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FILED - STATE OF CALIFORNIA  
Speech-Language Pathology & Audiology  
& Hearing Aid Dispensers Board  
Sacramento, CA on February 11, 2011

By: Cynthia Alameda

7  
8 **BEFORE THE**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **FOR THE SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING**  
11 **AID DISPENSERS BOARD**  
12 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 11 2010 03

12 KATHRYN CHARLOTTE ELLIS  
13 521 North Francisca Avenue, #1  
14 Redondo Beach, California 90277

**A C C U S A T I O N**

15 Speech-Language Pathologist License  
16 No. SP 15760

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Annemarie Del Mugnaio (Complainant) brings this Accusation solely in her official  
22 capacity as the Executive Officer of the Speech-Language Pathology and Audiology and Hearing  
23 Aid Dispensers Board.

24 2. On or about September 28, 2006, the Speech-Language Pathology and Audiology and  
25 Hearing Aid Dispensers Board issued Speech-Language Pathologist License Number SP 15760 to  
26 Kathryn Charlotte Ellis (Respondent). The License was in full force and effect at all times  
27 relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.  
28

JURISDICTION

3. This Accusation is brought before the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2531.5 of the Code provides that the board shall issue, suspend, and revoke licenses and approvals to practice speech-language pathology and audiology as authorized by this chapter.

5. Section 2533 of the Code states:

"The board may refuse to issue, or issue subject to terms and conditions, a license on the grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon the license of any licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct shall include, but shall not be limited to, the following:

"(a) Conviction of a crime substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist, as the case may be. The record of the conviction shall be conclusive evidence thereof.

"(b) Securing a license by fraud or deceit.

"(c) (1) The use or administering to himself or herself, of any controlled substance; (2) the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in a manner as to be dangerous or injurious to the licensee, to any other person, or to the public, or to the extent that the use impairs the ability of the licensee to practice speech-language pathology or audiology safely; (3) more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section; or (4) any combination of paragraphs (1), (2) or (3). The record of the conviction shall be conclusive evidence of unprofessional conduct.

"(d) Advertising in violation of Section 17500.

"(e) Committing a dishonest or fraudulent act which is substantially related to the qualifications, functions, or duties of a licensee.

1           (f) Incompetence or gross negligence in the practice of speech-language pathology or  
2 audiology.

3           (g) Other acts that have endangered or are likely to endanger the health, welfare, and  
4 safety of the public."

5           6. Section 125.3 of the Code provides:

6           (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary  
7 proceeding before any board within the department or before the Osteopathic Medical Board, the  
8 board may request the administrative law judge to direct a licentiate found to have committed a  
9 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
10 investigation and enforcement of the case.

11           (b) In the case of a disciplined licentiate that is a corporation or a partnership, the order  
12 may be made against the licensed corporate entity or licensed partnership.

13           (c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs  
14 are not available, signed by the entity bringing the proceeding or its designated representative  
15 shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The  
16 costs shall include the amount of investigative and enforcement costs up to the date of the  
17 hearing, including, but not limited to, charges imposed by the Attorney General.

18           (d) The administrative law judge shall make a proposed finding of the amount of  
19 reasonable costs of investigation and prosecution of the case when requested pursuant to  
20 subdivision (a). The finding of the administrative law judge with regard to costs shall not be  
21 reviewable by the board to increase the cost award. The board may reduce or eliminate the cost  
22 award, or remand to the administrative law judge where the proposed decision fails to make a  
23 finding on costs requested pursuant to subdivision (a).

24           (e) Where an order for recovery of costs is made and timely payment is not made as  
25 directed in the board's decision, the board may enforce the order for repayment in any appropriate  
26 court. This right of enforcement shall be in addition to any other rights the board may have as to  
27 any licentiate to pay costs.

28

1           "(f) In any action for recovery of costs, proof of the board's decision shall be conclusive  
2 proof of the validity of the order of payment and the terms for payment.

3           "(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the  
4 license of any licentiate who has failed to pay all of the costs ordered under this section.

5           "(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or  
6 reinstate for a maximum of one year the license of any licentiate who demonstrates financial  
7 hardship and who enters into a formal agreement with the board to reimburse the board within  
8 that one year period for the unpaid costs.

9           "(h) All costs recovered under this section shall be considered a reimbursement for costs  
10 incurred and shall be deposited in the fund of the board recovering the costs to be available upon  
11 appropriation by the Legislature.

12           "(i) Nothing in this section shall preclude a board from including the recovery of the costs  
13 of investigation and enforcement of a case in any stipulated settlement.

14           "(j) This section does not apply to any board if a specific statutory provision in that board's  
15 licensing act provides for recovery of costs in an administrative disciplinary proceeding."

16           7. Section 490 of the Code states:

17           "(a) In addition to any other action that a board is permitted to take against a licensee, a  
18 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
19 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
20 or profession for which the license was issued.

21           "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
22 discipline a licensee for conviction of a crime that is independent of the authority granted under  
23 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
24 of the business or profession for which the licensee's license was issued.

25           "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
26 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
27 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
28 the judgment of conviction has been affirmed on appeal, or when an order granting probation is

1 made suspending the imposition of sentence, irrespective of a subsequent order under the  
2 provisions of Section 1203.4 of the Penal Code.

3 "(d) The Legislature hereby finds and declares that the application of this section has been  
4 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
5 554, and that the holding in that case has placed a significant number of statutes and regulations  
6 in question, resulting in potential harm to the consumers of California from licensees who have  
7 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
8 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
9 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not  
10 constitute a change to, but rather are declaratory of, existing law."

11 8. Section 493 of the Code states:

12 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
13 the department pursuant to law to deny an application for a license or to suspend or revoke a  
14 license or otherwise take disciplinary action against a person who holds a license, upon the  
15 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
16 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
17 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
18 and the board may inquire into the circumstances surrounding the commission of the crime in  
19 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
20 qualifications, functions, and duties of the licensee in question.

21 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
22 'registration.'"

23 9. California Code of Regulations, title 16, section 1399.156, states:

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

26  
27 "(a) Violating or conspiring to violate or aiding or abetting any person to violate the  
28 provisions of the Act or these regulations.





1 on a two year probation with certain terms and conditions. That decision is now final and is  
2 incorporated by reference as if fully set forth.

3 17. The discipline referenced in paragraph 17 of the instant Accusation was based on the  
4 fact that on or about February 17, 2004, in a prior criminal proceeding entitled *People of the State*  
5 *of California v. Kathryn Charlotte Ellis* in Los Angeles Superior Court, Case Number 3SB03419.  
6 Respondent was convicted for violating Vehicle Code section 23152 subdivision (b), unlawfully  
7 driving a vehicle while having a .08 or more, by weight, of alcohol in her blood, a misdemeanor  
8 and was ordered to. The record of the criminal proceeding is attached hereto as Exhibit B and is  
9 incorporated as if fully set forth.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
12 and that following the hearing, the Board issue a decision:

- 13 1. Revoking or suspending Speech-Language Pathologist License Number SP 15760,  
14 issued to Kathryn Charlotte Ellis;
  - 15 2. Ordering Kathryn Charlotte Ellis to pay the Speech-Language Pathology and  
16 Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and  
17 enforcement of this case, pursuant to Business and Professions Code section 125.3;
  - 18 3. Taking such other and further action as deemed necessary and proper.
- 19  
20

21 DATED: 2/11/2011

  
22 ANNEMARIE DEL MUGNAIO  
23 Executive Officer  
24 Speech-Language Pathology and Audiology and Hearing  
25 Aid Dispensers Board  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

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