

By *Paul Sanchez*

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

11 In the Matter of the Accusation Against:  
12  
13 **GREGORY EDWARD SCOTT**  
609 Elmhurst Drive  
14 Fort Mill, South Carolina 29715  
15  
16 Hearing Aid Dispenser License No. HA 3126  
17  
Respondent.

Case No. 1C-2013-61

**ACCUSATION**

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 February 28, 1992, the Speech-Language Pathology and Audiology and  
24 Hearing Aid Dispensers Board issued Hearing Aid Dispenser License Number 3126 to Gregory  
25 Edward Scott, HA (Respondent). The Hearing Aid Dispenser License was in full force and effect  
26 at all times relevant to the charges brought herein and was surrendered without written consent of  
27 the Board on or about September 2, 2015. It expired on or about February 29, 2016, and may be  
28 renewed within three years of that date, upon application and payment of delinquent fees, if any.

## JURISDICTION

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

6 4. Section 2531.02 of the Code states:

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

11 5. Section 2533 of the Code states:

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

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

18 "..."

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

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

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

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

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

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

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

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

5           "..."

6           6.       Section 118 of the Code states:

7           "..."

8           "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a  
9 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
10 order of a court of law, or its surrender without the written consent of the board, shall not, during  
11 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its  
12 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
13 provided by law or to enter an order suspending or revoking the license or otherwise taking  
14 disciplinary action against the licensee on any such ground.

15          7.       Section 2538.54 of the Code states:

16          "Except as otherwise provided in this article, an expired license may be renewed at any time  
17 within three years after its expiration on filing of an application for renewal on a form prescribed  
18 by the board, and payment of all accrued and unpaid renewal fees. If the license is renewed after  
19 its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee  
20 prescribed by this article. Renewal under this section shall be effective on the date on which the  
21 application is filed, on the date on which the renewal fee is paid, or on the date on which the  
22 delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in  
23 effect through the date provided in Section 2538.53 which next occurs after the effective date of  
24 the renewal, when it shall expire if it is not again renewed."

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

28       ///

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

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

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

10          "(1) The failure to comply with section 3357 of the code or any of the regulations contained  
11 in this article which is a prima facie violation, or is confirmed by an internal investigation report  
12 signed by the chief, or by a formal investigation by the Division of Investigation of the  
13 department within the preceding 36 months. "Confirmed by formal investigation" means the  
14 investigator assigned the matter has written a final investigation report which has been  
15 countersigned by a Supervising Special Investigator.

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

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

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

26          "..."

27          11.     California Code of Regulations, title 16, section 1399.126, states:  
28

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

5           "(b) Tests for significant air-bone gap shall be performed in a suitable environment using  
6 appropriate equipment to establish threshold values and with appropriate masking procedures  
7 employed."<sup>1</sup>

8           12. California Code of Regulations, title 16, section 1399.132

9           "For the purpose of denial, suspension, or revocation of a hearing aid dispenser's license  
10 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
11 crime or act shall be considered substantially related to the qualifications, functions, and duties of  
12 a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a  
13 hearing aid dispenser to perform the functions authorized by his license in a manner consistent  
14 with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to  
15 those involving the following:

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

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

19           13. Section 651 states:

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

28           <sup>1</sup> Section 3365.5 is now renumbered as section 2538.36.

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 "(1) Contains a misrepresentation of fact.

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

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

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

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

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

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

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

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

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

10          "(c) Any price advertisement shall be exact, without the use of phrases, including, but not  
11 limited to, 'as low as,' 'and up,' 'lowest prices,' or words or phrases of similar import. Any  
12 advertisement that refers to services, or costs for services, and that uses words of comparison  
13 shall be based on verifiable data substantiating the comparison. Any person so advertising shall  
14 be prepared to provide information sufficient to establish the accuracy of that comparison. Price  
15 advertising shall not be fraudulent, deceitful, or misleading, including statements or  
16 advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In  
17 connection with price advertising, the price for each product or service shall be clearly  
18 identifiable. The price advertised for products shall include charges for any related professional  
19 services, including dispensing and fitting services, unless the advertisement specifically and  
20 clearly indicates otherwise.

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

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

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

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

5           “...”

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

9           "Each of the healing arts boards and committees and examining committees within Division  
10 2 shall, by regulation, define those efficacious services to be advertised by businesses or  
11 professions under their jurisdiction for the purpose of determining whether advertisements are  
12 false or misleading. Until a definition for that service has been issued, no advertisement for that  
13 service shall be disseminated. However, if a definition of a service has not been issued by a  
14 board or committee within 120 days of receipt of a request from a licensee, all those holding the  
15 license may advertise the service. Those boards and committees shall adopt or modify  
16 regulations defining what services may be advertised, the manner in which defined services may  
17 be advertised, and restricting advertising that would promote the inappropriate or excessive use of  
18 health services or commodities. A board or committee shall not, by regulation, unreasonably  
19 prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or  
20 commodities, by either outright prohibition or imposition of onerous disclosure requirements.  
21 However, any member of a board or committee acting in good faith in the adoption or  
22 enforcement of any regulation shall be deemed to be acting as an agent of the state.

23           (j) The Attorney General shall commence legal proceedings in the appropriate forum to  
24 enjoin advertisements disseminated or about to be disseminated in violation of this section and  
25 seek other appropriate relief to enforce this section. Notwithstanding any other provision of law,  
26 the costs of enforcing this section to the respective licensing boards or committees may be  
27 awarded against any licensee found to be in violation of any provision of this section. This shall  
28

1 not diminish the power of district attorneys, county counsels, or city attorneys pursuant to  
2 existing law to seek appropriate relief.

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

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

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

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

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

25 "(c) If the buyer returns the device within the period specified in the written warranty, the  
26 seller shall, without charge and within a reasonable time, adjust the device or, if appropriate,  
27 replace it with a device that is specifically fit for the particular needs of the buyer. If the seller  
28 does not adjust or replace the device so that it is specifically fit for the particular needs of the

1 buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be  
2 deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive  
3 device or other consideration exchanged as part of the transaction and shall promptly cancel or  
4 cause to be canceled all contracts, instruments, and security agreements executed by the buyer in  
5 connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other  
6 fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

7 "...."

8 16. Section 125 states:

9 "Any person, licensed under Division 1 (commencing with Section 100), Division 2  
10 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a  
11 misdemeanor and subject to the disciplinary provisions of this code applicable to him or her, who  
12 conspires with a person not so licensed to violate any provision of this code, or who, with intent  
13 to aid or assist that person in violation those provisions does either of the following:

14 "(a) Allows his or her license to be used by that person.

15 "(b) Acts as his or her agent or partner."

### 16 COST RECOVERY

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

21 18. Paragraph 13 above, referring to the costs provision of section 651, subsection (j), is  
22 re-alleged and incorporated herein by reference.

### 23 FACTS

24 19. Respondent Gregory Scott established a corporation called Elite Consultants Inc.  
25 (Elite), a marketing firm designed to provide temporary sales associates for hearing aid  
26 dispensing businesses. The corporation, which has since dissolved, was comprised of  
27 approximately eight to ten salespeople familiar with the hearing aid market. Respondent held the  
28 corporate title of President of Elite. Some of the salespeople, like Respondent, had a Hearing Aid

1 Dispenser (HAD), license in California, and others who were licensed in other states were able to  
2 obtain temporary licenses in California. Those salespersons who were not eligible for temporary  
3 licensure in California became trainee licensees under the supervision of other Elite salespersons.  
4 Elite claimed to provide sales associates who possess a special "proprietary method" of  
5 "promoting and procuring hearing aid sales."

6 20. On or about January 1, 2011, January 1, 2012, and January 1, 2013 Respondent  
7 entered into yearly contracts to provide the services of sales associates for McDonald Hearing  
8 Aid Center (MHAC), a hearing aid dispensing business with multiple branch locations throughout  
9 northern California. The owner of MHAC is Mark Moore, California HAD license No. 2425.  
10 The contract called for Elite sales associates to staff the MHAC branch locations during specially  
11 advertised sales events for the purpose of increasing hearing aid sales. At the time of entering  
12 into this contract with MHAC, Respondent was aware that MHAC employs false and misleading  
13 advertising, including bait and switch advertising, misstatements of the normal pricing and  
14 limited time offers of products, and making false statements that the sale is no-risk and  
15 satisfaction guaranteed despite employing onerous and unlawful return policies. Respondent  
16 nonetheless agreed to provide sales associates to MHAC, and to work as a sales associate himself,  
17 on dates that coincided with these advertising practices, by providing sales associates to work at  
18 Open House hearing aid sales events advertised by MHAC. Under the terms of the contracts,  
19 MHAC agreed to pay Elite \$25.00-\$50.00 per sale of the advertised, low-cost, "bait" product, and  
20 14% of the sales price on the higher-priced, "switch," product if the Elite sales associates were  
21 able to achieve a sale of the higher-priced product.

22 21. Ashley Brown was identified as the Vice President of Elite. She is currently a  
23 licensee of the North Carolina Hearing Aid Dealers and Fitters Board. Ms. Brown was issued  
24 California Hearing Aid Dispenser Trainee License No. 8678 on or about May 25, 2010, and the  
25 license expired on or about November 30, 2011. During the 18 months Ms. Brown held this  
26 Trainee License, she was under the supervision of Respondent. Even after her license expired,  
27 throughout 2012 and 2013, she continued to staff the MHAC branch sales events, selling more  
28 hearing aids than any other member of the Elite marketing company, with Respondent's full

1 knowledge. In her role as Vice President of Elite, Ms. Brown's unlicensed practice continued at  
2 least through August 21, 2013, at which time she was cited for a misdemeanor offense of  
3 unlicensed practice of hearing aid dispensing at a MHAC branch location in Contra Costa  
4 County.

5 **Ashley Brown's Role in Sale to Consumer M.B.**

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

14 23. On or about January 20, 2012, Sister M.B. and F.W. entered the MHAC branch  
15 location in Lodi. HAD Robert Bennett, a regular employee of MHAC, was working at the Lodi  
16 location on that day. In accordance with the terms of the contract between Elite and MHAC,  
17 Ashley Brown, was working as an Elite Sales Associate at the Lodi branch of MHAC on this date  
18 as well, even though her trainee license expired two months before.

19 24. Sister M.B. immediately explained that she was not authorized to make any purchases  
20 herself without consulting with her Order's financial advisor, and that she was merely there to  
21 conduct a price comparison of the \$700.00 hearing aids she saw advertised. Sister M.B. was  
22 separated from Sister F. W., and led into a room by HAD Robert Bennett, who conducted a  
23 hearing test.

24 25. After the hearing test was completed, Ms. Brown entered the room where Sister M.B.  
25 was waiting. Ms. Brown was wearing a white coat, and waving the audiometric testing graph  
26 dramatically. She told Sister M.B. that she had a "very serious hearing loss." Sister M.B. was  
27 shaken and upset by the statements that she had a serious hearing loss, and found that HAD  
28 Bennett was speaking a rush of words at her, and felt she could not get a word in. Sister M.B.

1 asked Brown about the \$700.00 hearing aids advertised, but Brown told her that those are only  
2 suitable for people in the top part of the graph, and her hearing loss extended to the bottom of the  
3 graph. Sister M.B. restated to Bennett and Brown that she cannot make any large expenditures  
4 without prior authorization from her Order. Bennett brought out paperwork for an order for  
5 hearing aids, and explained that if she did not fill out the forms, the offer would not be available  
6 later. Sister M.B. asked if she could take the paperwork with her to review before signing  
7 anything. Brown told her that she had already entered into the contract, and it did not really  
8 matter if she signed the paperwork or not. Sister M.B. finally signed the paperwork because she  
9 felt shaken up and wanted to leave.

10 26. MHAC records show that Sister M.B. entered into a purchase agreement with HAD  
11 Bennett on January 20, 2012, for the purchase of a pair of Intela-Hear hearing aids at the cost of  
12 \$9,000.00. The records further show that she opened a credit card through CreditCare to finance  
13 the purchase. Once Sister M.B. left the MHAC branch location and began reviewing the  
14 purchase agreement, she saw that she had opened a credit card and had purchased an expensive  
15 hearing aid package. As a result of her shock and distress, Sister M.B. was unable to drive herself  
16 home, and she and Sister F.W. stayed the night in a nearby hotel. Sister M.B. was still shaken up  
17 that evening, and tripped and fell, causing her wrist to fracture.

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

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

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conspiracy to Commit Fraud)**

3 29. Paragraphs 19-21, and 22-28, above are incorporated by reference as if fully set forth  
4 herein.

5 30. Respondent is subject to disciplinary action under section 125, in that he conspired  
6 with unlicensed Ashley Brown and HAD Mark Moore (owner of MHAC), to violate section  
7 2533, subdivision (e), and California Code of Regulations, title 16, section 1399.132, which  
8 incorporates section 651. Respondent knowingly and willfully conspired with Brown and Moore  
9 to commit fraudulent or dishonest acts in connection with the sale of hearing aids to Sister M.B,  
10 in that both Respondent and Moore were aware that Brown was not licensed as a HAD in  
11 California, but was continuing to act as a sales associate at MHAC branch locations under the  
12 contractual agreement between Elite and MHAC described above. Under the terms of this  
13 agreement Brown had the financial incentive to commit the following fraudulent or dishonest acts  
14 in furtherance of the conspiracy:

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

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

19 (c) Brown upsold Sister M.B. to a higher priced hearing aid that was not necessary or  
20 suitable for her based on her representations that she was only at MHAC to conduct price  
21 comparison of the advertised \$745.00 hearing aid.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Conspiracy to Engage in Unlicensed Practice)**

24 31. Paragraphs 19-21, and 22-28 above are incorporated by reference as if fully set forth  
25 herein.

26 32. Respondent is subject to disciplinary action under section 125, in that he conspired  
27 with unlicensed Ashley Brown to violate section 2538.48 and 2538.50. As Respondent's agent or  
28

1 partner, Brown violated these provisions by fitting and selling and holding herself out as an  
2 individual licensed to fit and sell hearing aids to Sister M.B. on or about January 20, 2012.

3 **Ashley Brown's Role in Sale to Consumer M.S.**

4 33. On or about February 10, 2012, M.S., an 81 year old woman, responded to an  
5 advertisement by MHAC, advertising a limited time 10-day sale, of 50-67% off prices, with a free  
6 video ear inspection and audiometric testing, and a \$745.00 entry level hearing aid, with a six-  
7 week guarantee, "no risk," and "nothing to lose." On or about February 10, 2012, M.S. entered  
8 the Fair Oaks MHAC branch location at 5480 Dewey Drive, Suite 110, in Fair Oaks, California.  
9 Ashley Brown was working at the Fair Oaks MHAC branch on February 10, 2012, under the  
10 terms of the contract between Elite and MHAC, despite her trainee license having expired three  
11 months earlier.

12 34. On or about February 10, 2012, M.S. was given an audiometric hearing test by HAD  
13 Michelle Moreland. HAD Moreland then introduced M.S. to Ashley Brown. Brown told M.S.  
14 that she had a "50% hearing loss" and advised her to purchase a pair of hearing aids for  
15 \$4,990.00. M.S. asked Brown why she could not have the \$745.00 hearing aid advertised, and  
16 Brown told her that the entry level hearing aid was not suitable for her needs. M.S. told Brown  
17 that she would like to have a second opinion. Brown told her that it was unnecessary as MHAC  
18 had been in business for 60 years. Brown proceeded to make molds of M.S.'s ears.

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



1 40. Respondent is subject to disciplinary action under section 125, in that he conspired  
2 with unlicensed Ashley Brown to violate section 2538.48 and 2538.50. As Respondent's agent or  
3 partner, Brown violated these provisions by fitting and selling and holding herself out as an  
4 individual licensed to fit and sell hearing aids to M.S. on or about February 10, 2012.

5 **Undercover Investigator's Trip to Roseville Branch of MHAC**

6 41. During the year 2013, after receiving numerous complaints from dissatisfied  
7 consumers of MHAC, the Division of Investigation of the Department of Consumer Affairs was  
8 conducting an investigation into the practices of MHAC. On or about May 9, 2013, two Division  
9 of Investigation investigators, acting in an undercover capacity, entered the Roseville Branch of  
10 MHAC. The female Investigator (Inv. 1), assumed the role of a caregiver relative to the older  
11 male Investigator, who assumed the role of hearing aid consumer, (Inv. 2). Before entering the  
12 MHAC branch location on May 9, 2013, Inv. 2 had undergone a hearing test with a licensed  
13 audiologist in preparation for the undercover operation. Inv. 2 provided the results of his hearing  
14 test to a Board expert, to determine whether the advertised \$745.00 entry level hearing aid would  
15 be suitable for his hearing loss. The Board expert determined that the entry level hearing aid  
16 would be suitable.

17 42. Upon entering the Roseville MHAC branch the undercover investigators explained to  
18 the receptionist that they had seen an advertisement for hearing aids, and would like to learn  
19 more. The receptionist made an appointment for Inv. 2, for the following day, explaining that a  
20 factory representative would be available then to discuss the benefits of the hearing aids.

21 43. When the Investigators returned the next day, May 10, 2013, Allen Schoen, a sales  
22 associate with Elite, was working at the Roseville Branch of MHAC under the terms of the  
23 contract between Elite and MHAC. Allen Schoen was issued California Hearing Aid Dispenser  
24 Trainee License No. 8930 on November 19, 2012, under the supervision of Respondent, which  
25 continued until October 21, 2013.

26 44. Inv. 1 and Inv. 2 were initially met by MHAC associated, HAD Geraci-Staub and  
27 HAD Roy Bostick. HADs Geraci-Staub and Bostick led Inv. 2 to a separate room to perform a  
28 hearing test on Inv. 2. While Inv. 1 was waiting for Inv. 2 to complete his testing, Inv. 1 observed

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

5 45. HAD Geraci-Staub returned to the waiting area to speak with the receptionist. She  
6 held a piece of paper to the left side of her mouth to help conceal her words, but Inv. 1 could hear  
7 Geraci-Staub tell the receptionist that she needed Allen Schoen, the factory representative, to be  
8 present to make the sale. The receptionist asked Geraci-Staub if she could do it, and Geraci-  
9 Staub responded that she could, but that she would rather have Schoen there as he is the more  
10 successful salesperson.

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

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

20 48. After Stan Atkinson left the room, Hearing Aid Trainee Allen Schoen entered the  
21 room and said that he would explain the hearing test and offer recommendations on hearing aids.  
22 Inv. 2 showed Schoen an advertisement for a \$745.00 hearing aid, and explained that was what  
23 brought him into the store. Schoen told Inv. 2 that the entry level hearing aid was only  
24 appropriate for people with a 35-40 decibel hearing loss. Schoen said that Inv. 2's hearing loss is  
25 not within that range, and that he would not be happy with the entry level hearing aid, and would  
26 miss certain frequencies. Schoen said Inv. 2 did not need the high end hearing aids, but could not  
27 use the entry-level ones either, and that the most appropriate hearing aids for him would be in the  
28 middle, in the \$3,500 to \$5,500 price range.



1 **SIXTH CAUSE FOR DISCIPLINE**

2 **(Use of Misleading Advertising/Supervisor Responsible for the Acts/Omission of**  
3 **Trainee)**

4 52. Paragraphs 19-21 and 41-49 above are incorporated by reference as if fully set forth  
5 herein.

6 53. Respondent is subject to disciplinary action under section 2538.28, (Supervisor  
7 Responsibility for the acts of trainee under his supervision), for Schoen's use of misleading  
8 advertising materials in connection with the attempted sale to Inv. 2. Schoen violated section  
9 2533, subdivision (i), and California Code of Regulations, title 16, section 1399.127, which  
10 incorporates section 651, in that he used advertising in a manner that has the capacity or tendency  
11 to mislead or deceive prospective purchasers.

12 **Undercover Investigator's Trip to Santa Rosa Branch of MHAC**

13 54. On or about August 21, 2013, Inv. 1 and Inv. 2 went to MHAC branch location in  
14 Santa Rosa in an undercover capacity with an appointment set up for Inv. 2 at 11:00 a.m. Inv. 1  
15 and 2 entered the Santa Rosa branch location at 1425 Fulton Road, Suite 315, in Santa Rosa,  
16 California, and were met by HAD Michelle Nielson. HAD Nielson took Inv. 2 to another room  
17 to perform a hearing test. After the hearing test was completed, Inv. 1 returned to the room with  
18 Inv. 2, and waited.

19 55. Respondent, acting as a salesperson for MHAC pursuant to the contract between  
20 MHAC and Elite, then approached Inv. 2 and took him to another room to discuss his test and  
21 recommend hearing aids. HAD Scott told Inv. 2 that he should wear hearing aids. Scott told Inv.  
22 2 that because of his hearing loss, his brain function is starting to drop, and he is losing his ability  
23 to distinguish speech. Scott told Inv. 2 that this is causing his short-term memory to be affected.  
24 Scot told Inv. 2 that wearing hearing aids will help his ability to distinguish speech, and improve  
25 his memory.

26 56. HAD Scott showed Inv. 2 a hearing aid that would cost \$7,500.00 each. Scott  
27 explained that it is a medical device to retrain the brain, and that if he is not satisfied with them  
28 after six weeks, he can return them for a refund. Inv. 2 asked Scott about the \$745.00 hearing aid,

1 and Scott told him that he “might be able to get away” with a pair of hearing aids costing \$3,490,  
2 but that he should not get any hearing aids lower in cost than that. Scott explained that the  
3 important thing is for Inv. 2 to wear hearing aids to prevent his short-term memory from being  
4 impaired, as the theory now is that the precursor to dementia is hearing loss.

5 **SEVENTH CAUSE FOR DISCIPLINE**

6 **(Fraudulent Dishonest Act)**

7 57. Paragraphs 19-21 and 54-56 above are incorporated by reference as if fully set forth  
8 herein.

9 58. Respondent is subject to disciplinary action under section 2533, subsection (e), and  
10 California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that  
11 he committed fraudulent or dishonest acts in connection with the attempted sale of hearing aids to  
12 Inv. 2, which include, but are not limited to the following:

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

16 (b) Respondent made false and unscientific statements regarding short term memory and  
17 dementia and the relationship of these phenomena to hearing loss in an attempt to frighten and  
18 mislead Inv. 2 into purchasing more expensive hearing aids to obtain greater profit under the  
19 contract between Elite and MHAC.

20 **EIGHTH CAUSE FOR DISCIPLINE**

21 **(Use of Promotional Literature or adverting designed to mislead)**

22 59. Paragraphs 19-21 and 54-56 above are incorporated by reference as if fully set forth  
23 herein.

24 Respondent is subject to disciplinary action under section 2533, subdivision (i), and  
25 California Code of Regulations, title 16, section 1399.127, which incorporates section 651, in that  
26 he used advertising in a manner that has the capacity or tendency to mislead or deceive  
27 prospective purchasers for his use of misleading advertising materials in connection with the  
28 attempted sale to Inv. 2.

**Undercover Investigator's Trip to Walnut Creek Branch of MHAC**

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2       60. On or about August 21, 2013, after Inv. 1 and 2 left the Santa Rosa branch location,  
3 they traveled to the Walnut Creek branch location of MHAC. On or about August 21, 2013, Inv.  
4 1 and 2 entered the Walnut Creek branch of MHAC at 1399 Ygnacio Valley, Suite 21, in Walnut  
5 Creek, California, explaining that they did not have an appointment. Inv. 2 completed some  
6 paperwork, and was seen by Ashley Brown who was unlicensed.

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

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

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

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1 **NINTH CAUSE FOR DISCIPLINE**

2 **(Conspiracy to Commit Fraud)**

3 64. Paragraphs 19-21 and 60-63 above are incorporated by reference as if fully set forth  
4 herein.

5 65. Respondent is subject to disciplinary action under section 125, in that he conspired  
6 with unlicensed Ashley Brown and HAD Mark Moore (owner of MHAC), to violate section  
7 2533, subdivision (e), and California Code of Regulations, title 16, section 1399.132, which  
8 incorporates section 651. Respondent knowingly and willfully conspired with Brown and Moore  
9 to commit fraudulent or dishonest acts in connection with the sale of hearing aids to Inv. 2., in  
10 that both Respondent and Moore were aware that Brown was not licensed as a HAD in California,  
11 but was continuing to act as a sales associate at MHAC branch locations under the contractual  
12 agreement between Elite and MHAC described above. Under the terms of this agreement Brown  
13 had the financial incentive to commit the following fraudulent or dishonest acts in furtherance of  
14 the conspiracy; she made misleading and unscientific statements to Inv. 2 when she told him that  
15 he had an "80%" hearing loss at high frequency, and that using the hearing aids she recommended  
16 would bring him up to "100%" hearing.

17 **TENTH CAUSE FOR DISCIPLINE**

18 **(Conspiracy to Engage in Unlicensed Practice)**

19 66. Paragraphs 19-21 and 60-63 above are incorporated by reference as if fully set forth  
20 herein.

21 67. Respondent is subject to disciplinary action under section 125, in that he conspired  
22 with unlicensed Ashley Brown to violate section 2538.48 and 2538.50. As Respondent's agent or  
23 partner, Brown violated these provisions by fitting and selling and holding herself out as an  
24 individual licensed to fit and sell hearing aids to Inv. 2 on or about August 21, 2013.

25 **ELEVENTH CAUSE FOR DISCIPLINE**

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

27 68. Paragraphs 19-21, 22-28, 33-36, 41-49, 54-56, and 60-63 above are incorporated by  
28 reference as if fully set forth herein.

