

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 ESTHER H. LA
Deputy Attorney General
4 State Bar No. 160706
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5636
6 Facsimile: (415) 703-5480
Attorneys for Complainant

By *Yvonne Crawford*

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

11 In the Matter of the Accusation Against:

Case No. 11-2011-51

12 **MARSHALL LEIGH SHOQUIST**
13 **101 Church Street, Ste. 13**
Los Gatos, CA 95030

A C C U S A T I O N

14 **Audiologist License No. AU 461**

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

22 2. On or about August 16, 1978, audiologist license no. AU 461 was issued to Marshall
23 Leigh Shoquist (Respondent). Said audiologist license was in full force and effect at all times
24 relevant to the charges brought herein and expires on January 31, 2013 unless renewed.
25 Additionally, hearing aid dispenser license no. HA 1054 was issued to Respondent on February 7,
26 1978; that license expired on January 31, 2010 and was subsequently cancelled and converted to a
27 dispensing audiologist license under Respondent's audiologist license no. AU 461.

JURISDICTION

1
2 3. This Accusation is brought before the Speech-Language Pathology and Audiology
3 and Hearing Aid Dispensers Board (Board), Department of Consumer Affairs, under the authority
4 of the following laws. All section references are to the Business and Professions Code unless
5 otherwise indicated.

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

9 5. Section 2533 of the Code states in pertinent part:

10 "The board may . . . suspend, revoke, or impose terms and conditions upon the license of
11 any licensee for any of the following:

12 ". . ."

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

15 ". . ."

16 "(k) Violation of Section 1689.6 or 1793.02 of the Civil Code."¹

17 6. Civil Code Section 1793.02 provides in pertinent part:

18 "(a) All new and used assistive devices sold at retail in this state shall be accompanied by
19 the retail seller's written warranty which shall contain the following language: 'This assistive
20 device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is
21 not specifically fit for your particular needs, it may be returned to the seller within 30 days of the
22 date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you
23 return the device, the seller will either adjust or replace the device or promptly refund the total
24 amount paid. This warranty does not affect the protections and remedies you have under other
25 laws.' In lieu of the words '30 days' the retail seller may specify any longer period. "

26
27 ¹ Section 2533, subdivision (k) (added by Stats. 2011, ch. 449, § 6) became effective
28 January 1, 2012, and is identical in substance to and replaces former Code section 3401,
subdivision (n) (repealed by Stats. 2011, ch. 449, §13).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

" . . . "

" (c) If the buyer returns the device within the period specified in the written warranty, the seller shall, without charge and within a reasonable time, adjust the device or, if appropriate, replace it with a device that is specifically fit for the particular needs of the buyer. If the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and shall promptly cancel or cause to be canceled all contracts, instruments, and security agreements executed by the buyer in connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

7. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

COST RECOVERY

8. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Dishonest Act/Failure to Refund re Customer S.W.)²

9. Respondent is subject to disciplinary action under Code section 2533(e) and/or Code section 2533(k) in that Respondent committed a dishonest act and failed to fully refund customer S.W. for the amount paid for a hearing aid device. The circumstances are as follows:

² Customer's names are abbreviated to protect privacy.

1 different hearing aids, requiring many adjustments, that did not meet his satisfaction, A.S.
2 requested a full refund.

3 B. On or about September 3, 2010, Respondent issued a partial refund of \$1000 to
4 A.S.

5 C. In response to an inquiry from the Board regarding A.S.'s request for a full
6 refund, Respondent stated in a letter dated November 26, 2010 that, "we have decided to
7 complete [A.S.'s] refund of \$1750."

8 D. Respondent subsequently wrote a check for \$300 payable to A.S., but did not
9 refund A.S. the remaining balance of \$1450.

10 E. In response to further inquiries from the Board regarding A.S.'s request for a
11 full refund, Respondent stated in a letter dated July 25, 2011, that he "apologize[d] for the delay
12 in refunding [A.S.]" and that he would "do this as quickly as possible."

13 F. Despite assurances to the Board that he would refund customer A.S. for the
14 entire purchase price of the hearing aid, Respondent has failed to fully refund A.S.

15 PRAYER

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Speech-Language Pathology and Audiology and Hearing Aid
18 Dispensers Board issue a decision:

19 1. Revoking or suspending Audiologist License No. Number 461, issued to Marshall
20 Leigh Shoquist.;

21 2. Ordering Marshall Leigh Shoquist to pay the Speech-Language Pathology and
22 Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and
23 enforcement of this case, pursuant to Business and Professions Code section 125.3; and

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: March 28, 2012



ANNEMARIE DEL MUGNAIO
Executive Officer
Speech-Language Pathology and Audiology and Hearing
Aid Dispensers Board
Department of Consumer Affairs
State of California
Complainant

SF2012400744