

By *Auto Josepa*

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

11
12 In the Matter of the Accusation Against:
13 **MELISSA K. PEACOCK, HA**
1601 Douglas Blvd., Suite A
14 Roseville, CA 95661
15 Hearing Aid Dispenser License No. HA 7070
16 Respondent.

Case No. 1C-2015-31
OAH No.
ACCUSATION

17
18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about August 14, 2006, the Speech-Language Pathology and Audiology and
25 Hearing Aid Dispensers Board issued Hearing Aid Dispenser License Number HA 7070 to
26 Melissa K. Peacock, HA (Respondent). The Hearing Aid Dispenser License will expire on
27 August 31, 2016, unless renewed.

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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 2538.35 of the Code states:

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

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

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

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

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

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

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

22 7. Section 2538.36 of the Code states:

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

- 1 "(1) Visible congenital or traumatic deformity of the ear.
- 2 "(2) History of, or active drainage from the ear within the previous 90 days.
- 3 "(3) History of sudden or rapidly progressive hearing loss within the previous 90 days.
- 4 "(4) Acute or chronic dizziness.
- 5 "(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- 6 "(6) Significant air-bone gap (when generally acceptable standards have been established).
- 7 "(7) Visible evidence of significant cerumen accumulation or a foreign body in the ear
- 8 canal.
- 9 "(8) Pain or discomfort in the ear.

10 “...”

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

12 "(a) The bureau may refuse to approve or approve subject to terms and conditions a hearing

13 aid dispenser’s authority to supervise a trainee-applicant, or may suspend, revoke or impose

14 probationary conditions on a hearing aid dispenser’s authority to supervise a trainee-applicant for

15 any of the following causes:

16 "(1) The failure to comply with section 3357 of the code or any of the regulations contained

17 in this article which is a prima facie violation, or is confirmed by an internal investigation report

18 signed by the chief, 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 "(2) The violation of any provision of the Hearing Aid Dispensers Licensing Law or the

23 regulations contained in this chapter which is confirmed by an internal investigation report signed

24 by the executive officer, or by a formal investigation by the Division of Investigation of the

25 department within the preceding 36 months. "Confirmed by formal investigation" means the

26 investigator assigned the matter has written a final investigation report which has been

27 countersigned by a Supervising Special Investigator.

28

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

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

5 " ..."¹

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

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

11 "(b) Tests for significant air-bone gap shall be performed in a suitable environment using
12 appropriate equipment to establish threshold values and with appropriate masking procedures
13 employed."²

14 10. California Code of Regulations, title 16, section 1399.132

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

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

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

25 11. Section 651 states:

26 ¹ The text of the regulation cited here is the version that was in force at the time of the
27 events alleged in this Accusation.

28 ² The text of the regulation cited here is the version that was in force at the time of the
events alleged in this Accusation.

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

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

11 "(1) Contains a misrepresentation of fact.

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

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

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

24 "(C) Use of any photograph or other image of an actual patient that depicts or
25 purports to depict the results of any procedure, or presents 'before' and 'after' views
26 of a patient, without specifying in a prominent location in easily readable type size
27 what procedures were performed on that patient is a violation of subdivision (a). Any
28 'before' and 'after' views (i) shall be comparable in presentation so that the results

1 are not distorted by favorable poses, lighting, or other features of presentation, and
2 (ii) shall contain a statement that the same 'before' and 'after' results may not occur
3 for all patients.

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

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

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

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

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

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

27 "(d) Any person so licensed shall not compensate or give anything of value to a
28 representative of the press, radio, television, or other communication medium in anticipation of,

1 or in return for, professional publicity unless the fact of compensation is made known in that
2 publicity.

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

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

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

11 "..."

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

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

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

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

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

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

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

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

3 16. Paragraph 11 above, referring to the costs provision of section 651, subsection (j), is
4 re-alleged and incorporated herein by reference.

5 **FACTS**

6 17. Respondent is employed at McDonald Hearing Aid Center (MHAC), a corporation
7 with branch offices throughout Northern California. She holds the title of Chief Compliance
8 Officer. In her role as Chief Compliance Officer, she monitors and reviews the sale of hearing
9 aids by other Hearing Aid Dispensers (HADs), to ensure the MHAC policies are followed, and
10 she addresses post-sale requests for refunds from consumers. She also performs duties selling
11 and fitting hearing aids when no other HADs are available. MHAC is the second largest seller of
12 hearing aids in the Sacramento valley area, with Costco as its nearest competitor. Between
13 January 2007 and November 2013, MHAC grossed 45 million dollars in sales of hearing aids.

14 18. The President of MHAC, Mark Moore, (HAD License No. 2425), has established
15 corporate policies designed to obtain greater sales of hearing aids and to prevent returns, while
16 disregarding the statutes and regulations governing the sale and fit of hearing aids in California.
17 For example, MHAC advertises the sales to be “no risk” and “satisfaction guaranteed,” but
18 consumers are subjected to onerous cancelation fees and return policies. One such policy is the
19 “Patient Journey.”

20 19. The Patient Journey is a six-week program created by HAD Moore, which requires
21 the consumer to return to a MHAC branch location at least five times over the course of six
22 weeks to complete a series of exercises while wearing the hearing aids, before the consumer can
23 seek to return any hearing aid for a refund. Under instruction and supervision from Moore and
24 Respondent, MHAC staff inform consumers that this program is required under the Song-Beverly
25 Act, but staff actually use the program to evade the application of the Song-Beverly Act, by
26 manipulating the date on which the fitting is deemed by the dispenser to be complete. If the
27 consumer seeks to return the hearing aids before the Patient Journey is complete, MHAC will
28 claim the consumer failed to complete the fitting. Alternatively, if the consumer completes the

1 patient journey, which requires longer than thirty days, MHAC can claim the consumer failed to
2 seek an adjustment or return the hearing aids within thirty days.

3 20. Regardless of whether the consumer completes the Patient Journey, MHAC requires
4 all consumers seeking to return hearing aids to complete a form, checking a box indicating the
5 grounds for return. The boxes, however, all correspond to reasons for return that relate to price.
6 Respondent then instructs dispensers to deny any refunds based on the MHAC interpretation of
7 the Song-Beverly Act to preclude a consumer from returning hearing aids when the consumer is
8 dissatisfied with the price of the hearing aids. As the Chief Compliance Officer for MHAC,
9 Respondent takes a lead role in enforcing these policies, by making determinations of how the
10 MHAC policies will be applied, and communicating these determinations to consumers.

11 21. Documents found on Respondent's computer at the MHAC Flagship Office include a
12 document titled "Guarantee Satisfaction Program," which outlines the Patient Journey and states
13 that if a patient does not complete the process then he or she would not meet the requirement
14 under the Song-Beverly Act for a refund. The document continues with Respondent's
15 instructions to the HAD that state: "YOU are the expert. YOU tell the patient their treatment
16 program. YOU tell the patient what their expectations are going to be..Never let the patient tell
17 you what they want you to do. YOU are in control of the patient's journey, not them."

18 22. Because MHAC interprets the Song-Beverly Act's date of "completion of the fitting
19 by the seller" to be the day the Patient Journey is complete, Respondent's instruction to staff
20 ensure that when a consumer completes the Patient Journey, he or she will no longer qualify for a
21 refund because completion of the Patient Journey requires more than thirty days. Respondent's
22 manipulation of the MHAC policy to achieve this result is explicit in her email to a HAD
23 employee, chastising the HAD for attempting to fulfill her professional obligations under the
24 Song-Beverly Act: "Because you adjusted the aids at the same time she wanted to return, now
25 she qualifies. It was clear from the notes ... that she was frustrated with the price ... so ended
26 with Costco and bought something else ... cheaper, I'm sure. Even though she didn't mark price,
27 I could have written her a "not qualified" letter with no adjustment and price as the reason. Then
28 she would have had to return the Costco ones and kept ours." This email continues to instruct the

1 employee: "I don't like to jump patients to fill out the form but I will if I know the patient won't
2 qualify. If they want to return first visit back, then DO NOTHING to the aids, fill out the form
3 and they will NEVER qualify."

4 23. The letters Respondent issues as Chief Compliance Officer denying returns are
5 designed to enforce MHAC's policy of evading the obligations of the Song-Beverly Act.
6 Respondent makes this explicit in her email to the HAD by directing the employee that: "It would
7 help all of you if you think of the reasons why they can't return and what scenario works for/with
8 the letters before you pull out the form or jump to fix the problem..." The individual cases below
9 illustrate Respondent's role in enforcing these policies.

10 **Consumer J.C.**

11 24. On or about January 24, 2012, J.C. an elderly man in his 90's, responded to an
12 advertisement by MHAC for a \$745.00 hearing aid special offer, which claimed the sale was
13 "Satisfaction Guaranteed, Full Refund, and No risk-Nothing to lose." The advertisement showed
14 a picture of Stan Atkinson holding a hearing aid, with a testimonial in which he claims Intela-
15 Hear hearing aids have improved his hearing remarkably. There is no disclaimer indicating that
16 Stan Atkinson is a paid spokesperson. On or about January 24, 2012, J.C. entered the Roseville
17 Branch of the MHAC at 1601 Douglas Boulevard, Roseville, California. He was met by HAD
18 Moreland (HAD License No. 7507), and Respondent.

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

25 26. While going over the sales contract and MHAC policies, J.C. told Respondent that he
26 was concerned that the price for the hearing aids at MHAC was so much more than other
27 companies. Respondent told J.C. that hearing aids were top of the line and better than the other
28 options, and that he could return the hearing aids after thirty days if was dissatisfied, but that after

1 using the hearing aids for thirty days, he would be so happy with the product that he would not
2 want to return it. However, she reassured him that the thirty-day trial period was free, and no-
3 risk, and that MHAC would even provide the batteries for the trial.

4 27. On or about February 7, 2012, J.C. returned to the Roseville branch location and met
5 with Respondent. Respondent fit J.C. with the hearing aids, but they were not molded earpieces.
6 Respondent adjusted and programed the earpieces to match J.C.'s audiogram there in the branch
7 location. J.C. signed the receipt accepting delivery of the hearing aids on February 7, 2012.

8 28. On or about February 14, 2012, J.C. complained to Respondent that the earpieces did
9 not fit well, and that he observed that they were not molded custom earpieces as advertised.
10 Respondent agreed to order custom earpieces, and provided them to J.C. on or about February 22,
11 2012. J.C. found them to fit better. On or about February 22, 2012, Respondent informed J.C.
12 that his thirty-day trial period would start that date, and would be completed on March 23, 2102.
13 Even though his hearing aids fit better, J.C. was dissatisfied with the performance of the hearing
14 aids.

15 29. Between February 28, and March 8, 2012, J.C. attempted to return the hearing aids
16 for a full refund because he was dissatisfied with their performance, but each time he was told he
17 had to complete the Patient Journey. J.C. found that the sound quality on the hearing aids was not
18 any better than cheaper products he had used, and that the hearing aids gave annoying feedback
19 noises. He continued to return to the branch store to perform the Patient Journey classes. J.C.
20 found that the Patient Journey was taking longer than expected, and kept a close watch on the
21 calendar, trying to complete the Patient Journey before March 17, 2012 because he would be
22 away on vacation starting March 17, 2012. J.C. told MHAC staff that he would be away for a
23 preplanned nonrefundable vacation starting March 17, 2012, and that he would need to complete
24 the Patient Journey before that date so he could return the hearing aids that were sold to him with
25 a full satisfaction and no risk guarantee.

26 30. On or about March 7, 2012, J.C. began experiencing oscillation problems with the
27 hearing aids. He inquired about having the problem fixed, but was told that only Respondent
28 could do it for him. He called the MHAC office on March 8, 2012, and again asked to see

1 Respondent and have the oscillation fixed as it was loud and distracting, and he needed to
2 complete his Patient Journey before his March 17, 2012 vacation so he could obtain a refund.
3 Office staff told J.C. that Respondent was unavailable, but they would give her his message to
4 call him. Respondent did not call J.C.

5 31. On March 9, 2012, J.C. went to the branch location to complete another Patient
6 Journey session, and again attempted to have the oscillation fixed or to return the hearing aids for
7 a refund. The office staff told J.C. that only Respondent could fix the oscillation or accept the
8 hearing aids or provide a return, and she was busy. J.C. observed Respondent helping other
9 customers in the office and approached her asking why she would not take his calls or fix the
10 oscillation. Respondent would not fix the oscillation, or have another technician do it, but she
11 agreed to see him on March 12, 2012.

12 32. On March 12, 2012, J.C. saw Respondent at the office, and she did not make any
13 attempt to fix the oscillation. Instead, she gave him a form entitled "Request for a Refund"
14 requesting that he check one of four boxes citing the reason for the return. The four options
15 "Financial Hardship," "Purchase Elsewhere," "Too Expensive," and "Other." J.C. checked Too
16 Expensive and Other. J.C. explained that he had written letters explaining all the various grounds
17 for dissatisfaction with the product, and the oscillation, and that he would not like to re-write that
18 in the small space of the form, but would like to have it considered. Respondent accepted the
19 hearing aids, and told him he would receive a letter in the mail concerning his request for a
20 refund.

21 33. On or about March 19, 2012, Respondent wrote a letter to J.C., in her role as Chief
22 Compliance Officer for MHAC. She told J.C. that he was not entitled to a refund because the
23 Song-Beverly Act does not require HADs to refund purchase price when the consumer feels he
24 paid too much for the product, and that J.C.'s main concern was the price of the hearing aids.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Fraudulent or Dishonest Act)**

3 34. Paragraphs 17-23, and 24-33, above are re-alleged and incorporated by reference
4 herein.

5 35. Respondent is subject to disciplinary action under section 2533, subdivision (e),
6 which incorporates section 651, committing a fraudulent or dishonest act, in that he committed
7 fraudulent or dishonest acts in connection with the sale of a hearing aid to J.C., which include, but
8 are not limited to the following:

9 (a) participating in the fitting and selling of hearing aids to J.C. with the knowledge that
10 MHAC had disseminated false and misleading statements in connection with the sale;

11 (b) falsely telling J.C. that he could return the devices for a refund, and that the sale was no
12 risk and satisfaction guaranteed while omitting the 15% cancelation fee and the onerous programs
13 he would have to complete before being considered for a refund;

14 (c) attempting to fit J.C. with non-custom ear molds despite having advertised and
15 represented that the hearing aids were custom made;

16 (d) misrepresenting that state law required J.C. to complete the Patient Journey before he
17 could be considered for a refund;

18 (e) evading J.C.'s requests and declining to perform an adjustment of the hearing aids
19 between March 7 and 12, 2012, despite having been informed that he required an adjustment for
20 oscillation he was experiencing and failing to offer an adjustment of the oscillation before
21 accepting the hearing aids for return on March 12, 2012, with the knowledge that MHAC policy
22 considered the lack of adjustment as a grounds to preclude a return;

23 (f) falsely claiming that J.C.'s sole grounds for seeking to return the hearing aids was due to
24 price; and

25 (g) refusing to accept a return of the hearing aids based on the fraudulent and dishonest acts
26 and statements alleged above.

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1 41. On or about May 9, 2012, A.K. entered into a purchase agreement with HAD Bennett
2 for a pair of Intela-Hear hearing aids, for a total price of \$4,941.00. The purchase agreement
3 indicated that the original cost of the pair was \$10,980.00 and she received a 50% off sale,
4 with an additional AARP discount. A.K. returned to the branch location on or about May 24,
5 2012 and was seen by HAD Bennett and fitted with hearing aids. A.K. has degenerative arthritis
6 in her jaws, and small ear canals. When she started wearing the hearing aids, she began to
7 develop pain in her ears. She tried to keep wearing the hearing aids in the hope that she would
8 get used to them, but after four days the pain persisted and got worse, and she removed them.
9 She returned to the MHAC branch location to conduct the Patient Journey exercises on several
10 occasions.

11 42. A.K. started to find that even after removing the hearing aids, she would continue to
12 have pain, and saw her doctor who referred her to an otolaryngologist. The otolaryngologist
13 advised her to stop wearing the hearing aids, and return them. On or about June 1, 2012, A.K.
14 returned to MHAC and asked to return the hearing aids due to severe degenerative arthritis,
15 causing pain in her ears. Staff at MHAC told A.K. to continue wearing the hearing aids.

16 43. On or about June 6, 2012, A.K. saw Respondent at the branch office. She explained
17 that the hearing aids were causing her severe pain and she could not wear them. Respondent
18 instructed her to keep wearing them. On or about June 10, 2012, A.K. saw her otolaryngologist
19 who found that she had severe degenerative arthritis in her jaw, which was worsened by wearing
20 the hearing aids. He wrote out and signed a form indicating the A.K. needed to return the hearing
21 aids for a refund.

22 44. On or about June 12, 2012, A.K. returned to MHAC, and provided staff with a copy
23 of the otolaryngologist's note instructing her not to wear the hearing aids. Respondent refused to
24 accept the return, and continued to advise A.K. to wear the hearing aids, or to allow an exchange
25 of different hearing aids.

26 45. On or about June 27, 2012, Respondent authored a letter to A.K. indicating that she
27 was not entitled to a refund because she did not allow MHAC to adjust the hearing aids, or try
28 alternate types of hearing aids. The letter indicates that the note from the otolaryngologist is not a

1 “medical waiver” and does not entitle A.K. to return the hearing aids, but that a “legal team”
2 would be in touch with the physician to obtain further information.

3 46. On or about July 3, 2012, A.K. returned to the branch location and spoke to
4 Respondent about her letter denying the refund despite the physician note. Respondent indicated
5 to A.K. that she would contact the physician for additional information. On or about July 30,
6 2012, Respondent sent another letter to A.K. indicating that MHAC had spoken with the
7 otolaryngologist who stated that there is no specific medical reason why A.K. cannot wear the
8 aids, and that his recommendation was based on “just his personal recommendation.” The
9 Division of Investigation followed up with the physician who explained that he had made no such
10 statements.

11 47. On or about August of 2012, after further communications with the otolaryngologist,
12 MHAC changed its position and agreed to provide a refund to A.K. MHAC did not refund A.K.
13 the purchase price until November 27, 2012.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Gross Negligence)**

16 48. Paragraphs 17-23 and 40-47, above are re-alleged and incorporated by reference
17 herein.

18 49. Respondent is subject to disciplinary action under section 2533, subdivision (f), gross
19 negligence, in that she advised A.K. to continue wearing hearing aids in contradiction to her
20 physician’s advice, despite the knowledge that HAD Bennett had failed to refer her to a physician
21 for the existence of an air-bone gap and other medical contraindications before fitting her hearing
22 aids.

23 **FIFTH CAUSE FOR DISCIPLINE**

24 **(Fraudulent or Dishonest Act)**

25 50. Paragraphs 17-23 and 40-47, above are re-alleged and incorporated by reference
26 herein.

27 51. Respondent is subject to disciplinary action under section 2533, subdivision (e),
28 which incorporates section 651, committing a fraudulent or dishonest act, in that she committed

1 fraudulent or dishonest acts in connection with the sale of a hearing aid to A.K., which include,
2 but are not limited to the following:

3 (a) refusing to complete a return and refund of A.K.'s hearing aids, despite the knowledge
4 that the sale was based on false and misleading advertising and misrepresentations;

5 (b) refusing to complete a return and refund despite the opinion of a physician that the
6 hearing aids were not suitable or necessary for A.K.;

7 (c) misrepresenting that state law required A.K. to complete the Patient Journey before he
8 could be considered for a refund; and

9 (d) falsely stating that the otolaryngologist did not have a medical basis for the
10 recommendation that A.K. not wear hearing aids.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 **(Violation of the Song-Beverly Act)**

13 52. Paragraphs 17-23 and 40-47, above are re-alleged and incorporated by reference
14 herein.

15 53. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
16 she violated Section 1793.02 (Song-Beverly Act), by refusing to accept a return of the hearing
17 aids based on the fraudulent and dishonest acts and statements alleged in the Fifth Cause for
18 Discipline.

19 **Consumer P.D.**

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

27 55. Hearing Aid Dispenser (HAD) Marion Nelson (HAD License No. 7416), employed
28 by MHAC, conducted an audiogram hearing test on P.D. that showed a loss of hearing in P.D.'s

1 right ear, and an air-bone gap in P.D.'s left ear. Nelson did not chart that he performed a bone
2 conduction test for the right ear, or that he referred P.D. for testing by a physician due to the air-
3 bone gap in the left ear.

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

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

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

23 SEVENTH CAUSE FOR DISCIPLINE

24 (Fraudulent or Dishonest Act)

25 59. Paragraphs 17-23 and 54-58, above are re-alleged and incorporated by reference
26 herein.

27 60. Respondent is subject to disciplinary action under section 2533, subdivision (e),
28 which incorporates section 651, committing a fraudulent or dishonest act, in that she committed a

1 fraudulent or dishonest act by attempting to impose a 15% cancelation fee on P.D. despite the
2 knowledge that P.D. had entered into the sale on the basis of false and misleading advertising, and
3 a grossly negligent audiogram result.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Violation of the Song-Beverly Act)**

6 61. Paragraphs 17-23 and 54-58, above are incorporated by reference as if fully set forth
7 herein.

8 62. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
9 she violated Section 1793.02 (Song-Beverly Act), by attempting to impose a 15% cancelation fee
10 on P.D. despite the knowledge that P.D. had entered into the sale on the basis of false and
11 misleading advertising, and a grossly negligent audiogram result.

12 **Consumer M.B.**

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

21 64. On or about January 2012, Sister M.B. and F.W. entered the MHAC branch location
22 in Lodi. Sister M.B. immediately explained that she was not authorized to make any purchases
23 herself without consulting with her Order's financial advisor, and that she was merely there to
24 conduct a price comparison of the \$700.00 hearing aids she saw advertised. Sister M.B. was
25 separated from Sister F.W., and led into a room by HAD Robert Bennett, who conducted a
26 hearing test.

27 65. After the hearing test was completed Sister M.B. observed a woman who was
28 wearing a white coat enter the room waving a graph dramatically, who stated, "you have a very

1 serious hearing loss.” The woman in the white coat, Ashley Brown, was issued HAD Trainee
2 License No. 8678 on or about May 25, 2010, and the license expired on or about November 30,
3 2011. Brown was not licensed to fit or sell hearing aids during her interactions with Sister M.B.
4 Sister M.B. was shaken and upset by the statements that she had a serious hearing loss, and found
5 that HAD Bennett was speaking a rush of words at her, and felt she could not get a word in.
6 Sister M.B. asked Brown about the \$700.00 hearing aids advertised, but Brown told her that those
7 are only suitable for people in the top part of the graph, and her hearing loss extended to the
8 bottom of the graph. Sister M.B. restated to Bennett and Brown that she cannot make any large
9 expenditures without prior authorization from her Order. Bennett brought out paperwork for an
10 order for hearing aids, and explained that if she did not fill out the forms, the offer would not be
11 available later. Sister M.B. asked if she could take the paperwork with her to review before
12 signing anything. Brown told her that she had already entered into the contract, and it did not
13 really matter if she signed the paperwork or not. Sister M.B. finally signed the paperwork
14 because she felt shaken up and wanted to leave.

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

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

28 ///

1 Atkinson was a paid spokesman for the product or for MHAC. On October 16, 2012, D.G.
2 entered the MHAC branch office at 433 F Street in Lincoln, California.

3 74. HAD Nelson performed an audiogram on D.G. and informed her that she had a
4 moderate hearing loss. The audiogram indicates that D.G.'s right ear had an air bone gap, but he
5 did not inform D.G. of this result, and HAD Nelson did not refer D.G. to a medical doctor for a
6 consultation. The chart of the audiogram Nelson used incorrectly classified the ranges of hearing
7 loss accepted by industry standards, by overstating the ranges of moderate to severe hearing loss.
8 An unidentified HAD working in the MHAC branch location that day showed D.G. only
9 expensive hearing aids, not the \$745.00 hearing aid advertised. D.G. reported feeling pressured
10 into purchasing more expensive hearing aids.

11 75. On October 16, 2012, D.G. entered into a purchase agreement with Nelson for a pair
12 of Intela-Hear model hearing aids for \$6,741.00. The purchase agreement indicated that the
13 hearing aids D.G. purchased were \$14,980.00 and that D.G. was being given a 50% and AAA
14 discount in order to arrive at the price of \$6,741.00. The next day, on October 17, 2012, D.G.
15 decided to cancel the contract, and she went in person to the Lincoln office but it was closed. She
16 telephoned another MHAC office to cancel but was told that she had to come in person to the
17 office to cancel. On October 18, 2012, D.G. went to the MHAC office in Lincoln and met with
18 Nelson. D.G. signed a Request for Cancellation. A few days later, D.G. received a statement
19 from HealthiPlan, a credit company, for \$6,741.00. D.G. did not realize that on October 16,
20 2012, she had signed an application for financing of the hearing aids. D.G. contacted
21 Respondent, in her role as Chief Compliance Officer for MHAC. Respondent reviewed D.G.'s
22 case and told her that she would be charged a 15% cancelation fee of \$1,011.15.

23 76. D.G. continued calling and asking to speak to Respondent, but was told Respondent
24 was busy and unavailable. She found many of her calls were dropped, and believed that MHAC
25 was deliberately hanging up on her. D.G. then went in person to the MHAC branch. She met
26 with Respondent in person approximately three times, and each time Respondent told her she was
27 not entitled to a refund and that she would be charged the cancelation fee of \$1,1011.15.

28 ///

1 Atkinson's photograph and endorsement in large letters were the words "Satisfaction Guarantee
2 Program" and in small type below the mailer stated, "Refund guaranteed upon completion of
3 fitting of the "patient Journey Program" for better hearing which may take 8 weeks or more with
4 the average patient 6 weeks. (Refunds provided in compliance with the Song-Beverly Consumer
5 Protection Act.)"

6 83. M.C. and her daughter were shown into a room where they were met by Karen Roark
7 (HAD No. 7546). Ms. Roark told them she could try out the hearing aids, just by putting down
8 \$500.00, and if she did not like them, she would get "every penny of her money back." When
9 M.C. commented that \$500 is a large part of the total price of \$700.00, Ms. Roark explained that
10 no, the total amount was not \$700.00. She stated that device was only for people with minor
11 hearing loss, that she has severe hearing loss, and requires devices that cost over \$6,300.00 for
12 both. M.C. indicated that the price was too expensive and she and her daughter got up to leave,
13 but Roark got up and stood in front of M.C. and her daughter telling them she could just try it and
14 see if she liked it. Roark repeated several times that she could get "every penny back" if she was
15 dissatisfied with them.

16 84. M.C. had an audiogram performed by Jese Warda, who held Hearing Aid Trainee
17 license, HT. 9087. Mr. Warda, held a Hearing Aid Trainee License that required supervision by a
18 licensed HAD. At all times alleged herein, Respondent was Mr. Warda's supervising licensee.
19 Respondent's name and license number are written across the bottom of the audiogram, with no
20 date. The audiogram shows that M.C. had a sufficiently large air-bone gap that further bone
21 conduction or masking testing was required to determine whether there was an air-bone gap, but
22 M.C. was not referred to a physician before proceeding with the sale of hearing aids. Following
23 the audiogram, M.C. entered into a sales agreement with Mr. Warda for two hearing aids, costing
24 a total of \$14,980.00, with discounts leading to a total of \$6,367.00. Warda signed the purchase
25 agreement and listed his "California License Number" as 9087. He did not make any notation
26 indicating that this was a Hearing Aid Trainee License. Respondent did not co-sign the purchase
27
28

1 agreement.⁴ M.C. entered into a financing program through the medical credit company
2 “HealthiPlan,” with payments due of 300.00 per month.

3 85. Respondent met with M.C. on or about June 17, 2014, to provide the hearing aids to
4 her. M.C. accepted delivery, and began the Patient Journey process. After the first week of the
5 Journey, M.C. reported to Warda that she did not like the quality of the sound. Warda left the
6 room with the devices and told her he altered them on a computer. M.C. continued to find that
7 she did not like the quality of the sound, but continued to wear them daily for the amount of time
8 recommended by the Patient Journey, even though they caused her headaches and made her feel
9 nervous.

10 86. M.C. found it to be a great relief when she took the hearing aids off each night.
11 During the several weeks of the “Journey,” M.C.’s payments became due for HealthiPlan. Since
12 M.C. is on a fixed income with monthly Social Security income of \$818.00 per month, the
13 \$300.00 payments was a large percentage of her income, and she felt she had been misled by
14 Roark who told her that the trial period for the hearing aids was risk free and yet she had to pay
15 \$300.00. M.C. was already dissatisfied with the hearing aids, and spoke to Warda, requesting a
16 refund again indicating that she was unhappy with the quality of the devices and how it created a
17 distorted sound. M.C. wrote out in detail the concerns she had with the quality of the hearing
18 aids. Warda pushed the papers back to M.C. and stated “It’s yours; it’s like buying a car.” Warda
19 told M.C. that she was not qualified for a refund because she had not completed the Patient
20 Journey. M.C. was required to take money out of her savings to cover living expenses and still
21 make the Healthiplan payments.

22 87. On or about July 14, 2014, M.C. went to MHAC and did two sessions on one day to
23 complete the Patient Journey sooner. On or about July 23, 2014, M.C. returned for her final
24 session of the Patient Journey, but was given the one she previously did on her last visit.
25 Accordingly, MHAC claimed that M.C. did not complete the Patient Journey, even though she

26 ⁴ The original Purchase Agreement M.C. provided to the Board in September of 2014
27 does not contain a co-signature by Respondent. The copy of the Purchase Agreement MHAC
28 provided in response to M.C.’s complaint containing Melissa Peacock’s co-signature was,
therefore, added after the Agreement was executed.

1 attended the full number of sessions required to “complete” the Patient Journey. Believing that
2 she had completed what was required to receive her money back, M.C. again asked for a refund.
3 Staff at MHAC did not inform M.C. that she had not completed the Patient Journey, and just
4 provided her with a Return Form. M.C. checked the box indicating that the hearing aids were too
5 expensive because she felt the devices were not worth the high price she paid, and that she had
6 already written extensive complaints about the quality of the sound when she requested the first
7 refund from Warda.

8 88. On or about August 11, 2014, Respondent sent a letter to M.C. indicating that she did
9 not qualify for a refund because her grounds for seeking to return the hearing aids was that they
10 cost too much, and this is an impermissible grounds under the Song-Beverly Act. M.C. wrote
11 back to Respondent, explaining that she believed she had completed the Patient Journey, and that
12 no one at MHAC ever told her she had not completed it.

13 89. On or about January 1, 2015, M.C. obtained a small claims judgment rescinding the
14 Purchase Agreement and ordering MHAC to refund the entire amount of the purchase price.
15 MHAC appealed the judgment, and the appeal was denied on or about July 1, 2015. MHAC was
16 assessed \$100.00 in costs on appeal.

17 **THIRTEENTH CAUSE FOR DISCIPLINE**

18 **(Gross Negligence/Supervisor Responsible for Acts and Omissions of Trainee)**

19 90. Paragraphs 17-23 and 82-89, above are incorporated by reference as if fully set forth
20 herein.

21 91. Respondent is subject to disciplinary action under section 2538.28, (Supervisor
22 Responsibility for the Acts or Omissions by Hearing Aid Trainee under Supervision) for the gross
23 negligence of Jese Warda in the fit and sale of a hearing aid to M.C. Warda violated section
24 2533, subdivision (f), gross negligence, in that he failed to perform or chart sufficient bone
25 conduction testing of M.C., and failed to refer M.C. to a physician based on the charted bone-air
26 gap.

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1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 **(Gross Negligence/Supervisor Responsible for Acts and Omissions of Trainee)**

3 92. Paragraphs 17-23 and 82-89, above are incorporated by reference as if fully set forth
4 herein.

5 93. Respondent is subject to disciplinary action under section 2538.28, (Supervisor
6 Responsibility for the Acts or Omissions by Hearing Aid Trainee under Supervision) for the gross
7 negligence of Jese Warda in the fit and sale of a hearing aid to M.C. Warda violated section
8 2533, subdivision (f), gross negligence, in that he failed to perform or chart sufficient bone
9 conduction testing of M.C., and failed to refer M.C. to a physician based on the charted bone-air
10 gap.

11 **FIFTEENTH CAUSE FOR DISCIPLINE**

12 **(Failure to Refer to a Physician/Supervisor Responsible for Acts and Omissions of Trainee)**

13 94. Paragraphs 17-23 and 82-89, above are incorporated by reference as if fully set forth
14 herein.

15 95. Respondent is subject to disciplinary action under section 2538.28, (Supervisor
16 Responsibility for the Acts or Omissions by Hearing Aid Trainee under Supervision), for the
17 failure of Warda to refer to a physician based on the charted air-bone gap of M.C.'s audiogram.
18 Warda violated section 2538.36, subdivision (a), and Title 16, section 1399.126, subdivision (c),
19 of the California Code of Regulations, in that he failed to refer M.C. to a physician based on the
20 apparent air-bone gap.

21 **SIXTEENTH CAUSE FOR DISCIPLINE**

22 **(Fraudulent Dishonest Act/Supervisor Responsible for Acts and Omissions of Trainee)**

23 96. Paragraphs 17-23 and 82-89, above are incorporated by reference as if fully set forth
24 herein.

25 97. Respondent is subject to disciplinary action under section 2538.28, (Supervisor
26 Responsibility for the Acts or Omissions by Hearing Aid Trainee under Supervision), for the
27 fraudulent or dishonest acts of Warda in the fitting and sale of hearing aids to M.C. at the
28 Roseville branch location. Warda violated section 2533, subdivision (e), and California Code of

1 Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed
2 fraudulent or dishonest acts in connection with the sale of hearing aids to M.C., which include,
3 but are not limited to the following:

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

6 (b) Warda failed to identify himself as a Trainee Hearing Aid Dispenser to M.C.; and

7 (c) Warda made false statements as to M.C.'s ability to return the hearing aids and falsely
8 told her she was required to participate in the Patient Journey.

9 **SEVENTEENTH CAUSE FOR DISCIPLINE**

10 **(Fraudulent or Dishonest Act)**

11 98. Paragraphs 17-23 and 82-89, above are re-alleged and incorporated by reference
12 herein.

13 99. Respondent is subject to disciplinary action under section 2533, subdivision (e),
14 which incorporates section 651, committing a fraudulent or dishonest act, in that she committed a
15 fraudulent or dishonest act by failing to accept a return and refund M.C. for the hearing aids
16 despite the knowledge that M.C. had entered into the sale on the basis of false and misleading
17 advertising, and a grossly negligent audiogram result, and by misrepresenting the grounds on
18 which M.C. was entitled to a refund and her reasons for seeking a refund.

19 **EIGHTEENTH CAUSE FOR DISCIPLINE**

20 **(Violation of the Song-Beverly Act)**

21 100. Paragraphs 17-23 and 82-89, above are incorporated by reference as if fully set forth
22 herein.

23 101. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
24 she violated Section 1793.02 (Song-Beverly Act), by failing to accept a return and refund M.C.
25 for the hearing aids.

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1 **PRAYER**

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

- 5 1. Revoking or suspending Hearing Aid Dispenser License Number HA 7070, issued to
6 Respondent Melissa Peacock;
- 7 2. Revoking Respondent Melissa Peacock's ability to supervise trainee and temporary
8 licensees;
- 9 3. Ordering Respondent Melissa Peacock to pay the Speech-Language Pathology and
10 Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and
11 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 12 4. Taking such other and further action as deemed necessary and proper.
- 13
14
15

16 DATED: 6-14-2016



17 PAUL SANCHEZ
18 Executive Officer
19 Speech-Language Pathology and Audiology and Hearing
20 Aid Dispensers Board
21 Department of Consumer Affairs
22 State of California
23 *Complainant*

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