/C Solomon-Rice/Parker

- **Move to approve the proposed text for a 45 day public comment period; delegate to the EO the authority to adopt the proposed regulatory changes if there are no adverse comments received during the public comment period and make any technical and non-substantive changes that may be required to complete the rule making file. The motion carried 6-0**

d. Title 16, CCR, Sections 1399.131 & 1399.155 - Disciplinary Guidelines for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers

The Board reviewed the proposed language and noted corrections that needed to be made to the language. Anita Joseph explained what the tolling of probation is. Ms. Knight will be checking to determine if the Board can place a time limit on tolling and acceptability of including the requirement to pay if bankruptcy is filed. The Disciplinary Guidelines will be revised and brought back at the February Board meeting.

10. Executive Officer's Report

Mr. Sanchez informed the Board that Monique Stephens has been hired as a seasonal clerk to assist with reception duties. He advised the Board that the CPS-HR workforce assessment and process improvements has been delayed and expects the project to start up again in December and be completed in the spring of 2016.

a. Administration Update
b. Budget Report

Mr. Sanchez briefed the Board on the budget process and let them know many hours have been spent working on Budget Change Proposals (BCP). He informed the Board that BCP's are confidential but noted an increase in resources is being sought and further information will be shared when the BCP is no longer considered confidential.

c. Licensing Report

Mr. Sanchez reported that licensing processing times have increase as peak licensing season is coming to an end. He pointed out the impact the loss of temporary staff has had on the processing timeframe and the need of additional staff was articulated in the budget process.

d. Practical Examination Report

Three of five practical exams have been held in 2015, which is an increase from prior years. Ms. Humphreys and staff have worked to improve and streamline the examination process in order to meet the high demand from candidates, including improvements to the examiner training program. The pass/fail data from the last examination is not currently available but will be included in the report during the February Board meeting.

e. Enforcement Report

Discussion ensued concerning the days it takes a complaint to be assigned to an analyst from the date it is received in the office. Mr. Sanchez informed the Board that Ms. Joseph worked hard to make the sure the stats were accurately reflected.

f. Status of Pending Regulations

Mr. Sanchez apprised the Board that progress is being made moving the regulations. Karen Robison explained what the final filing date means and gave an estimated date of when the SLPA regulations would be effective. Ms. Robison informed the Board that the non-substantive change regulations had been approved and the new law book will reflect those changes.

11. Update on 2015 Legislation
    a. AB 12 (Cooley) State Government: Administrative Regulations: Review

The Board was informed AB12 is in Senate appropriations.

    b. AB 85 (Wilk) Open Meetings

The Board was informed AB 85 has been vetoed by the Governor

    c. AB 333 (Melendez) Healing Arts: Continuing Education

The Board was informed AB 333 passed, however; legislation will only take effect if the Board enacts regulations allowing Continuing Education (CE) credit in CPR to be included as an approved CE subject.

    d. AB 1351 (Eggman) Deferred Entry of Judgment

The Board was informed AB 1351 has been vetoed by the Governor.

    e. AB 1352 (Eggman) Deferred Entry of Judgment

The Board was informed AB 1352 passed. Ms. Knight noted this bill is in response to Federal requirements which allow original pleas be stricken by certain substance abusers if they complete a rehabilitation program.

    f. SB 467 (Hill) Professions and Vocations

The Board was informed this bill passed.

    g. SB 479 (Bates) Healing Arts: Behavior Analysis

The Board was informed SB 479 is in Assembly appropriations and has stalled. Bill Barnaby reported on the history and current status of the bill. He advised the Board that the California Speech and Hearing Association (CSHA) will be watching for any movement in the area and will notify Mr. Sanchez if the current bill is amended or if a new bill is authored. Mr. Barnaby requests the Board take an interest in this bill and support the Board of Psychology's consumer protection requirements in the bill.

12. Discussion and Possible Action on Board Policy Regarding Requests for Teleconference Appearances for Petitions for Reduction of Penalty or Reinstatement

The Board discussed a teleconference appearance request from a reduction of penalty petitioner. The Board noted that they have a big responsibility when hearing a case to reduce a probation penalty or reinstate a license. The failure of technology, inability to evaluate credibility, disadvantage to the petitioner and not knowing who is with the petitioner were debated in the course of the discussion. The Board was informed by that legal counsel that policy can be made however, she is not aware of any Boards that allow Teleconference appearances. The Board requests staff gathers more information to bring to the February Board meeting.

13. Future Agenda Items and Future Board Meeting Dates

SLP Aides
Education on Registering AuD Aides
Hearing Aid Dispenser self-study hours
Disciplinary Guidelines
Foreign Educated applicants
SLP supervision audits - SLPA's
Regional Center providing inadequate services
Teleconference Petition discussion
Support for additional AuD programs
Strategic Plan

a. February 4-5, 2016 – San Diego
b. May 12-13, 2016 (Location to be determined)

The May Board meeting will be held in the Bay Area.

c. August 11-12, 2016 (Location to be determined)

The August Board meeting will be held in Sacramento.

d. November 10-11, 2016 (Location to be determined) (Dates on State Holiday)

14. Adjournment

The Board adjourned at 3:26 p.m.

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TELECONFERENCE BOARD MEETING
Board Meeting Minutes - Draft
November 30, 2015

I. Call to Order/ Role Call / Establishment of a Quorum

Alison Grimes, Board Chair, called the Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board meeting to order at 12:15 p.m. Ms. Grimes called roll; seven members of the Board were present and thus a quorum was established.

Board Members Present
Alison Grimes, Board Chair
Patti Solomon-Rice, Vice Chair
Deanne Manning, Board Member
Marcia Raggio, Board Member
Dee Parker, Board Member
Amnon Shalev, Board Member
Debbie Snow, Public Board Member

Board Member Absent
Rodney Diaz, MD, Public Board Member
Jaime Lee, Public Board Member

Staff Present
Paul Sanchez, Executive Officer
Shelly Jones, DCA Executive Office
Sabina Knight, Legal Counsel
Karen Robison, Analyst

Guests Present
Vanessa Cajina, KP Public Affairs for Hearing Healthcare Providers (HHP)

II. Public Comment for Items not on the Agenda

There were no comments from Public/Outside Agencies/Associations.

III. Review and Approval Strategic Plan (final draft)

The Board discussed the Strategic Plan. Minor edits to the Strategic Plan were noted.

M/S/C Parker/Snow

- **Move to approve the Strategic Plan as amended. The motion carried 7-0**

IV. Discussion and Possible Support for Additional Audiology Doctoral Programs through the California State University System

Ms. Raggio spoke about the support the California Academy of Audiology (CAA) is requesting support from the Board finding an author a Bill allowing affordable stand-alone Audiology Doctorate programs through the California State University (CSU) system. The demand for audiologists is increasing and the University of California (UC) system has been unable to add the needed programs.

The Board's discussion was interrupted due to technical issues with the conference call system. The Executive Officer notified all participants that the meeting had to be adjourned and would be rescheduled.

V. Adjournment
The meeting adjourned at 12:45 p.m.

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TELECONFERENCE BOARD MEETING
NOTICE AND AGENDA
Board Meeting Minutes - Draft
December 22, 2015

I. Call to Order/ Role Call / Establishment of a Quorum

Alison Grimes, Board Chair, called the Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board meeting to order at 12:05 p.m. Ms. Grimes called roll; seven members of the Board were present and thus a quorum was established.

Board Members Present
Alison Grimes, Board Chair
Patti Solomon-Rice, Vice Chair
Deanne Manning, Board Member
Marcia Raggio, Board Member
Dee Parker, Board Member
Amnon Shalev, Board Member
Debbie Snow, Public Board Member

Board Member Absent
Rodney Diaz, MD, Public Board Member
Jaime Lee, Public Board Member

Staff Present
Paul Sanchez, Executive Officer
Breanne Humphries, Program Manager
Shelly Jones, DCA Executive Office
Kurt Heppler, Supervising Legal Counsel
Kelsey Pruden, Legal Counsel
Karen Robison, Enforcement Analyst

Guests Present
Becky Bingea, California Academy of Audiology
Vanessa Cajina, Hearing Healthcare Providers
Rose Saxman
Gary Sayed, Dean, College of Health, Human Services, & Nursing, CSU Dominguez Hills

II. Public Comment for Items not on the Agenda

Paul Sanchez informed the Board that the North Carolina decision documents were e-mailed to the Board and this issue will be on a future agenda.

III. Discussion and Possible Support for Additional Audiology Doctoral Programs through the California State University System

Mr. Sanchez briefly went over the material included in the Board packet and stated this subject is in line with item 4.5 of the Strategic Plan. He reminded everyone that discussion on this subject began at the November 30, 2015 meeting, however; that meeting was interrupted due to technical difficulties.

Becky Bingea advised the Board that there is a shortage of audiologists (AU) in California. The current programs are not graduating the number of AuD's needed to meet the growing elderly population or the need of California school districts.

The California Academy of Audiology met with Assemblyman Mullin on December 1, 2015 to speak with him about authoring a bill to allow the CSU system to provide AuD programs. The California State University (CSU) system is interested in providing a clinical doctorate in audiology. She stated that the University of California (UC) at Irvine is currently the only UC school that has expressed an interest in starting an audiology program and this bill will not preclude the UC system from starting AuD programs.

Concern for decreasing salaries due to an overabundance of AuD graduates was brought up. The Board was apprised of the fact that AuD's are migrating to California from other states due to the shortage in California. Kaiser routinely recruits outside of California to fill its need for AuD's.

It was noted that not all CSU's will offer AuD programs because programs costs money. The hope is to have at least one program in Northern California and one program in Southern California. The Board was informed that the CSU degree will be distinguishable from the UC degree. The Board was advised that only about half of all AuD programs are housed at universities with medical facilities and there are internal policies in place to vet programs and programs will be teaching to graduate students with experience across a wide scope of practice settings.

M/S/C Manning/Shalev

- **Motion to write a letter of support in concept to Assemblyman Mullin supporting clinical audiology doctorate programs being provided by the California State University system. The motion carried 7-0**

IV. Future Agenda Items

Future items for the agenda are: the North Carolina decision, Foreign Educated applicants, SLPA and SLPA supervision, and the Department of Labor allowing hearing aid dispensers to provide diagnostic services to military veterans.

V. Adjournment

The meeting adjourned at 12:45 p.m.

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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Supervised Clinical Experience**

BACKGROUND

In January 2015, SB 1466 became effective which gave the Board authority to raise the minimum number of clinical clock hours required from 300 clock hours to 375 clock hours. At its November 6, 2015 meeting, the Board reviewed proposed regulatory language to update the number of hours required for supervised clinical experience. The Board sought clarification on the language pertaining to audiology in relation to supervised clinical experience and required professional experience.

The proposed language includes changes to both speech-language pathology (SLP) and audiology applicants' requirements as referenced in Business and Professions Code 2532.2 and 2532.25.

Supervised clinical practice (also referred to as clinical practicum or supervised clinical rotations)

Business and Professions Code 2532.2 lists the qualifications SLP and audiology applicants who graduated from approved educational institutions on or before December 31, 2007, must have when applying for licensure. This statute reads, in part:

(b) (1) Submit evidence of the satisfactory completion of supervised clinical practice . . . The board shall establish by regulation the required number of clock hours, not to exceed 375 clock hours, of supervised clinical practice necessary for the applicant.

(2) The clinical practice shall be under the direction of an educational institution approved by the board.

(c) Submit evidence of no less than 36 weeks of satisfactorily completed supervised professional full-time experience or 72 weeks of professional part-time experience . . . The required professional experience shall follow completion of the requirements listed in subdivisions (a) and (b). . .

(e) As applied to licensure as an audiologist, this section shall apply to applicants who graduated from an approved educational institution on or before December 31, 2007.

Business and Professions Code 2532.25 lists the qualifications for audiology license applicants who graduate from an approved educational institute on or after January 1, 2008. This statute reads, in part:

(Supervised Clinical Practice)

(b)(1) Submit evidence of the satisfactory completion of supervised clinical practice . . . The board shall establish by regulation the required number of clock hours of supervised clinical practice necessary for the applicant. The clinical practice shall be under the direction of an educational institution approved by the board.

(RPE)

(2) Submit evidence of no less than 12 months of satisfactorily completed supervised professional full-time experience or its part-time equivalent . . . This experience shall be completed under the direction of a board-approved audiology doctoral program. The required professional experience shall follow completion of the didactic and clinical rotation requirements of the audiology doctoral program.

(c) This section shall apply to applicants who graduate from an approved educational institution on and after January 1, 2008.

California Code of Regulations 1399.152.2 pertains to supervised clinical experience, clinical practicum, or supervised clinical rotation. This requirement is separate from and in addition to the required professional experience that both SLP and audiology applicants need to qualify for licensure.

ACTION REQUESTED

Staff recommends that we review and approve the proposed language to raise the minimum number of supervised clinical practice hours required for SLP or audiology licensure for submission to the Office of Administrative Law.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND
HEARING AID DISPENSERS BOARD

Title 16, Chapter 13.4
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
Article 3. Qualifications for Licensure – Education and Clinical Experience
Proposed Language

Amend Section 1399.152.2 of Article 3 of Division 13.4 of Title 16 as follows:

§ 1399.152.2. Supervised Clinical Experience.

(a) …

~~(b) Two hundred seventy-five (275) clock hours of clinical experience shall be required for licensure as a speech-language pathologist or audiologist for applicants who completed their graduate program on or before December 31, 1992.~~

(~~c~~ b) A minimum of three hundred seventy-five (~~300~~375) clock hours of clinical experience with individuals representative of a wide spectrum of ages and communication disorders from various clinical settings shall be required for licensure as a speech-language pathologist or audiologist. ~~for applicants who completed their graduate program after December 31, 1992.~~

(~~d~~ c) Twenty-five (25) hours of the required clinical experience may be in the field other than that for which the applicant is seeking licensure (speech-language pathology for an audiologist or audiology for a speech-language pathologist) if such clinical experience is under a supervisor who is qualified in the minor field as provided in subsection (a).

Note: Authority cited: Section 2531.95, Business and Professions Code. Reference: Section 2532.2, Business and Professions Code.

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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Increase in the Number of Self-Study Hours Allowed for Hearing Aid Dispensers' (HAD) Continuing Education (CE) Requirement**

BACKGROUND

At its October 2013 meeting, the Board approved language to amend the HAD CE requirements, which included a limit of three hours of self-study allowed toward meeting renewal requirements. These regulations are in the final stages of adoption with a final filing date of February 15, 2016.

On June 19, 2015, the Board decided to increase the limit of self-study hours that can be applied toward meeting the CE requirements for license renewal for the Speech-Language Pathology and Audiology professions.

Board member Amnon Shalev requested that the Board consider increasing the number of self-study hours to make the requirement consistent with the Board's other license types.

ACTION REQUESTED

Staff recommends that we review and approve the amended language for submission to the Office of Administrative Law.

February 4-5, 2016 Proposed Language:

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND
HEARING AID DISPENSERS BOARD

Title 16, Chapter 13.4
Hearing Aid Dispensers
Article 11. Continuing Professional Development
Proposed Language

Amend Sections 1399.140. of Article 3 of Division 13.3 of Title 16 as follows:

Section 1399.140 - Continuing Education Required.

(a) . . .
(1) . . .

(2) Not more than six ~~three~~ (6~~3~~) hours of the required continuing education may be credited ~~for~~ by way of self-study. "Self-study" means a form of systematic learning that does not offer participatory interaction between the licensee and the instructor during the instructional period. These include, but are not limited to, recorded courses delivered via the Internet~~,~~ or CD-ROM/DVD, correspondence, or home study and which require completing and passing an assessment or examination of the course content. ~~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; these courses are not subject to the three (3) hour limit above.~~

(b) . . .
(c) . . .
(d) . . .
(e) . . .
(f) . . .

Note: Authority cited: Section 2531.95, Business and Professions Code. Reference: Section 2538.18, Business and Professions Code.

2013 Board-approved language:

Title 16, California Code of Regulations
Division 13.3

Article 7
Continuing Education

Section 1399.140 - Continuing Education Required.

(a) . . .
(1) . . .
(2) Not 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; these courses are not subject to the three (3) hour limit above.
(b) . . .
(c) . . .
(d) . . .
(e) . . .
(f) . . .

Note: Authority cited: Section 2531.95, Business and Professions Code. Reference: Section 2538.18, Business and Professions Code.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY& HEARING AID DISPENSERS BOARD
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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Disciplinary Guidelines and Uniform Standards for Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers**

BACKGROUND

Business and Professions Code (BPC) 2531.02 mandates that protection of the public is the highest priority for the Board in exercising its licensing, regulatory and disciplinary actions.

BPC 2533 allows the Board to refuse, suspend, revoke, or impose terms and conditions upon the license of any licensee for, among other things, the use or administering to himself or herself, of any controlled substance, the use of alcohol or other controlled substances to the extent, or in a manner as to be dangerous or injurious to the licensee or to the public.

The attached regulatory amendments incorporate by reference the proposed disciplinary guidelines and add the legislative mandated Uniform Standards Related to Substance Abuse. This draft proposal includes an updated single disciplinary guidelines document that will replace the Board's two existing disciplinary guidelines which were last updated in 1997 for Hearing Aid Dispensers and 2004 for Speech-Language Pathology and Audiology professions.

ACTION REQUESTED

Staff recommends that you review the proposed regulatory language and attached Disciplinary Guidelines. Please be prepared to provide guidance and possibly approve the amended language and for submission to the Office of Administrative Law.

Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

~~Speech-Language Pathology and Audiology Board~~

DISCIPLINARY GUIDELINES AND UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

~~July 16, 2004~~ January 1, 2017

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INTRODUCTION

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

The Board carefully considers all facts and circumstances associated with each case in its efforts to protect consumers. Subsequently, the Administrative Law Judge ("ALJ") shall provide in all proposed decisions a detailed basis of his or her decision in the "Findings of Fact" particularly when there is a deviation from the Guidelines. 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 when it has been determined that the case is 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 Section 1399.155 of Division 13.4 of Title 16, Article 6 entitled "Disciplinary Guidelines," of the California Code of Regulations is amended to read:

California Code of Regulations, Title 16, Section 1399.131 is amended to read:

1399.131 Disciplinary Guidelines

(a) In reaching a Decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code), the Board shall comply with the_Disciplinary Guidelines entitled ~~"Disciplinary Guidelines and Model Disciplinary Orders" Sixth Edition, June 1997~~ "Disciplinary Guidelines and Uniform Standards Related to Substance Abuse" 2016 (hereinafter "Guidelines") that are hereby incorporated by reference. The Guidelines apply to all matters; the Uniform Standards describe the orders that shall be imposed upon a substance abusing licensee. Deviation from these Guidelines ~~and orders,~~ including the standard terms 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.

(b) Notwithstanding subsection (a), the Board shall use the uniform standards for substance-abusing licensees as provided in Section 1399.131.1, without deviation, for each individual determined to be a substance-abusing licensee.

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.

(c) Notwithstanding the ~~disciplinary~~ ~~g~~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~~1) 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~~2) 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~~3) Any attempt to commit any of the offenses specified in this section.
(~~d~~4) 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 315, 315.2, 315.4, 2531.95, Business and Professions Code; and Section 11400.20 and 11425.50(e), Government Code. Reference: Sections 475, 480, 2533, 2533.1, 2533.2, and 2538.40, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

1399.131.1 Uniform Standards Related to Substance-Abusing Licensees

(a) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions related to substance abuse contained in the Guidelines, shall be used in any probationary order of the Board affecting that licensee.

(b) 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.

(c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 315, 315.2, 315.4, and 2531.95, Business and Professions Code. Reference: Sections 315, 315.2, and 315.4 of the Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

California Code of Regulations, Title 16, Section 1399.155 is amended to read:

1399.155. Disciplinary Guidelines.

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

(b) Notwithstanding subsection (a), the Board shall use the uniform standards for substance-abusing licensees as provided in Section 1399.155, without deviation, for each individual determined to be a substance-abusing licensee.

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.

(c) Notwithstanding the ~~disciplinary g~~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~~1) 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~~2) 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~~3) Any attempt to commit any of the offenses specified in this section.
(~~d~~4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

Note: Authority cited: Sections 2531.95, Business and Professions Code; and Sections 11400.20, Government Code. Reference: Sections 2533 and 2533.1, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

1399.155.1 Uniform Standards Related to Substance-Abusing Licensees

(a) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions related to substance abuse contained in the Guidelines, shall be used in any probationary order of the Board affecting that licensee.

(b) 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.

(c) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 315, 315.2, 315.4, and 2531.95, Business and Professions Code. Reference: Sections 315, 315.2, and 315.4 of the Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

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

The following Uniform Standards (Standards) shall be adhered to in all cases when a licensee's license is placed on probation due to, in part, a substance abuse problem without deviation.

Clinical Diagnostic Evaluations:

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has 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.

The following practice restrictions apply to each licensee or registrant who undergoes a clinical diagnostic evaluation:

1. The Board shall suspend the license or registration during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the Board.
2. While awaiting the results of a clinical diagnostic evaluation, the licensee or registrant shall be randomly drug tested at least two (2) times per week.

Clinical Diagnostic Evaluation Report:

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

The evaluator shall not have a financial, personal or business relationship with the licensee 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 shall review the clinical diagnostic evaluation to determine whether or not the licensee or registrant is safe to return to either part-time or full-time practice and what restrictions or

recommendations should be imposed on the licensee or registrant based on the application of the following criteria:

1. License or registration type;
2. Licensee or registrant's history;
3. Documented length of sobriety;
4. Scope and pattern of substance abuse;
5. Treatment history;
6. Medical history;
7. Current medical condition;
8. Nature, duration and severity of substance abuse problem; and
9. Whether the licensee or registrant is a threat to himself or herself or others.

No licensee or registrant shall be returned to practice until he or she has at least 30 calendar days of negative drug tests.

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:

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:

1. the licensee or registrant's history;
2. the documented length of sobriety;
3. the recommendation of the clinical diagnostic evaluator;
4. the scope and pattern of substance abuse;
5. the licensee or registrant's treatment history; and
6. 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 last year.

The group meeting facilitator shall provide the Board a signed document showing the licensee or registrant's name, the group name, the date and location of the meeting, the licensee or registrant's attendance, and the licensee or registrant's level of participation and progress.

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:

1. The supervisor shall not have a current or former financial, personal, business or professional relationship with the licensee or registrant, or other relationship that could reasonably be expected to compromise the ability of the supervisor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee or registrant's employer to serve as the supervisor, this requirement may be waived by the Board; however, under no circumstances shall a licensee or registrant's supervisor be an employee or supervisee of the licensee or registrant.
2. The supervisor's license scope of practice shall include the scope of practice of the licensee or registrant who is being monitored or be another health care professional if no supervisor with like scope of practice is available.
3. The supervisor shall be a current California licensed practitioner and have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee or registrant's disciplinary order and agrees to monitor the licensee or registrant as set forth by the Board.

The supervisor must adhere to the following required methods of monitoring the licensee or registrant:

1. Have a face-to-face contact with the licensee or registrant in the work environment on as frequent a basis as determined by the Board, but at least once per week.
2. Interview other staff in the office regarding the licensee or registrant's behavior, if applicable.
3. Review the licensee or registrant's work attendance.

Reporting by the supervisor to the Board shall be as follows:

1. Any suspected substance abuse must be orally reported to the Board and the licensee or registrant's employer within one (1) business day of occurrence. If the occurrence is not during the Board's normal business hours, the oral 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.
2. The supervisor shall complete and submit a written report directly to the Board monthly or as directed by the Board. The report shall include:
    a. the licensee or registrant's name;
    b. license or registration number;
    c. supervisor's name and signature;
    d. supervisor's license number;
    e. worksite location(s);
    f. dates licensee or registrant had face-to-face contact with supervisor;
    g. worksite staff interviewed, if applicable;
    h. attendance report;
    i. any change in behavior and/or personal habits; and
    j. any indicators that can lead to suspected substance abuse.

The licensee or registrant shall complete the required consent forms and sign an agreement with the supervisor and the Board to allow the Board to communicate with the supervisor.

Major and Minor Violations:

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

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation terms and conditions;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
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 as 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 and;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

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

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

Positive Test for Alcohol and/or a Controlled Substance

If a licensee or registrant tests positive for alcohol and/or a controlled substance, the Board shall do the following:

- Automatically suspend the license or registration;
- Immediately contact the licensee or registrant and inform him or her that his or her license or registration has been suspended and he or she may not practice until the suspension is lifted; and
- Immediately notify the licensee or registrant's employer that the license or registration has been automatically suspended, and that he or she may not practice until the suspension is lifted.

The Board should do the following, as applicable, to determine whether a positive test for alcohol and/or a controlled substance is evidence of prohibited use:

- Consult the specimen collector and the laboratory;
- Communicate with the licensee or registrant and/or treating physician; and
- Communicate with any treatment provider, including a group facilitator.

The Board shall immediately lift the suspension if the positive drug test is not found to be evidence of prohibited use.

Drug Testing Standards

The drug testing standards below shall apply to each licensee or registrant subject to drug testing. At its discretion, the Board may use other testing methods in place of, or to supplement, drug and alcohol testing, if appropriate.

1. Drug testing may be required on any day, including weekends and holidays.
2. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.
3. Licensees or registrants shall be required to make daily contact as directed to determine if drug testing is required.
4. Licensees or registrants shall be drug tested on the date of notification as directed by the Board.
5. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
6. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
7. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
8. Collection of specimens shall be observed.
9. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.
10. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

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

Nothing herein shall limit the Board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code Section 11522 or statutes applicable to the Board that contain different provisions for reinstatement or reduction of penalty.

Drug Testing Frequency Schedule

The Board may order a licensee or registrant to drug test at any time. In addition, each licensee or registrant shall be tested randomly according to the following drug testing frequency schedule:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II	Years 2-5	36-104 per year
III	After Year 5	Once per month*

*If no positive drugs tests in the previous 5 consecutive years.

The Board may increase the number of random tests required at its discretion. If the Board suspects or finds that a licensee or registrant has violated the prescribed testing program, or finds that a licensee or registrant has committed a major violation, it may re-establish the testing cycle by placing that licensee or registrant at the beginning of Level I. This is in addition to any other disciplinary action.

Drug Testing Frequency Schedule Exceptions

The Board may make exceptions to the prescribed drug testing frequency schedule for the following reasons:

1. Licensee or Registrant Demonstrates Previous Testing and Sobriety

   The licensee or registrant can demonstrate participation in a treatment or monitoring program which requires random testing, prior to being subject to testing by the Board. In such a case, the Board may give consideration to the previous testing by altering the testing frequency schedule so that it is equivalent to the standard.

2. Violations Outside of Employment

   A licensee or registrant whose license or registration is placed on probation for a single conviction or incident, or two convictions or incidents, spanning greater than seven years from each other, where alcohol or drugs were a contributing factor, may bypass Level I and participate in Level II of the testing frequency schedule if the violations did not occur at work or on the way to or from work.

3. Not Employed in Health Care Field

   The Board may reduce testing frequency to a minimum of twelve (12) times per year if the licensee or registrant is not practicing or working in any health care field. If reduced testing frequency is established for this reason, and the licensee or registrant returns to practice, the licensee or registrant shall notify and obtain approval from the Board. The licensee or registrant shall then be subject to Level I testing frequency for at least 60 days. If the licensee or registrant had not previously met the Level I frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the licensee or registrant had previously met the Level I frequency standard, the licensee or registrant shall be subject to Level II testing after completing Level I testing for at least 60 days.

4. Tolling

   The Board may postpone all testing for any person whose probation is placed in a tolling status if the overall length of the probationary period is also tolled. The licensee or registrant shall notify the Board upon his or her return to California and shall be subject to testing as provided in the testing frequency standard. If the licensee or registrant returns to practice and has not previously met the Level I testing frequency standard, the licensee or registrant shall be subject to completing a full year at Level I of the testing frequency schedule. If the

licensee or registrant has previously met the Level I testing frequency standard, then Level II shall be in effect.

5. Substance Use Disorder Not Diagnosed
   If a licensee or registrant is not diagnosed with a current substance use disorder, a lesser period of monitoring and toxicology screening may be adopted by the Board. This period may not be less than 24 times per year.

Criteria to Petition to Return to Practice

In order to petition to return to full time practice, a licensee or registrant shall have demonstrated all of the following:

1. Sustained compliance with his or her current recovery program;
2. The ability to practice safely as evidenced by current work site reports, evaluations, and any other information related to his or her substance abuse;
3. Must have at least six (6) months of negative drug screening reports and two (2) positive supervisor reports; and
4. Complete compliance with the other terms and conditions of his or her program. Criteria to Petition for Reinstatement to Unrestricted License or Registration

In order to petition for reinstatement to a full and unrestricted license or registration, a licensee or registrant shall meet all of the following criteria:

1. Demonstrated sustained compliance with the terms of the disciplinary order (if applicable);
2. Demonstrated successful completion of a rehabilitation program (if required);
3. Demonstration of a consistent and sustained participation in activities that promote and support his or her recovery, including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Demonstrated ability to practice safely; and
5. Continuous sobriety for at least three (3) to five (5) years.

Disciplinary Guidelines

Guidelines to Consider When Rendering Discipline

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

1. Nature and severity of the act(s), offense(s), 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 and/or offenses.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence or court-ordered probation.
9. 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, 1203.4a, or 1203.41.
12. Whether or not the Respondent cooperated with the Board's investigation, other law enforcement, or regulatory agencies and/or the injured parties
13. Recognition by Respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

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), Speech-Language Pathology Aide (Aide), Audiology Aide (Aide), Required Professional Experience (RPE), Hearing Aid Dispenser (HAD), Hearing Temporary License (HTL), Hearing Aid Trainee (HT) license or registration number [enter license/registration number] issued to Respondent [enter name] is hereby revoked; however, the revocation is stayed and Respondent's license is placed on probation for [enter amount] years on the following terms and conditions.

- **Applicants:** The application of Respondent [enter name] 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 [enter amount] years on the following terms and conditions.

- **Reinstatements:** The petition of [enter name] for reinstatement of the (SLP, AU, DAU, SLPA, SLP/AU Aide, RPE, HAD, HTL, HT) license/registration is hereby GRANTED, as follows.

  SLP, AU, DAU, SLPA, SLP/AU Aide, RPE, HAD, HTL, HT license/registration number [enter license/registration number] is reinstated. The license will be immediately revoked; however, the revocation is stayed for [enter amount] years on the following terms and conditions:

  In cases where a petitioner for reinstatement has let their license expire in the State of California for five (5)/three (3) years, he or she must take and pass the licensing examinations(s) 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.

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 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:

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:"

DISCIPLINARY GUIDELINES

The Board recognizes that these penalties and conditions of probation are guidelines, and that each disciplinary case must be assessed individually. If individual circumstances exist that justify omissions or deviations from these guidelines, the Board asks that these be explained by the Administrative Law Judge hearing the case. This will help the Board to better evaluate proposed decisions and to make decisions that accurately reflect the facts of each specific disciplinary matter.

Except where otherwise indicated, the following terms and conditions apply to speech-language pathologists and audiologists as well as speech-language pathology assistants.

As part of the Board's mission to protect consumers, 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.

If the Administrative Law Judge (ALJ) deviates from the guidelines, the ALJ shall include an explanation of the deviations or omissions, including all mitigating factors considered by the ALJ in the Proposed Decision so that the circumstances can be better understood by the Board during its review and consideration of the Proposed Decision.

Probationary Term

The probationary term imposed may vary depending upon the severity of the violation(s), and/or aggravating/mitigating factors.

Probationary Conditions

Conditions of probation are divided into two categories:

1. **Standard** conditions that are generally included in all probation orders;
2. **Optional** 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 1-18 are generally required in all probation orders:

1) Severability Clause
2) Obey all Laws
3) Comply with Probation Program
4) Change of Name and Contact Information
5) Submit Quarterly Reports
6) Notice to Employers
7) Notice to Employees
8) Interviews with Board Representatives
9) Employment Limitations
10) Recovery of Costs
11) Probation Costs
12) Tolling for Out-of-State Practice, Out-of-State Residence
13) Tolling of Probation for In-State Non-Practice
14) Voluntary License Surrender
15) Violation of Probation
16) Completion of Probation
17) Maintain a Valid License
18) Future Registration or Licensure

Optional Probation Terms and Conditions

In addition to the standard terms and conditions (1-18), optional terms and conditions (19-34), are required (as applicable) if the offense involves any of the following: sexual misconduct, mental/physical disabilities, fraudulent conduct, drugs or alcohol,or lack of knowledge or skills. These optional terms and conditions should be included if relevant to the violation.

19) Educational Course
20) Consumer Restitution
21) Submit to Examination by Physician
22) Psychological Evaluation
23) Psychotherapy
24) Serving as a Supervisor
25) Practice Monitor/Billing Monitor
26) Restrictions on Licensed Practice
27) Actual Suspension of License
28) Take and Pass Licensure Examinations
29) Clinical Diagnostic Evaluation
30) Attend In Patient or Outpatient Treatment
31) Attend Chemical Dependency Support and Recovery Groups
32) Abstain from Drugs and Alcohol and Submit to Drug and Alcohol Testing
33) Billing System
34) Billing System Audit

STANDARD TERMS AND CONDITIONS OF PROBATION (1-13~~8~~)

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

Rationale: The severability clause is required for all Decisions 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, and remain in full compliance with any court ordered criminal probation. This condition applies to any jurisdiction with authority over Respondent, whether it is inside or outside of California.

Further, ~~r~~Respondent shall, within five (5) days of any arrest, submit to the Board in writing a full and detailed account of such arrest, including the name and address of the arresting agency.

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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, RPE, Aide,HAD, HTL, HT 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, and shall, upon notice report to the Board's staff. Respondent shall contact probation monitor 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 ~~established by the Board and shall cooperate with the representatives of the Board~~.

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.*

~~3~~4. CHANGE OF ~~ADDRESS NOTIFICATION~~ NAME AND CONTACT INFORMATION

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

5. SUBMIT QUARTERLY ~~WRITTEN DECLARATIONS~~ REPORTS

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

Rationale: *Requiring the Respondent to 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. ~~NOTIFY~~ NOTICE TO EMPLOYERS ~~OF PROBATION TERMS AND RESTRICTIONS~~

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

Respondent shall cause each employer to submit quarterly written ~~declarations~~ reports to the Board. These ~~declarations~~ reports 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. NOTICE TO EMPLOYEES

If Respondent is an employer or supervisor, Respondent shall, upon or before the effective date of this Decision, post or circulate a notice which actually recites the offenses for which the Respondent has been disciplined and the terms and conditions of probation, to all employees. Within fifteen (15) days of the effective date of this Decision, Respondent shall cause his/her employees to report to the Board in writing, acknowledging the employees have read the Accusation and Decision in the case and understand Respondent's terms and conditions of probation. The Respondent shall notify any prospective employee of his or her probationary status with the Board prior to offering employment. This notification shall include a copy of the Board's Decision placing Respondent on probation.

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

~~7~~8. 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.~~ The cost of travel to the interviews shall be paid by the Respondent.

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

~~8~~9. EMPLOYMENT LIMITATIONS

While on probation, Respondent may not work as a faculty member or instructor 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.*

~~25~~10. 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 and enforcement in the amount of $[Enter Amount] within the thirty (30) days of the effective date of the Decision. Such costs shall be payable to the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board and are to be paid regardless of whether probation is tolled. Failure to pay such costs shall be considered a violation of probation. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. However, full payment of any and all costs required by this condition must be received by the Board no later than six (6) months prior to the scheduled termination of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay investigation and enforcement costs.

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

11. PROBATION COSTS

Respondent shall pay the costs associated with probation monitoring each and every year of probation. Such costs shall be payable to the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at the end of each fiscal year (June 30). Failure to pay such costs shall be considered a violation of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay probation monitoring costs.

Rationale: *The Board incurs costs associated with probation monitoring; this requires the Respondent*

to reimburse the Board for those expenditures.

10~~2~~. ~~FUNCTION IN LICENSED CAPACITY~~ TOLLING FOR OUT-OF-STATE PRACTICE, OUT-OF-STATE RESIDENCE

In the event that Respondent should leave California to reside or to practice outside the State for any reason, Respondent shall notify the Board or its designee in writing within ten (10) days of the dates of departure and return to California. Respondent's probation is tolled, and the term of probation shall be extended tolled for the period of time Respondent is out of state. While out of state, Respondent will be required to comply with the following conditions of probation: quarterly reports, restitution, cost recovery, and maintain a current and valid license. All requirements of probation shall resume upon receipt of written notice to the Board of the resumption of practice in California.

13. TOLLING OF PROBATION FOR IN-STATE NON-PRACTICE

Respondent, during the period of probation, shall engage in the practice of [enter license type] in California for a minimum of sixty-four (64) hours per calendar month. Respondent is required to immediately notify the probation monitor or Board designee in writing if he or she works less than sixty-four (64) hours in any month. This time shall not be counted towards the satisfaction of the probationary period, and the term of probation shall be extended for the period of time Respondent is not engaged in practice the minimum required hours. Non-practice is defined as any period of time exceeding thirty (30) days in which Respondent is not engaging in any activities defined in Sections 2530.2, 2538.11, and 2538.14 of the Business and Professions Code. For the purpose of compliance with this section, "engaged in the practice of [insert license category]" may also include, when approved by the Board, volunteer work in or work in any non-direct patient position in [insert license category] that requires licensure. During any period where Respondent is practicing less than the required minimum hours, Respondent will be required to comply with the following conditions of probation as directed by the Board: quarterly reports, restitution, cost recovery, educational course, maintain a current and valid license. As directed by the Board, and if listed as a condition of this Decision, Respondent may also be required to comply with the condition to abstain from drugs and alcohol and submit to tests and samples.

For purposes of this section non-practice does not include the time school is out of session if Respondent is employed by and works in a school setting while engaged in the practice of [insert license category]. Respondent shall provide the Board proof of employment and the school calendar within a week of the school year commencing each year. Respondent shall continue to adhere to all other terms and conditions of probation during the time school is out of session.

Tolling of probation shall not exceed two (2) years or it may be considered a violation of probation.

For purposes of this term and condition, non-practice due to Board ordered suspension shall not be considered a period of non-practice.

~~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.~~

~~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.~~

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.*

14. 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 it 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. If reinstatement is approved, Respondent must meet all current requirements for licensure including, but not limited to, filing a current application, meeting all current educational and experience requirements, and taking and passing any and all examinations required of new applicants.

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.*

12~~5~~. 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 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.*

13~~6~~. 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.*

1~~4~~7. MAINTAIN A VALID LICENSE

Respondent shall, at all times while on probation, maintain an ~~active~~ current active 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. The period of time a licensee does not hold a current active license shall not be counted towards satisfaction of the probationary period.

For purposes of this term and condition, a licensee shall be considered to hold a current active license during the time the license is under a Board ordered suspension.

18. FUTURE REGISTRATION OR LICENSURE

This Decision shall remain in full force and effect through any registration or license issued by the Board until the probationary period is successfully terminated. Future registrations or licensure shall not be approved, however, unless Respondent is currently in compliance with all of the terms and conditions of probation.

~~9~~19. EDUCATIONAL COURSE

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

Respondent shall successfully complete the required remedial education no later than the end of the first year of probation. Respondent shall ~~cause the instructor to~~ furnish proof to the Board within five (5) business days of ~~Upon~~ successful completion of ~~the~~ each course.

The costs of such educational course work shall be paid by the Respondent.

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 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.*

20. CONSUMER RESTITUTION

Respondent shall make restitution to consumer(s) named in the Decision in the amount of damage specified within one (1) year of the effective date of the Decision. Respondent shall provide the Board copies of the cancelled checks to each consumer within ten (10) days of receiving said cancelled checks, or an alternate proof of payment approved in advance by the Board. The cost of providing copies of cancelled checks or other proof of payment shall be paid by the Respondent.

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 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.*

~~14~~21. SUBMIT TO EXAMINATION BY PHYSICIAN ~~ABSTAIN FROM USE OF ALCOHOL~~

~~Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.~~

Within sixty (60) days of the effective date of the Decision, Respondent shall submit to a physical examination by a physician of his or her choice who meets minimum criteria established by the Board. The physician ~~must~~ shall 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 ~~with~~ a copy of the Board's Decision prior to the examination.
~~Respondent shall cause t~~The physician shall submit a ~~to~~ completed ~~a~~ written medical report~~. This report~~

~~shall be submitted by the physician~~ to the Board within ninety (90) days of the effective date of the Decision, and any time thereafter as required by the Board or its designee. If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board within three (3) working days. The Board shall notify the respondent in writing of the examining physician's determination of unfitness to practice and shall order 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 in writing. Respondent shall document compliance in the manner required by the Board.

The ~~C~~cost of such examination(s) shall be paid by the Respondent.

Rationale: *This permits the Board to require the Respondent 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.*

~~15~~22. PSYCHOLOGICAL EVALUATION ~~SUBMIT BIOLOGICAL FLUID SAMPLES~~

~~Respondent shall immediately submit to biological fluid, testing paid for by Respondent, at the request of the Board or its designee. Positive test results will be immediately reported to the Board.~~

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 perform all professional duties with safety to self and to the public. Respondent shall provide the evaluator with a copy of the Board's Accusation or Statement of Issues and Decision prior to the evaluation. The evaluation shall be performed by a psychotherapist (psychiatrist or psychologist) licensed in California and Board certified in psychiatry or by a clinical psychologist licensed in California approved by the Board. The cost of such evaluation shall be paid by the Respondent.

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

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. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall execute a release authorizing the evaluator to provide to the Board or its designee ~~cause~~ the ~~evaluator shall to submit to the Board~~ a written psychiatric or psychological report evaluating Respondent's status ~~and progress~~ as well as such other information ~~as~~ that may be requested by the Board. This report shall be submitted within ~~ninety~~ sixty (~~9~~60) days ~~from~~ of the effective date of the Decision. The cost of such evaluation shall be paid by the Respondent.

If the evaluator finds that Respondent is not psychologically fit to practice safely, or can only practice with restrictions, the evaluator shall notify the Board within ~~three~~ one (~~3~~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 in writing. Respondent shall document compliance in the manner required by the Board.

If not otherwise ordered herein, if ongoing psychotherapy is recommended in the psychological evaluation, the Board will notify Respondent in writing to submit to such therapy and to select a psychotherapist for approval by the Board or its designee within thirty (30) days of such notification. The therapist shall (1) be a California-licensed psychologist with a clear and current license; and (2) have no previous business, professional, personal or other relationship with Respondent. Frequency of psychotherapy shall be determined upon recommendation of the treating psychotherapist with approval by the Board or its designee; however, psychotherapy shall, at a minimum, consist of one one-hour session per week. Respondent shall continue psychotherapy until released by the approved psychologist and approved by the Board or its designee. The Board or its designee may order a re-evaluation upon receipt of the therapist's recommendation.

Respondent shall execute a release authorizing the therapist to provide to the Board any information the Board or its designee deems appropriate, including quarterly reports of Respondent's therapeutic progress. Respondent shall furnish a copy of this Decision to the therapist. If the therapist determines that Respondent cannot continue to practice with safety to the public, he/she shall notify the Board immediately.

Respondent shall pay all costs associated with the psychological evaluation and ongoing psychotherapy. Failure to pay costs will be considered a violation of the probation order.

Option of Evaluation as a **Condition Precedent:**

In some cases, the psychological evaluation may be imposed as either a condition precedent to the stay of revocation, or to the issuance or reinstatement of a license, so that the Respondent or petitioner is not entitled to begin or continue practice until found to be safe to do so. In such cases, the following language shall be used as the first sentence of the first paragraph of this term:

As a condition precedent to the [stay of revocation] [issuance] [re-issuance] of a license, within ninety (90) days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California-licensed psychologist.

In addition, the following language shall also be used as the first sentence of the second paragraph of this term:

If the Board concludes from the results of the evaluation that Respondent is unable to practice independently and safely, upon written notice from the Board [Respondent shall, in accordance with professional standards, appropriately refer/terminate existing patients within thirty (30) days and shall not resume practice until a Board-appointed evaluator determines that Respondent is safe to practice] [Respondent shall not be issued or re-issued a license until a Board-appointed evaluator determines that Respondent or Petitioner is safe to practice].

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.

~~16~~23. PSYCHOTHERAPY

Respondent shall participate in ongoing psychotherapy with a California licensed psychiatrist who is, ~~Board~~ certified in Psychiatry, or a clinical psychologist, or a marriage, family, and child counselor, or 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. The ~~C~~cost of such therapy shall be paid ~~for~~ by the Respondent.

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

If the therapist finds that Respondent is not psychologically fit to practice safely, or can only practice safely with restrictions, the therapist shall notify the Board within ~~three~~ one (~~3~~1) working day~~s~~. 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 in writing.

~~Respondent shall cause~~ ~~t~~The therapist shall ~~to~~ submit quarterly written ~~declarations~~ reports 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.*

24. SERVING AS A SUPERVISOR

Respondent may not function as a supervisor for any required professional experience (RPE) candidate, or any registered assistant, or trainee, or aide during the period of probation ~~or until~~ unless approved by the Board in writing.

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

~~23~~5. ~~SUPERVISION~~PRACTICE MONITOR/BILLING MONITOR

Within thirty (30) days of the effective date of this Decision, Respondent shall submit to the Board or its

designee for prior approval, the name and qualifications of a who has agreed to serve as a [practice monitor][billing monitor][practice & billing monitor].
The [practice monitor][billing monitor] [practice & billing monitor] shall (1) hold a current and valid California license in the same field of practice as Respondent, (2) have held said license for a minimum of three (3) years; (3) have had no disciplinary action taken against their license by the Board; and (4) be independent, with no prior or current business, professional, personal, or other relationship that could reasonably be expected to compromise the ability of the monitor to provide impartial and unbiased supervision of the Respondent. 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 monitor.

Once approved, the monitor(s) shall submit to the Board or its designee a plan for approval by which Respondent's practice shall be monitored. The Respondent shall provide the monitor with a copy of this Decision and the related Accusation or Statement of Issues. The monitoring shall be: (choose one)

- general and not require the physical presence of the monitor during the time services are performed, but does require an occasional, unrestricted review of the work performed as well as quarterly monitoring visits at the office or place of practice
- direct and require the physical presence of the monitor at the actual location during the time services are performed
- [insert other option].

Additionally, the monitor shall have full and unrestricted access to all patient and billing records of Respondent. The monitor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of deficiencies. Respondent shall obtain any necessary patient releases to enable the monitor to review all client and fiscal records, and to make direct contact with clients, if necessary. Respondent shall execute a release authorizing the monitor to divulge any information that the Board may request

The approved monitor shall submit written reports to the Board on a quarterly basis, or other frequency as determined by the Board, verifying that monitoring has taken place as required and include an evaluation of Respondent's performance, compliance with his or her probationary conditions, and existing laws governing the practice. It shall be the Respondent's responsibility to assure that the required reports are filed in a timely manner.

If the monitor terminates his or her monitoring or is no longer available to serve in the monitor role, Respondent must submit to the Board the name or names of a new monitor, including qualifications and supervision plan within fifteen (15) days. If a new monitor is not approved by the Board within thirty (30) days from the date of resignation of the previous monitor, Respondent shall be suspended from practice until a new monitor has been approved by the Board and necessary documents are filed with the Board.

All costs of monitored practice shall be paid by the Respondent.

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. The type of monitoring needs to be clearly defined relative to the necessity for the presence of the monitor. Direct monitoring would require the physical presence of the monitor during all time services are performed. General monitoring does not require the physical presence of the monitor and may be appropriate for violations that do not involve direct patient harm.*

~~24~~26. 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].

Within thirty (30) days from the effective date of the Decision and Order, Respondent shall submit to the Board or its designee, for its approval, a plan to implement this restriction. Respondent shall submit proof to the Board or its designee of compliance with this term of probation. Respondent shall notify their supervisor of the restrictions imposed on their practice.

Rationale: *In cases wherein some factor of the patient population at large (e.g. age, gender, practice setting, limited practice procedures) 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. Additionally, Respondent may be prohibited from engaging in solo practice as well as being required to work in a monitored environment.*

27~~6~~. ACTUAL SUSPENSION OF LICENSE

As part of probation, ~~r~~Respondent is suspended from practice for [enter amount] months beginning the effective date of this ~~d~~Decision. Respondent shall be responsible for informing his or her employer of the Board's ~~d~~Decision and shall provide his or her employer with a copy of the Accusation or Statement of Issues and the Board's Decision. ~~, the reasons for the length of suspension. Prior to the lifting of the actual suspension of license, the Respondent shall provide documentation of completion of educational courses or treatment rehabilitation if required.~~

If Respondent operates his or her own office as a solo practitioner or as a one person professional corporation, said office is to be closed except for administrative purposes (making future appointments when suspension is over, opening mail, referring patients, accepting payments on account, and general office administration); and Respondent shall not lease the office nor make any monetary gain from the practice earned during the period of time that the office is closed. *Respondent shall post a notice of the Board's Order of Suspension in a place clearly visible to the public. The notice, provided by the Board, shall remain posted during the entire period of actual suspension.*

Prior to the lifting of the actual suspension of license, if applicable, the Board shall receive 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.

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

2~~2~~8. TAKE AND PASS LICENSURE EXAMINATIONS

Option #1:

Respondent shall take and pass the written and/or practical licensure examination(s) as designated by the Board, no later than one-hundred (100) days prior to the termination date of probation. 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 written examination is passed.

The cost of any examinations shall be paid by the Respondent.

Option #2 (Condition Precedent):

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

The cost of all examinations shall be paid by the Respondent.

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(s) is passed (condition precedent).*

29. CLINICAL DIAGNOSTIC EVALUATION

Within twenty (20) days of the effective date of the Decision and at any time during probation upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation (CDE) from a licensed practitioner who holds a valid , unrestricted license to conduct CDE's, has three (3) years of experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. Respondent shall provide the evaluator with a copy of the Accusation or Statement of Issues and the Board's Decision prior to the clinical diagnostic evaluation being performed. The cost of the CDE shall be paid by the Respondent.

Any time the Respondent is ordered to undergo a CDE, the Respondent shall cease practice for a minimum of 1 month pending the results of the CDE. During such time, the Respondent shall submit to random biological testing as prescribed by the Board. The cost of the biological testing shall be paid the Respondent.

The evaluator shall submit to the Board a written CDE report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted, in writing, to the evaluator by the Board.

Respondent shall comply with any restrictions or recommendations made as a result of the CDE. Respondent's license may be suspended until the Board determines that he or she is able to safely practice 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.*

30. ATTEND IN PATIENT OR OUTPATIENT TREATMENT

Within ~~thirty~~ fifteen (~~30~~15) days of the effective date of the Decision, Respondent shall submit to the Board or its designee, for its approval, the name of an (inpatient) (outpatient) treatment program of Respondent's choice. ~~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.~~

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. The program director shall submit quarterly reports to the Board or its designee indicating whether Respondent is capable of safe practice.

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

~~18~~31. ATTEND CHEMICAL DEPENDENCY SUPPORT AND RECOVERY GROUPS

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

RATIONALE: *Alcohol and/or other drug abuse treatment shall be required in addition to other terms of probation in cases where the use of alcohol or other drugs by Respondent has impaired Respondent's ability to practice safely. This condition must be accompanied by condition #___. This term is to be considered in cases where the grounds for discipline involve drugs and/or alcohol, or where the Uniform Standards Related to a Substance-Abusing Licensee apply. If the Uniform Standards do not apply, where relevant, non-facilitated support group attendance, such as 12- Twelve Step meetings, may be ordered instead of a facilitated group support meeting, or in addition to it.*

~~19~~32. ABSTAIN FROM ~~CONTROLLED SUBSTANCES~~ DRUGS AND ALCOHOL AND SUBMIT TO DRUG AND ALCOHOL TESTING

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, or any drugs requiring a prescription ~~from the~~ except when lawfully prescribed by a licensed practitioner for a bona fide illness or condition.

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

Respondent shall submit to random and directed drug and/or alcohol testing, upon request by the Board or its designee. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to alcohol and/or drug testing. Respondent shall submit to his or her alcohol and/or drug test on the same day that he or she is notified that a test is required. All alternative testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel. Any confirmed positive test result shall be a violation of probation.

The cost of drug and/or alcohol testing shall be paid by the Respondent.

RATIONALE: *This condition provides documentation that the probationer is substance or chemical free. It also provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol and/or dangerous drugs when the probationer appears to be in violation of the terms of probation or appears to be under the influence of mood altering substances. The term is mandatory in cases where the Uniform Standards Related to a Substance-Abusing Licensee apply. Where the Uniform Standards do not apply, where relevant, the Respondent should be ordered to submit to random and directed testing, with a length of time and frequency to be determined by the Board.*

33. BILLING SYSTEM

Within fifteen (15) days from the effective date of the Decision, Respondent shall submit to the Board or its designee for prior approval the name of one or more independent billing systems which monitor and document the dates and times of client visits. Respondent shall obtain the services of the independent billing system monitoring program within fifteen (15) days after notification of the Board's approval of such program. Clients are to sign documentation stating the dates and time of services rendered by Respondent and no bills are to be issued unless there is a corresponding document signed by the client in support thereof. The billing system service shall submit quarterly written reports concerning Respondent's cooperation with this system. The cost of the service shall be paid by Respondent.

34. BILLING SYSTEM AUDIT

Within sixty (60) days of the effective date of this Decision, Respondent shall provide to the Board or its designee the names and qualifications of three auditors. The Board or its designee shall select one of the three (3) auditors to annually audit Respondent's billings for compliance with the Billing System condition of probation. During said audit, randomly selected client billing records shall be reviewed in accordance with accepted auditing/accounting standards and practices. The cost of the audits shall be paid by Respondent. Failure to pay for the audits in a period as prescribed by the Board shall constitute a violation of probation.

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 Terms and Conditions of Probation you will find the applicable numbered terms and conditions to include in a Decision and Order.

PENALTIES FOR DISCIPLINARY ACTIONS

UNPROFESSIONAL CONDUCT (GENERAL)

Sections 480 & 2533 of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13~~3~~8) Optional Terms of Probation (19-34), if warranted

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

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

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13~~3~~8) Optional Terms of Probation (19-34), if warranted

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.

UNLICENSED PRACTICE—FALSE REPRESENTATION

Sections 2532 and 2538.7 of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms of Probation (1-18) Optional Terms of Probation (19-34), if warranted

UNLAWFUL REFERRALS

Section 650 of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-18) Optional Terms of Probation (19-34), if warranted

MENTAL OR PHYSICAL ILLNESS

Section 820 of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	5 Years Probation Standard Terms of Probation (1-18) Optional Terms of Probation (19-34), if warranted

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

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

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

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms of Probation (1-138) Optional Terms of Probation (19-34), if warranted

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 WHICH IMPAIRS THE ABILITY TO PRACTICE SAFELY

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

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms of Probation (1-138) Optional Terms of Probation (19-34), if warranted

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 of Probation (1-1~~3~~8)
Optional Terms of Probation (19-34), if warranted

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

UNPROFESSIONAL CONDUCT -- ADVERTISING

Section 1399.156.4 of the California Code of Regulations, Title 16
California Code of Regulations, Title 16, Section 1399.127

MAXIMUM — Revocation or Denial

MINIMUM — 18 Months Probation
Standard Terms (1-1~~3~~8)
Optional Terms of Probation (19-34), if warranted

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

Section 2533(e) of the Business and Professions Code

MAXIMUM — Revocation or Denial

MINIMUM — ~~18~~24 Months Probation
Standard Terms of Probation (1-1~~3~~8)
Optional Terms of Probation (19-34), if warranted

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 of Probation (1~~3~~8)
Optional Terms of Probation (19-34), if warranted

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 of Probation (1-1~~3~~8)
Optional Terms of Probation (19-34), if warranted

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

UNPROFESSIONAL CONDUCT- INCOMPETENCE OR NEGLIGENCE

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

MAXIMUM — Revocation or Denial

MINIMUM — ~~3~~ 5 Years Probation
Standard Terms of Probation (1-1~~3~~8)
Optional Terms of Probation (19-34), if warranted

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 of Probation (1-1~~3~~8)
Optional Terms of Probation (19-34), if warranted

DISCIPLINARY ACT BY FOREIGN JURISDICTION

Section 141 of the Business and Professions Code

MAXIMUM — Revocation or Denial
MINIMUM — 18 Months Probation
Standard Terms of Probation (1-1~~3~~8)
Optional Terms of Probation (19-34), if warranted

SEXUAL MISCONDUCT

Section 726 of the Business and Professions Code

MAXIMUM	Revocation or Denial
MINIMUM	3 Years Probation Standard Terms of Probation (1-13~~8~~) Optional Terms of Probation (19-34), if warranted

VIOLATION OF REQUIRED PROFESSIONAL EXPERIENCE (RPE) REGULATIONS

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

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13~~8~~) Optional Terms of Probation (19-34), if warranted

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 of Probation (1-13~~8~~) Optional Terms of Probation (19-34), if warranted

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

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

MAXIMUM	Revocation or Denial
MINIMUM	18 Months Probation Standard Terms of Probation (1-13~~8~~) Optional Terms of Probation (19-34), if warranted

PRACTICING WITHOUT PROPERLY POSTING LICENSE

Section 2532.5 of the Business and Professions Code

MAXIMUM — 2 Years Probation
Standard Terms of Probation (1-18)
Optional Terms of Probation (19-34), if warranted

MINIMUM — Public Reproval

SUBSTANTIALLY RELATED CRIME OR ACT
California Code of Regulations, Title 16, Section 1399.156.1

MAXIMUM — Revocation or Denial

MINIMUM — 3 Years Probation
Standard Terms of Probation (1-18)
Optional Terms of Probation (19-34), if warranted

FAILURE TO SUBMIT A CHANGE OF ADDRESS WITH THE BOARD
California Code of Regulations, Title 16 Section 1399.157.2

MAXIMUM — 2 Years Probation
Standard Terms of Probation (1-18)
Optional Terms of Probation (19-34), if warranted

MINIMUM — Public Reproval

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 of Probation (1-18)
Optional Terms of Probation (19-34), if warranted

PRACTICING WITHOUT NOTIFYING THE BOARD OF BUSINESS ADDRESS
Section 2538.33 of the Business and Professions Code; California Code of Regulations Section 1399.105

MAXIMUM — 2 Years Probation
Standard Terms of Probation (1-18)
Optional Terms of Probation (19-34), if warranted

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 of Probation (1-18) Optional Terms of Probation (19-34), if warranted
MINIMUM	Public Reproval

FAILURE TO DELIVER PROPER RECEIPT

Sections 2538.35 and 2539.4 of the Business and Professions Code

MAXIMUM	3 Years Probation Standard Terms of Probation (1-18) Optional Terms of Probation (19-34), if warranted
MINIMUM	Public Reproval

FAILURE TO MAKE PHYSICIAN REFERRAL

Sections 2538.36 and 2539.6 of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms of Probation (1-18) Optional Terms of Probation (19-34), if warranted

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

Sections 2538.37 and 2539.8 of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms of Probation (1-18) Optional Terms of Probation (19-34), if warranted

FAILURE TO MAINTAIN REQUIRED RECORDS

Sections 2538.38 and 2539.10 of the Business and Professions Code

MAXIMUM	1 Year suspension, stayed with 3 Years probation Standard Terms of Probation (1-8 Optional Terms of Probation (19-34), if warranted
MINIMUM	Public Reproval

THE IMPROPER OR UNNECESSARY FITTING OF A HEARING AID

Sections 2533(f) and 2538.11 of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years' Probation Standard Terms of Probation (1-18) Optional Terms of Probation (19-34), If warranted

HEARING SCREENINGS—UNAUTHORIZED SERVICES

Section 2538.12 of the Business and Professions Code

MAXIMUM	5 Years Probation
MINIMUM	Public Reproval

UNAUTHORIZED DISPENSING OF A HEARING AID – REMOTE ACQUISITION

Sections 2538.23 and 2539.2 of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	5 Years Probation Standard Terms of Probation (1-18) Optional Terms of Probation (19-34), if warranted

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 of Probation (1-18) Optional Terms of Probation (19-34), if warranted

VIOLATION OF SECTION 1689.6 OR 1793.02 OF THE CIVIL CODE

Section 2533(k) of the Business and Professions Code

MAXIMUM	Revocation
MINIMUM	24 Months Probation Standard Terms of Probation (1-18) Optional Terms of Probation (19-34), if warranted

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 of Probation (1-18)
Optional Terms of Probation (19-34), if warranted

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&P 480(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 of Probation (1-18)
Optional Terms of Probation (19-34), if warranted

USE OR ATTEMTPED USE OF LICENSE PURCHASED, FRAUDULENTLY ISSUED, COUNTERFEITED, OR MATERIALLY ALTERED

Section 2538.46 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 (1-18)
Optional Terms of Probation (19-34), if warranted

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 of Probation (1-18)
Optional Terms of Probation (19-34), if warranted

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

IMPROPER SUPERVISION OF A TRAINEE

California Code of Regulations, Title 16, Section 1399.116

MAXIMUM — Revocation

MINIMUM — 3 Years' Probation
Standard Terms of Probation (1-18)
Optional Terms of Probation (19-34), if warranted

UPROFESSIONAL CONDUCT BY A TRAINEE

MINIMUM	Revocation of trainee license and denial of permanent licensure

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY& HEARING AID DISPENSERS BOARD
2005 Evergreen Street, Suite 2100, Sacramento, CA 95815
Phone: (916) 263-2666 Fax: (916) 263-2668 | www.speechandhearing.ca.gov

MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Executive Officer Report**

This report and the statistical information provided by staff, is to update you on the current operations of the Board.

Administration/Personnel/Staffing

In January 2016, the Board hired Francisco Del Pozo as a licensing analyst. Mr. Del Pozo has over three years of DCA experience with the Bureau of Automotive Repair and the Structural Pest Control Board. Mr. Del Pozo replaces Christy Small who recently resigned from employment with the Board.

Board Budget

Included in your Board materials is the most recent Expenditure Projection Report through Fiscal Month 6 (December 2016) of the current budget year. Based on this report, we are projected to spend most of our allocated budget. The Board continues to absorb additional costs attributed to the hiring of temporary staff, overtime, and retirement payouts. We will monitor our budget closely and make the appropriate spending adjustments as we near the end of the fiscal year.

Licensing/Exams/Enforcement

Included in your Board materials are statistical reports for your review. Management and staff will be present at the Board meeting to answer any questions you have regarding these reports.

Licensing – So far this fiscal year, we have seen an increase in the number of licenses issued. Although the Board has used temporary help to keep with the licensing workload, we may be limited by budget constraints this year. This could cause licensing cycle times to increase again. Staff is currently working through the State budget process to obtain additional permanent resources to address the Board office workload.

Board licensing timeframes:

Licensing Cycle Times	8/1/15	10/1/15	12/1/15	1/18/16
SLPs and Audiologists Licensing applications	6 weeks	6 weeks	4 weeks	4 weeks
Review and process supporting licensing documents	6 weeks	7 weeks	5 weeks	4 weeks
Review and process RPE applicant's verification forms for full licensure	6 weeks	6 weeks	5 weeks	4 weeks
Hearing Aid Dispensers	5 weeks	3 weeks	3 weeks	3 weeks

Practical Examinations – Included in your Board materials are statistical summaries of the Hearing Aid Dispensers Practical Examinations that were held on October 17, November14, and November 21, 2015.

Enforcement – Board enforcement staff have made improvements in almost all the enforcement cycle times. We are seeing an increase in the number of complaints received compared to last year. This fiscal year the Board has referred 21 formal discipline cases to the Office of the Attorney General. There are currently 37 formal discipline cases pending with the Attorney General's Office.

Probation – The Board is currently monitoring 25 probationers. Six probationers require drug or alcohol testing and eight are in a tolled status.

The following disciplinary actions have been adopted by the Board in fiscal year 2015-16:

Name	License No.	License Type	Case No.	Eff. Date	Action Taken
Nicholson, Mary	SPA 1460	Speech-Language Pathology Assistant	1l 2015 13	12/24/15	Revocation of License
Green, Robert	AU 1100	Audiologist	1l 2011 57	12/21/15	Revocation Stayed, 2 Yrs Probation w/ Specified Terms & Conditions
Crocker, Taran	HA 7542	Hearing Aid Dispenser	1C 2015 65	11/18/15	License Surrender During Probation
Wolford, Julia	SP 13872	Speech-Language Pathologist	1l 2013 33	9/11/15	Revocation Stayed, 5 Yrs Probation w/ Specified Terms & Conditions

Name	License No.	License Type	Case No.	Eff. Date	Action Taken
Beckwith, John	HA 7606	Hearing Aid Dispenser	1C 2014 12	8/12/15	Stipulated Surrender of License
Rawlinson, Kristin	SP 19002	Speech-Language Pathologist	1I 2014 22	8/9/15	Revocation of License
Trythall, Michael	AU 2225	Audiologist	1I 2014 63	7/31/15	Stipulated Surrender of License
Blanchard, Miriam	SP 8627	Speech-Language Pathologist	1I 2012 70	7/22/15	Revocation Stayed, 90 Day Suspension, 7 Yrs Probation w/ Specified Terms & Conditions
Rios, Keith	HA 5058	Hearing Aid Dispenser	1C 2010 155	7/24/15	Revocation Stayed, 5 Yrs Probation w/Specified Terms & Conditions
Frangos, Nicole	SP 18907	Speech-Language Pathologist	1I 2012 66	7/24/15	Revocation Stayed, 5 Yrs Probation w/ Specified Terms & Conditions

Regulations Update

The Board has three draft regulatory proposals for your review and approval. The Board is currently preparing six approved regulatory proposals for the Office of Administrative Law (OAL).

The following table provides the status of each package along with target completion and submission dates:

Rulemaking File	Published	Final Filing Date	Status
Hearing Aid Dispenser Continuing Education	12/4/2014	2/15/2016	DCA Final Review.
Speech-Language Pathology Assistant	10/9/2015	10/8/2016	DCA Final Review.

Rulemaking File	Published	Final Filing Date	Status
Fees: Hearing Aid Dispensers	10/9/2015	10/8/2016	DCA Final Review.
Fees: SLP and Audiology			Target Filing with OAL 2/2016. Working on notice and Initial Statement of Reasons.
Disciplinary Guidelines			On Board Agenda 3/2016. Board to review language and review guidelines. Need to incorporate Uniform Standards.
Hearing Aid Dispenser Advertising Guidelines			Working on notice and Initial Statement of Reasons. Target Filing with OAL 2/2016
Required Professional Experience Clock Hours			Board to review and approve language. On Board Agenda 2/2016
SLP and AUD Self-study Hours			Working on notice and Initial Statement of Reasons. Target Filing with OAL 4/2016
HAD Self-study Hours			Board to review and approve language. On Board Agenda 2/2016.

Strategic Plan Update

The Board has approved and adopted the *2016-2020 Strategic Plan.* The next steps involve publication, implementation, and planning. Staff will work with the SOLID team on developing an action plan to achieve the goals and objectives.

Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board - 0376
BUDGET REPORT
FY 2015-16 EXPENDITURE PROJECTION

FISCAL MONTH 6

OBJECT DESCRIPTION	FY 2014-15 ACTUAL EXPENDITURES (MONTH 13)	FY 2014-15 PRIOR YEAR EXPENDITURES 12/31/2014	FY 2015-16 BUDGET STONE 2015-16	FY 2015-16 CURRENT YEAR EXPENDITURES 12/31/2015	FY 2015-16 PERCENT SPENT	FY 2015-16 PROJECTIONS TO YEAR END	FY 2015-16 UNENCUMBERED BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	391,673	194,255	**455,000**	220,145	48%	**448,916**	6,084
Statutory Exempt (EO)	82,680	40,560	**82,000**	41,574	51%	**83,148**	(1,148)
Temp Help Reg (Seasonals)	54,350	41,565	**1,000**	28,898	2890%	**39,855**	(38,855)
Temp Help (Exam Proctors)	4,592	4,345	**0**	274		**274**	(274)
Board Member Per Diem			**6,000**		0%		6,000
Committee Members (DEC)	4,100	3,000	**0**	2,200		**3,007**	(3,007)
Overtime	18,128	14,536	**5,000**	12,959		**16,161**	(11,161)
Staff Benefits	228,845	113,704	**255,000**	135,871	53%	**273,459**	(18,459)
TOTALS, PERSONNEL SVC	**784,368**	**411,965**	**804,000**	**441,921**	**55%**	**864,820**	(60,820)
OPERATING EXPENSE AND EQUIPMENT							
General Expense	19,009	8,910	**43,000**	5,319	12%	**11,348**	31,652
Fingerprint Reports	20,635	8,437	**28,000**	8,918	32%	**21,811**	6,189
Minor Equipment	3,406	1,720	**0**	827		**1,500**	(1,500)
Printing	3,667	2,816	**24,000**	1,620	7%	**2,110**	21,890
Communication	3,097	1,037	**17,000**	1,697	10%	**5,068**	11,932
Postage	26,374	11,925	**23,000**	12,365	54%	**30,000**	(7,000)
Insurance	0	0	**0**	0	0%	**0**	0
Travel In State	31,425	11,254	**34,000**	12,661	37%	**35,000**	(1,000)
Travel, Out-of-State	0	0	**0**	0		**0**	0
Training	465	465	**6,000**	0	0%	**500**	5,500
Facilities Operations	65,835	62,951	**113,000**	68,462	61%	**71,598**	41,402
Utilities	0		**0**	0	0%	**0**	0
C & P Services - Interdept.	5,377	0	**24,000**	21,784	91%	**21,784**	2,216
C & P Services - External	1,325	0	**0**	0		**0**	0
DEPARTMENTAL SERVICES:							
Departmental Pro Rata	159,192	89,868	**171,000**	84,500	49%	**171,000**	0
Admin/Exec	98,480	47,290	**108,000**	52,000	48%	**108,000**	0
DOI-ProRata Internal	2,679	1,480	**3,000**	1,500	50%	**3,000**	0
Communications Division	3,109	1,444	**7,000**	1,500	21%	**7,000**	0
PPRD Pro Rata	3,004	1,580	**0**	2,000	0%	**0**	0
INTERAGENCY SERVICES:							
Interagency Services	0	458	**29,000**	10,214	0%	**10,214**	29,093
Consolidated Data Center	224	72	**9,000**	138	2%	**429**	8,571
DP Maintenance & Supply	2,901	2,893	**17,000**	3,754	22%	**4,000**	13,000
Central Admin Svc-ProRata	79,026	39,513	**146,000**	73,222	50%	**146,000**	0
EXAM EXPENSES:							0
Exam Supplies	0		**0**			**0**	0
Exam Freight	0		**0**			**0**	0
Exam Site Rental	4,149	2,158	**8,000**	1,618	20%	**3,111**	4,889
C/P Svcs-External Expert Administrative	10,445	8,870	**25,000**	4,435	18%	**10,000**	15,000
C/P Svcs-External Expert Examiners	0		**38,000**		0%	**0**	38,000
C/P Svcs-External Subject Matter	68,725	26,743	**0**	34,926		**34,926**	(34,926)
ENFORCEMENT:							
Attorney General	152,182	46,438	**91,000**	102,539	113%	**205,078**	(114,078)
Office Admin. Hearings	14,423	12,512	**22,000**	13,845	63%	**27,690**	(5,690)
Court Reporters	1,258	679	**0**	350		**725**	(725)
Evidence/Witness Fees	7,050	3,450	**7,000**	6,259	89%	**12,790**	(5,790)
DOI - Investigations	283,575	140,646	**342,000**	165,500	48%	**342,000**	0
Major Equipment	3,860		**0**			**0**	0
Other - Clothing & Pers Supp	0		**0**			**0**	0
Special Items of Expense	0		**0**			**0**	0
Other (Vehicle Operations)	0		**15,000**			**0**	15,000
TOTALS, OE&E	1,137,873	535,609	**1,350,000**	691,953	51%	**1,286,683**	73,624
TOTAL EXPENSE	1,922,241	947,574	**2,154,000**	1,133,874	53%	**2,151,503**	12,804
Sched. Reimb. - Fingerprints	(18,326)	(6,419)	**(31,000)**	(9,849)	32%	**(31,000)**	0
Sched. Reimb. - Other	(4,465)	(2,115)	**(2,000)**	(3,525)	176%	**(2,000)**	0
Distributed			**0**				0
Unsched. Reimb. - Other	(9,011)	(4,768)	**0**	(16,337)			0
NET APPROPRIATION	1,890,439	934,272	**2,121,000**	1,104,164	52%	**2,118,503**	**12,804**
						SURPLUS/(DEFICIT):	**0.6%**

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

As of December 31, 2015

Licenses Issued

LICENSES ISSUED	FY10/11	FY11/12	FY12/13	FY13/14	FY14/15	FY15/16 QTR 1-2
AU	57	55	76	57	89	45
AUT	2	1	1	0	0	0
DAU	78	20	19	UA	UA	8
SLP	734	911	1056	974	1143	584
SPT	1	0	0	0	0	0
SLPA	312	346	407	325	550	327
RPE'S	513	667	727	702	836	530
AIDES	52	44	51	40	48	17
CPD PROVIDERS	15	16	9	15	17	16
HAD Permanent	50	91	84	49	92	76
HAD Trainees	77	94	95	139	145	93
HAD Licensed in Another State	12	6	7	5	9	7
HAD Branch Office	205	192	132	282	426	248
TOTAL LICENSES ISSUED	**2108**	**2443**	**2664**	**2588**	**3355**	**1951**

Licensing Population

POPULATION	FY10/11	FY11/12	FY12/13	FY13/14	FY14/15	FY15/16 QTR 1-2
AU	622	595	609	UA	612	411
DAU	911	930	942	UA	988	1,172
Both License Types	1,533	1,525	1,551	1,555	1,600	1,583
AUT	0	0	0	0	0	0
SLP	11,349	12,020	12,696	13,285	13,967	14,178
SPT	0	0	0	0	0	0
SLPA	1,304	1,529	1,771	1,969	2,343	2,569
RPE'S	608	665	682	768	802	910
AIDES	215	181	120	119	124	127
HAD	932	938	946	913	948	946
HAD Trainees	83	97	95	145	160	156
HAD Licensed in Another State	12	6	9	8	7	12
HAD Branch Office	601	627	653	710	821	867
TOTAL LICENSEES	**18,170**	**19,113**	**20,074**	**19,472**	**20,772**	**22,931**

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

Hearing Aid Dispensers Practical Examination

October 17, 2015

Candidate Type	Number of Candidates	Passed	%	Failed	%
Applicants with Supervision (Temporary License)					
HA	30	16	53%	14	47%
AU	1			1	100%
RPE	2	2	100%		
Aide					
Applicants Licensed in Another State (Temporary License)					
HA	1			1	100%
AU					
Applicants without Supervision					
HA	4	1	25%	3	75%
AU	5	2	40%	3	60%
RPE			#DIV/0!		
	Total Number of Candidates	**Passed**	**%**	**Failed**	**%**
TOTAL:	42	21	50%	21	50%

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

Hearing Aid Dispensers Practical Examination

November 14, 2015

Candidate Type	Number of Candidates	Passed	%	Failed	%
Applicants with Supervision (Temporary License)					
HA	30	16	53%	14	47%
AU	1			1	100%
RPE					
Aide					
Applicants Licensed in Another State (Temporary License)					
HA	1			1	100%
AU					
Applicants without Supervision					
HA	4	1	25%	3	75%
AU	5	2	40%	3	60%
RPE	2	2	100%		
	Total Number of Candidates	**Passed**	**%**	**Failed**	**%**
TOTAL:	42	21	50%	21	50%

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

Hearing Aid Dispensers Practical Examination

November 21, 2015

Candidate Type	Number of Candidates	Passed	%	Failed	%
Applicants with Supervision (Temporary License)					
HA	19	4	21%	15	79%
AU					
RPE					
Aide					
Applicants Licensed in Another State (Temporary License)					
HA					
AU					
Applicants without Supervision					
HA	9	2	22%	7	78%
AU	15	9	60%	6	40%
RPE	1			1	100%
	Total Number of Candidates	**Passed**	**%**	**Failed**	**%**
TOTAL:	44	15	34%	29	66%

Speech-Language Pathology Audiology Hearing Aid Dispensers Board

COMPLAINTS AND CONVICTIONS	FISCAL YEAR 2012 - 2013		FISCAL YEAR 2013 - 2014		FISCAL YEAR 2014 - 2015		2015 - 2016 Quarter 1-2	
	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU
Complaints Received	71	28	86	41	56	41	41	26
Convictions Received	7	41	6	29	4	27	13	33
Average Days to Intake	1	2	2	2	31	31	2	2
Closed	103	87	104	69	107	46	62	27
Pending	111	29	100	30	55	56	47	32

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator. DCA Performance Measure: Target 5 Days.

INVESTIGATIONS Desk	FISCAL YEAR 2012 - 2013		FISCAL YEAR 2013 - 2014		FISCAL YEAR 2014 - 2015		2015 - 2016 Quarter 1-2	
	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU
Assigned	98	69	91	68	59	64	54	59
Closed	91	80	84	63	89	41	60	82
Average Days to Complete	360	220	458	128	339	250	134	168
Pending	84	27	80	28	46	48	43	30

INVESTIGATONS DOI	FISCAL YEAR 2012 - 2013		FISCAL YEAR 2013 - 2014		FISCAL YEAR 2014 - 2015		2015 - 2016 Quarter 1-2	
	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU
Assigned	25	0	12	5	2	3	0	2
Closed	6	6	20	5	15	2	2	5
Average Days to Complete	758	697	451	503	722	527	338	290
Pending	27	1	19	2	6	3	4	2

ALL TYPES OF INVESTIGATGIONS	FISCAL YEAR 2012 - 2013		FISCAL YEAR 2013 - 2014		FISCAL YEAR 2014 - 2015		2015 - 2016 Quarter 1-2	
	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU
Closed Without Discipline	94	77	93	60	83	37	54	72
Cycle Time - No Discipline	383	243	470	152	347	234	115	144

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the AG or other forms of formal discipline. DCA Performance Measure: Target 90 Days.

CITATIONS/Cease&Desist	FISCAL YEAR 2012 - 2013		FISCAL YEAR 2013 - 2014		FISCAL YEAR 2014 - 2015		2015 - 2016 Quarter 1-2	
	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU
Issued	6	3	7	3	3	8	4	5
Avg Days to Complete Cite	654	794	358	453	292	188	195	305
Cease & Desist Letter	26	0	9	0	5	1	0	1

ATTORNEY GENERAL CASES	FISCAL YEAR 2012 - 2013		FISCAL YEAR 2013 - 2014		FISCAL YEAR 2014 - 2015		2015 - 2016 Quarter 1-2	
	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU
Pending at the AG	12	12	9	13	17	13	19	18
Accusations Filed	1	3	3	6	5	6	5	16
SOI Withdrawn, Dismissed, Declined	0	0	0	0	0	0	0	0
Acc Withdrawn, Dismissed, Declined	0	4	2	1	1	1	0	0
Average Days to Discipline	606	1013	703	617	1336	234	1134	667

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board and prosecution by the AG.) DCA Performance Measure: Target 540 Days

ATTORNEY GENERAL TYPE OF PENALTIES	FISCAL YEAR 2012 - 2013		FISCAL YEAR 2013 - 2014		FISCAL YEAR 2014 - 2015		2015 - 2016 Quarter 1-2	
	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU
Probation		4	4		1	1	1	2
Surrender of License		1	1	1		1	1	1
Conditional License			1	3				
License Denied (SOI)	1						1	
Suspension & Probation								1
Revocation-No Stay of Order				1	1	3		2
Petition for Modification of Probation				1				
Petition for Reinstatement Denied			1					

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.

SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY& HEARING AID DISPENSERS BOARD
2005 Evergreen Street, Suite 2100, Sacramento, CA 95815
Phone: (916) 263-2666 Fax: (916) 263-2668 | www.speechandhearing.ca.gov

MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Anita Joseph, Enforcement Coordinator
SUBJECT	**Hearing on Petition for Early Termination of Probation – Kathryn Ellis, SLP, License # 15760**

Please see the attached probation report for the petitioner, Kathryn Ellis. The entire petition packet is included in your Board materials in a separate binder.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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PHONE (916) 263-2666 FAX (916) 263-2668 WWW.SPEECHANDHEARING.CA.GOV

PROBATION REPORT

January 20, 2016

SUBJECT INFORMATION:

NAME:	**Kathryn Ellis**
MAILING ADDRESS:	**1916 Vanderbilt Ln., Redondo Beach, CA 90278**
PROFESSION:	**Speech-Language Pathologist**
LICENSE NUMBER:	**SP 15760**
EMAIL ADDRESSES:	**sunshyn713@yahoo.com**
BUSINESS LOCATION:	**Hawthorne School District, Hawthorne, CA**
BUSINESS PHONE:	**310-676-2276**

The Stipulated Settlement and Disciplinary Order (1l 2010 03) effective March 2, 2012 granted a stay of the Board's revocation of Kathryn Ellis' speech-language pathology license. Ms. Ellis was placed on probation for five years subject to certain terms and conditions. Probation status is active, with a two month period of tolling (medical related) in 2013.

Term 1- Clinical Diagnostic Evaluation - Completed

The Board received the approved evaluator's report regarding Kathryn Ellis in January 2013. In the report, it was indicated that Ms. Ellis did not represent a danger to herself or others and was capable of practicing safely as a speech-language pathologist.

Term 2- Attend Chemical Dependency Support and Recovery Groups - Compliant

Ms. Ellis has reported consistent weekly attendance at Alcoholics Anonymous meetings as required.

Term 3- 5 Abstain from Controlled Substances & Alcohol, Submit Biological Fluid Samples

The Stipulated Settlement Agreement called for Ms. Ellis to submit to a minimum of 104 biological fluid tests during the first year of probation. This number was later reduced to twice monthly following a clinical diagnostic evaluation recommendation. There is no record that Ms. Ellis missed any test dates for which she was selected. Ms. Ellis had a positive test in June 2015, however, she provided medical documentation for prescription medication which caused the fluid test result to show positive.

Term 6- Obey All Laws - Compliant

There is no record that Ms. Ellis has violated any laws during her probation.

Term 7- Comply with Probation Program - Compliant

Probation Report
Kathryn Ellis
1I 2010 03

Term 8 – Changes of Name and Address - Compliant

Throughout her probation, Ms. Ellis has provided the Board current contact information.

Term 9- Quarterly Reports - Compliant

Ms. Ellis has submitted all required reports timely.

Term 10- Employee Notification - Compliant

Ms. Ellis provided notification of her probation status to her employer as required. Her employer has submitted quarterly work performance evaluations for Ms. Ellis throughout her probation.

Term 11- Interviews with Board Representatives - Compliant

Ms. Ellis has met with Board representatives as requested.

Term 12- Employment Limitations - Compliant

Reports submitted by Ms. Ellis's employer confirm that she has been consistently employed as a speech-language pathologist with the school district throughout her probationary period.

Term 13 – Function as a Licensee Compliant

Ms. Ellis has been employed as a speech-language pathologist throughout her probationary period. Her license was placed in toll status for two months in 2013 due to medical reasons.

Term 14 –Recovery of Costs - Completed

Ms. Ellis has paid in full the cost recovery amount of $3500.00.

Term 15 –Voluntary License Surrender – Not Applicable

Ms. Ellis has not requested to surrender her license during her probation.

Term 16 –Violation of Probation – None

There are no noted violations regarding Ms. Ellis' probation.

Term 17 – Completion of Probation - Pending

The term of Ms. Ellis' probation is currently scheduled to end on March 2, 2017.

Submitted by:

_____

Anita Joseph
Probation Monitor

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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Review and Approve Support Letter for Legislation to Allow Additional AuD Programs through the California State University System**

BACKGROUND

At its December 22, 2015 meeting, the Board approved a motioned to write a letter to Assemblyman Mullin supporting legislation that would allow California State University system to provide clinical audiology doctorate programs.

ACTION REQUESTED

Staff recommends that we review and approve the attached draft letter on behalf of the Board to Assemblyman Mullin.

DRAFT #1 January xx, 2016

Honorable Kevin Mullin

Member of the Assembly

P.O. Box 942849

Sacramento, CA 94249-0022

RE: AB xxx Support

Dear Assembly Member Mullin:

The mission of the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (SLPAHADB) is to protect the health, safety, and welfare of the people of California by requiring that these professional entities adhere to laws and regulations designed to ensure the qualifications and competency of these providers. The function of the board is to "regulate the practices of speech-language pathology, audiology, and hearing aid dispensing in California by licensing those who meet minimum standards of competency. Among its functions, the Board promulgates laws and regulations; issues, renews, suspends, and revokes licenses; and imposes disciplinary sanctions, when necessary."

An important aspect of the work of this board is to ensure that consumers of speech and hearing services have adequate access to the professionals who provide them. Due to the every-increasing elderly population and mandatory newborn hearing screening program in California, the severe shortage of audiology training programs in the state has created a consumer protection

issue that is of major concern to this board.

The percentage of Californians aged 65 years and older is approximately 12.5% or nearly 5,000,000. According to the American Speech-Language-Hearing Association, the incidence of hearing loss in the US has doubled in the last 30 years (ASHA, 2015). Currently, 30 million Americans aged 12 and older have permanent, bilateral hearing loss. About 2 percent of adults aged 45 to 54 years have disabling hearing loss. The rate increases to 8.5 % for adults aged 55 to 64 years. Nearly 25 % of those aged 65 to 74 years and 50 % of those who are 75 years and older have disabling hearing loss (NIH, 2014). Since California represents approximately 12% of the US population, it would appear that nearly 4 million Californians have permanent, bilateral hearing loss. In addition, with over 500,000 live births in California each year, the California Department of Health Care Services has noted that more than 1200 infants (2.4 babies per 1000 live births) are identified annually as having permanent hearing loss.

These factors make it clear to this board that a significant number of audiology training programs are needed in California in order to provide its consumers of hearing and balance services with appropriate and timely access to the professional care that only audiologists can provide. Thus, the SLPAHADB would like to add its support for ABxxx in an effort to allow for stand-alone clinical doctoral program (AuD) development within the California State University (CSU) system. It is our belief that programs within the CSU will not only be affordable, but also will bring needed diversity to those who practice this profession in California.

For these reasons, we are pleased to support AB xxx and appreciate your leadership.

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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Patti Solomon-Rice, Vice Chair and Board Member
SUBJECT	**Discussion and Possible Action to Eliminate Speech Pathology Aide Designation**

Background Information

1) What are the current SLP aide regulations?

SLP Aide Regulations (Article 5, Sections 154 – 154.7)

- Section 1399.154 defines a speech-language pathology aide as a person who assists or facilitates an SLP and is registered by the supervisor with the board, which is approved by the board.
- Section 1399.154.1 describes the process for SLP registration of an SLP aide.
- Section 1399.154.2 states an SLP must be physically present when the aide is assisting with patients unless there is an alternative plan of supervision.
- Section 1399.154.3 states the maximum number of aides that can be supervised by an SLP.
- Section 1399.154.4 states the supervising SLP will instruct the aide in necessary skills, the aide must demonstrate his/her competences, and the supervising SLP must instruct the aide in limitations imposed by the duties.
- Sections 1399.154.5 – 1399.154-7 state regulations for notice of termination, noncompliance with this article, and that aide experience is not applicable to the qualifications for licensure regarding supervised clinical experience and required professional experience.

2) What are the current SLPA regulations?

SLPA Regulations (Article 12, Sections 170 – 170.19)

- Section 1399.170 defines a speech-language pathology assistant in great detail, including accountability of the SLPA, the type of supervision required, and who services can be provided to.
- Section 1399.170.1 describes the responsibilities, duties, and functions of the SLPA.
- Section 1399.170.2 describes the types of supervision required for duties performed by the SLPA.

- Section 1399.170.3 describes the activities, duties and functions outside of the scope of practice of an SLPA.
- Section 1399.170.4 describes the application for approval of SLPA training programs.
- Section 1399.170.5 describes the approval requirements for SLPA programs.
- Section 1399.170.6 describes the requirements of the sponsoring institution.
- Section 1399.170.7 describes the administration and organization of the SLPA program.
- Section 1399.170.8 describes the required field work experience to be a SLPA.
- Section 1399.170.9 describes site visit compliance for remaining a SLPA program.
- Section 1399.170.10 describes the required SLPA curriculum.
- Section 1399.170.11 describes the qualifications for registration as a SLPA.
- Section 1399.170.12 was deleted.
- Section 1399.170.13 describes the application and fees to be a SLPA.
- Section 1399.170.14 describes requirements for renewal of SLPA licensure.
- Section 1399.170.15 describes requirements for SLP supervision of SLPAs.
- Sections 1399.170.16 – 1399.170.18 describe the maximum number of support personnel supervised by an SLP, regulations addressing when a SLPA has more than one SLP supervisor, and regulations addressing a notice of termination by an SLP supervisor
- Section 1399.170.19 describes the actions that can result in discipline against an SLPA including denial of licensure or probation, suspension or termination of SLPA licensure.

What are SLP Aide issues of concern?

A. As can be seen by the above SLP aide regulations, there is no formal education, no licensure, no continuing education, and no disciplinary actions for maintaining registration as an SLP aide.
B. Alternatively, there are institutional educational requirements with an approval process for training SLPAs, licensure is required to be an SLPA, there are continuing education renewal requirements to maintain the SLPA license, and there are disciplinary actions that can impact obtaining and renewing SLPA licensure.
C. In FY 14/15 there were a total of 124 speech-language pathology and audiology aides registered with the licensing board; it is unknown what percentage were speech-language pathology aides.
D. Alternatively, in FY 14/15 there were a total of 2,343 SLPAs registered with the licensing board.

E. The SLP aide regulations are less stringent than the SLPA regulations as there are far fewer requirements in the areas of education, there are no licensure requirements, there are no continuing education requirements, and there are no disciplinary regulations that can impact SLP aide registration.
F. There are far fewer registered SLP aides in comparison to licensed SLPAs.

What are issues for discussion?

1) What are the advantages of having designations for both SLP aides and SLPAs?
2) What are the disadvantages of having designations for both SLP aides and SLPAs?
3) Do we need the SLP aide designation when there are minimal regulations addressing SLP aide education, no licensure, no continuing education and no disciplinary actions, and there are far fewer SLP aides registered?
4) Should the SLP aide designation be eliminated?
5) If we were to eliminate the SLP aide designation, what are the next steps?

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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Update and Discussion on Requirements and Processes on Foreign-educated Speech-Language Pathology Applicants**

Breanne Humphreys will present an oral report.

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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Outreach/Education to Audiologists on Aide Registration**

BACKGROUND

At the November 6 Board Meeting, the Board requested that staff work with California Academy of Audiology on an outreach/educational communication to inform audiologists on the importance of registering their audiology aides according to Business and Professions Code 2530.6.

Board member Marcia Raggio has drafted the following language to include in an email communication from California Academy of Audiology and to be placed on the Board's website.

REGISTERING YOUR AUDIOLOGY AIDES:

A REMINDER FROM THE CALIFORNIA ACADEMY OF AUDIOLOGY

Audiology aides can be a helpful addition to any type of audiology practice from hospital clinics to a private practice. According to the Business and Professions Code, Section 2530.2, "an audiology aide means any person meeting the minimum requirements established by the board. An audiology aide may not perform any function that constitutes the practice of audiology unless he or she is under the supervision of an audiologist. …" This code allows for significant latitude in terms of the tasks that an audiology aide can perform, however, it is assumed by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (SLPAHADB) that audiologists

who hire audiology aides will do their utmost to make sure that aides are used appropriately and not allowed to perform duties for which they have received little or no training. In addition, audiology regulations require that audiology aides be registered with the SLPAHADB. On the SLPAHADB website, you will find the requirements that need to be met and the forms that must to be completed in order to register audiology aides (see website below). Please make every effort to register your audiology aides before they begin work in your facility to ensure that the tasks they will be performing and the planned supervision strategy are appropriate.

http://www.speechandhearing.ca.gov/applicants/app_pack_au_aide.shtml

ACTION REQUESTED

Review and approve proposed language for Board communication.

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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Review and Approve Board Letter to California Children's Services (CCS) Regarding the Lack of Access to Audiology Services for CCS Participants**

BACKGROUND

At its June 2015 meeting, the Board delegated to staff and Board members Marcia Raggio and Alison Grimes to write a letter to Department of Healthcare Services expressing concerns with the lack of access to audiology services through the California Children's Services (CCS).

ACTION REQUESTED

Staff recommends that we review and approve the attached draft letter on behalf of the Board to the California Department of Healthcare Services.

January xx, 2016

XXXXXXXXX, Chief
Systems of Care Division
California Department of Health Care Services
1515 K Street, Suite 400
MS 1800
P.O. Box 997413
Sacramento, CA 95899-7413

Dear

Approximately two years ago, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board attempted to generate talks with the California Department of Health Care Services (DHCS) in order to address provider concerns regarding service implementation aspects of California Children's Services (CCS). A letter was written at that time to Louis Rico that delineated a number of concerns regarding the provision of services to children with hearing loss covered under the CCS system (see attached). Unfortunately, a response was not received, and these issues and concerns, in the interim, have only increased.

While there are a number of important issues that the SLPAHADB would like to discuss, of primary importance, however, is the issue of the severe lack of access to audiology services for CCS participants due to the decreasing number of CSS providers of audiology and hearing aid services. Based on complaints received by the board from audiologists who are CCS providers, it is clear that the complexities of the application

process, delays in reimbursement, and apparently antiquated requirements, appear to be at the root of these concerns.

The SLPAHADB continues to be interested in addressing its concerns with regard to consumer access, consumer protection, and other aspects of care provided under the CCS system. Thus, the SLPAHADB, once again, respectfully requests a meeting with representatives of DHCS who can work with the SLPAHADB to ensure that children who require care for their communication disorders are able to readily access services.

The SLPAHADB would appreciate your willingness to meet to discuss a collaborative effort to resolve these important issues on behalf of CCS participants and audiology providers.

Respectfully,

October 17, 2014

Louis R. Rico, Chief
Systems of Care Division
California Department of Health Care Services
1515 K Street, Suite 400
MS 1800
P.O. Box 997413
Sacramento, CA 95899-7413

RE: Immediate attention needed to address severe access issues to audiology services for CCS participants

Dear Mr. Rico:

As practicing audiologists with extensive experience in the care of California's CCS children, we are writing to express our grave concerns regarding audiological services for these children. We appreciate recent conversations with representatives from the CCS and Medi-Cal programs, but realize their hands may be tied in moving forward with proposed resolutions.

Our concerns reflect both professional and consumer issues, specifically as they relate to, 1) consumer access and protection for children, and 2) provider solvency of those dedicated to serving CCS children. These concerns have existed for at least the past 30 years, and many specific cases have been examined over the years to support these issues. We would now like to move beyond micro-examination and identify resolutions for the problems that exist persistently in California in providing services to our children.

Our goals are to be able to provide timely service to ALL California children with impaired hearing, regardless of insurance status. The state and national best-practice goals are as follows:

- Hearing screening completed by one month of age
- Diagnosis of hearing loss completed by three months of age
- Hearing aid fitting completed by four months of age
- Enrollment in Early Intervention by six months of age

In the current state, there is a significant disconnect in achieving these legally mandated goals. It is typically children with private insurance who meet these targets, while it is extraordinarily difficult for children with CCS to meet these goals. Obviously, the disparity between these two populations is not only concerning, but is ethically wrong.

Our specific concerns and proposed resolutions:

1) **The processes by which the application to Medi-Cal, the application to CCS, and the linkage of the NPI to the CCS provider roles occur, and the challenges in efficiently linking Medi-Cal provider status to paneled-CCS provider status and dispensing audiologist license status.** There is a disconnect among Medi-Cal provider status, CCS provider status, and dispensing audiologist status. This is not only confusing, but also seriously delays the time it takes an audiologist to obtain Medi-Cal provider status, particularly as related to place/type of clinic. Differing regulations appear to be in place for a hospital-based clinic vs. a free-standing practice. We are aware of variations in application needs depending upon whether applying as a Billing Provider or a Service/Rendering Provider under a group; in the case of a sole provider, that person may be both billing and rendering provider. For example, a rendering service provider does not need to be independently credentialed as a Medi-Cal provider if billing is under a hospital institution. Even after lengthy discussion with state CCS and Medi-Cal representatives, requirements were not clear. In addition, the lack of a reasonably central source for answers has created tremendous frustration for audiologists who want to "do the right thing." We are aware of the complexity of the system and the currently mandated response guidelines, which are not typically met (i.e., 180 days to work the application, then re-tolling if an application is incomplete, with 60 days for provider response to resolve). We have discussed with Medi-Cal the statutory requirement for a 90-day turn-around for physician applicants.

   ***Solutions*:**

   - Decrease the complexity and tighten the application turn-around time for CCS/Medi-Cal provider status for audiologists, as it is for physicians.
   - Provide clear instructions to applicants with a provider handbook in clear language that outlines qualifications, guides the application process, and explains how to bill.
   - Create a "bridge" person for the three agencies to streamline the process, bridge the communication gap, and link Medi-Cal, CCS, and hearing aid dispensing. This person would be a direct contact to provide answers to audiologists.

2) **Delays in services to CCS children due to outdated requirements for 2 years of pediatric experience for CCS paneling.** While we appreciate the goals of the CCS program to use qualified providers, the paneling requirements were instituted prior to the minimum requirement of a doctoral degree to practice as an audiologist. With the current 4-year equivalent post-baccalaureate doctoral degree minimum entry requirement to audiology, the requisite 2 years of pediatric experience for CCS paneling is outdated. This may have been necessary when a 1-2 year post-baccalaureate Master's was the entry level, but today's students must complete many more didactic courses and internship hours than in the past, not to mention the 4th year clinical externship experience prior to graduation. (As with any area of professional practice, the audiologist is ethically bound by licensure and professional association membership to engage in only those areas in which they are competent, and frankly, the current paneling requirement does not preclude

poor or unqualified CCS providers.) Our licensure law is reasonably robust, and we can and do provide services to people of all ages, including infants/children, who are privately insured when there is not "2 years pediatric experience." This results in the scenario where a final year doctoral student completing the CA Required Professional Experience (RPE) is licensed in CA to see CCS children under supervision of their preceptor(s), but then when they graduate with their Doctor of Audiology (AuD) degree, they are unable to see these same children for another year until they complete the 2-year requirement for paneling.
Solution: Change CCS requirements to correspond to CA licensure, with a minimum of 1 year experience that includes serving children within the RPE. This would enable recent AuD grads to serve children (the very same children they saw during their clinical externship) during their first year after graduation and will expedite access.

3) **Delay in services due to paneled ENT medical clearance.** Currently, CCS children must be evaluated and receive medical clearance from a CCS-paneled ENT physician prior to obtaining hearing aids. Delay in medical clearance due to physician accessibility is a significant obstacle to providing hearing aids on a timely basis. Every day without amplification places the child at risk for communication delays.
***Solution*:** Allow non-paneled ENTs to provide medical clearance for hearing aids to expedite the process in providing amplification and audition to children.

4) **Poor reimbursement for CCS (and Medi-Cal) earmolds**. Earmolds are an essential coupling to most hearing aids for children. Current reimbursement does not cover the earmold companies' billed charges or the added costs to the provider of earmold impression materials, otoblocks, shipping, time, etc. Although cost-containment affects us all, poor reimbursement for earmolds requires that the audiologist take a significant loss. This is not a matter of "cutting the fat," but rather, losing money on products for which the provider has already paid. For example, the least expensive earmold companies charge $28-35 per earmold for a "no frills" earmold (*with* CCS discount), depending on material and features + tax & shipping. The silicone material used to provide an ear impression to the earmold company is ~ $3.00 per earmold—if the child sits still for the first impression and does not have to be re-done, a mixing tip of ~$0.57/ear, and the cost of an otoblock per ear, ~$0.11. Additional costs include disposable eartips/specula for an earlight for placing the otoblock and the use of an otoscope for visualization of the ear canal and otoblock placement, and the professional services of the audiologist, which may take from 15-30 minutes (plus charting and packaging), depending on the child. Our best guess is a minimum cost of $50.00 per earmold. And if you are aware of the growing ears of infants and young children, frequent earmold remakes are necessary. Also, this does not account for greater costs of earmold models for use with the newer receiver-in-the-canal hearing aid models, which are upwards of $100.
Solution: Increase reimbursement for earmolds to cover provider invoice costs (including tax & shipping) plus an allowance for non-reusable supplies. We suggest invoice + 60%.

5) Delays in reimbursement: Despite diligence on the part of most providers, even when care is taken to provide billing and all documentation for products and services rendered to CCS children, the lack

of timely reimbursement is problematic, especially for those in private practice who have already paid for the products and rendered their services but for whom payment is not received until many months later—if ever. Several clinics and practices have noted repeated "loss" of faxed information when sent to Xerox for payment. At least one audiologist even sought assistance from his legislator in this regard.
***Solution*:** Streamline the billing and reimbursement process (lost faxes are not acceptable) and create a web-based claims system where required documents (i.e., hearing aid and supplies invoices) can be uploaded as opposed to being faxed.

6) **The loss of Medi-Cal/CCS providers:** CCC providers are dropping out of the system in CA due to the untenable situations above. This creates an access issue for these children and an overload for those few providers who continue to see the CCS children. Services are delayed and families have a difficult time keeping their appointments due to precious time away from work and long travel distances, affecting both their access and rising cost of business for the providers. This substantial decrease in the number of CCS providers creates delays in identification and treatment and also results in the inability to meet state and federal mandates to serve and protect these children.
***Solution*:** Increase the number of CCS providers by enabling the solutions above.

Additional thoughts:

- Consider the idea of the VA model, whereby the State purchases hearing aids and earmolds. The State negotiates rates with the manufacturers and obtains bulk pricing for hearing aids and earmolds, and the audiologist/dispenser obtains the hearing aids from the state and orders earmolds via the contracted provider(s). The state saves money through bulk purchasing and saves time/money in processing invoices. The provider saves time/money through a streamlined process and is paid for services rendered.
- There does not appear to be a mechanism for reporting problem CCS providers to the SLPAHADB; this needs to be developed.

We appreciate your attention and look forward to collaboration in resolving these issues.

Respectfully,

Becky Bingea, AuD, CCC-A, FAAA
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Paul Sanchez, Executive Officer, Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board; Department of Consumer Affairs, 2005 Evergreen Street, Suite 2100, Sacramento, CA 95815

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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Update on President's Council of Advisors on Science and Technology Report: *Aging America and Hearing Loss: Imperative of Improved Hearing Technologies***

BACKGROUND

The attached announcement and report was published October 26, 2015 from the President's Council of Advisors on Science and Technology.

ACTION REQUESTED

These documents are provided for your information. No action is requested at this time.

the WHITE HOUSE

PCAST Recommends Changes to Promote Innovation in Hearing Technologies

OCTOBER 26, 2015 AT 1:10 PM ET BY CHRISTINE CASSEL AND ED PENHOET

Summary: President's Council of Advisors on Science and Technology letter report investigated age-related mild to moderate hearing loss.

Untreated, age-related hearing loss is a significant national problem. With the population 65 and older in the United States expected to reach 80 million in the next 25 years, the number of people with hearing loss will rise dramatically. Already, a quarter of adults between 60 and 69 years, more than half of adults between 70 and 79 years, and almost 80 percent of those older than 80 years have difficulty hearing – that's almost 30 million Americans. Only a small fraction of this group seek out and use assistive hearing technologies, including hearing aids, and that rate is even smaller among low income and racial and ethnic minorities.

The President's Council of Advisors on Science and Technology (PCAST) believes there is an opportunity to enhance the pace of innovation, decrease cost, and improve the capability,

convenience, and use of assistive hearing devices for individuals whose hearing has diminished in a mild to moderate way with age. Today, we delivered a letter report to the President, *Aging America & Hearing Loss: Imperative of Improved Hearing Technologies*, that examines these issues and includes several recommendations as part of our larger study about how technologies can help Americans remain independent as they age.

With the average price of just one hearing aid costing more than $2,300, and most consumers paying double that to get one for each ear, it's not surprising that we found high costs to be a major obstacle for many people. Most people also have to cover the costs entirely out of pocket as Medicare and most insurance do not cover hearing aids. Bundling services also drives up the costs, meaning consumers must pay for a professional evaluation and fitting, the hearing devices, and follow up appointments and adjustments all at once, whether they use them or not.

We also found that hearing aids have not experienced the dramatic reduction in price or increases in features and innovations as seen in other consumer electronics. Following a wave of industry acquisitions, just six hearing-aid manufacturing companies – most of them based outside of the United States – have dominated the industry for the past 15 years.

In this report, PCAST identified a few recommendations for changes the Federal Government can make that we believe will simultaneously decrease the cost of hearing aids, spur technology innovation, and increase consumer choice options. The recommendations we sent to the President for consideration include:

- The Federal Trade Commission (FTC) should enable a hearing-

aid prescription process similar to what is available for eyeglasses and contact lenses, giving consumers a greater diversity of choices and the opportunity to shop around without being locked into the cost of a particular device or service.

- The Food and Drug Administration (FDA) should create a new category for "basic" hearing aids and associated hearing tests that are meant for sale over-the-counter. This would allow entrepreneurs and innovators to enter the market and open a space for creative solutions to improve mild-to-moderate, age-related hearing loss with devices that can be sold widely, allowing consumers to buy a basic hearing aid at the local pharmacy, online, or at a retail store for significantly less.
- The FDA should rescind its previous draft guidance about Personal Sound Amplification Products and allow these devices to make truthful claims about capabilities like improving hearing or understanding in situations where environmental noise or crowded rooms might interfere with speech intelligibility.

While these changes would likely disrupt the current business practices of hearing aid manufacturers and dispensers, they would also dramatically increase competition and increase new choices for the millions of Americans who will soon be experiencing hearing loss for the first time.

Christine Cassel and Ed Penhoet are members of PCAST and co-chairs of the PCAST Hearing Technologies Working Group.

PCAST is an advisory group of the Nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. For more information about PCAST, please visit the PCAST website.

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EXECUTIVE OFFICE OF THE PRESIDENT
PRESIDENT'S COUNCIL OF ADVISORS ON SCIENCE AND TECHNOLOGY
WASHINGTON, D.C. 20502

October 2015

Dear Mr. President,

Untreated hearing loss, especially in older Americans, is a substantial national problem. Only a fraction of consumers who need assistance with hearing obtain and use hearing aids, in large part because of high cost, complex dispensing procedures, social stigma, and performance shortfalls. While the contributing factors are complex, your President's Council of Advisors on Science and Technology (PCAST) believes that a few simple actions by the Federal Government could dramatically enhance the pace of innovation and level of competition in this domain, leading to rapid decrease in cost and improvement in capability, convenience, and use of assistive hearing devices. We expand on these ideas in this letter report.

We focus here only on devices to assist the tens of millions of Americans with age-related, progressive, mild-to-moderate hearing loss. PCAST recognizes that many Americans have severe hearing impairment or deafness from congenital or illness/injury causes, but we do not address these categories of need here.[a]

I. Age-related hearing loss is a substantial national problem.

Age-related hearing loss affects many Americans, with older adults particularly at risk—a quarter of adults between 60 and 69 years, over half in the range 70-79 years, and almost 80 percent of those older than age 80 have difficulty hearing.[1] The absolute number of those affected, already almost 30 million,[2] is expected to grow as the population ages.

Untreated hearing loss is statistically associated with higher risks of social isolation; depression; dementia; falls with injury; and inability to work, travel, or be physically active.[3,4,5,6,7,8,9] While the National Institutes of Health is planning a large randomized trial to supplement these correlational findings, the volume of studies, the number of correlations, and their clinical plausibility are indicative of the types of problems that may be avoided with improved hearing. Recognizing the importance of good hearing health, *Healthy People 2020* has set a national goal to increase the use of hearing aids and other assistive devices for hearing.[10]

While untreated hearing loss likely impairs physical and cognitive health, only a minority of Americans with hearing loss (perhaps 15-30 percent) seek out and use assistive hearing technologies.[11,12,13,14,15] Adoption rates are even smaller for people with lower income and for racial and ethnic minorities.[16,17]

II. The market for hearing aids is characterized by high cost and low innovation.

PCAST believes that cost is the largest barrier to hearing-technology adoption. A 2014 survey found that the average price of one hearing aid was $2,363, with premium models costing $2,898.[18] Many, if not

[a] The National Academy of Medicine (NAM) is engaged in a much broader study on hearing health care, which is likely to be completed by mid 2016. It is supported by the Food and Drug Administration, Centers for Disease Control and Prevention, Hearing Loss Association of America, National Institute on Aging, National Institute on Deafness and Other Communication Disorders, Department of Defense, and Veterans Affairs. It will aim to address topics including the full range of hearing loss in adults at all ages; third-party payment systems; new delivery models; innovative approaches such as telehealth, mobile health, and team-based care; and specific challenges for select populations.

most, individuals need two hearing aids, one in each ear, doubling the cost. High costs are a major obstacle for many people. One survey found that 64 percent of people with the most serious hearing loss reported that they could not afford a hearing aid, and over 75 percent identified financial factors as a barrier.[19]

Most people pay for hearing aids completely out of pocket since traditional Medicare and most private insurance plans do not cover the cost of hearing aids or their fitting. The lack of Medicare coverage is widely cited as a major barrier to access, with one survey finding 50 percent of consumers identifying lack of insurance coverage as a barrier to their acquiring a hearing aid.[20] That failure dates from the original 1966 Medicare amendments to the Social Security Act, which bar Medicare from covering hearing aids. Congressional action is required to change this policy, and legislation to do just that has been introduced multiple times by members from both parties. When legislation has been introduced to change this policy, the changes are typically found to be prohibitively costly due to the combination of high cost and large number of consumers in need of hearing aids. This analysis is based on the current high average prices of hearing aids. If market forces were to lower costs, the analysis and potential for Congressional action would change.

Hearing aids have not experienced the dramatic reductions in price and increases in features that have been routinely seen across consumer electronics. When compared in complexity to today's smartphones costing a few hundred dollars each, even premium-model hearing aids are simple devices but can cost several thousand dollars. A 2010 study suggested that a hearing aid's components then cost less than $100; the number today is likely less.[21] Innovations in premium models, while real, have been remarkably expensive for the consumer.[22]

Compared with other kinds of consumer electronics, the innovation cycle for hearing aids is slow. Features such as Bluetooth and WiFi connectivity or a smartphone app interface, routine in other consumer electronics, command price differentials of as much as $500-$1,000 in premium hearing aids. Interestingly, studies suggest that premium and basic hearing aids offer comparable levels of hearing improvement.[23]

Beyond today's models, PCAST sees many opportunities for both incremental and disruptive improvements in assistive hearing technologies, none of which should be intrinsically expensive in a competitive market. In the near future, people could check their hearing using automated hearing tests available online or through common smart devices.[24] Interfaces between smart devices and users could allow adaptive self-fitting by devices in response to user needs.[25] Custom earbuds and configurations could be made routinely by 3D printing.[26] Wirelessly integrated with smartphones and other wearable electronics, hearing aids could merge with "hearables" (wearable audio technology discussed below), extending devices such as today's Bluetooth earpieces to become general interfaces to the cyber world. Assistive devices could correspondingly tap into much more computational power, enabling advances such as noise-source identification and cancellation, speech localization and recognition, and auditory (or visual closed-caption) reconstruction.[27] Conversations in noisy environments or at a distance across crowded rooms—impossible today even for people with normal hearing—could become convenient and routine. Hearables, as interfaces to cyber-assistance generally, could offer forgotten names (via face recognition), health alerts (Fitbit equivalents), navigational information (indoor and outdoor GPS), and much more.

The hearing-aid industry is highly concentrated and lacks a steady influx of new innovative companies. Following a wave of acquisitions, just six hearing-aid manufacturing companies (mostly based outside of the United States) have been dominant for the past 15 years. In 2012, these six companies accounted for 98 percent of the global market.[28] There is considerable evidence that hearing aids can be profitably sold for a fraction of today's end-user cost. The Veterans Health Administration, which accounts for approximately 20 percent of all hearing aids dispensed in the United States, purchases hearing aids from the major

manufacturers at a cost of about $400 per unit.[29] Costco now accounts for about 10 percent of all hearing aids sold, and it sells its house brand (reportedly manufactured by one of the big six manufacturers) for about one-third of the typical retail price, including the cost of fitting.[30,31] Some Medicare Advantage insurers provide partial hearing-aid coverage; United Health notably uses its own hearing aid manufacturing and dispensing networks, reportedly at costs a small fraction of retail prices.

Cost is not the only barrier to more widespread use of hearing technology. Even in European countries where hearing aids are supplied free or at low cost, adoption rates are not what they should be.[32,33,34] Social stigma—the association of hearing aids with old age or infirmity—is a barrier. Public education can play a role in expanding use, and the the arrival of the Baby Boomers as new seniors with different attitudes, including greater familiarity with wearable electronics and greater use, may shift attitudes toward social acceptance. But, robust technology innovation could also be a potent force for wider use – with the introduction of devices that are simpler, better, and more fashionable.

III. Current distribution channels create barriers to access.

Consumers find it difficult to shop for the best value. Bundling is a common practice in hearing aids, where patients pay a single fee for the professional evaluation, the hearing-aid devices, and follow-up and adjustments of the device after it is fitted and worn for an initial period. In 2014, more than 80 percent of hearing-care professionals used the practice of bundling.[35] A *Consumer Reports* analysis found an average markup of 120 percent from the wholesale device price, so that the technology accounts for less than half of the bundled price. Surveys suggest that many people do not use the services included in the bundle, with approximately one-quarter of people never using a follow-up appointment.[36] Moreover, with bundling, patients are often locked into the services of one professional and cannot easily shop around or change location.

Complex State regulations restrict the distribution channels for hearing aids. Most States require that hearing aids be sold only by licensed "credentialed dispensers," typically audiologists; ear, nose, and throat physicians; and licensed hearing-aid specialists. Audiologists and hearing-aid dispensers typically offer a limited selection of brands and models. About 20 percent sell only one brand,[37] and surveys find that—even when multiple brands are available—dispensers recommend a single brand to 75-80 percent of their patients.[38] In recent years, the big six manufacturers have expanded into retail by purchasing chains of audiologist and dispenser practices,[39] while independent dispensers are frequently offered contracts and incentives that favor a single brand.[40]

Vertical integration practices such as these mean that hearing-aid dispensers have a disincentive to selling hearing aids from a wide range of manufacturers. This has inhibited new device designers and manufacturers from releasing competitive devices because they must establish their own dedicated dispensing channels or only sell on-line in States that allow it. As a result of such vertical integration, a person wanting to try out different kinds of hearing aids sees fewer differentiated, innovative devices in the marketplace and must visit multiple hearing-aid dispensers in-person and on-line to sample what is available. The difficulty in obtaining clear information can be a significant burden for a person seeking to buy a hearing aid.

Studies of dispensers have found that average dispensing rates of various hearing-aid features do not follow evidence-based practice (EBP) guidelines, and that dispenser preference has a bigger influence on the brand recommended than the needs of the patient population served by that dispenser.[41] A different study of hearing-aid dispensers found that they did not heavily use peer-reviewed research in recommending a

particular brand of hearing aid, relying instead on information from manufacturers (and presumably distribution agreements).[42] Findings like these suggest that vertical integration reduces consumer choice.

In addition to regulating the professions that may dispense hearing aids, some States prohibit mail and Internet orders outright or allow them only after a prior in-person sale.[43] There are limited statistics on the percentage of hearing aids distributed by mail or online, but the most recent statistics available (from 2008) suggest that less than five percent are distributed by mail.[44] A recent analysis suggests that approximately 14 States have some type of restrictions on mail order or Internet sales.[45] These State legal restrictions further limit consumer choice and the ability to comparison shop. We note that some of the State regulations on hearing aids may be pre-empted by regulations of the Food and Drug Administration (FDA). A Federal appellate court has recently overturned one State's law for this reason.[46]

In addition to consumers not being able to find the best value, it is unclear how well these distribution arrangements are helping consumers find hearing aids that improve their hearing. For example, as many as 12 to 18 percent of the 3 million hearing aids sold in the United States each year may end up not being used,[47] and a *Consumer Reports* study in 2009 suggested that two-thirds of hearing aids were misfit.[48] There are many reasons for these poor experiences, including that current hearing aids may require practice and time in use to achieve maximum effectiveness; the devices often do not restore normal hearing as fully as people expect; or there are physical challenges managing the devices for those with arthritis or limited dexterity.[49] Because there are many ways to help consumers adapt, and innovation can drive greater usability, PCAST finds that today's distribution and dispensing models are inadequate, especially to meet future needs.

IV. Modest changes in FDA regulation could dramatically increase accessibility and innovation for tens of millions of Americans, without compromising patient safety.

FDA's current regulatory framework involves two fundamental types of devices, which are differentiated by their intended use (see the appendix for more information):

The FDA defines a Personal Sound Amplification Product (PSAP) as a wearable consumer electronic product that is intended for non-hearing-impaired consumers to amplify sounds in certain environments "such as for recreational activities." A PSAP must not be "intended to compensate for impaired hearing"—that describes a hearing aid. Because PSAPs are "not intended to treat, cure, or mitigate disease and do not alter the structure or function of the body," the FDA forbears from asserting any regulatory authority over them, except incidentally under the Radiation Control for Health and Safety Act of 1968 (which applies to all sound amplification equipment and, among other things, seeks to ensure that there are volume limits to prevent ear damage).[50,51]

The FDA defines a hearing aid as "any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing." (21 CFR 801.420) All hearing aids must comply with specific requirements regarding patient and professional labeling identified in 21 CFR 801.420…. Additionally, all hearing aids must comply with the required conditions for sale, as stated in 21 CFR 801.421." Current FDA regulations for hearing aids impose requirements on both consumers and manufacturers, as follows.

(A) *FDA requires that consumers undergo a medical evaluation before they can purchase any type of hearing aid.*

With the evaluation requirement instituted in the 1970s, FDA regulations sought to have users evaluated by a physician to ensure the hearing aid would treat the underlying causes of the hearing loss, although it allowed consumers to waive the requirement of a medical evaluation by simply signing a form. Today a

majority of people waive that requirement; several sources suggesting that between 60 and 85 percent of patients now forgo the medical evaluation.[52] While encouraging patients to seek medical evaluation is a laudable goal, it is important to weigh the benefit of such a requirement in terms of the frequency and severity of the conditions that are likely to be detected against the risks and costs that result from greater barriers to obtaining assistance for mild-to-moderate hearing loss among tens of millions of aging Americans.

FDA, for example, has noted that hearing loss in some patients might be caused by acoustic neuroma, a benign tumor arising from the lining of the vestibular nerve. However, this cause is extremely rare. Acoustic neuroma has an incidence of only 1 in 90,000 individuals [53] and is associated with unilateral, rather than bilateral, hearing loss, as well as other symptoms such as dizziness and headache. By contrast, the incidence of glaucoma in North America is 3.54 percent,[54] but this has not prevented reading glasses from being sold over the counter.

Ear wax is another often-cited issue. A consumer might mistakenly purchase a hearing aid when simple ear-wax removal at a clinic or local drugstore might be all that is needed.[55,56,57] A comparison to vision is again useful. Over 35 percent of adults age 70-74 age have cataracts that will not be mitigated by eyeglasses. Even so, older adults are not prevented from "mistakenly" purchasing over-the-counter reading glasses. Individuals are expected to check with an eye professional when they suspect vision loss from another cause.

More generally, concern has been expressed that sudden or unilateral onset of hearing loss could indicate other problems for which patients might seek medical evaluation. While there are anecdotal reports of rare, serious conditions being found during the required medical evaluation or examination by a hearing aid professional, such reports do not address the question of whether the affected patients would have instead sought treatment anyway through conventional medical channels, nor are these reports statistically adequate for estimating the actual frequency of such rare cases. Carrying through with the vision analogy, there are frequent occurrences of sudden or unilateral visual impairment due to retinal tears, retinal vein or artery occlusion, or ocular tumors, but those incidences have not prevented the marketing of easy to access over-the-counter (OTC) or commercial vision enhancement for people who need it. Patients are trusted to seek emergency medical help in the case of sudden and unusual visual events.

PCAST concludes that Americans would be better served if non-surgical air-conduction devices intended to address bilateral, gradual-onset, mild-to-moderate age-related hearing loss (referred to here as "basic" hearing aids) were available over-the-counter. Such devices meet the criteria for OTC sale, which is appropriate when consumers are able to self-diagnose, self-treat, and self-manage a disease or condition. For such devices, the requirement for a medical examination (or a written waiver of such examination) provides little patient benefit, while acting as a barrier to access for the millions of Americans needing hearing assistance. FDA could require such devices to carry a warning about "red flag" symptoms of conditions for which medical attention should be sought, while continuing to require medical examination for hearing aids that do not qualify as "basic." Simple hearing tests to aid consumers in purchasing such OTC hearing aids should also be available OTC, including on-line and in stores.

FDA's regulation of "basic" hearing aids, then, should be similar to FDA's regulation of reading glasses, which are also classified as "medical devices." In making some hearing aids and tests available as OTC products, FDA should preempt State requirements that the OTC devices be sold by credentialed dispensers. While this approach would lead to changes in the business models of many audiologists and hearing-aid dispensers, PCAST believes that the net benefit to the public would be large and positive. The analogy with vision is again useful. While complex eye cases require prescription medical devices and professional

dispensing, people are able to treat a wide array of uncomplicated conditions with OTC technology. In these cases, consumers can judge whether the device meets their need, and, if it does not, they can visit a professional to obtain a more advanced device, as well as comparison shop.

With respect to hearing aids not deemed appropriate for OTC sales, PCAST believes that new actions by the Federal Trade Commission (FTC) are needed to increase consumer choice, promoting competition that benefits both price and innovation. The Federal Trade Commission's "Eyeglass Rule" (16 CFR Par 456), dating from 1978, ended bundling practices by ophthalmologists and opticians, requiring them to give consumers a portable copy of their refraction prescriptions. By the Fairness to Contact Lens Consumers Act (PL 108–164), Congress gave FTC authority to ensure that contact lenses could readily be purchased by mail, phone, or (today) the Internet, independent of State regulations that restricted who was allowed to dispense. Analogous actions, which may also benefit from new legislative authority, are needed for assistive hearing devices.

(B) FDA also places requirements on manufacturers of air-conduction hearing aids.

Air-conduction hearing aids are classified as Class I medical devices (FDA's least-regulated category). Class I medical devices are exempt from any requirement for premarket notification to FDA and do not require FDA clearance before marketing. Their manufacturers are required, however, to maintain an annual registration with FDA (at a cost of several thousand dollars) and to register their devices at the time that they are first marketed. More importantly, air-conduction hearing aids are *not* exempted from FDA's Quality System Regulation (QSR), nor from its record-keeping and complaint-process regulations.

While this regulatory framework is appropriate for a wide range of medical products under FDA's regulatory authority, there are narrow cases when even such apparently light regulation turns out to have large negative unintended consequences. Most air-conduction hearing aids represent such a case.

FDA's QSR (often referred to as "good manufacturing practices" or GMP), even at its least cumbersome form (Inspection Level 1, Abbreviated), mandates a system of documentation of production and process controls (P&PC) and corrective and preventive actions (CAPA) by manufacturers.[58] QSR seeks to assure product quality by assuring that controllable design and manufacturing processes exist and are followed. This makes sense for things like pharmaceuticals and medical devices, for which a design or manufacturing failure can lead to patient harm. In other areas (including some kinds of software apps for smartphones), such regulation may not be burdensome.

For hearing aids needed for age-related hearing loss, however, an inherent failure of the product to perform does not provide an increased health risk to the user. Furthermore, the QSR/GPM fundamentally conflicts with the nature of the consumer-electronics industry. The consumer-electronics industry's fast innovation cycles for both design and manufacturing processes can lead rapidly to increased performance and lower cost. Volume production and open consumer preference are strong feedback mechanisms to drive product performance and manufacturing quality. In short, the consumer electronics industry focuses on product rather than process.

PCAST's assessment is that QSR and related regulatory requirements on documentation are more stringent than necessary. Instead, FDA could foster innovation by using quality standards appropriate to the nature of the devices and compatible with broadly accepted industry approaches towards quality management in the consumer electronics industry. Such standards could be developed in conjunction with the Consumer Electronics Association (CEA), which is currently developing standards and performance measurements according to features and quality for PSAPs.

It is important to emphasize that PCAST does not favor weakening FDA's overall regulatory framework for medical devices. Indeed, each device area needs to be considered in the context of the relative risks and benefits to consumers. Our concerns here are focused on the special circumstances concerning non-surgical air-conduction devices intended to address bilateral, gradual onset, mild-to-moderate age-related hearing loss – where regulations have been largely unchanged since 1976; where dramatic advances in consumer electronics have transformed audio products; where the medical risks are extremely low; and where the needs of tens of millions of Americans are not being adequately met by the existing market.

V. Personal Sound Amplification Devices illustrate the negative consequences of the barriers to competition in the hearing aid market and its current regulatory regime.

The FDA, as described above, largely forbears from asserting regulatory authority over PSAPs. But the distinction between a PSAP and a hearing aid (which is based on "intended use" rather than actual performance) is not clear, and there are many people with mild hearing impairment who can benefit from amplification by headphones and other devices, including PSAPs. PSAPs are improving and can be helpful to people with hearing loss, something that has been noted by several experts and organizations.[59] The regulatory distinction between PSAPs and hearing aids has led to an unproductive and escalating exchange between PSAP vendors and the FDA over the wording of product labels and advertisements for PSAPs. The sometimes tortured legalisms that result have the effect of confusing the consumer, who deserves access to accurate information.

The artificial distinction between PSAPs and hearing aids has also led to a natural experiment that shows what could be possible with a more open market: more innovation, at lower cost, is occurring in the less-regulated PSAP market. Companies ranging from established consumer electronics manufacturers to small startups are today developing innovative new PSAPs. "Hearables" can combine multiple functions (from listening to music to accessing calendar appointments), coordinate with other technologies (such as smartphones), and record health information and vital signs. Using technology similar, if not identical, to that in hearing aids, PSAPs can improve the clarity of sound, for example in situations with a lot of environmental noise. Some PSAPs are fashionably designed as "bling" in bright or metallic colors, a far cry from beige plastic hearing aids. At the same time, PSAPs are marketed at much lower price points than hearing aids. A *Consumer Reports* analysis found that behind-the-ear PSAP models range from $25-$500, while in-ear PSAP models may cost in the range of $400.[60] In some cases, companies have marketed similar devices as a PSAP (under one model name) and as a hearing aid (under another model name and at a higher price).

Since the publication of the 1977 FDA rules, there have been several appeals to FDA (most notably in 1993 and 2000) by innovative technology developers and consumer groups to take actions that would open the market to more competition. No significant changes have been made.

On the contrary, the FDA's recent draft regulatory guidance on PSAPs moves in the wrong direction. In 2013, FDA greatly extended its 2009 regulatory guidance by issuing draft guidance that, if finalized, would have the effect of forbidding PSAPs from making truthful claims about capabilities like providing assistance in "situations in which environmental noise might interfere with speech intelligibility" or "difficulty understanding conversations in crowded rooms." The 2013 draft guidance defines the mention of such capabilities in advertising or labeling as evidence that the PSAP is actually a hearing aid. Under such a definition, innovative products addressing such scenarios could not be marketed *even to people with normal hearing, which is clearly allowed under the 2009 guidance.* The situations described in the 2013 draft guidance do not refer to medical conditions, but rather to issues related to normal human perception. PSAPs should be broadly defined as devices for discretionary consumer use that are intended to augment,

improve, or extend the sense of hearing in individuals. FDA should continue its current practice of forbearing from regulating PSAPs, except incidentally (as under the Radiation Control for Health and Safety Act of 1968).

PCAST finds the 2013 draft guidance on PSAPs is unsupportable by the facts and should be withdrawn. After presentations by a number of potential market innovators, PCAST assesses that the existence of this guidance *even in draft* has created concerns over the scope of FDA's regulatory authority and the future of the PSAP business model.

VI. PCAST's Recommendations

Hearing loss is a substantial national problem. Cost is the largest barrier to hearing technology adoption by more people who need it, but technological shortfalls are also a significant barrier. Consumers are limited in their ability to shop for the best value, due to bundling and State restrictions on who is licensed to sell hearing aids.

The Federal Government has immediate opportunities to open up the hearing technology market to lower cost and increased innovation. The FDA is a critical actor as it tries to balance its important responsibility to protect the public from unsafe drugs and medical devices with the rapidly changing world of consumer electronics, such as wearables and biometrics, that are empowering consumers to find the solutions to their needs in the innovative technology market. The FTC also has an important role to play. We believe the following actions would greatly serve the public interest.

PCAST makes the following recommendations:

<u>Open up the market for innovative hearing technologies</u>

Recommendation 1. FDA should designate as a distinct category ("basic" hearing aids) non-surgical, air-conduction hearing aids intended to address bilateral, gradual onset, mild-to-moderate age-related hearing loss and adopt distinct rules for such devices.

(a) FDA should approve this class of hearing aids for over-the-counter (OTC) sale, without the requirement for consultation with a credentialed dispenser. FDA should also approve for OTC sale, both in stores and on-line, tests appropriate to the self-fitting and adjustment of these OTC devices by the end user. Such hearing treatments and tests meet the FDA requirements for OTC products, which are that consumers should be able to self-diagnose, self-treat, and self-monitor the condition.

(b) FDA should exempt this class of hearing aids from QSR regulation in its present form and substitute compliance with standards for product quality and recordkeeping appropriate for the consumer-electronics industry, developed by an appropriate third-party organization and approved by FDA. Similar actions should be taken with respect to diagnostic hearing tests used to dispense and fit Class I hearing aids.

Recommendation 2. FDA should withdraw its draft guidance of November 7, 2013 on Personal Sound Amplification Products (PSAPs). PSAPs should be broadly defined as devices for discretionary consumer use that are intended to augment, improve, or extend the sense of hearing in individuals. PSAP manufacturers should continue to be able to make truthful claims about their use in normal settings. FDA should not require language in PSAP labeling or advertising that excludes their use by individuals with age-related hearing loss no worse than mild-to-moderate.

Increase opportunities for consumer choice

Recommendation 3. Analogously to its "Eyeglass Rule," FTC should require audiologists and hearing-aid dispensers who perform standard diagnostic hearing tests and hearing aid fittings to provide the customer with a copy of their audiogram and the programmable audio profile for a hearing aid at no additional cost and in a form that can be used by other dispensers and by hearing-aid vendors. Also analogously, the availability of a hearing test and fitting must not be conditioned on any agreement to purchase goods or additional services from the provider of the test.

Recommendation 4. Similarly in effect to its "Contact Lens Rule," FTC should define a process by which patients may authorize hearing-aid vendors (in-state or out-of-state) to obtain a copy of their hearing test results and programmable audio profile from any audiologist or hearing-aid dispenser who performs such a test, and it should require that the testers furnish such results at no additional cost. While FTC has the authority to issue new regulations of this sort, action can be accelerated and strengthened by legislative direction. We urge the Administration to work with Congress to initiate bipartisan legislation that would instruct FTC to issue a rule for hearing aids and PSAPs similar to the eyeglass and contact lens rules.

In summary, PCAST finds that the costs and risks of inaction with respect to untreated hearing loss in the aging U.S. population are large. PCAST finds that the unnecessarily high price of hearing aids for individuals and the conspicuously slow pace of innovation by their manufacturers compared with other consumer electronics are consequences of a concentrated and increasingly vertically integrated incumbent industry, operating in the context of longstanding Federal and State regulations that appear to discourage potential new entrants. PCAST recommends specific actions by FDA and FTC that would have the effect of opening up the market for innovative hearing technologies and increasing opportunities for consumer choice.

Sincerely,

The President's Council of Advisors on Science and Technology

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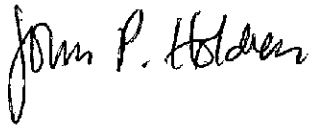
John P. Holdren



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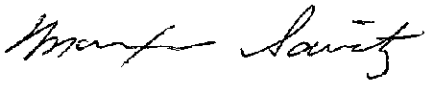

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	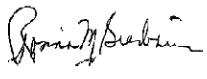	
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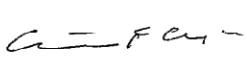	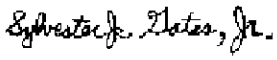	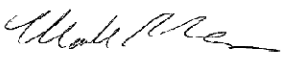
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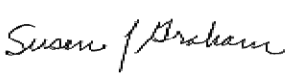		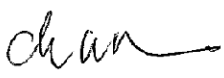
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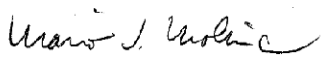		
Barbara Schaal	Eric Schmidt	Daniel Schrag
		

APPENDIX

Excerpt from FDA's *Guidance for Industry and FDA Staff: Regulatory Requirements for Hearing Aid Devices and Personal Sound Amplification Products* (2009) relevant to Class I air-conduction hearing aids and PSAPs.[47]

1. Introduction

…Hearing aids and [personal sound amplification products] (PSAPs) both affect our ability to hear sound, but the products have different intended uses, and are therefore subject to different regulatory controls.

A hearing aid is a wearable sound-amplifying device that is intended to compensate for impaired hearing. A PSAP is a wearable electronic product that is not intended to compensate for impaired hearing, but rather is intended for non-hearing impaired consumers to amplify sounds in the environment for a number of reasons, such as for recreational activities. While some of the technology and function of hearing aids and PSAPs may be similar, the intended use of each article determines whether it is a device or an electronic product. The intended use may be established by labeling materials. Promotional materials that make claims or suggest the use of a PSAP for hearing impaired consumers, such as in the description of the types and severity of hearing loss, establish an intended use that causes the product to be a device and therefore subject to the regulatory requirements for a hearing aid device, as described in this guidance…

FDA's guidance documents, including this guidance, do not establish legally enforceable responsibilities. Instead, guidances describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited…

2. Hearing Aids

The regulations define a hearing aid as "any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing." (21 CFR 801.420)… All hearing aids must comply with specific requirements regarding patient and professional labeling identified in 21 CFR 801.420…. Additionally, all hearing aids must comply with the required conditions for sale, as stated in 21 CFR 801.421…. Finally, the hearing aid dispenser must retain records of all medical evaluation statements and waivers for a period of three years after dispensing of the hearing aid. These regulatory conditions for sale were established to encourage prospective users to receive proper medical evaluation and treatment for treatable causes of hearing loss…

3. Personal Sound Amplification Products (PSAPs)

PSAPs are intended to amplify environmental sound for non-hearing impaired consumers. They are not intended to compensate for hearing impairment. Examples of situations in which PSAPs typically are used include hunting (listening for prey), bird watching, listening to lectures with a distant speaker, and listening to soft sounds that would be difficult for normal hearing individuals to hear (e.g., distant conversations, performances). Because PSAPs are not intended to diagnose, treat, cure or mitigate disease and do not alter the structure or function of the body, they are not devices as defined in the Food, Drug and Cosmetic Act. As such, there is no regulatory classification, product code, or definition for these products. Furthermore, there are no requirements for registration of manufacturers and listing of these products with FDA…

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SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY& HEARING AID DISPENSERS BOARD
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MEMORANDUM

DATE	February 4-5, 2016
TO	Speech Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Paul Sanchez, Executive Officer
SUBJECT	**Presentation and Discussion – North Carolina State Board of Dental Examiners v. Federal Trade Commision**

Board Legal Counsel, Kelsey Pruden will present an oral report.

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board
CALENDAR - FISCAL YEAR 2015/2016

Rev. 1/21/2016

Month	Date	Description
February 2016	4-5 15	Board & Committee Meeting – San Diego State Holiday – Office Closed – Presidents Day
March 2016	31	State Holiday – Office Closed – Caesar Chavez Day
April 2016	13-16	AAA Convention - Phoenix, AZ
May 2016	12-13 12-14 30	Board & Committee Meeting – Bay Area HHP Convention – San Diego State Holiday – Office Closed – Memorial Day
June 2016		

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board
CALENDAR - FISCAL YEAR 2016/2017

Rev.1/21/2016

Month	Date	Description
July 2016		
August 2016	11-12	Board & Committee Meetings - Sacramento
September 2016	7 8-10	State Holiday – Office Closed – Labor Day CAA Conference – San Diego
October 2016		
November 2016	TBD 11 17-19 26/27	Board & Committee Meetings - TBD State Holiday – Office Closed – Veteran's Day ASHA Convention - Colorado State Holiday – Office Closed – Thanksgiving Holiday
December 2016	25	State Holiday – Office Closed - Christmas Day
January 2017	1 18	State Holiday – Office Closed – New Year's Day State Holiday – Office Closed – Martin Luther King Jr. Day
February 2017	9-10 15	Board & Committee Meeting - TBD State Holiday – Office Closed – Presidents Day
March 2017	31	State Holiday – Office Closed – Caesar Chavez Day
April 2017		
May 2017	10-11 30	Board & Committee Meetings -TBD State Holiday – Office Closed – Memorial Day
June 2017		