

TITLE 16. SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board is proposing to take the action described in the Informative Digest. No public hearing has been scheduled on the proposed action. However, any interested person or such person's duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at its office no later than 5:00 p.m. on [August 8, 2011](#), or must be received by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at the hearing. The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 726, 2531.4, 2531.5, 2531.95 and 3328, Business and Professions Code and Section 11400.20, 11425.50(e) and 11500, Government Code; and to implement, interpret or make specific Sections 729, 2531.4, 2532.1, 2533, 2533, 3357, 3400, 3401, 3402, 3403, Business and Professions Code; Sections 11400.20, 11425.50(e) and 11500, Government Code; Section 44010 Education Code; and Section 290, Penal Code; the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board is considering changes to Divisions 13.3 and 13.4 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 2531.95 authorizes the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) to adopt, amend, or repeal regulations as may be necessary to enable it to carry into effect the provisions of the laws and regulations relating to the practice of Speech-Language Pathology and Audiology and Hearing Aid Dispensing. The Board is proposing the following changes:

Business and Professions Code section 2531.02 mandates that protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

This proposal would make specific regulatory changes to enhance the Board's mandate

of consumer protection.

Division 13.3 Hearing Aid Dispensers: Adopts Sections 1399.110, 1399.130, and 1399.130.1 and Amends Section 1399.131

Division 13.4 Speech-Language Pathology and Audiology: Amends Sections 1399.150.3, 1399.151, 1399.155, and 1399.156 and Adopts Section 1399.156.5

Amends Section 1399.150.3

This proposal would delegate authority to the Executive Officer the ability to accept default decisions, to approve settlement agreements for revocation, surrender, or interim suspension of a license.

Adopts Section 1399.110; Amends Section 1399.151

This proposal would authorize the Board to order an applicant for licensure to submit to a physical or mental examination if it appears that the applicant may be unable to perform safely the duties and functions of a licensee due to physical or mental illness affecting his or her competency. Additionally, if after receiving the evaluation report the Board determines that the applicant is unable to practice safely, the Board may deny the application.

Adopts Sections 1399.130 ,1399.130.1 & 1399.156.5; Amends Sections 1399.131, 1399.155, & 1399.156.

This proposal would also require that in specific cases of a licensee having sexual contact with a patient or any finding that a licensee has committed a sex offense, or been convicted of a sex offense, a proposed decision would contain an order revoking the license. The proposed order could not contain an order staying the revocation of the license.

Additionally, this proposal would define required disciplinary action to be taken by the Board against registered sex offenders who are applicants or licensees.

The proposal would, in addition to conduct described in Business and Professions Code Sections 2533 and 3401, establish as unprofessional conduct or a violation the prohibition of including provisions in civil dispute settlement agreements that prohibit a person from contacting, cooperating with, filing, or withdrawing a complaint with the Board.

The definition of Unprofessional Conduct and expansion of violations would also include failure of the licensee to provide lawfully requested documents; the commission of any act of sexual abuse or misconduct; failure to cooperate with an investigation pending against the licensee; failure to report an indictment, charging a felony, arrest, conviction of the licensee; failure to report any disciplinary action taken by another licensing entity or authority; or failure to comply with a court order issued in the enforcement of a subpoena mandating the release of records to the Board.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Minor.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because it only affects individual licensees.

AND

The following studies/relevant data were relied upon in making the above determination: None.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because it only affects individual licensees.

The Board does not license businesses or small businesses; rather, it licenses individuals to practice as licensed speech-language pathologists, audiologists and hearing aid dispensers. Licensees may work for businesses and, thus, businesses may be indirectly impacted if an individual licensee is affected by the proposed regulation by, for example, having his or her license revoked or otherwise disciplined pursuant to the proposed regulations. The Board has approximately 17,000 licensees.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with a disciplinary order. Costs only affect individuals who are applying for licensure or licensees being disciplined.

To the extent that this proposal potentially increases the penalties for individual

licensees, an economic impact could occur with the fees licensees may pay for attorney services. The fees would vary depending on the complexity, and amount of time an attorney would devote to a case.

Additionally, applicants who would be required to submit to medical or mental evaluations may incur costs for these evaluations, costing on average of \$1,000.

There will be no economic impact on licensees who do not violate the law.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses because the regulations are applicable only to applicants or licensees who are disciplined by the Board.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. It may be obtained upon request from the Board at 2005 Evergreen Street, Suite 2100, Sacramento, California 95815 or on the Board's website at: www.speechandhearing.ca.gov.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 2005 Evergreen Street, Suite 2100, Sacramento, California 95815 or on the Board's website: www.speechandhearing.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named

below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Annemarie Del Mugnaio
Address: 2005 Evergreen Street, Suite 2100
Sacramento, CA 95815
Telephone No.: (916) 263-2666 Fax No.: (916) 263-2668
E-Mail Address: annemarie.delmugnaio@dca.ca.gov

The backup contact person is:

Name: Cynthia Alameda
Address: 2005 Evergreen Street, Suite 2100
Sacramento, CA 95815
Telephone No.: (916) 263-2291 Fax No.: (916) 263-2668
E-Mail Address: Cynthia.alameda@dca.ca.gov

Website Access : Materials regarding this proposal can be found at:
www.speechandhearing.ca.gov.