

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

In the Matter of the Second Amended
Accusation Against:

AARON A. MARQUIS,

Hearing Aid Dispenser, License No. HA 3617

Respondent

Case No. 1C-2010-14

OAH No.: 2013010346

**ORDER WITHDRAWING ORDER OF REMAND TO ADMINISTRATIVE LAW
JUDGE AND ADOPTING THE PROPOSED DECISION**

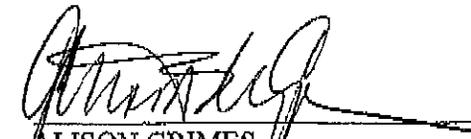
The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board ("Board") hereby withdraws the Order of Remand to Administrative Law Judge heretofore entered on

12/22/14.

Further, the Board hereby adopts the Proposed Decision of the Administrative Law Judge as her decision in this matter.

This decision shall become effective on 2/14/15, 2015.

IT IS SO ORDERED this 15th day of January, 2015.


ALISON GRIMES

Board Chair, Speech-Language
Pathology and Audiology and
Hearing Aid Dispensers Board

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In the Matter of the Second Amended Accusation
Against:

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Respondent.

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PROPOSED DECISION

Administrative Law Judge Regina J. Brown, Office of Administrative Hearings, State of California, heard this matter on October 20, 2014, in Oakland, California.

Deputy Attorney General Ashley Harlan represented complainant Paul Sanchez.

There was no appearance by or on behalf of respondent Aaron A. Marquis.

The matter was submitted on October 20, 2014.

FACTUAL FINDINGS

1. On June 17, 1996, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (board) issued hearing aid dispenser license number HA 3617 to respondent Aaron A. Marquis. The license expired on June 30, 2014.

2. The accusation was filed against respondent on November 29, 2012. On December 10, 2012, respondent filed a notice of defense. On September 16, 2014, complainant Paul Sanchez, acting in his official capacity as executive officer of the board, brought a second amended accusation against respondent.

3. Respondent was properly served with the second amended accusation in compliance with the notice and service requirements of Government Code section 11509. This matter proceeded as a default hearing under Government Code section 11520.

4. On November 25, 2013, in San Luis Obispo County Superior Court, respondent was convicted on his plea of no contest of a violation of Penal Code sections 487, subdivision (a) (grand theft of personal property), and 550, subdivision (a)(6) (insurance fraud), with an enhancement under section 186.11, subdivision (a)(3) (pattern of related felony conduct involving the taking of more than \$100,000). These convictions are felonies and substantially related to the qualifications, functions, or duties of a hearing aid dispenser.

Imposition of sentence was suspended and respondent was placed on formal probation for five years on the conditions that he serve 365 days in jail with credit for time served of 69 days, pay restitution, pay fines and fees, not practice as a hearing aid dispenser while on probation, not assist or work with a hearing aid dispenser, audioprosthologist or audiologist, not bill insurance companies for services, and surrender his business license if the administrative authority filed charges to forfeit his business license.

The facts and circumstances underlying this conviction are that, from April 2009 through July 6, 2011, respondent took money and personal property from Anthem Blue Cross, by filing false and fraudulent claims for payment of health care benefits.

5. Respondent appealed the accusation, but he did not appear at the hearing. There is no evidence of mitigation or rehabilitation.

Costs

6. The board certifies that the costs incurred in connection with the department's investigation totaled over \$206,000. The costs incurred in connection with the enforcement by the Office of the Attorney General were \$18,051.50.

7. There is no evidence that respondent was the cause of the delay, given that the accusation was issued in November 2012, in finally bringing this matter to an administrative hearing. Best practices would be to have a due process hearing in a reasonable period of time to avoid certain costs. Additionally, the second amended accusation only has two causes for discipline which are solely related to his convictions. Furthermore, the declarations provided for the investigative costs were confusing, not detailed, and appear duplicative. Thus, the reasonable costs of investigation are determined to be \$10,000, and the reasonable costs of enforcement are determined to be approximately one-half of the attorney's costs in the amount of \$9,000, for a total amount of \$19,000.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 118, subdivision (b),¹ the expiration of a hearing aid dispenser license does not prevent the filing of an accusation for disciplinary action against the registrant.

2. Section 490, subdivision (a), provides that a license may be suspended or revoked if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the business or profession for which the license was issued. Section 2533, subdivision (a), provides that the board may suspend or revoke a license for conviction of a crime substantially related to the qualifications, functions, and duties of a hearing aid dispenser. A crime is considered to be substantially related to the qualifications, functions or duties of a hearing aid dispenser if "to a substantial degree it evidences the present or potential unfitness of a licensed hearing aid dispenser to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1399.132.) In this case, respondent's conduct, in engaging in insurance fraud, demonstrates a lack of honesty and integrity which is necessary to perform the functions and duties of a hearing aid dispenser.

3. Cause exists to take disciplinary action against respondent's license pursuant to section 490, subdivision (a), and section 2533, subdivision (a), in that respondent has been convicted of a crime that is substantially related to the qualifications, functions or duties of a hearing aid dispenser, as set forth in Finding 3, and Legal Conclusion 2.

4. Section 2533, subdivision (e), provides that the Board may take disciplinary action against a hearing aid dispenser licensee for committing a dishonest or fraudulent act that is substantially related to the qualifications, functions, or duties of a licensee.

5. Cause exists to take disciplinary action against respondent's hearing aid dispenser license pursuant to section 2533, subdivision (e), in that respondent committed crimes involving dishonest and fraudulent acts which are related to the qualifications, functions, or duties of a hearing aid dispenser licensee, as set forth in Finding 3 and Legal Conclusions 2 and 4.

6. Respondent did not appear at the hearing. He made no showing of mitigation or rehabilitation. Respondent's conduct was repeated and occurred over a period of years netting respondent over \$100,000 in illegal financial gains. In addition, his crimes involved dishonesty and fraud which are both serious offenses. Protection of the public requires that his license be revoked.

¹All statutory references are to the Business and Professions Code.

Cost recovery

7. Section 125.3 provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." Generally, the Board's certification of the actual costs constitutes prima facie evidence of its costs.

8. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Court set forth the factors to be considered in determining the reasonableness of costs. Those factors include, but are not limited to, whether the scope of the investigation was appropriate to the alleged conduct of the respondent. In this case, the second amended accusation is solely based on respondent's convictions in 2013, warranting a reduction in costs. Therefore, the reasonable costs should be reduced to \$19,000, as indicated in Finding 7.

ORDER

1. It is hereby ordered that hearing aid dispenser license number HA 3617 issued to respondent Aaron A. Marquis is revoked.

2. Respondent Aaron A. Marquis shall pay the Board \$19,000, as the reasonable costs of the investigation and prosecution of this case.

DATED: October 28, 2014



REGINA J. BROWN
Administrative Law Judge
Office of Administrative Hearings

By Gyonna Crawford

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

11 In the Matter of the Second Amended
Accusation Against:

12 **AARON A. MARQUIS, HAD**

13 **628 California Blvd. #F**
14 **San Luis Obispo, CA 93401**

15 **Hearing Aid Dispenser License No. HA 3617**

16 Respondent.

Case No. 1C-2010-14

OAH No. 2013010346

SECOND AMENDED ACCUSATION

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about June 17, 1996, the Speech-Language Pathology and Audiology and
24 Hearing Aid Dispensers Board issued Hearing Aid Dispenser License Number HA 3617 to Aaron
25 A. Marquis, HAD ("Respondent"). The Hearing Aid Dispenser License was in full force and
26 effect at all times relevant to the charges brought herein and expired on June 30, 2014 and has not
27 been renewed.
28

JURISDICTION

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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
4 authority of the following laws. All section references are to the Business and Professions Code
5 unless otherwise indicated.

6 4. Section 2533 of the Code states, in relevant part:

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

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

13 "...

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

16 5. Section 490 of the Code states, in relevant part:

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

21 "...

22 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
23 conviction following a plea of nolo contendere. An action that a board is permitted to take
24 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
25 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
26 made suspending the imposition of sentence, irrespective of a subsequent order under Section
27 1203.4 of the Penal Code. ..."

1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Substantially Related Conviction)

3 6. Respondent's license is subject to disciplinary action for unprofessional conduct
4 under Code sections 2533(a) and 490(a) and (c), in that on November 25, 2013, Respondent was
5 convicted by plea of no contest of violating Penal Code ("PC") section 487(a) [grand theft of
6 personal property], a felony, and PC 550(a)(6) [insurance fraud], a felony, with aggravated white
7 collar criminal enhancement under PC 186.11(a)(3), convictions which are substantially related to
8 the qualifications functions or duties of a hearing aid dispenser license. The circumstances are as
9 follows:

10 7. On October 21, 2013, in a case entitled *The People of the State of California v. Aaron*
11 *Allen Marquis and Anja Elaine Marquis*, in San Luis Obispo County Superior Court, Case
12 Number F000487746, a criminal complaint was filed, which alleged that beginning on or about
13 January 1, 2008, and continuing through approximately March 4, 2013, Respondent aided,
14 abetted, solicited, and conspired with another to knowingly make false and fraudulent claims for
15 payment of health care benefits from Coastal Communities Physician Network ("CCPN"), State
16 Compensation Insurance Fund, Anthem Blue Cross, Blue Shield of California, CenCal Health,
17 California Association of Highway Patrolmen ("CAHP") Health Benefits Fund, and the
18 California Department of Rehabilitation, as well as Patients V.R.,¹ S.B., and K.C. Respondent
19 was charged as follows: ten counts felony grand theft under PC 487(a) and twelve counts felony
20 insurance fraud under PC 550(a)(6), with aggravated white collar criminal enhancement under PC
21 186.11(a)(3) for committing repeated acts of felony fraud and embezzlement resulting in losses in
22 excess of \$100,000.00 and further enhancement under PC 12022.6(A)(1) for the damage and
23 destruction of property valued in excess of \$65,000.00.

24 8. From January 1, 2008 through March 4, 2013, Respondent billed and received
25 payment from the above-mentioned insurance carriers and individual patients for audiology
26

27 ¹ Initials are used to protect patient confidentiality. Patient names will be released with
28 discovery.

1 services by representing himself as a licensed Audiologist. Respondent is not now, nor has he
2 ever been, a licensed Audiologist.

3 9. On November 25, 2013, Respondent was convicted by plea of no contest of violating
4 PC 487(a), a felony, and PC 550(a)(6), a felony, with aggravated white collar criminal
5 enhancement under PC 186.11(a)(3). Respondent was sentenced as follows: 365 days jail time,
6 five years formal probation, \$235,993.50 restitution to both public and private insurers, and
7 \$1,560.00 in fines. As a condition of probation, Respondent was ordered not to practice as a
8 hearing aid dispenser, audioprosthologist, or audiologist, nor assist or work with a hearing aid
9 dispenser, audioprosthologist, or audiologist, not to bill insurance providers for services, and to
10 surrender his hearing aid dispenser license upon the filing of an Accusation.

11 SECOND CAUSE FOR DISCIPLINE

12 (Unprofessional Conduct - Dishonest or Fraudulent Act)

13 10. Paragraphs 6 through 9 are incorporated herein.

14 11. Respondent's license is subject to disciplinary action for unprofessional conduct
15 under Code section 2533(e) for a dishonest or fraudulent act, in that on November 25, 2013,
16 Respondent was convicted of violating PC 550(a)(6), felony insurance fraud, with aggravated
17 white collar criminal enhancement under PC 186.11(a)(3) for committing repeated acts of felony
18 fraud resulting in losses in excess of \$100,000.00.

19 PRAYER

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

23 1. Revoking or suspending Hearing Aid Dispenser License Number 3617, issued to
24 Aaron A. Marquis, HAD;

25 2. Ordering Aaron A. Marquis to pay the Speech-Language Pathology and Audiology
26 and Hearing Aid Dispensers Board the reasonable costs of the investigation and enforcement of
27 this case, pursuant to Business and Professions Code section 125.3; and
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3. Taking such other and further action as deemed necessary and proper.

DATED: September 16, 2014



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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