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

12 In the Matter of the Accusation Against:

Case No. 1C-2012-98

13 **ROBIN D. SWANSON**
24361 El Toro Rd., #175
14 Laguna Woods, CA 92637
Hearing Aid Dispenser License No. HA 3104,

A C C U S A T I O N

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about December 12, 1991, the Speech-Language Pathology and Audiology and
24 Hearing Aid Dispensers Board issued Hearing Aid Dispenser License Number HA 3104 to
25 ROBIN D. SWANSON (Respondent). The Hearing Aid Dispenser License was not in full force
26 and effect at all times relevant to the charges brought herein. Respondent's Hearing Aid
27 Dispenser License Number HA 3104 is expired.

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1 **JURISDICTION**

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

5 4. Section 2531.02 of the Code states:

6 "Protection of the public shall be the highest priority for the Speech-Language Pathology
7 and Audiology and Hearing Aid Dispensers Board in exercising its licensing, regulatory, and
8 disciplinary functions. Whenever the protection of the public is inconsistent with other interests
9 sought to be promoted, the protection of the public shall be paramount."

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

11 "The board may refuse to issue, or issue subject to terms and conditions, a license on the
12 grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon
13 the license of any licensee for any of the following:

14 "..."

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

17 "..."

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

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

21 "..."

22 6. Section 651 of the Code states in pertinent part:

23 "(a) It is unlawful for any person licensed under this division or under any initiative act
24 referred to in this division to disseminate or cause to be disseminated any form of public
25 communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image
26 for the purpose of or likely to induce, directly or indirectly, the rendering of professional services
27 or furnishing of products in connection with the professional practice or business for which he or
28 she is licensed. A "public communication" as used in this section includes, but is not limited to,

1 communication by means of mail, television, radio, motion picture, newspaper, book, list or
2 directory of healing arts practitioners, Internet, or other electronic communication.

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

5 “... ”

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

8 “... ”

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

11 “... ”

12 7. Section 2538.10 of the Code states:

13 “(a) ‘Advertise’ and its variants include the use of a newspaper, magazine, or other
14 publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card,
15 label, tag, window display, store sign, radio, or television announcement, or any other means or
16 methods now or hereafter employed to bring to the attention of the public the practice of fitting or
17 selling of hearing aids.

18 “(b) ‘License’ means a hearing aid dispensers license issued pursuant to this article and
19 includes a temporary license.

20 “(c) ‘Licensee’ means a person holding a license.

21 “(d) ‘Hearing aid’ means any wearable instrument or device designed for, or offered for the
22 purpose of, aiding or compensating for impaired human hearing.

23 “(e) ‘Fund’ means the Speech-Language Pathology and Audiology and Hearing Aid
24 Dispensers Fund.

25 8. Section 2538.11 of the Code states in pertinent part:

26 “(a) ‘Practice of fitting or selling hearing aids,’ as used in this article, means those practices
27 use for the purpose of selection and adaption of hearing aids, including direct observation of the
28 ear, testing of hearing in connection with the fitting and selling of hearing aids, taking of the ear

1 mold impressions, fitting or sale of hearing aids, and any necessary post fitting counseling.

2 "..."

3 9. Section 2538.14 of the Code states:

4 "Hearing aid dispenser,' as used in this article, means a person engaged in the practice of
5 fitting or selling hearing aids to an individual with impaired hearing."

6 10. Section 2538.20 of the Code states:

7 "It is unlawful for an individual to engage in the practice of fitting or selling hearing aids,
8 or to display a sign or in any other way to advertise or hold himself or herself out as being so
9 engaged without having first obtained a license from the board under the provisions of this article.
10 Nothing in this article shall prohibit a corporation, partnership, trust, association or other like
11 organization maintaining an established business address from engaging in the business of fitting
12 or selling, or offering for sale, hearing aids at retail without a license, provided that any and all
13 fitting or selling of hearing aids is conducted by the individuals who are licensed pursuant to the
14 provisions of this article. A person whose license as a hearing aid dispenser has been suspended
15 or revoked shall not be the proprietor of a business that engages in the practice of fitting or selling
16 hearing aids nor shall that person be a partner, shareholder, member, or fiduciary in a partnership,
17 corporation, association, or trust that maintains or operates that business, during the period of the
18 suspension or revocation. This restriction shall not apply to stock ownership in a corporation that
19 is listed on a stock exchange regulated by the Securities and Exchange Commission if the stock is
20 acquired in a transaction conducted through that stock exchange."

21 11. Section 2838.35 of the Code states in pertinent part:

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

24 "...

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

27 "...

28 "(d) A statement to the effect that the aide or aides delivered to the purchaser are used or

1 reconditioned, as the case may be, if that is the fact.

2 “(e) The number of the licensee’s license and the name and license number of any other
3 hearing aid dispenser or temporary licensee who provided any recommendation or consultation
4 regarding the purchase of the hearing aid.

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

7 12. Section 2538.48 of the Code states:

8 “It is unlawful to engage in the practice of fitting or selling hearing aids in this state without
9 having at the time of so doing a valid, unrevoked, and unexpired license or temporary license.”

10 13. Section 2538.49 of the Code states, in pertinent part:

11 “It is unlawful for a licensed hearing aid dispenser to fit or sell a hearing aid unless he or
12 she first does all of the following:

13 “(a) Complies with all provisions of state laws and regulations relating to the fitting or
14 selling of hearing aids.

15 “. . .”

16 14. Section 118, subdivision (b), of the Code states:

17 “The suspension, expiration, or forfeiture by operation of law of a license issued by a board
18 in the department, or its suspension, forfeiture, or cancellation by order of the board or by order
19 of a court of law, or its surrender without the written consent of the board, shall not, during any
20 period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
21 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
22 provided by law or to enter an order suspending or revoking the license or otherwise taking
23 disciplinary action against the licensee on any such ground.”

24 **CALIFORNIA CODE OF REGULATIONS**

25 15. California Code of Regulations, title 16, section 1399.132 states:

26 “For the purposes of denial, suspension, or revocation of a hearing aid dispenser’s license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions, and duties of

1 a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a
2 hearing aid dispenser to perform the functions authorized by his license in a manner consistent
3 with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to
4 those involving the following:

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

6 “(b) Any violation of the provisions of Chapter 7.5, Division 2 of the Business and
7 professions code.”

8 **COST RECOVERY**

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

13 **FACTS**

14 17. On or about October 16, 2012, patient R.S.¹ reported to the Board that on June 8,
15 2012, he bought hearing aids from Krone (KHAC) Hearing Aid Center in Laguna Woods,
16 California. KHAC is owned by E.K., and Respondent works for KHAC as a hearing aid
17 dispenser. Respondent’s responsibilities as a hearing aid dispenser are to test patient’s hearing
18 and, if necessary, fit the patient with hearing aids.

19 18. On or about October 16, 2012, KHAC indicated in numerous ways that KHAC
20 was an authorized Beltone dealer, including the placement of Beltone advertisements throughout
21 the office, a Beltone display on the main counter, and business cards listing KHAC employees as
22 Beltone dealers.

23 19. Respondent tested R.S.’s hearing and fit him for hearing aids. R.S. paid \$1000 as
24 a deposit for his hearing aids, but did not receive any paperwork or a signed purchase order at the
25 time he paid his deposit. E.K. assured R.S. his deposit would be refunded after United Health
26 Care Insurance (United) paid KHAC for the hearing aids. Approximately 2 weeks later

27 _____
28 ¹ Patient and witness names are abbreviated herein to protect confidentiality. Full name will be provided upon receipt of the properly executed and served Request for Discovery.

1 Respondent fitted R.S. with purportedly new Rexton hearing aids.

2 20. R.S. could not hear well when using the hearing aids, and the right hearing aid
3 repeatedly fell out of his ear. On June 26, 2012, R.S.'s daughter D.E., called KHAC and told
4 Respondent that R.S. could not hear clearly while using the hearing aids and that KHAC had not
5 returned R.S.'s deposit. Respondent instructed D.E. to speak with E.K. about the deposit.
6 On or about September 28, 2012, E.K. called D.E. regarding the outstanding deposit. During that
7 conversation D.E. mentioned KHAC displayed Beltone advertising in their Internet ads. In
8 response, Respondent stated KHAC had been affiliated with Beltone approximately a year earlier.

9 21. On or about October 1, 2012, D.E. and R.S. went to KHAC to have the hearing
10 aids adjusted. During this visit D.E. and R.S. noticed KHAC still displayed Beltone advertising
11 on the walls, a Beltone display on the counter, and business cards containing Beltone advertising.

12 22. At this visit, Respondent unsuccessfully attempted to fit and adjust the hearing
13 aids. E.K. then connected the hearing aids to a computer to adjust the volume of the hearing aids
14 and after several attempts was able to adjust them satisfactorily.

15 23. Despite Respondent's adjustments the hearing aids continued to malfunction. D.E.
16 called the Rexton company and complained about the hearing aids. After D.E.'s complaint
17 Rexton determined that the hearing aids were not Rexton hearing aids, but actually non-registered
18 Cobalt hearing aids made in September, 2009. All warranties on the hearing aids had previously
19 expired.

20 24. R.S. filed his complaint and the Board's records revealed both Respondent's license
21 and E.K.'s license were delinquent throughout 2012. During the Board's investigation of this
22 matter Respondent admitted knowing that KHAC was not an authorized Beltone dealer at the
23 time he tested and fit R.S. for hearing aids.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Fraud-Unlicensed Sale of Hearing Aids)

3 25. Respondent is subject to disciplinary action under section 2533 (e), 2538.20 and
4 2538.48, of the Code and California Code of Regulations, title 16, section 1399.132 subsection
5 (b), in that he committed fraud by dispensing hearing aids without a current and valid license.

6 The circumstances are as follows:

7 26. Paragraphs 17 through 24 are incorporated by reference.

8 27. Respondent worked at KHAC, a business which engaged in the practice of fitting or
9 selling hearing aids, fitting and dispensing hearing aids during a time that he did not possess a
10 valid, unrevoked, and unexpired license from the Board to do so, thereby committing fraud.

11 28. Respondent's acts and/or admissions as set forth in paragraphs 17 through 24, above,
12 constitute fraud within the meaning of section 2533 (e), 2538.20, and section 2538.48 of the Code
13 and California Code of Regulations, title 16, section 1399.132, subsection (b). Therefore cause
14 for discipline exists.

15 **SECOND CAUSE FOR DISCIPLINE**

16 (Fraud-Sale of Used or Reconditioned Hearing Aids as if New)

17 29. Respondent is subject to disciplinary action under section 2533 (e) and 2538.35 (d) of
18 the Code and California Code of Regulations, title 16, section 1399.132 subsection (b), in that he
19 committed fraud when he dispensed hearing aids represented as new hearing aids when the
20 hearing aids were actually used hearing aids. The circumstances are as follows:

21 30. Paragraphs 17 through 24 are incorporated by reference.

22 31. Respondent sold used hearing aids which he represented to the purchaser as new
23 hearing aids, thereby committing fraud.

24 32. Respondent's acts and/or admissions as set forth in paragraphs 17 through 24, above,
25 constitute fraud within the meaning of section 2533 (e), 2538.35 (d) of the Code and California
26 Code of Regulations, title 16, section 1399.132, subsection (b). Therefore cause for discipline
27 exists.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Misleading and Deceptive Advertisement)

3 33. Respondent is subject to disciplinary action under section 651 and 2533, subdivisions
4 (e) and (i), of the Code and California Code of Regulations, title 16, section 1399.132 subsection
5 (a), in that he committed fraud when he worked in a practice fitting and dispensing hearing aids
6 which he was aware was misrepresented as an authorized dealer for a well-known hearing aid
7 company. The circumstances are as follows:

8 34. Paragraphs 17 through 24 are incorporated by reference.

9 35. Respondent's business contained Beltone advertisements throughout the office. A
10 Beltone display was on the main counter as were business cards listing KHAC as Beltone dealers,
11 thereby misleading prospective clients to believe KHAC was an authorized Beltone dealer.
12 Respondent misrepresented himself as a hearing aid dispenser and an authorized Beltone dealer
13 by knowingly fitting and dispensing hearing aids in a business which contained these deceptive
14 advertisements throughout while being aware that the business was not associated with Beltone.

15 36. Respondent's acts and/or admissions as set forth in paragraphs 17 through 24, above,
16 constitute fraud within the meaning of sections 651 and 2533, subdivisions (e) and (i), of the
17 Code and California Code of Regulations, title 16, section 1399.132 subsection (a). Therefore
18 cause for discipline exists.

19 **DISCIPLINE CONSIDERATIONS**

20 37. To determine the degree of discipline, if any, to be imposed on Respondent,
21 Complainant alleges that on or about September 14, 2011, in a prior action, the Speech-Language
22 Pathology and Audiology and Hearing Aid Dispensers Board issued Citation Number 1C-2010-
23 107 for unlicensed practice and ordered Respondent to pay a fine of \$1,100.00. That Citation is
24 now final and is incorporated by reference as if fully set forth.

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1 **PRAYER**

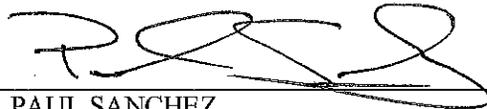
2 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Speech-Language Pathology and Audiology and Hearing Aid
4 Dispensers Board issue a decision:

5 1. Revoking or suspending Hearing Aid Dispenser License Number HA 3104, issued to
6 Robin D. Swanson;

7 2. Ordering Robin D. Swanson to pay the Speech-Language Pathology and Audiology
8 and Hearing Aid Dispensers Board the reasonable costs of the investigation and enforcement of
9 this case, pursuant to Business and Professions Code section 125.3;

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

11
12 DATED: June 26, 2015



13 PAUL SANCHEZ
14 Executive Officer
15 Speech-Language Pathology and Audiology and Hearing
16 Aid Dispensers Board
17 Department of Consumer Affairs
18 State of California
19 *Complainant*

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