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

- **Text originally proposed and reference and authority citation additions: single underline**
- **Existing regulation text, and reference and authority citations being removed: strikeout**
- **Text originally proposed, but being deleted in the modified text: single underline and strikeout**
- **New text being added in the modified text: double underline**

TITLE 16 CALIFORNIA CODE OF REGULATIONS
DIVISION 13.3

ARTICLE 2
APPLICATIONS

§ 1399.110. Applications.

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

NOTE: Authority cited: Section ~~3328~~ 2531.95, Business and Professions Code. Reference: Sections 475, 480, 820, 2531.02, 2533, 2538.24 and ~~3357~~ 2538.28, Business and Professions Code.

ARTICLE 6
ENFORCEMENT

§ 1399.130. ~~Petition for Reinstatement or Reduction of Penalty.~~ Violations.

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

(a) Commission of an act prohibited by Section 1399.131~~of sexual abuse or misconduct.~~

(b) ~~To the extent a licensee has control over the terms of an agreement; including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:~~ On or after January 1, 2013, a violation of Section 143.5 of the Code.

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

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

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

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

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

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

(2) The arrest of the licensee.

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

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

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

NOTE: Authority cited: Section 2531.95, Business and Professions Code. Reference: Sections 143.5 (Stats. 2012, c. 561, sec. 1), 726, 2531.02, and 2533, Business and Professions Code.

§ 1399.130.1. Required Actions Against Registered Sex Offenders.

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

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

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

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

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

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

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

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

NOTE: **Authority cited**: Section 2531.95, Business and Professions Code. Reference: Sections 475, 480, 2531.02, and 2533 Business and Professions Code.

1399.131. Disciplinary Guidelines.

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

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

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

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

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

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

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

NOTE: Authority cited: Section ~~3328~~ 2531.95, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code. Reference: Sections 475, 480, ~~3400~~, 2533, 2533.1, 2533.2, ~~3401~~, ~~3402~~ and 2538.40 ~~3403~~, Business and Professions Code; ~~and~~ Sections 11400.20 and 11425.50(e), Government Code.

DIVISION 13.4

ARTICLE 1
GENERAL PROVISIONS

§ 1399.150.3. Delegation of Functions.

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

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

NOTE: Authority cited: Section~~s 2018, 2531.4, 2531.5, and 2531.25~~ 2531.95, Business and Professions Code. Reference: Sections 2531.4 and 2531.5, Business and Professions Code; Section 11500, Government Code.

ARTICLE 2
APPLICATION

§ 1399.151. Applications for License.

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

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

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

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

(e) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice speech-language pathology or audiology safely because the applicant's ability to practice may be

impaired due to mental or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant. If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the board may deny the application.

NOTE: Authority cited: Section 2531.95, Business and Professions Code. Reference: Sections 475, 480, 820, 2531.02, 2531.4, ~~and~~ 2532.1 and 2533, Business and Professions Code.

ARTICLE 6
DISCIPLINARY GUIDELINES

1399.155 Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines July 16, 2004" that are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation is appropriate where the board, in its 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.

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

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

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

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

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

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

NOTE: Authority cited: Section~~s~~ 2531.95, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 2533 ~~and~~ 2533.1, and 2533.2, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

ARTICLE 7
DENIAL, SUSPENSION AND REVOCATION OF LICENSURE

§ 1399.156. Unprofessional Conduct.

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

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

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

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

(d) Commission of an act prohibited by Section 1399.155 ~~of sexual abuse or misconduct~~.

(e) ~~To the extent a licensee has control over the terms of an agreement, including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:~~ On or after January 1, 2013, a violation of Section 143.5 of the Code.

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

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

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

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

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

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

(2) The arrest of the licensee.

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

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

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

NOTE: Authority cited: Section 2531.95, Business and Professions Code. Reference: Sections 143.5 (Stats. 2012, c. 561, sec. 1), 726, 2531.02, and 2533, Business and Professions Code.

§ 1399.156.5. Required Actions Against Registered Sex Offenders.

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

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

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

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

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

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

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

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

NOTE: Authority cited: Section 2531.95, Business and Professions Code. Reference: Sections 475, 480, 2531.02, and 2533, Business and Professions Code.