

**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:

**MARLE A. SCOTT, HAD  
2329 Hilltop Drive  
Redding CA 96002  
Hearing Aid Dispenser License No. HA 7065**

Case No. 1C-2011-21

OAH No. 2012060730

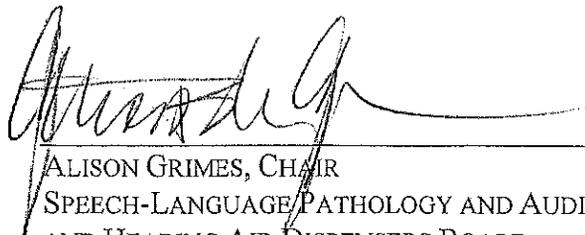
Respondent.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on March 3, 2014.

It is so ORDERED January 31, 2014.



ALISON GRIMES, CHAIR  
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY  
AND HEARING AID DISPENSERS BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS  
Attorney General of California  
2 JOSE R. GUERRERO  
Supervising Deputy Attorney General  
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:  
13 **MARLE A. SCOTT, HAD**  
14 **2329 Hilltop Drive**  
15 **Redding CA 96002**  
16 **Hearing Aid Dispenser License No. HA 7065**  
17 Respondent.

Case No. 1C-2011-21  
OAH No. 2012060730  
**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 **PARTIES**

- 21 1. Annemarie Del Mugnaio (Complainant) is the Executive Officer of the Speech-  
22 Language Pathology and Audiology and Hearing Aid Dispensers Board. She brought this action  
23 solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney  
24 General of the State of California, by Michelle L. Angus, Deputy Attorney General.
- 25 2. Respondent Marle A. Scott, HAD (Respondent) is represented in this proceeding by  
26 attorney David A. Valerio, whose address is: P.O. Box 4977, Auburn, CA 95604.
- 27 3. On or about July 11, 2006, the Speech-Language Pathology and Audiology and  
28 Hearing Aid Dispensers Board issued Hearing Aid Dispenser License No. HA 7065 to Marle A.

1 Scott, HAD (Respondent). The Hearing Aid Dispenser License was in full force and effect at all  
2 times relevant to the charges brought in Accusation No. 1C-2011-21 and will expire on July 31,  
3 2014, unless renewed.

#### 4 JURISDICTION

5 4. Accusation No. 1C-2011-21 was filed before the Speech-Language Pathology and  
6 Audiology and Hearing Aid Dispensers Board (Board), Department of Consumer Affairs, and is  
7 currently pending against Respondent. The Accusation and all other statutorily required  
8 documents were properly served on Respondent on May 30, 2012. Respondent timely filed her  
9 Notice of Defense contesting the Accusation.

10 5. A copy of Accusation No. 1C-2011-21 is attached as exhibit A and incorporated  
11 herein by reference.

#### 12 ADVISEMENT AND WAIVERS

13 6. Respondent has carefully read, fully discussed with counsel, and understands the  
14 charges and allegations in Accusation No. 1C-2011-21. Respondent has also carefully read, fully  
15 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
16 Order.

17 7. Respondent is fully aware of her legal rights in this matter, including the right to a  
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
19 her own expense; the right to confront and cross-examine the witnesses against her; the right to  
20 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to  
21 compel the attendance of witnesses and the production of documents; the right to reconsideration  
22 and court review of an adverse decision; and all other rights accorded by the California  
23 Administrative Procedure Act and other applicable laws.

24 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
25 every right set forth above.

#### 26 CULPABILITY

27 9. Respondent admits the truth of each and every charge and allegation in the First  
28 Cause for Discipline in Accusation No. 1C-2011-21 and that such conduct constitutes repeated

1 negligent acts, but denies such conduct constitutes incompetence or gross negligence.

2 Respondent further admits the truth of each and every charge and allegation in the Second Cause  
3 for Discipline and Third Cause for Discipline in Accusation No. 1C-2011-21.

4 10. Respondent agrees that her Hearing Aid Dispenser License is subject to discipline and  
5 she agrees to be bound by the Speech-Language Pathology and Audiology and Hearing Aid  
6 Dispensers Board probationary terms as set forth in the Disciplinary Order below.

7 **CONTINGENCY**

8 11. This stipulation shall be subject to approval by the Speech-Language Pathology and  
9 Audiology and Hearing Aid Dispensers Board. Respondent understands and agrees that counsel  
10 for Complainant and the staff of the Speech-Language Pathology and Audiology and Hearing Aid  
11 Dispensers Board may communicate directly with the Board regarding this stipulation and  
12 settlement, without notice to or participation by Respondent or her counsel. By signing the  
13 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek  
14 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
15 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
16 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
17 action between the parties, and the Board shall not be disqualified from further action by having  
18 considered this matter.

19 12. The parties understand and agree that Portable Document Format (PDF) and facsimile  
20 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
21 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

22 13. In consideration of the foregoing admissions and stipulations, the parties agree that  
23 the Board may, without further notice or formal proceeding, issue and enter the following  
24 Disciplinary Order:

25 **DISCIPLINARY ORDER**

26 IT IS HEREBY ORDERED that Hearing Aid Dispenser License No. HA 7065 issued to  
27 Respondent Marle A. Scott, HAD (Respondent) is revoked. However, the revocation is stayed  
28 and Respondent is placed on probation for five (5) years on the following terms and conditions.

1           1.    TAKE AND PASS LICENSING EXAM

2           Respondent shall take and pass the written and practical licensure examinations as  
3           designated by the Board within one year of the effective date of this decision. If Respondent fails  
4           the examination, Respondent must take and pass a re-examination consisting of the written and/or  
5           practical licensure examination which is administered for purpose of licensure. If Respondent is  
6           required to take and pass both the written and practical examinations, the written examination  
7           must be taken and passed prior to taking the practical examination. Respondent shall pay all  
8           examination fees.

9           2.    SUPERVISED PRACTICE

10          Within thirty (30) days of the effective date of this decision, Respondent shall submit to the  
11          Board, for its prior approval, the name and qualifications of one or more proposed supervisors.  
12          Each supervisor shall have been licensed in California for at least three (3) years and have no  
13          current or prior disciplinary action by the Board. An administrative citation and fine does not  
14          constitute discipline and therefore, in and of itself, is not a reason to deny an individual as a  
15          supervisor. The supervisor shall be independent, with no current or prior business, or  
16          professional relationship, other relationship that could reasonably be expected to compromise the  
17          ability of the supervisor provide impartial and unbiased supervision of the Respondent.

18          The Board will advise Respondent within two weeks whether or not the proposed  
19          supervisor and plan of supervision are approved. Respondent shall not practice until receiving  
20          notification from the Board of the approval of Respondent's choice of a supervisor and plan of  
21          supervision. All costs of the supervision shall be borne by the Respondent.

22          The plan of supervision shall require an occasional, random review of the work performed  
23          as well as quarterly monitoring visits at the office or place of practice. Additionally, the  
24          supervisor shall have full and random access to all patient records of Respondent. The supervisor  
25          may evaluate all aspects of Respondent's practice regardless of Respondent's areas of  
26          deficiencies.

27          Each proposed supervisor shall be a California licensed hearing aid dispenser who shall  
28          submit written reports to the Board on a quarterly basis verifying that supervision has taken place

1 as required and include an evaluation of Respondent's performance. It shall be Respondent's  
2 responsibility to assure that the required reports are filed in a timely manner.

3 If the supervisor terminates his or her supervision or is no longer available to serve in the  
4 supervisory role, Respondent must submit to the Board the name or names of a new supervisor  
5 within fifteen (15) days. If a new supervisor is not approved by the Board within thirty (30) days  
6 from the date of resignation of the previous supervisor, Respondent shall be suspended from  
7 practice until a new supervisor has been approved by the Board and necessary documents are  
8 filed with the Board. All costs of the supervision shall be borne by the Respondent.

9 3. **RESTITUTION**

10 Respondent shall make full restitution to patient T.Y. in the amount of \$3,990 within ninety  
11 (90) days of the effective date of this decision or on terms as otherwise approved by the Board.  
12 Respondent shall provide the Board with proof of payment to T.Y.

13 4. **OBEY ALL LAWS**

14 Respondent shall obey all federal, state, and local laws, including all statutes and  
15 regulations governing the practice of the licensee.

16 Further, Respondent shall, within five (5) days of any arrest, submit to the Board in writing  
17 a full and detailed account of such arrest.

18 5. **COMPLY WITH PROBATION PROGRAM**

19 Respondent shall fully comply with the probation program established by the Board and  
20 shall cooperate with the representatives of the Board.

21 6. **CHANGE OF ADDRESS NOTIFICATION**

22 Respondent shall, within five (5) days of a change of residence or mailing address, notify  
23 the Board in writing of the new address.

24 7. **OUT-OF-STATE RESIDENCY**

25 Respondent shall notify the Board immediately in writing if she leaves California to reside  
26 or practice in another state.

27 Respondent shall notify the Board immediately upon return to California.

28 ///

1 The period of probation shall not run during the time Respondent is residing or practicing  
2 outside California.

3 8. **SUBMIT QUARTERLY WRITTEN DECLARATIONS**

4 Respondent shall submit to the Board quarterly written declarations and verification of  
5 actions signed under penalty of perjury. These declarations shall certify and document  
6 compliance with all the conditions of probation.

7 9. **NOTIFY EMPLOYER OF PROBATION TERMS AND RESTRICTIONS**

8 When currently employed, applying for employment, or contracted to provide services as a  
9 speech-language pathologist, audiologist, dispensing audiologist, speech-language pathology  
10 assistant, or hearing aid dispenser, respondent shall notify his or her employer and supervisor or  
11 contractor of the probationary status of respondent's license. This notification to the respondent's  
12 current employer and supervisor, or contractor shall occur no later than the effective date of the  
13 Decision placing respondent on probation. The respondent shall notify any prospective employer  
14 and supervisor or contractor of his or her probationary status with the Board prior to accepting  
15 such employment. This notification shall include a copy of the Board's Decision placing  
16 respondent on probation.

17 The respondent shall provide to the Board the names, physical addresses, and telephone  
18 numbers of all employers, supervisors and contractors.

19 The respondent shall complete and sign an agreement with the employer and supervisor, or  
20 contractor, and the Board to allow the Board to communicate with the employer and supervisor or  
21 contractor.

22 Respondent shall cause each employer and supervisor or contractor to submit quarterly  
23 written declarations to the Board. These declarations shall include a performance evaluation.

24 Respondent shall notify the Board, in writing, of any change in his or her employment  
25 status, within five (5) days of such change.

26 10. **INTERVIEWS WITH BOARD REPRESENTATIVES**

27 Respondent shall appear in person for interviews with the Board, or its designee, upon  
28 request at various intervals and with reasonable notice. An initial probation visit will be required

1 within sixty (60) days of the effective date of the Decision. The purpose of this initial interview  
2 is to introduce Respondent to the Board's representatives and to familiarize Respondent with  
3 specific probation conditions and requirements. Additional meetings may be scheduled as needed.

4 **11. EMPLOYMENT LIMITATIONS**

5 While on probation, Respondent may not work as a faculty member in an accredited or  
6 approved school of hearing aid dispensing.

7 **12. PRACTICE RESTRICTIONS: SERVING AS A SUPERVISOR**

8 Respondent may not function as a supervisor for any hearing aid dispenser trainees during  
9 the period of probation or until approved by the Board.

10 **13. FUNCTION IN LICENSED CAPACITY**

11 During probation, Respondent shall work in her capacity in the State of California. If  
12 Respondent is unable to secure employment in her capacity, the period of probation shall be  
13 tolled during that time.

14 **14. RECOVERY OF COSTS**

15 Respondent shall pay investigative and legal costs in the amount of \$4,000.00. Respondent  
16 shall make timely monthly payments in the amount of \$250.00 every month from the effective  
17 date of the decision until fully paid.

18 **15. MAINTAIN A VALID LICENSE**

19 Respondent shall, at all times while on probation, maintain an active current license with  
20 the Board, including any period during which suspension or probation is tolled.

21 Should Respondent's license, by operation of law or otherwise, expire, upon renewal or  
22 reinstatement, Respondent's license shall be subject to any and all terms of this probation not  
23 previously satisfied.

24 **16. VIOLATION OF PROBATION**

25 If Respondent violates probation in any respect, the Board may seek to revoke probation  
26 and carry out the disciplinary order that was stayed. The Respondent shall receive prior notice  
27 and the opportunity to be heard. If a Petition to Revoke Probation, an Accusation or Petition to  
28 Vacate Stay or other formal disciplinary action is filed against Respondent during probation, the

1 Board shall have continuing jurisdiction and the period of probation shall be extended until the  
2 matter is final.

3 17. COMPLETION OF PROBATION

4 Respondent's license will be fully restored upon successful completion of probation.

5 18. VOLUNTARY LICENSE SURRENDER

6 During Respondent's term of probation, if he or she wishes to cease practice, Respondent  
7 may request in writing to surrender the license(s) to the Board. The Board shall evaluate the  
8 request based on the factual circumstances surrounding that particular request, and notify  
9 Respondent in writing whether it has been granted. Upon formal acceptance of the license  
10 surrender, Respondent's license will no longer be subject to the terms and conditions of  
11 probation. Respondent shall return the pocket license(s) and wall certificate(s) to the Board  
12 within ten (10) days of the effective date of the surrender.

13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
15 discussed it with my attorney, David A. Valerio. I understand the stipulation and the effect it will  
16 have on my Hearing Aid Dispenser License. I enter into this Stipulated Settlement and  
17 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
18 Decision and Order of the Speech-Language Pathology and Audiology and Hearing Aid  
19 Dispensers Board.

20 DATED: 11-25-13 Marle A. Scott  
21 MARLE A. SCOTT, HAD  
Respondent

22 I have read and fully discussed with Respondent Marle A. Scott, HAD the terms and  
23 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
24 I approve its form and content.

25 DATED: 12-6-13 David A. Valerio, Esq.  
26 David A. Valerio  
Attorney for Respondent

27  
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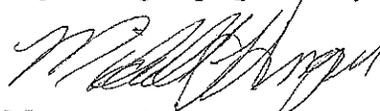
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**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board of the Department of Consumer Affairs.

Dated:

KAMALA D. HARRIS  
Attorney General of California  
JOSE R. GUERRERO  
Supervising Deputy Attorney General



MICHELLE L. ANGUS  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 1C-2011-21**

By Yvonne Crawford

1 KAMALA D. HARRIS  
Attorney General of California  
2 GAIL M. HEPPELL  
Supervising Deputy Attorney General  
3 MICHELLE L. ANGUS  
Deputy Attorney General  
4 State Bar No. 210031  
1300 I Street, Suite 125  
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6 Telephone: (916) 445-2395  
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 1C-2011-21

12 **MARLE A. SCOTT, HAD**  
13 **CARLSON'S HEARING AID CENTER**  
2329 Hilltop Drive  
14 Redding, CA 96002  
15 Hearing Aid Dispenser License No. HA 7065

**A C C U S A T I O N**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about July 11, 2006, the Speech-Language Pathology and Audiology and  
23 Hearing Aid Dispensers Board issued Hearing Aid Dispenser License Number HA 7065 to Marle  
24 A. Scott, HAD (Respondent). The Hearing Aid Dispenser License was in full force and effect at  
25 all times relevant to the charges brought herein and will expire on July 31, 2012, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Speech-Language Pathology and Audiology  
28 and Hearing Aid Dispensers Board (Board), Department of Consumer Affairs, under the authority

1 of the following laws. All section references are to the Business and Professions Code unless  
2 otherwise indicated.

3 4. Section 2531.5 of the Code states:

4 "The board shall issue, suspend, and revoke licenses and approvals to practice speech-  
5 language pathology and audiology as authorized by this Chapter."

6 5. Section 2533 of the Code states:

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 "(b) Securing a license by fraud or deceit.

14 "(c) (1) The use or administering to himself or herself, of any controlled substance; (2) the  
15 use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the  
16 extent, or in a manner as to be dangerous or injurious to the licensee, to any other person, or to the  
17 public, or to the extent that the use impairs the ability of the licensee to practice speech-language  
18 pathology or audiology safely; (3) more than one misdemeanor or any felony involving the use,  
19 consumption, or self-administration of any of the substances referred to in this section; or (4) any  
20 combination of paragraph (1), (2), or (3). The record of the conviction shall be conclusive  
21 evidence of unprofessional conduct.

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

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

27 "(f) Incompetence, gross negligence, or repeated negligent acts.  
28

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

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

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

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

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

9           6.       Section 2538.11 of the Code states:

10           (a) 'Practice of fitting or selling hearing aids,' as used in this article, means those practices  
11 used for the purpose of selection and adaptation of hearing aids, including direct observation of  
12 the ear, testing of hearing in connection with the fitting and selling of hearing aids, taking of ear  
13 mold impressions, fitting or sale of hearing aids, and any necessary postfitting counseling.

14           "The practice of fitting or selling hearing aids does not include the act of concluding the  
15 transaction by a retail clerk.

16           "When any audiometer or other equipment is used in the practice of fitting or selling  
17 hearing aids, it shall be kept properly calibrated and in good working condition, and the  
18 calibration of the audiometer or other equipment shall be checked at least annually.

19           (b) A hearing aid dispenser shall not conduct diagnostic hearing tests when conducting  
20 tests in connection with the practice of fitting or selling hearing aids.

21           (c) Hearing tests conducted pursuant to this article shall include those that are in  
22 compliance with the Food and Drug Administration Guidelines for Hearing Aid Devices and  
23 those that are specifically covered in the licensing examination prepared and administered by the  
24 board."

25           7.       Section 2538.35 of the Code states:

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

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

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

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

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

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

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

13           8.           Section 2538.36 of the Code states:

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

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

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

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

23           "(4) Acute or chronic dizziness.

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

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

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

28           "(8) Pain or discomfort in the ear.

1           (b) No referral for medical opinion need be made by any licensee in the instance of  
2 replacement only of a hearing aid that has been lost or damaged beyond repair within one year of  
3 the date of purchase. A copy of the written recommendation shall be retained by the licensee for  
4 the period provided for in Section 2538.38. A person receiving the written recommendation who  
5 elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with  
6 the other papers retained by the licensee for the period provided for in Section 2538.38. Nothing  
7 in this section required to be performed by a licensee shall mean that the licensee is engaged in  
8 ~~the diagnosis of illness or the practice of medicine or any other activity prohibited by the~~  
9 provisions of this code."

10           9. Section 1399.126 of Title 16 of the California Code of Regulations states:

11           “(a) For purposes of Section [2538.36]<sup>1</sup> of the code, a significant air-bone gap is defined as  
12 a difference of 15 decibels or more between the higher air conduction and the lower bone  
13 conduction pure tone thresholds at 2 or more succeeding octave frequencies of 500 Hertz through  
14 and including 4000 Hertz.

15           “(b) Tests for significant air-bone gap shall be performed in a suitable environment using  
16 appropriate equipment to establish threshold values and with appropriate masking procedures  
17 employed.”

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

22           ///

23           ///

24           ///

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26 \_\_\_\_\_  
27 <sup>1</sup> Section 1399.126 of Title 16 of the California Code of Regulations references Code  
28 section 3365.5. On January 1, 2012, Code section 3365.5 was repealed and replaced with Code  
section 2538.36. Stats. 2011, ch. 449, §§ 9, 13.

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**FIRST CAUSE FOR DISCIPLINE**

(Incompetence, Gross Negligence or Repeated Negligent Acts)

[Bus. & Prof. Code § 2533(f)]

11. Respondent is subject to disciplinary action under section 2533(f) in that she failed to appropriately test a patient and select and fit appropriate hearing aids. The circumstances are as follows:

12. On or about June 23, 2009, Respondent tested patient T.Y.<sup>2</sup> for purposes of providing T.Y. with hearing aids. The testing Respondent performed on T.Y. included an audiogram that showed air conduction, bone conduction, most comfortable loudness testing, uncomfortable loudness testing, and speech discrimination were evaluated. The audiogram shows masking was not used for the better ear, bone conduction testing in the left ear only, and presentation level for speech discrimination test was not clear. On January 6, 2010, Respondent performed a second audiogram on patient T.Y. The audiogram shows air conduction, bone conduction, most comfortable loudness level were evaluated but that masking was not used for either air conduction or bone conduction testing.

13. After completing the testing, Respondent recommended and sold a set of Nano 4 Power RICs without molds to T.Y., which were delivered on August 10, 2009. The cost of the instruments was \$3,990.00.

14. Patient T.Y. thereafter complained on several occasions that the instruments were not strong enough for his hearing loss and that Respondent should not have recommended them. T.Y. also requested a refund of his purchase. Respondent responded to T.Y.'s complaints by providing T.Y. with custom ear molds to more appropriately fit his hearing loss.

15. After several attempts to adjust T.Y.'s hearing instruments, Respondent decided to upgrade T.Y.'s instruments to ReSound Live 771. The new hearing instruments were delivered on February 9, 2010. Respondent did not provide T.Y. with a written receipt for the new set of instruments.

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<sup>2</sup> Patient and doctor names are abbreviated herein to protect confidentiality. Full names will be provided upon receipt of a properly executed and served Request for Discovery.

1 16. Respondent next saw patient T.Y. on June 7, 2010. T.Y. informed Respondent that  
2 his hearing loss needs still were not being met by the new instruments. T.Y. also complained of a  
3 plugging feeling in his ears. Respondent referred T.Y. to see Dr. K., an ear, nose and throat  
4 specialist, for the discomfort and possible fungus in T.Y.'s left ear canal.

5 17. Dr. K. saw patient T.Y. five times and was unable to verify fungus in the left ear or  
6 any significant cerumen that would explain the plugged feeling. Dr. K ordered an audiometric  
7 evaluation by his staff audiologist and CT scan for further evaluation of T.Y.'s complaints of  
8 plugged feeling and poor hearing. The audiometric evaluation revealed very poor hearing above  
9 1000 Hz with fair discrimination in both ears; some asymmetry in the left ear was present, left ear  
10 being worse than the right. T.Y. refused the CT scan. Dr. K cleared T.Y. for hearing instruments  
11 and requested his staff to re-check T.Y.'s current hearing instruments.

12 18. Respondent's failure to perform complete bone conduction testing and masking  
13 during testing, failure to appropriately select and fit hearing instruments for T.Y., and failure to  
14 provide a written receipt for the second set of instruments constitutes incompetence and  
15 negligence.

16 19. Respondent's failure to perform complete bone conduction testing and masking  
17 during testing, failure to appropriately select and fit hearing instruments for T.Y., failure to  
18 perform post-fitting verification for both sets of instruments, and failure to provide a written  
19 receipt for the second set of instruments constitutes repeated acts of negligence.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Receipt Requirements)

22 [Bus. & Prof. Code § 2538.35]

23 20. Complainant realleges paragraphs 12 through 17 above, and incorporates them by  
24 reference herein as if fully set forth.

25 21. Respondent is subject to disciplinary action under Code section 2538.35 in that  
26 Respondent failed to provide patient T.Y. with a written receipt for the replacement pair of  
27 instruments.  
28

1  
2 **THIRD CAUSE FOR DISCIPLINE**

(Inadequate Testing)

3 [Bus. & Prof. Code §§ 2538.11(c), 2538.36(a)(6); Cal. Code Regs., tit. 16, § 1399.126]

4 22. Complainant realleges paragraphs 12 through 17 above, and incorporates them by  
5 reference herein as if fully set forth.

6 23. Respondent is subject to disciplinary action under Code sections 2538.11(c),  
7 2538.36(a)(6) and section 1399.126 of Title 16 of the California Code of Regulations in that  
8 Respondent failed to perform complete bone conduction testing or use masking during testing on  
9 patient T.Y., thereby preventing Respondent from determining whether a medical referral was  
10 required and from properly fitting hearing instruments.

11 **PRAYER**

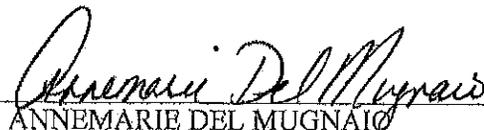
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
13 and that following the hearing, the Speech-Language Pathology and Audiology and Hearing Aid  
14 Dispensers Board issue a decision:

15 1. Revoking or suspending Hearing Aid Dispenser License Number HA 7065, issued to  
16 Marle A. Scott, HAD.

17 2. Ordering Marle A. Scott, HAD to pay the Speech-Language Pathology and  
18 Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and  
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

21  
22 DATED: May 30, 2012



23 ANNEMARIE DEL MUGNAIO  
24 Executive Officer  
25 Speech-Language Pathology and Audiology and Hearing  
26 Aid Dispensers Board  
27 Department of Consumer Affairs  
28 State of California  
*Complainant*

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