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BEFORE THE
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MARK LEE MOORE,** McDonald Hearing Aid Center 1400 X Street, Suite 300 Sacramento, California 95818 Hearing Aid Dispenser License No. HA 2425 Respondent.	Case No. 1C-2012-17 **ACCUSATION**

Complainant alleges:

PARTIES

1. Paul Sanchez (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, Department of Consumer Affairs.

2. On or about October 23, 1987, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board issued Hearing Aid Dispenser License Number HA 2425 to Mark Lee Moore, (Respondent). Respondent's Hearing Aid Dispenser's License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2016, unless renewed.

JURISDICTION

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

4. Section 2531.02 of the Code states:

"Protection of the public shall be the highest priority for the Speech-Language Pathology and Audiology and Hearing Aid Dispensers 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."

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 for any of the following:

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

"..."

"(d) Advertising in violation of Section 17500. Advertising an academic degree that was not validly awarded or earned under the laws of this state or the applicable jurisdiction in which it was issued is deemed to constitute a violation of Section 17500.

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

"(f) Incompetence, gross negligence, or repeated negligent acts.

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

"(h) Use by a hearing aid dispenser of the term 'doctor' or 'physician' or 'clinic' or 'audiologist,' or any derivation thereof, except as authorized by law.

"(i) The use, or causing the use, of any advertising or promotional literature in a manner that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.

"(j) Any cause that would be grounds for denial of an application for a license.

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

"..."

6. Section 2538.35 of the Code states:

"A licensee shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser a written receipt, signed by or on behalf of the licensee, containing all of the following:

"(a) The date of consummation of the sale.

"(b) Specifications as to the make, serial number, and model number of the hearing aid or aids sold.

"(c) The address of the principal place of business of the licensee, and the address and office hours at which the licensee shall be available for fitting or post fitting adjustments and servicing of the hearing aid or aids sold.

"(d) A statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, as the case may be, if that is the fact.

"(e) The number of the licensee's license and the name and license number of any other hearing aid dispenser or temporary licensee who provided any recommendation or consultation regarding the purchase of the hearing aid.

"(f) The terms of any guarantee or written warranty, required by Section 1793.02 of the Civil Code, made to the purchaser with respect to the hearing aid or hearing aids."

7. Section 2538.36 of the Code states:

"(a) Whenever any of the following conditions are found to exist either from observations by the licensee or on the basis of information furnished by the prospective hearing aid user, a licensee shall, prior to fitting or selling a hearing aid to any individual, suggest to that individual in writing that his or her best interests would be served if he or she would consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to a duly licensed physician:

"(1) Visible congenital or traumatic deformity of the ear.

"(2) History of, or active drainage from the ear within the previous 90 days.

"(3) History of sudden or rapidly progressive hearing loss within the previous 90 days.

"(4) Acute or chronic dizziness.

"(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.

"(6) Significant air-bone gap (when generally acceptable standards have been established).

"(7) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal.

"(8) Pain or discomfort in the ear.

"..."

8. Section 2538.39 of the Code states: "A hearing aid dispenser who is the owner, manager, or franchisee at a location where hearing aids are fit or sold, shall be responsible for the adequacy of the fitting or selling of any hearing aid fit and sold by any licensee or licensees at that location."

9. Section 2538.48 of the Code states: "It is unlawful to engage in the practice of fitting or selling hearing aids in this state without having at the time of so doing a valid, unrevoked, and unexpired license or temporary license."

10. Section 2538.50 of the Code states: "It is unlawful to advertise by displaying a sign or otherwise or hold himself or herself out to be a person engaged in the practice of fitting or selling hearing aids without having at the time of so doing a valid, unrevoked license or temporary license."

11. California Code of Regulations, title 16, section 1399.115, states:

"(a) The bureau may refuse to approve or approve subject to terms and conditions a hearing aid dispenser's authority to supervise a trainee-applicant, or may suspend, revoke or impose probationary conditions on a hearing aid dispenser's authority to supervise a trainee-applicant for any of the following causes:

"(1) The failure to comply with section 3357 of the code or any of the regulations contained in this article which is a prima facie violation, or is confirmed by an internal investigation report

signed by the chief, or by a formal investigation by the Division of Investigation of the department within the preceding 36 months. "Confirmed by formal investigation@ means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

"(2) The violation of any provision of the Hearing Aid Dispensers Licensing Law or the regulations contained in this chapter which is confirmed by an internal investigation report signed by the executive officer, or by a formal investigation by the Division of Investigation of the department within the preceding 36 months. "Confirmed by formal investigation@ means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

"(3) The dispenser's license has been revoked, suspended, or subject to any restrictions within the preceding 36 months.

"(4) An Accusation has been filed against the dispenser under the Administrative Procedure Act by the Attorney General's office and the charges are pending.

"..."

12. California Code of Regulations, title 16, section 1399.126, states:

"(a) For purposes of Section 3365.5 of the code, a significant air-bone gap is defined as a difference of 15 decibels or more between the higher air conduction and the lower bone conduction pure tone thresholds at 2 or more succeeding octave frequencies of 500 Hertz through and including 4000 Hertz.

"(b) Tests for significant air-bone gap shall be performed in a suitable environment using appropriate equipment to establish threshold values and with appropriate masking procedures employed."[1]

13. California Code of Regulations, title 16, section 1399.132

"For the purpose of denial, suspension, or revocation of a hearing aid dispenser's license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

[1] Section 3365.5 is now renumbered as section 2538.36.

crime or act shall be considered substantially related to the qualifications, functions, and duties of a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a hearing aid dispenser to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to those involving the following:

"(a) Any violation of the provisions of Sections 650, 651, 651.3 and 655.2 of the code.

"(b) Any violation of the provisions of Chapter 7.5, Division 2 of the Business and Professions Code."

14. Section 651 states:

"(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A 'public communication' as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, internet, or other electronic communication.

"(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

"(1) Contains a misrepresentation of fact.

"(2) Is likely to mislead or deceive because of a failure to disclose material facts.

"(3)(A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

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"(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

"(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents >before= and >after= views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any 'before' and 'after' views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same 'before' and 'after' results may not occur for all patients.

"(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

"(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

"(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

"(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

"(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

"(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, 'as low as,' 'and up,' 'lowest prices,' or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison

shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

"(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

"(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

"(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

"(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

"..."

"(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

"Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that

service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

"(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

15. Section 652 of the Code states, in pertinent part:

"Violation of this article [Article 6, commencing with Section 650 of the Code] in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and each board shall have all the powers granted therein."

16. Section 1793.02 of the Civil Code, also known as the Song-Beverly Consumer Warranty Act, provides:

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

"(b) The language prescribed in subdivision (a) shall appear on the first page of the warranty in at least 10-point bold type. The warranty shall be delivered to the buyer at the time of the sale of the device.

"(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.

". . . ."[2]

COST RECOVERY

17. 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

[2] The text of Civil Code section 1793.02 cited here is the version that was in force at the time of the events alleged in this Accusation.

the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

18. Paragraph 15 above, referring to the costs provision of section 651, subsection (j), is re-alleged and incorporated herein by reference.

FACTS

19. Respondent Mark Moore established a series of corporate entities, including but not limited to McDonald Hearing Aid Center (MHAC), designed to use the profession of fitting and selling hearing aids to effect unlawful schemes that target vulnerable, elderly customers. These unlawful schemes use false and misleading advertising to get elderly customers into multiple branch locations throughout Northern California, where licensed Hearing Aid Dispensers, and unlicensed individuals acting as dispensers, are motivated by corporate policies to sell the most expensive hearing aids while disregarding the standards of care and professional ethics.

20. Licensed Hearing Aid Dispensers fitting and selling hearing aids in Respondent's branch locations are paid a minimal base salary with significantly increased rates of commission for selling upgraded hearing aid products and preventing returns. As a result, consumers are sold much more expensive hearing aids than necessary, and than advertised. Consumers are frightened and pressured into purchasing expensive hearing aids with false and scientifically unsupported statements.

21. Respondent's methods of false and misleading advertising include advertising a $745.00 hearing aid product to lure consumers into stores where they are pressured and misled into purchasing products costing several thousand dollars. Respondent further uses former news anchor Stan Atkinson as a paid spokesperson without acknowledging his paid status to create a false sense of trustworthiness.

22. Respondent advertises the sales to be "no risk" and "satisfaction guaranteed," but consumers are subjected to onerous cancelation fees and return policies. One such policy is the "Patient Journey." The Patient Journey is a six-week program created by Respondent that requires the consumer to return to a MHAC branch location at least five times over the course of six weeks to complete a series of exercises while wearing the hearing aids. Respondent informs

consumers that this program is required under the Song-Beverly Act, but actually uses the program to evade the application of Song-Beverly, by manipulating the date on which the fitting is deemed by the dispenser to be complete. If the consumer seeks to return the hearing aids before the Patient Journey is complete, the dispenser will claim the consumer failed to complete the fitting. Alternately, if the consumer completes the patient journey, which requires longer than thirty days, the dispenser can claim the consumer failed to seek an adjustment or return the hearing aids within thirty days.

23. Regardless of whether the consumer completes the Patient Journey, Respondent requires all consumers seeking to return hearing aids to complete a form, checking a box indicating the grounds for return. The boxes, however, all correspond to reasons for return that relate to price. Respondent then instructs dispensers to deny any refunds based on his interpretation of Song-Beverly to preclude a consumer from returning hearing aids when the consumer is dissatisfied with the price of the hearing aids.

24. MHAC is the second largest seller of hearing aids in the Sacramento Valley area, with Costco as its nearest competitor. Between January 2007 and November 2013, MHAC grossed 45 million dollars in sales of hearing aids. The grounds for discipline that follow illustrate the application of the unlawful business practices developed and employed by Respondent.

Consumer P.D.

25. On or about April 19, 2011, P.D., an 84 year old woman, responded to an advertisement distributed by Respondent's corporation, McDonald Hearing Aid Center (MHAC), advertising a limited time five-day-only special, between April 18 through 22, of up to 67% off prices, a free video ear inspection, and a $745.00 entry level hearing aid, with "satisfaction guaranteed." On April 19, 2011, P.D. entered the MHAC branch location at 1400 X Street, Suite 300, Sacramento, CA 95818. P.D. had undergone a cardiac surgical procedure two weeks before her visit to MHAC, and was consequently feeling fatigued at the time of her visit. She used a walker to ambulate.

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26. Hearing Aid Dispenser (HAD) Marion Nelson, (HA License No. 7416), employed by Respondent, conducted an audiogram hearing test on P.D. that showed a loss of hearing in P.D.'s right ear, and an air-bone gap in P.D.'s left ear. Nelson did not chart that he performed a bone conduction test for the right ear, or that he referred P.D. for testing by a physician due to the air-bone gap in the left ear.

27. HAD Nelson told P.D. that her hearing loss was a 20 to 80 dB loss, which he claimed was a moderate to severe loss. The chart of the audiogram Nelson used incorrectly classified the ranges of hearing loss accepted by industry standards, by overstating the ranges of moderate to severe hearing loss. P.D. inquired about the $745 hearing aid, but Nelson told her that this hearing aid was not suitable for her needs. He proceeded to sell her an OTE Alpha Intela-Hear hearing aid for $2,245.00. The hearing aid that was advertised by McDonald for $745.00 would have been an appropriate hearing aid for P.D., by industry standards.

28. On April 20, 2011, Nelson and P.D entered into a Purchase Agreement in which P.D. purchased an OTE Alpha RIE Intela-Hear digital hearing aid for $2,245.00. The purchase agreement indicated that the hearing aid P.D. purchased was $4,990.00 and that P.D. was being given a 50% and AAA discount in order to arrive at the price of $2,245.00. Respondent and P.D. signed the Purchase Agreement, and P.D. paid a deposit of $1,200.00 by credit card on April 20, 2011.

29. On or about June 16, 2011, P.D. was tested at the University of California, Davis, Medical Center (Medical Center). The test administered by the Medical Center showed a mild hearing loss with no significant air-bone gap in either ear. After being tested by the Medical Center, P.D. sought to cancel her order with MHAC, and obtain a full refund from Respondent. HAD Melissa Peacock (HA License No. 7070), employed by Respondent as the Chief Compliance Officer for MHAC corresponded with P.D. informing her that her cancelation was subject to a $336.83 cancelation fee. Under the MHAC's Purchase Agreement, MHAC imposed a fifteen percent cancelation fee on P.D. of $336.83.

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Owner Responsible for Fit and Sale)

30. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

31. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the gross negligence of HAD Nelson in the fit and sale of a hearing aid to P.D. HAD Nelson violated section 2533, subdivision (f), gross negligence, in that he failed to perform or chart a bone conduction test of P.D.'s right ear, and failed to refer P.D. to a physician based on the charted bone-air gap in her left ear.

SECOND CAUSE FOR DISCIPLINE

(Failure to Refer to a Physician/Owner Responsible for Fit and Sale)

32. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

33. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the failure of HAD Nelson to refer to a physician based on the charted air-bone gap of P.D.'s left ear. HAD Nelson violated section 2538.36, subdivision (a), and Title 16, section 1399.126, subdivision (c), of the California Code of Regulations, in that he failed to refer P.D. to a physician based on the apparent air-bone gap in P.D.'s left ear.

THIRD CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

34. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

35. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or dishonest act of HAD Nelson. HAD Nelson violated section 2533, subdivision (e), committing a fraudulent or dishonest act, in that he misrepresented the industry standards for hearing loss, and misrepresented P.D.'s degree of hearing loss to her.

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36. HAD Nelson committed a dishonest or fraudulent act when he recommended and sold the $2,245.00 Intela-Hear hearing aid to P.D. without offering the alternative of the $745.00 hearing aid that was advertised by MHAC and appropriate for P.D.

FOURTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act)

37. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

38. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of a hearing aid to P.D., which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait $745 hearing aid, with the knowledge that his corporate policies encouraged HAD Nelson to upsell P.D. to a higher priced hearing aid;

(b) disseminating an advertisement with the promise of "satisfaction guaranteed" and "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement;

(c) disseminating an advertisement with the false claim of a limited-time discounted price; and

(d) maintaining audiogram charts that misrepresent the industry standards of hearing loss ranges.

FIFTH CAUSE FOR DISCIPLINE

(Use of Promotional or Advertising in a Manner that Has Tendency to Mislead)

39. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

40. Respondent is subject to disciplinary action under section 2533, subsection (i), in that he caused the use of promotional literature in a manner that has the capacity or tendency to mislead or deceive in connection with the sale of a hearing aid to P.D.

SIXTH CAUSE FOR DISCIPLINE

(Violation of the Song-Beverly Act)

41. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

42. Respondent is subject to disciplinary action under section 2533, subsection (k), in that he violated Section 1793.02 (Song-Beverly Act), by maintaining a purchase agreement that imposed a 15% cancelation fee.

Consumer M.B.

43. During January of 2012, Sister M.B., an elderly catholic nun, received a hearing test at a Kaiser Permanente Facility and was advised that she had a mild to moderate hearing loss that would benefit from hearing aids. Sister M.B. relayed this information to the financial advisor of her diocese, who advised her of their policy to conduct a price-comparison before making any large purchase. Sister M.B. consulted with another nun, Sister F.W., who had observed several advertisements for MHAC's sale on $700.00 hearing aids. Sister F.W. provided the advertisements to Sister M.B., and agreed to accompany her to the MHAC branch location to compare prices.

44. On or about January 2012, Sister M.B. and F.W. entered the MHAC branch location in Lodi. Sister M.B. immediately explained that she was not authorized to make any purchases herself without consulting with her Order's financial advisor, and that she was merely there to conduct a price comparison of the $700.00 hearing aids she saw advertised. Sister M.B. was separated from Sister F.W., and led into a room by HAD Robert Bennett, (HA License No. 7365), who conducted a hearing test.

45. After the hearing test was completed Sister M.B. observed a woman who was wearing a white coat enter the room waving a graph dramatically, who stated, "you have a very serious hearing loss." The woman in the white coat, Ashley Brown, was issued HAD Trainee License No. 8678 on or about May 25, 2010, and the license expired on or about November 30, 2011. Brown was not licensed to fit or sell hearing aids during her interactions with Sister M.B. Sister M.B. was shaken and upset by the statements that she had a serious hearing loss, and found that HAD Bennett was speaking a rush of words at her, and felt she could not get a word in. Sister M.B. asked Brown about the $700.00 hearing aids advertised, but Brown told her that those are only suitable for people in the top part of the graph, and her hearing loss extended to the bottom of the graph. Sister M.B. restated to Bennett and Brown that she cannot make any large

expenditures without prior authorization from her Order. Bennett brought out paperwork for an order for hearing aids, and explained that if she did not fill out the forms, the offer would not be available later. Sister M.B. asked if she could take the paperwork with her to review before signing anything. Brown told her that she had already entered into the contract, and it did not really matter if she signed the paperwork or not. Sister M.B. finally signed the paperwork because she felt shaken up and wanted to leave.

46. MHAC records show that Sister M.B. entered into a purchase agreement with HAD Bennett on January 20, 2012, for the purchase of a pair of Intela-Hear hearing aids at the cost of $9,000.00. The records further show that she opened a credit card through Credit Care to finance the purchase. Once Sister M.B. left the MHAC branch location and began reviewing the purchase agreement, she saw that she had opened a credit card and had purchased an expensive hearing aid package. As a result of her shock and distress, Sister M.B. was unable to drive herself home, and she and Sister F.W. stayed the night in a nearby hotel. Sister M.B. was still shaken up that evening, and tripped and fell, causing her wrist to fracture.

47. On or about January 23, 2012, Sister M.B. called MHAC and left a message for Bennett explaining that she wanted to cancel her order. On or about January 26, 2012, Bennett returned Sister M.B.'s call and told her that any cancelation would incur a 15% cancelation fee, but that she could avoid the cancelation fee if she went through with the order and completed the Patient Journey and was not satisfied with the hearing aids.

48. On or about February 15, 2012, HAD Melissa Peacock, Chief Compliance Officer for MHAC, wrote a letter to Sister M.B. advising her that a cancelation fee of $673.65 was being imposed, but that she could choose to apply that fee towards the purchase of another Intela-Hear hearing aid instrument through MHAC.

SEVENTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

49. Paragraphs 19-22 and 41-46 above are incorporated by reference as if fully set forth herein.

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50. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the fraudulent or dishonest acts of HAD Bennett and the unlicensed individual Ashley Brown who fit and sold hearing aids to Sister M.B. at the Lodi Branch location. HAD Bennett and Brown violated section 2533, subdivision (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that they committed fraudulent or dishonest acts in connection with the sale of hearing aids to Sister M.B., which include, but are not limited to the following:

(a) Brown made misleading statements to Sister M.B. as to the severity of her hearing loss and the suitability of the $745.00 hearing aid for her needs;

(b) Brown claimed that Sister M.B. had entered into a contract with MHAC regardless of whether she signed a purchase agreement or not;

(c) Bennett persuaded Sister M.B. to enter into a purchase agreement, and to open a line of credit, despite her statements that she was not authorized to make a purchase and was only seeking information for purposes of price comparison; and

(d) Brown made recommendations as to the suitability of hearing aids for Sister M.B. despite lacking a valid license to do so.

EIGHTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act)

51. Paragraphs 19-22 and 41-46 above are incorporated by reference as if fully set forth herein.

52. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of hearing aids to M.B., which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait $745 hearing aid, with the knowledge that his corporate policies encouraged HAD Bennett and unlicensed Brown to upsell Sister M.B. to a higher priced hearing aid she did not intend to purchase;

(b) disseminating an advertisement with the promise of "satisfaction guaranteed" and "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement;

(c) disseminating an advertisement with the false claim of a limited-time discounted price; and

(d) permitting an unlicensed individual to work in a branch location owned by MHAC.

NINTH CAUSE FOR DISCIPLINE

(Owner Responsibility/Unlicensed person)

53. Paragraphs 19-22 and 41-46 above are incorporated by reference as if fully set forth herein.

54. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the actions of Brown, an unlicensed individual, in the fit and sale of hearing aids to M.B. Brown violated sections 2538.48 and 2538.50 by fitting and selling and holding herself out as an individual licensed to fit and sell hearing aids to Sister M.B. on or about January 20, 2012.

TENTH CAUSE FOR DISCIPLINE

(Use of Promotional Literature or Advertising in a Manner that Has Tendency to Mislead)

55. Paragraphs 19-22 and 41-46 above are incorporated by reference as if fully set forth herein.

56. Respondent is subject to disciplinary action under section 2533, subsection (i), in that he caused the use of promotional literature in a manner that has the capacity or tendency to mislead or deceive in connection with the sale to Sister M.B.

Consumer M.S.

57. On or about February 10, 2012, M.S., an 81 year old woman, responded to an advertisement by MHAC, advertising a limited time 10-day sale, of 50-67% off prices, with a free video ear inspection and audiometric testing, and a $745.00 entry level hearing aid, with a six-week guarantee, "no risk," and "nothing to lose." On or about February 10, 2012, M.S. entered the Fair Oaks MHAC branch location at 5480 Dewey Drive, Suite 110, in Fair Oaks, California.

58. On or about February 10, 2012, M.S. was given an audiometric hearing test by HAD Michele Moreland (HA License No. HA 7507). HAD Moreland then introduced M.S. to Ashley Brown who was not licensed to fit or sell hearing aids in California. Brown told M.S. that she had a "50% hearing loss" and advised her to purchase a pair of hearing aids for $4,990.00. M.S. asked Brown why she could not have the $745.00 hearing aid advertised, and Brown told her that the entry level hearing aid was not suitable for her needs. M.S. told Brown that she would like to have a second opinion. Brown told her that it was unnecessary as MHAC had been in business for 60 years. Brown proceeded to make molds of M.S.'s ears.

59. On or about February 10, 2012, M.S. entered into a purchase agreement for a pair of Intel-a Hear model hearing aids for a total cost of $4,990.00. The purchase agreement indicated that the hearing aid package M.S. purchased was $9,980.00 and that M.S. was being given a 50% discount in order to arrive at the price of $4,990.00. M.S. paid the full amount with her Discover credit card. As soon as M.S. returned home, she was concerned that she overspent on hearing aids, when she only intended to purchase the $745.00 hearing aid, given that she was on a fixed income and care-giver to her elderly World War II veteran husband. She contacted her credit card company and requested that it stop payment, but the company told her that it was too late. On or about February 13, 2012, M.S. contacted MHAC to ask about rescinding her purchase, and was told she could not.

60. On or about March 2, 2012, M.S. went to MHAC and told HAD Moreland that she did not want to continue with the hearing aid purchase. Moreland told her that she would be able to return the devices for a refund if the hearing aids did not work for her. M.S. accepted delivery of the hearing aids on March 2, 2012. On or about March 12, 20112, M.S. had another appointment with MHAC, during which she told Moreland that the hearing aids were not working, and she was seeking a second opinion. Between March 12, and May 2, 2012, M.S. persisted in seeking a refund from MHAC. Staff at MHAC repeatedly told her that she must come into the branch locations and make appointments to see Moreland to discuss her case, which required several more trips for her. On or about April 2, 2012, M.S. received a letter from

MHAC informing her that her request for a refund was denied, and that she must complete the patient journey.

61. On or about May 2, 2012, M.S. received a written evaluation from her physician stating that she had a mild to moderately severe sensorineural hearing loss consistent with presbycusis. The physician opined that for M.S.'s condition and her degree of hearing loss, hearing aids are optional. M.S. provided this document to MHAC. On or about May 30, 2012, MHAC refunded the purchase on the Discover credit card.

ELEVENTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

62. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth herein.

63. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or dishonest acts of HAD Moreland and the unlicensed individual Ashley Brown who fit and sold hearing aids to M.S. at the Fair Oaks Branch location. HAD Moreland and Brown violated section 2533, subdivision (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that they committed fraudulent or dishonest acts in connection with the sale of hearing aids to M.S., which include, but are not limited to the following:

(a) Brown made misleading and unscientific statements to M.S. when she told her that she had a "50%" hearing loss;

(b) Brown recommended and sold the $4,990.00 Intela-Hear hearing aids to M.S. and falsely claimed that the alternative of the $745.00 hearing aid that was advertised by MHAC was not appropriate for M.S.;

(c) Moreland entered into a purchase agreement with M.S. with the knowledge that MHAC had disseminated false and misleading statements in connection with the sale;

(d) Moreland falsely told M.S. that she could return the devices for a refund if the hearing aids did not work for her while omitting the 15% cancelation fee and the onerous programs she would have to complete before being considered for a refund; and

(e) Brown made recommendations as to the suitability of hearing aids for M.S. despite lacking a valid license to do so.

TWELFTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act)

64. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth herein.

65. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of hearing aids to M.S., which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait $745 hearing aid, with the knowledge that his corporate policies encouraged HAD Moreland and unlicensed Brown to upsell M.S. to a higher priced hearing aid she did not intend to purchase;

(b) disseminating an advertisement with the promise of "satisfaction guaranteed" and "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement;

(c) disseminating an advertisement with the false claim of a limited-time discounted price; and

(d) permitting an unlicensed individual to work in a branch location owned by MHAC.

THIRTEENTH CAUSE FOR DISCIPLINE

(Owner Responsibility/Unlicensed person)

66. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth herein.

67. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the actions of Brown, an unlicensed individual, in the fit and sale of hearing aids to M.S. Brown violated sections 2538.48 and 2538.50 by fitting and selling and holding herself out as an individual licensed to fit and sell hearing aids to M.S. on or about February 10, 2012.

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FOURTEENTH CAUSE FOR DISCIPLINE

(Use of Promotional Literature or Advertising in a Manner that Has Tendency to Mislead)

68. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth herein.

69. Respondent is subject to disciplinary action under section 2533, subsection (i), in that he caused the use of promotional literature in a manner that has the capacity or tendency to mislead or deceive in connection with the sale to M.S.

FIFTEENTH CAUSE FOR DISCIPLINE

(Violation of the Song-Beverly Act)

70. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth herein.

71. Respondent is subject to disciplinary action under section 2533, subsection (k), in that he violated Section 1793.02 (Song-Beverly Act), by imposing a 15% cancelation fee and failing to promptly refund M.S.'s entire purchase price.

Consumer D.G.

72. On or about October 16, 2012, D.G., a 77 year old woman, responded to an advertisement by MHAC for a limited time five-day-only special, between October 15 through 19, of up to 67% off prices, a free video ear inspection, and a $745.00 entry level hearing aid, with "satisfaction guaranteed" and a six-week, no risk, nothing to lose guarantee. The advertisement showed a picture of Stan Atkinson holding a hearing aid, with the words "Stan Atkinson, Intela-Hear Wearer" next to his picture. There was no disclaimer indicating that Stan Atkinson was a paid spokesman for the product or for MHAC. On October 16, 2012, D.G. entered the MHAC branch office at 433 F Street in Lincoln, California.

73. HAD Nelson performed an audiogram on D.G. and informed her that she had a moderate hearing loss. The audiogram indicates that D.G.'s right ear had an air bone gap, but he did not inform D.G. of this result, and HAD Nelson did not refer D.G. to a medical doctor for a consultation. The chart of the audiogram Nelson used incorrectly classified the ranges of hearing loss accepted by industry standards, by overstating the ranges of moderate to severe hearing loss.

An unidentified HAD working in the MHAC branch location that day showed D.G. only expensive hearing aids, not the $745.00 hearing aid advertised. D.G. reported feeling pressured into purchasing more expensive hearing aids.

74. On October 16, 2012, D.G. entered into a purchase agreement with Nelson for a pair of Intela-Hear model hearing aids for $6,741.00. The purchase agreement indicated that the hearing aids D.G. purchased were $14,980.00 and that D.G. was being given a 50% and AAA discount in order to arrive at the price of $6,741.00. The next day, on October 17, 2012, D.G. decided to cancel the contract, and she went in person to the Lincoln office but it was closed. She telephoned another MHAC office to cancel but was told that she had to come in person to the office to cancel. On October 18, 2012, D.G. went to the MHAC office in Lincoln and met with Nelson. D.G. signed a Request for Cancelation. A few days later, D.G. received a statement from HealthiPlan, a credit company, for $6,741.00. D.G. did not realize that on October 16, 2012, she had signed an application for financing of the hearing aids. D.G. contacted HAD Melissa Peacock, Chief Compliance Officer for MHAC, and was told she would be charged a 15% cancelation fee of $1,011.15.

75. On or about November 6, 2012, D.G. went to the University of California at Davis Medical Center for an audiological evaluation. The test results indicated that her hearing loss was mild, and she was not a candidate for hearing aids. When shown this paperwork, MHAC agreed to waive the 15% cancelation fee.

SIXTEENTH CAUSE FOR DISCIPLINE

(Gross Negligence/Owner Responsible for Fit and Sale)

76. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth herein.

77. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the gross negligence of HAD Nelson in the fit and sale of hearing aids to D.G. HAD Nelson violated section 2533, subdivision (f), gross negligence, in that he incorrectly charted an air-bone gap in D.G.'s right ear, incorrectly recorded her actual hearing loss and need for hearing aids, and failed

to inform her of the charted air-bone gap or refer her to a physician based on the charted bone-air gap in her right ear.

SEVENTEENTH CAUSE FOR DISCIPLINE

(Failure to Refer to a Physician/Owner Responsible for Fit and Sale)

78. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth herein.

79. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the failure of HAD Nelson to refer to a physician based on the charted air-bone gap of D.G's right ear. HAD Nelson violated section 2538.36, subdivision (a), and Title 16, section 1399.126, subdivision (c), of the California Code of Regulations, in that he failed to refer D.G. to a physician based on the apparent air-bone gap in D.G.'s right ear.

EIGHTEENTH CAUSE FOR DISCIPLINE

(Dishonest or Fraudulent Act/Owner Responsible for Fit and Sale)

80. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or dishonest act of HAD Nelson. HAD Nelson violated section 2533, subdivision (e), committing a fraudulent or dishonest act, in that he misrepresented the industry standards for hearing loss, and misrepresented to D.G. that she had a moderate hearing loss and required hearing aids.

81. HAD Nelson committed a dishonest or fraudulent act when he recommended and sold the $6,741.00 Intela-Hear hearings aid to D.G. without offering the alternative of the $745.00 aid, or advising her that hearing aids would be optional for her hearing loss.

NINETEENTH CAUSE FOR DISCIPLINE

(Fraudulent or Dishonest Acts)

82. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth herein.

83. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that

he committed fraudulent or dishonest acts in connection with the sale of hearing aids to M.S., which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait $745 hearing aid, with the knowledge that his corporate policies encouraged HAD Nelson to upsell D.G. to a higher priced hearing aid she did not intend to purchase;

(b) disseminating an advertisement with the promise of "satisfaction guaranteed" and "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement;

(c) disseminating an advertisement with the false claim of a limited-time discounted price;

(d) using a paid celebrity spokesperson Stan Atkinson in the advertisement without indicating that Stan Atkinson was a paid spokesman for the product or for MHAC;

(e) claiming that MHAC was offering a free video ear inspection, with a statement of the monetary value of the ear inspection, while omitting the information that it is illegal for a hearing aid dispenser to charge for audiometric testing or ear inspection in connection with the fitting or sale of hearing aids; and

(f) maintaining audiogram charts that misrepresent the industry standards of hearing loss ranges.

TWENTIETH CAUSE FOR DISCIPLINE

(Use of Promotional Literature or Advertising in a Manner that Has Tendency to Mislead)

84. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth herein.

85. Respondent is subject to disciplinary action under section 2533, subsection (i), in that he caused the use of promotional literature in a manner that has the capacity or tendency to mislead or deceive in connection with the sale to D.G.

TWENTY-FIRST CAUSE FOR DISCIPLINE

(Violation of the Song-Beverly Act)

86. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth herein.

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87. Respondent is subject to disciplinary action under section 2533, subsection (k), in that he violated Section 1793.02 (Song-Beverly Act), by refusing to permit cancelation of an order for hearing aids that had not yet been placed with a manufacturer, and by using a purchase agreement that imposes a 15% cancelation fee, or requires that any purchase price paid be applied toward the purchase of another hearing aid purchase with MHAC.

Consumer A.A.

88. On or about November 13, 2013, A.A., an elderly man in his 80's, responded to an advertisement by MHAC for a limited time five-day-only special with up to 67% off prices, a free video ear inspection, and a $745.00 entry level hearing aid, with "satisfaction guaranteed" and a six-week no risk, nothing to lose guarantee. The advertisement showed a picture of Stan Atkinson holding a hearing aid, with the words "Stan Atkinson, Intela-Hear Wearer" next to his picture. There was no disclaimer indicating that Stan Atkinson was a paid spokesman for the product or for MHAC. On or about November 13, 2013, A.A. entered the MHAC branch office at 433 Butano Drive, in Sacramento, California.

89. A.A. was seen by two licensed HADs at the Butano Branch location on November 13, 2013, HAD Karen Roark (HA License No. 7546), and HAD Michelle Moreland. HAD Moreland conducted audiometric testing on A.A. The results of the hearing test show that a bone conduction test was performed on A.A.'s left ear, but no bone conduction test was performed on A.A.'s right ear. Following the hearing testing, Roark told A.A. that the $745 hearing aids advertised would not meet his needs for hearing assistance, and that he required a more expensive set of hearing aids, costing $4,045.00 each, with the special limited time sale. Roark assured A.A. that the more expensive hearing aids would increase his hearing by 90%, and that it was a risk-free guarantee, and that he could receive his money back if he was not satisfied with the hearing aids.

90. On or about November 13, 2013, A.A. entered into a purchase agreement with MHAC for the purchase of a pair of "Intela-Hear" brand hearing aids, model Nexus XD, at a price of $4,045.00 each for a total of $8,200.00. The purchase agreement indicates that the normal price of these hearing aids would have been $17,980.00 for the pair. At the time of sale,

A.A. paid half the price, writing a check to MHAC for $4,045.00. A.A. reported that he felt rushed through the purchase, and did not fully understand the details on the purchase agreement until he reviewed the document at his home that evening. He was concerned about having made such a large purchase, but decided that if the hearing aids were able to restore 90% of his hearing, it would be worth the cost.

91. On or about November 29, 2013, A.A. returned to the Butano Branch location of MHAC to accept delivery of the hearing aids. A.A. found the hearing aids to be uncomfortable the first time he put them on, with the left hearing aid causing him pain due to his arthritis, which extends into his head.

92. On or about December 13, 2013, A.A. attempted to return the hearing aids, indicating he had spoken with an audiologist who informed him MHAC had misrepresented the degree of hearing improvement he could achieve with hearing aids in that a 90% increase in hearing for his condition was impossible with any known technology. MHAC refused to cancel the purchase agreement and informed A.A. that he was required to complete the MHAC "Patient Journey" before he could be eligible for a refund. On or about December 18, 2013, A.A. again attempted to return his hearing aids for a refund. Once again MHAC informed him he was required to complete the Patient Journey before he would be eligible for a refund. A.A. became angry because he felt he had been misled with the "Satisfaction Guarantee, No Risk Refund" advertisement. A.A. left his hearing aids at the MHAC branch location.

93. On or about December 18, 2013, A.A. contacted the Board to report the problem he was having with MHAC. Investigators with the Department of Consumer Affairs received a summary of his interactions with MHAC from A.A., and agreed to accompany him on his next meeting with MHAC. On or about December 19, 2013, Undercover Investigator No. 1 (Inv. 1) accompanied A.A. to the Butano Branch location assuming the role of A.A.'s granddaughter. When they arrived, a receptionist told them that they must see HAD Moreland, because she was responsible for A.A.'s fitting process and she is only in the Butano Branch location on Tuesdays and Thursdays. Inv. 1 and A.A. returned to the Butano Branch location the next day, Tuesday December 20, 2013, and met with Moreland. Inv. 1 told Moreland that A.A.

was unhappy with the hearing aids, because they hurt his ears due to his arthritis, and he wanted to return the hearing aids and obtain a refund. Moreland explained that A.A. cannot qualify for a refund under state law until he has provided an opportunity for seller to adjust and fit the hearing aids, and that under the terms of the purchase agreement A.A. entered into, the fitting must be completed through MHAC's Patient Journey which requires five separate appointments and approximately four to six weeks to complete. She further reminded A.A. that he owed the second payment $4,045.00 for the purchase of the hearing aids.

94. When Inv. 1 asked why A.A. was not eligible for a refund, Moreland stated that A.A. had made a statement complaining that the sales process was misleading and complained that the hearing aids were overpriced. Moreland claimed that under California law a consumer is not entitled to a refund of hearing aids due to buyer's remorse over the cost. A.A. denied that he was dissatisfied with the cost, and clarified that he felt the hearing aids were not of the quality promised for the price, and that the hearing aids were hurting his ear. Moreland acknowledged A.A. had complained of pain, but stated that even if the hearing aids are not fit properly or do not work, the consumer must still give the seller the ability to adjust and fit the hearing aids.

95. During the December 20, 2013 visit with the Inv. 1, A.A. requested that Moreland alter the fit of the hearing aids because the aids were causing pain to his left ear. Moreland took the hearing aids to another room and returned, reporting that she had adjusted the shell casing to minimize the material putting pressure on the canal walls of A.A.'s ears. A.A. placed the hearing aids in his ears, and made another appointment for a fitting on January 8, 2013. On the drive home from MHAC, A.A. complained to Inv. 1 that the hearing aids were still hurting his ear.

96. On or about January 4, 2014, and January 8, 2014, Inv. 1 and A.A. returned to the Butano Branch location and sought a refund, complaining that the hearing aids still hurt A.A.'s ear. A.A. filled out a request for a refund. On or about January 17, 2014, HAD Melissa Peacock sent a letter to A.A. informing him that he was not entitled to a refund because he kept the hearing aids for longer than 30 days after delivery without seeking an adjustment, that he did not allow the dispenser to perform an adjustment, and because complaints about price are not a valid ground for a refund.

97. In reviewing consumer A.A.'s complaint MHAC, the Board obtained a report from an independent expert who opined that for a person with A.A.'s hearing loss there would be very little difference in power between the $745.00 hearing aid and the $4,045 hearing aid Moreland sold to A.A.

TWENTY-SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Owner Responsible for Fit and Sale)

98. Paragraphs 19-22 and 86-95 above are incorporated by reference as if fully set forth herein.

99. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the gross negligence of HAD Moreland and HAD Roark in the fit and sale of hearing aids to A.A. Moreland and Roark violated section 2533, subdivision (f), gross negligence, in that they failed to perform or chart a bone conduction test of A.A.'s right ear before proceeding with the sale of hearing aids to A.A.

TWENTY-THIRD CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

100. Paragraphs 19-22 and 86-95 above are incorporated by reference as if fully set forth herein.

101. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or dishonest acts of HADs Moreland, Roark and Peacock. HADs Moreland, Roark, and Peacock violated section 2533, subdivision (e), committing fraudulent or dishonest acts in connection with the sale of hearing aids to A.A., which include, but are not limited to the following:

(a) Roark made misleading and unscientific statements to A.A. when she told him that the hearing aids would improve his hearing by 90%;

(b) Moreland and Roark recommended and sold the $8,200.00 set of Intela-Hear hearing aids to A.A. and falsely claimed that the alternative of the $745.00 hearing aid that was advertised by MHAC was not appropriate for A.A.;

(c) Moreland entered into a purchase agreement with A.A. with the knowledge that MHAC had disseminated false and misleading statements in connection with the sale;

(d) Moreland and Roark falsely represented that the sale price was a limited time 50% off price;

(e) Roark falsely told A.A. that his purchase had a risk-free guarantee, and that he could receive his money back if he was not satisfied with the hearing aids while omitting the 15% cancelation fee and the onerous programs he would have to complete before being considered for a refund;

(f) Moreland misrepresented A.A.'s rights under the Song-Beverly Act and falsely denied that she had not made adjustments to the hearing aids during the initial 30 days after delivery of the hearing aids to A.A.; and

(g) Peacock misrepresented A.A.'s rights to return the hearing aids, and denied A.A. the right to return the hearing aids based on false statements.

TWENTY-FOURTH CAUSE FOR DISCIPLINE

(Fraudulent or Dishonest Acts)

102. Paragraphs 19-22 and 86-95 above are incorporated by reference as if fully set forth herein.

103. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of hearing aids to A.A., which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait $745 hearing aid, with the knowledge that his corporate policies encouraged HADs Roark and Moreland to upsell A.A. to a higher priced hearing aid;

(b) disseminating an advertisement with the promise of "satisfaction guaranteed" and "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement and onerous return policy;

(c) disseminating an advertisement with the false claim of a limited-time discounted price; and

(d) using a paid celebrity spokesperson Stan Atkinson in the advertisement without indicating that Stan Atkinson was a paid spokesman for the product or for MHAC.

TWENTY-FIFTH CAUSE FOR DISCIPLINE

(Violation of the Song-Beverly Act)

104. Paragraphs 19-22 and 86-95 above are incorporated by reference as if fully set forth herein.

105. Respondent is subject to disciplinary action under section 2533, subsection (k), in that he violated Section 1793.02 (Song-Beverly Act), by maintaining corporate policies that denied A.A. the ability to return and be refunded for hearing aids that were not fit for his needs.

Consumer A.K.

106. On or about May 9, 2012, A.K., an 82-year old woman, entered the Roseville Branch of the MHAC at 1601 Douglas Boulevard, Roseville, California. She was met by HAD Robert Bennett and HAD Melissa Peacock. HADs Peacock and Bennett conducted an audiogram test, showing A.K. had a moderate to severe hearing loss. The audiogram test results show that A.K. had an air-bone gap in the right ear of greater than 15dB, and does not show than any bone conduction testing was done in the left ear. In the Medical History Form A.K. completed at MHAC, she checked the box to indicate yes to the following three conditions: "pain and Discomfort in the Ear"; "acute or recurring dizziness"; and "Ringing in the Ears." Despite these indications and the air-bone gap shown on the audiogram, Bennett and Peacock failed to refer A.K. for a medical clearance or consultation before proceeding with the sale of hearing aids.

107. On or about May 9, 2012, A.K. entered into a purchase agreement with HAD Bennett for a pair of Intela-Hear hearing aids, for a total price of $4,941.00. The purchase agreement indicated that the original cost of the pair was $10,980.00 and the she received a 50% off sale, with an additional AARP discount. A.K. returned to the branch location on or about May 24, 2012 and was seen by HAD Bennett and fitted with hearing aids. A.K. has degenerative arthritis in her jaws, and small ear canals. When she started wearing the hearing aids, she began to

develop pain in her ears. She tried to keep wearing the hearing aids in the hope that she would get used to them, but after four days the pain persisted and got worse, and she removed them.

108. Even after removing the hearing aids, A.K. continued to have pain, and saw her doctor who referred her to an otolaryngologist. The otolaryngologist advised her to stop wearing the hearing aids, and return them. On or about June 1, 2012, A.K. returned to MHAC and asked to return the hearing aids due to severe degenerative arthritis, causing pain in her ears. Staff at MHAC told A.K. to continue wearing the hearing aids. On or about June 12, 2012, A.K. returned to MHAC, and provided staff with a copy of the otolaryngologist's note instructing her not to wear the hearing aids. MHAC refused to accept the return, and continued to advise A.K. to wear the hearing aids, or to allow an exchange of different hearing aids. Even after speaking with the otolaryngologist who treated A.K., MHAC refused to accept the return and refund A.K. the purchase price. After additional telephone calls and written communication with the otolaryngologist, MHAC agreed to provide A.K. with a refund on or about August of 2012. MHAC did not refund A.K. the purchase price until November 27, 2012.

TWENTY-SIXTH CAUSE FOR DISCIPLINE

(Gross Negligence/Owner Responsible for Fit and Sale)

109. Paragraphs 19-22 and 104-106 above are incorporated by reference as if fully set forth herein.

110. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the gross negligence of HAD Bennett and HAD Peacock in the fit and sale of hearing aids to A.K. Bennett and Peacock violated section 2533, subdivision (f), gross negligence, in the fit and sale of hearing aids to A.K. at the Roseville branch in that they failed to perform or chart a bone conduction test of A.K.'s left ear, and failed to refer A.K. to a physician based on the charted air-bone gap in her right ear or for the reported pain and dizziness.

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TWENTY-SEVENTH CAUSE FOR DISCIPLINE

(Failure to Refer to a Physician/Owner Responsible for Fit and Sale)

111. Paragraphs 19-22 and 104-106 above are incorporated by reference as if fully set forth herein.

112. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the failure of HAD Bennett or HAD Peacock to refer A.K.to a physician. Bennett and Peacock violated section 2538.36, subdivision (a), and Title 16, section 1399.126, subdivision (c), of the California Code of Regulations, in that they failed to refer A.K. to a physician based on the apparent air-bone gap in her right ear, or her complaints of pain and dizziness.

TWENTY-EIGHTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

113. Paragraphs 19-22 and 104-106 above are incorporated by reference as if fully set forth herein.

114. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the fraudulent or dishonest acts of HAD Bennett who fit and sold hearing aids to A.K. at the Roseville Branch location. HAD Bennett violated section 2533, subdivision (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of hearing aids to A.K., by entering into a purchase agreement that falsely stated that the cost of the hearing aids being sold was 50% off the regular price.

TWENTY-NINTH CAUSE FOR DISCIPLINE

(Violation of the Song-Beverly Act)

115. Paragraphs 19-22 and 104-106 above are incorporated by reference as if fully set forth herein.

116. Respondent is subject to disciplinary action under section 2533, subsection (k), in that he violated Section 1793.02 (Song-Beverly Act), by maintaining corporate policies that denied

A.K. the ability to return and be refunded for her hearing aid purchase for several months despite documentation from an ears, nose, and throat physician recommending that A.K. not be fit with hearing aids.

Consumer J.C.

117. On or about January 24, 2012, J.C. an elderly man in his 90's, responded to an advertisement by MHAC for a $745.00 hearing aid special offer, which claimed Satisfaction Guaranteed, Full Refund, and No risk-Nothing to lose. The advertisement showed a picture of Stan Atkinson holding a hearing aid, with a testimonial in which he claims Intela-Hear hearing aids have improved his hearing remarkably. There is no disclaimer indicating that Stan Atkinson is a paid spokesperson. On or about January 24, 2012, J.C. entered the Roseville Branch of the MHAC at 1601 Douglas Boulevard, Roseville, California. He was met by HAD Moreland and HAD Peacock.

118. HAD Moreland did audiometric testing on J.C., reporting that he had a moderate to severe hearing loss. J.C. inquired about the $745 hearing aid, but was told he was not a candidate for that hearing aid due to the severity of his hearing loss. On or about January 24, 2012, J.C. entered into a purchase agreement with HAD Moreland for the purchase of a pair of Intela-Hear hearing aids costing $6,290.00, recommended by Moreland as state of the art, and appropriate for his needs.

119. On or about February 7, 2012, J.C. returned to the Roseville branch location and met with HAD Peacock. He was fit with the hearing aids he purchased, and signed the receipt for acceptance. Throughout February and March of 2012, J.C. returned to the Roseville branch location on at least six occasions to participate in the "Patient Journey" and to have multiple adjustments made to the hearing aids.

120. Following completion of the "Patient Journey" as defined by MHAC, J.C. still found that the hearing aids were not working well for him, and were unbearable to wear. On or about March 12, 2012, he submitted a request to return the hearing aids for a refund as stated in the advertisements and the terms of the purchase agreement.

121. Between March and May of 2012, J.C. and MHAC exchanged correspondence regarding the request to return the hearing aids. On or about March 12, 2012, HAD Peacock provided J.C. with a form called "Request for a Refund" requesting that he check one of four boxes citing the reason for the return. The four options "Financial Hardship," "Purchase Elsewhere," "Too Expensive," and "Other." J.C. checked Too Expensive and Other. On or about March 19, 2012, MHAC mailed J.C. an unsigned letter indicating that he did not qualify for a refund because a hearing aid dispenser is not required by law to provide a refund if the reason for return is that they buyer feels he paid too much. The letter states that J.C. does not qualify for a refund under the Song-Beverly Act, but that he can exchange his hearing aids or put the cost toward the purchase of another pair of hearing aids to be purchased through MHAC.

122. In follow up statements and correspondence with HAD Peacock and MHAC, J.C. explained that the reason he checked both Too Expensive and Other, was that he was trying to communicate that the hearing aids were not working as promised, and that they are too expensive for a defective product that is not working as represented. MHAC denied J.C.'s requests informing him that his only reason for seeking to return the hearing aids was that he was unhappy with the price.

THIRTIETH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

123. Paragraphs 19-22 and 115-120 above are incorporated by reference as if fully set forth herein.

124. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or dishonest acts of HADs Moreland and Peacock. HADs Moreland and Peacock violated section 2533, subdivision (e), committing fraudulent or dishonest acts in connection with the sale of hearing aids to J.C., which include, but are not limited to the following:

(a) Moreland entered into a purchase agreement with J.C. with the knowledge that MHAC had disseminated false and misleading statements in connection with the sale;

(b) Moreland falsely represented that the sale price was a limited time 50% off price; and

(c) Peacock misrepresented J.C.'s rights to return the hearing aids, and denied J.C. the right to return the hearing aids based on false statements.

THIRTY-FIRST CAUSE FOR DISCIPLINE

(Fraudulent or Dishonest Acts)

125. Paragraphs 19-22 and 115-120 above are incorporated by reference as if fully set forth herein.

126. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of hearing aids to J.C., which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait $745 hearing aid, with the knowledge that his corporate policies encouraged HADs Moreland and Peacock to upsell J.C. to a higher priced hearing aid;

(b) disseminating an advertisement with the promise of "satisfaction guaranteed" and "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement and onerous return policy;

(c) disseminating an advertisement with the false claim of a limited-time discounted price; and

(d) using a paid celebrity spokesperson Stan Atkinson in the advertisement without indicating that Stan Atkinson was a paid spokesman for the product or for MHAC.

THIRTY-SECOND CAUSE FOR DISCIPLINE

(Violation of the Song-Beverly Act)

127. Paragraphs 19-22 and 115-120 above are incorporated by reference as if fully set forth herein.

128. Respondent is subject to disciplinary action under section 2533, subsection (k), in that he violated Section 1793.02 (Song-Beverly Act), by maintaining corporate policies that denied J.C. the ability to return and be refunded for hearing aids that were not fit for his needs.

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Consumer E.W.

129. On or about May 9, 2012, E.W., an 88 year old man and World War II veteran who had suffered hearing loss from German artillery fire, responded to an advertisement by MHAC for a limited time four-day-only special with 50% to 67% off prices, and a $745.00 entry level hearing aid, with the printed statements "satisfaction guaranteed" and "Patient Journey program guarantees better hearing in 6 weeks or receive a full refund... No risk—Nothing to Lose." On or about May 9, 2012, E.W. entered the Elk Grove branch of MHAC at 9139 West Stockton Boulevard, Suite 140 in Elk Grove, California and was met by HAD Christopher Simon (HA License No. 7485). HAD Simon conducted an audiometric test, which showed E.W. had a moderate to severe hearing loss.

130. On or about May 9, 2012, E.W. entered into a purchase agreement with HAD Simon for a pair of Intela-Hear hearing aids at a cost of $8,091.00. The purchase agreement stated that the price was 50% off the usual price for the pair of $17,980.00. HAD Simon told E.W. that if he was dissatisfied with the product, he could return it for a refund within 30 days.

131. On or about May 21, 2012, E.W. met again with HAD Simon and accepted delivery of the hearing aids. After wearing the hearing aids for a few weeks, and returning to MHAC for numerous appointments to participate in the Patient Journey, E.W. found that the new hearing aids did not improve his hearing any better than his old hearing aids. On or about June 18, 2012, he returned to the Elk Grove branch location and informed staff that he was not satisfied with the hearing aids and wanted to return them. On or about June 18, 2012, he filled out the return form, checking the box "Hearing Aids" and indicating that the hearing aids did not improve his hearing beyond what his old hearing aids had done.

132. Between June 18, 2012 and throughout July of 2012, MHAC corresponded with E.W. on several occasions, refusing his request for a return and refund, and informing him he was required to complete the Patient Journey before he could be considered for a refund. During June and July of 2012, E.W. returned to MHAC's Elk Grove branch on at least four occasions and completed the Patient Journey. At the completion, E.W. reported that he was still not satisfied with the product, and sought to return the product for a refund.

133. On or about June 27, 2012, MHAC sent E.W. a letter indicating that he was not eligible for a refund under the Song-Beverly Act, because he had not allowed HAD Simon to make adjustments during the 30-day period after receiving the hearing aids. E.W. denied that he had been offered an adjustment of the hearing aids during that time.

THIRTY-THIRD CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

134. Paragraphs 19-22 and 127-131 above are incorporated by reference as if fully set forth herein.

135. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or dishonest acts of HAD Simon. HAD Simon violated section 2533, subdivision (e), committing fraudulent or dishonest acts in connection with the sale of hearing aids to E.W., which include, but are not limited to the following:

(a) Simon entered into a purchase agreement with E.W. with the knowledge that MHAC had disseminated false and misleading statements in connection with the sale;

(b) Simon falsely represented that the sale price was a limited time 50% off price; and

(c) Simon misrepresented E.W.'s rights to return the hearing aids, and denied E.W. the right to return the hearing aids based on false statements.

THIRTY-FOURTH CAUSE FOR DISCIPLINE

(Fraudulent or Dishonest Acts)

136. Paragraphs 19-22 and 127-131 above are incorporated by reference as if fully set forth herein.

137. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of hearing aids to E.W., which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait $745 hearing aid, with the knowledge that his corporate policies encouraged HAD Simon to upsell E.W. to a higher priced hearing aid;

(b) disseminating an advertisement with the promise of "satisfaction guaranteed" and "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement and onerous return policy; and

(c) disseminating an advertisement with the false claim of a limited-time discounted price.

THIRTY-FIFTH CAUSE FOR DISCIPLINE

(Violation of the Song-Beverly Act)

138. Paragraphs 19-22 and 127-131 above are incorporated by reference as if fully set forth herein.

139. Respondent is subject to disciplinary action under section 2533, subsection (k), in that he violated Section 1793.02 (Song-Beverly Act), by maintaining corporate policies that denied E.W. the ability to return and be refunded for hearing aids that were not fit for his needs.

Undercover Investigator's Trip to Roseville Branch of MHAC

140. On or about May 9, 2013, an older male Investigator with the Department of Consumer Affairs assumed the role of a hearing aid consumer for the purpose of conducting an undercover operation at MHAC. This male undercover investigator, (Inv. 2), worked in coordination with Inv. 1. For the purposes of this investigation, Inv. 1 assumed the role of a relative of Inv. 2. Investigator 2 had a hearing test with a licensed audiologist in preparation of the undercover operation. Inv. 2 provided the results of his hearing test to a Board expert, to determine whether the advertised $745.00 entry level hearing aid would be suitable for his hearing loss. The Board expert determined that the entry level hearing aid would be suitable.

141. On or about May 9, 2013, Invs. 1 and 2 entered the Roseville branch of MHAC located at Douglas Boulevard in Roseville, California, explaining that they had seen an advertisement for hearing aids, and would like to learn more. The receptionist made an appointment for Inv. 2, for the following day, explaining that a factory representative would be available then to discuss hearing aids with Inv. 2.

142. On or about May 10, 2013, Inv. 1 and Inv. 2 returned to the Roseville Branch location and were met by HAD Geraci-Staub (HA License No. 7585), and HAD Roy Bostick (HA License No. 7278). HADs Geraci-Staub and Bostick led Inv. 2 to a separate room to perform a hearing

test on Inv. 2. While Inv. 1 was waiting for Inv. 2 to complete his testing, Inv. 1 observed Stan Atkinson enter the branch location. Inv. 1 observed Stan Atkinson speak with the receptionist, explaining that he was at the branch location to assist in the promotional sale. Stan Atkinson spoke with another consumer waiting in the waiting area, and explained that he works for MHAC to help them sell hearing aids.

143. HAD Geraci-Staub returned to the waiting area to speak with the receptionist. She held a piece of paper to the left side of her mouth to help conceal her words, but Inv. 1 could hear Geraci-Staub tell the receptionist that she needed Allen Schoen, (HT License No. 8930), the factory representative, to be present to make the sale. The receptionist asked Geraci-Staub if she could do it, and Geraci-Staub responded that she could, but that she would rather have Schoen there as he is more successful.

144. Inv. 1 next observed the receptionist, Geraci-Staub, Bostick, and Atkinson gather together in the area where hearing aids are adjusted. Inv. 1 heard them converse about the best way to approach Inv. 2 about the purchase of hearing aids. Geraci-Staub told Atkinson to talk to Inv. 2 about his grandchildren, as that is "the key" to selling hearing aids.

145. Geraci-Staub led Inv. 1 into the room where Inv. 2 was waiting and few minutes later Stan Atkinson came into the room and spoke to Inv. 1 and Inv. 2. Stan Atkinson did not try to sell any individual product, but he told Inv. 2 what a good product MHAC provided to him, and how his hearing aids have changed his life, especially with his interactions with his grandchildren. Stan Atkinson explained that he has the best product MHAC offers.

146. After Stan Atkinson left the room, Hearing Aid Trainee Allen Schoen entered the room and said that he would explain the hearing test and offer recommendations on hearing aids. Inv. 2 showed Schoen an advertisement for a $745.00 hearing aid, and explained that was what brought him into the store. Schoen told Inv. 2 that the entry level hearing aid was only appropriate for people with a 35-40 decibel hearing loss. Schoen said that Inv. 2's hearing loss is not within that range, and that he would not be happy with the entry level hearing aid, and would miss certain frequencies. Schoen said Inv. 2 did not need the high end hearing aids, but could not

use the entry-level ones either, and that the most appropriate hearing aids for him would be in the middle, in the $3,500 to $5,500 price range.

147. Schoen showed Inv. 1 and Inv. 2 a price sheet, with higher and lower prices, and explained that the lower prices were the promotional sale currently going on. Schoen recommended Inv. 2 purchase a hearing aid package, and told him that an additional 30% off sale was currently in effect, but that the price would increase if he returned on Monday. He told Inv. 2 that MHAC offered a 60 day program to help him with the hearing aids, and that if he is not satisfied after the 60 days he can return the aids for a refund. He did not indicate that there were any limits or restrictions on the refund. Inv. 2 told Schoen that he would need to speak with his wife before he made any purchase, and Inv. 1 and 2 left the store.

THIRTY-SIXTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

148. Paragraphs 19-22 and 138-145 above are incorporated by reference as if fully set forth herein.

149. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or dishonest acts of HAD Schoen. HAD Schoen violated section 2533, subdivision (e), committing fraudulent or dishonest acts in connection with the fit and sale of hearing aids to Inv. 2, which include, but are not limited to the following:

(a) Schoen recommended and attempted to sell the expensive Intela-Hear hearing aids to Inv. 2, and falsely claimed that the alternative of the $745.00 hearing aid that was advertised by MHAC was not appropriate for Inv. 2;

(b) Schoen falsely represented that the sale price was a limited time 50% off price, with additional limited time discounts; and

(c) Schoen told Inv. 2 that he could obtain a refund if he was not happy with the product, while omitting significant restrictions and qualifications on the refund process.

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THIRTY-SEVENTH CAUSE FOR DISCIPLINE

(Fraudulent or Dishonest Acts)

150. Paragraphs 19-22 and 138-145 above are incorporated by reference as if fully set forth herein.

151. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of hearing aids, which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait $745 hearing aid, with the knowledge that his corporate policies encouraged HAD Schoen to attempt to upsell Inv. 2 to a higher priced hearing aid;

(b) disseminating an advertisement with the promise of "satisfaction guaranteed" and "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement and onerous return policy; and

(c) disseminating an advertisement with the false claim of a limited-time discounted price.

Undercover Investigator's Trip to Santa Rosa Branch of MHAC

152. On or about August 21, 2013, Inv. 1 and Inv. 2 went to MHAC branch location in Santa Rosa in an undercover capacity with an appointment set up for Inv. 2 at 11:00 a.m. Inv. 1 and 2 entered the Santa Rosa branch location at 1425 Fulton Road, Suite 315, in Santa Rosa, California, and were met by HAD Michelle Nielson (HA License No. 7276). HAD Nielson took Inv. 2 to another room to perform a hearing test. After the hearing test was completed, Inv. 1 returned to the room with Inv. 2, and waited.

153. HAD Gregory Scott (HA License No. 3126), approached Inv. 2 and took him to another room to discuss his test and recommend hearing aids. HAD Scott told Inv. 2 that he should wear hearing aids. Scott told Inv. 2 that because of his hearing loss, his brain function is starting to drop, and he is losing his ability to distinguish speech. Scott told Inv. 2 that this is causing his short-term memory to be affected. Scot told Inv. 2 that wearing hearing aids will help his ability to distinguish speech, and improve his memory.

154. HAD Scott showed Inv. 2 a hearing aid that would cost $7,500.00 each. Scott explained that it is a medical device to retrain the brain, and that if he is not satisfied with them after six weeks, he can return them for a refund. Inv. 2 asked Scott about the $745.00 hearing aid, and Scott told him that he "might be able to get away" with a pair of hearing aids costing $3,490, but that he should not get any hearing aids lower in cost than that. Scott explained that the important thing is for Inv. 2 to wear hearing aids to prevent his short-term memory from being impaired, as the theory now is that the precursor to dementia is hearing loss.

THIRTY-EIGHTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

155. Paragraphs 19-22 and 150-152 above are incorporated by reference as if fully set forth herein.

156. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the fraudulent or dishonest acts of HAD Scott. HAD Scott violated section 2533, subdivision (e), committing fraudulent or dishonest acts in connection with the attempted sale of hearing aids to Inv. 2 in that he:

(a) made misleading and unscientific statements to Inv. 2 when he told him that his hearing loss is causing his brain function and memory to decline and by claiming that hearing aids will prevent and/or cure brain dysfunction or cognitive decline; and

(b) made misleading statements to Inv. 2 as to the severity of his hearing loss and the suitability of the $745.00 advertised hearing aid for his needs.

<u>Undercover Investigator's Trip to Walnut Creek Branch of MHAC</u>

157. On or about August 21, 2013, after Inv. 1 and 2 left the Santa Rosa branch location, they traveled to the Walnut Creek branch location of MHAC. On or about August 21, 2013, Inv. 1 and 2 entered the Walnut Creek branch of MHAC at 1399 Ygnacio Valley, Suite 21, in Walnut Creek, California, explaining that they did not have an appointment. Inv. 2 completed some paperwork, and was seen by unlicensed individual Ashley Brown.

158. Ms. Brown directed Inv. 2 to go another room to have a hearing test with an audiologist. While Inv. 1 was waiting for Inv. 2 to complete his hearing test, she overheard Brown tell another customer that she does not give out business cards because she does not want consumers to call her after they leave the store.

159. After Inv. 2 completed the hearing test, Inv. 1 and 2 were led to another room where they met with Ms. Brown. Brown discussed the hearing test, and what hearing aids would work best for him. Brown told Inv. 2 that he had 80% trouble with his high frequency hearing. She told him that if the volume of sound is turned up for him, he will have 100% hearing, and bring his hearing back up to normal limits. Brown recommended that Inv. 2 purchase hearing aids that cost $3,000.00.

160. As Inv. 1 and 2 continued to discuss hearing aids with Brown, she altered her statement and said that she recommended Inv. 2 purchase hearing aids in the range of $5,000.00 to $7,000.00. She further explained that Inv. 2 would need to return once a week for adjustments, for six weeks. She informed Inv. 2 that if he was not happy with the hearing aids after the six weeks, he could return them for a full refund, but that if he canceled the order "today, tomorrow or next week," he would be charged a 15% cancelation fee. Inv. 2 made a selection, and Ms. Brown began to assemble paperwork for the sale. Then Inv. 1 and 2 informed Brown that they are law enforcement officers, and cited her for a misdemeanor offense of fitting or selling hearing aids without a valid license.

THIRTY-NINTH CAUSE FOR DISCIPLINE

(Owner Responsibility/Unlicensed person)

161. Paragraphs 19-22 and 155-158 above are incorporated by reference as if fully set forth herein.

162. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the actions of Brown, an unlicensed individual, in the attempted fit and sale of hearing aids to Inv. 2. Brown violated sections 2538.48 and 2538.50 by attempting to fit and sell and holding herself out as an individual licensed to fit and sell hearing aids to Inv. 2 on or about August 21, 2013.

FORTIETH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

163. Paragraphs 19-22 and 155-158 above are incorporated by reference as if fully set forth herein.

164. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the fraudulent or dishonest acts of unlicensed individual Ashley Brown who attempted to fit and sell hearing aids to Inv. 2 at the Walnut Creek branch location. Ms. Brown violated section 2533, subdivision (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that she committed fraudulent or dishonest acts in connection with the attempted sale of hearing aids to Inv. 2., which include, but are not limited to the following:

(a) Brown made misleading statements to Inv. 2 as to the severity of his hearing loss and the suitability of the $745.00 hearing aid for his needs;

(b) Brown told Inv. 2 that he could return the hearing aids for a full refund while omitting significant information about limits and restrictions on the refund policy;

(c) Brown made scientifically unsupported statements to induce Inv. 2 to purchase hearing aids, such as that the hearing aids would bring his hearing back to 100%; and

(d) Brown made recommendations as to the suitability of hearing aids for Inv. 2 despite lacking a valid license to do so.

FORTY-FIRST CAUSE FOR DISCIPLINE

(Violation of the Song-Beverly Act)

165. Paragraphs 19-162 are hereby incorporated by reference and re-alleged as if fully set forth herein.

166. Respondent is further subject to disciplinary action under section 1793.02 of the Civil Code, (also known as the Song-Beverly Act), in that he established policies making it difficult or impossible for consumers to return hearing aids even when the aids were not specifically fit for their needs, or had been sold to them based on misinformation or unlawful business practices.

Respondent effected this through manipulation of contract terms and establishment of a "Patient Journey" program designed to evade the application of the Song-Beverly Act.

167. The "Patient Journey" is a program created by MHAC in which consumers perform a series of tasks involving written materials, five computer-based exercises, and meetings with a MHAC employee. The computer-based exercises are referred to by the acronym "AWARE" and require the consumer to return to MHAC to use a computer terminal on at least five separate occasions. The written materials are referred to by the acronym "COZI" and require consumers to track their "progress" using the hearing aids. Follow up visits during which hearing aid dispensers are intended to adjust the fit are also required. The entire program requires at least five separate trips to the MHAC branch location for the consumer, and approximately six weeks to complete.

168. The MHAC employee responsible for administering the return policy and responding to requests for refunds is HAD Melissa Peacock. Documents found on her computer during execution of a search warrant at MHAC include a document titled "Guarantee Satisfaction Program," which outlines the Patient Journey and states that if a patient does not complete the process then he or she did not meet the requirement under the Song-Beverly Act for a refund. The document continues with instructions to the HAD that state: "YOU are the expert. YOU tell the patient their treatment program. YOU tell the patient what their expectations are going to be..Never let the patient tell you what they want you to do. YOU are in control of the patient's journey, not them." During interviews with investigators, Respondent stated that he interprets the Song-Beverly Act as predicating a consumer's right to return a hearing aid on the "completion of the fitting by the seller." He stated that due to lack of clarity in the law, a Hearing Aid Dispenser has the right to define what constitutes "completion of the fitting," and he defines it as having completed the Patient Journey.

169. MHAC uses the lengthy process of the Patient Journey to ensure that when a consumer completes the Patient Journey, he or she will no longer qualify for a refund because completion of the Patient Journey requires more than thirty days. This is illustrated in the case of Consumer A.A. as alleged in Paragraphs 90-103 above. A.A. accepted delivery of his hearing

aids on November 29, 2013, and first sought a return on December 13, 2013, but was told he was required to complete the Patient Journey. He made appointments and returned to MHAC to work on his Journey on December 18, and 20, 2013, and January 4, and 7, 2014, each time seeking to return the aids, and being told he cannot do so until he completed the Journey. On or about January 17, 2014, after A.A. completed the Journey, MHAC sent him a letter refusing to issue a refund, in part, because he kept the hearing aids for longer than 30 days after delivery without seeking an adjustment.

170. Similarly, during June and July 2012, E.W. completed the Patient Journey, and was then told he did not qualify for a refund because he had not allowed HAD Simon to make adjustments during the 30-day period after receiving the hearing aids.

171. This is a deliberate MHAC policy to prevent returns authorized by the Song-Beverly Act. This policy is explicit in HAD Peacock's email to an employee, chastising the employee for attempting to fulfill her professional obligations under the Song-Beverly Act. "Because you adjusted the aids at the same time she wanted to return, now she qualifies. It was clear from the notes..that she was frustrated with the price..so ended with Costco and bought something else..cheaper, I'm sure. Even thought she didn't mark price, I could have written her a "not qualified" letter with no adjustment and price as the reason. Then she would have had to return the Costco ones and kept ours." This email continues to instruct the employee: "I don't like to jump patients to fill out the form but I will if I know the patient won't qualify. If they want to return first visit back, then DO NOTHING to the aids, fill out the form and they will NEVER qualify."

172. The letters HAD Peacock issues denying returns are designed to effect Respondent's plan of evading the obligations under the Song-Beverly Act. Peacock makes this explicit in the email by directing the employee that: "It would help all of you if you think of the reasons why they can't return and what scenario works for/with the letters before you pull out the form or jump to fix the problem…"

173. Another MHAC policy designed to evade the application of the Song-Beverly Act is to provide a form document to the consumer, or elicit statements from the consumer indicating

that the consumer is dissatisfied with the price of the product. Respondent has interpreted the Song-Beverly Act not to require a HAD to return hearing aids if the consumer is dissatisfied with the price. Toward that end, consumers are provided with a form letter to check boxes indicating their reason for seeking to return the hearing aids. One such form gave options: "Financial Hardship," "Purchased Elsewhere," "Too Expensive," and "Other." All three of the specified choices are designed to elicit responses on which MHAC will claim it is not required to issue a refund because the consumer is complaining about the price. This is seen in the case of consumer J.C., who marked too expensive and other, in an attempt to indicate that the hearing aids did not function as promised or as they should for the expensive price. MHAC denied his refund, partly on the false ground that he had not sought an adjustment within the thirty days, and also because his reason for return was the "impermissible" issue of price.

174. Respondent's conduct in using corporate policies to evade the application of the Song-Beverly Act, constitutes a violation of section 1793.02 of the Civil Code.

FORTY-SECOND CAUSE FOR DISCIPLINE

(Use of Testimonials in a Way Likely to Mislead or Deceive in violation of section 651)

175. Respondent is further subject to disciplinary action under section 651, subsection (b)(8), in that he used customer testimonials in a manner likely to mislead or deceive. The circumstances are as follows.

176. On or about August 20, 2013, consumer K.H., submitted a complaint to the Board concerning testimonials he had seen in advertisements for MHAC. K.H. reported that he had observed advertisement for MHAC in the Sacramento Bee and Grass Valley Union newspapers of February 5, 2013, that both listed four testimonials of purported customers of MHAC. The testimonials listed in both newspapers were exactly the same, including the same names and same language, with the only difference being the location at which the purported customers received services. He later observed another advertisement for MHAC in the August 12, 2013 Marysville Appeal-Democrat, again containing the same four testimonials, with the location of branch changed.

177. On or about August 21, 2013, while conducting undercover activities at the Walnut Creek and Santa Rosa branch locations of MHAC, Inv. 1 observed advertisements that used the same four purported customer testimonials, with the location of the consumers listed as Walnut Creek and Santa Rosa, respectively.

178. Respondent's conduct in using testimonials purporting to be from actual customers, but were not, constitutes a violation of section 651 subdivision (b)(8), of the Code.

FORTY-THIRD CAUSE FOR DISCIPLINE

(Rebranding to Prevent Price Comparisons in Violation of Section 651)

179. Respondent is further subject to disciplinary action under section 651, subsection (b)(2), in that he falsely represented he was selling a product distinguishable from the GN Resound hearing aid products, for the purpose of preventing price comparisons with other sellers of same Resound products. The circumstances are as follows.

180. Respondent entered into an agreement with hearing aid manufacturer GN Resound to re-label certain of their hearing aid products with a the name "Intela-Hear," the rights to which Respondent purchased for consideration. The result of this agreement is that the Resound products are issued from the factory with the Intela-Hear label affixed to them, and such labeled devices are not shipped to any other retailer other than Respondent. A document located on HAD Peacock's computer directed employees that: "Before you ever switch to a Sonic product, you must be sure that they will not be satisfied with any GN ReSound/Intel-A-Hear product, that's why [you're] exchanging and switching brands."

181. The advertising provided by consumers to investigators and the mock-up ad discovered during execution of search warrants at Respondent's place of business contain statements claiming to provide better prices than competitors. For example, advertisements contain the statements that MHAC will "beat any competitor's price on exact models," and encourage consumers to bring in a written quote. During execution of search warrant on December 19, 2013, investigators discovered a handwritten document in Respondent's office which stated, "Why consider Intela-hear private label hearing instruments--Stops patient from shopping for the best price on the same product."

182. Respondent's conduct in rebranding Resound hearing aids with a separate, exclusive use label for the purpose of preventing price comparisons with other sellers of same products constitutes a violation of section 651 subdivision (b)(8), of the Code.

FORTY-FOURTH CAUSE FOR DISCIPLINE

(Use of Paid Celebrity Spokesperson in Violation of Section 651)

183. Respondent is further subject to disciplinary action under section 651, subsection (d), in that he compensated a member of the press in return for publicity without indicating the paid status of the spokesperson. The circumstances are as follows.

184. Respondent employed Stan Atkinson and paid him to use his likeness on advertising and at promotional events. Respondent had a personal services agreement between MHAC and Stan Atkinson for payment of $2,500.00 per month, and 5% of incremental increase of sales per year, in addition to free hearing aids, batteries, and hearing aid services. Mr. Atkinson was featured in almost all advertisements distributed during the years 2012, and 2013, and during portions of the advertising on other years. MHAC advertising records show that it sent 250,000 mailers out per month within a 50-100 mile radius of Sacramento, and ran another 5-10 advertisements in newspapers throughout the Sacramento Valley per month. These pictures and statement of Mr. Atkinson were present in the advertisements viewed by consumers D.G., A.A., and J.C., and others.

185. Respondent's conduct in using Stan Atkinson as a paid spokesperson without disclosing his paid status constitutes a violation of section 651 subdivision (d), of the Code.

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PRAYER

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

1. Revoking or suspending Hearing Aid Dispenser License Number HA 2425, issued to Respondent Mark Lee Moore;

2. Revoking Respondent Mark Lee Moore's ability to supervise trainee and temporary licensees;

3. Ordering Respondent Mark Lee Moore, to pay the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3 and 651;

4. Revoking the registration of branch office locations issued to Respondent Mark Lee Moore; and

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

DATED: November 5, 2015

PAUL SANCHEZ
Executive Officer
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
Department of Consumer Affairs
State of California
Complainant

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