

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:

KWANG HO (KEN) LEE
3130 Olympic Blvd., #3290
Los Angeles, CA 90006

Hearing Aid Dispenser License No. HA
7552,

Respondent.

Case No. 1C-2012-62

OAH No. 2015070100

DECISION AND ORDER

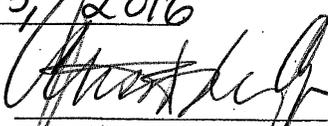
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on

July 15, 2016.

It is so ORDERED

June 15, 2016



FOR THE SPEECH-LANGUAGE PATHOLOGY
AND AUDIOLOGY AND HEARING AID
DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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

11 In the Matter of the Accusation Against:

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13 3130 Olympic Blvd., #3290
14 Los Angeles, CA 90006

15 **Hearing Aid Dispenser License No. HA**
16 **7552,**

16 Respondent.

Case No. 1C-2012-62

OAH No. 2015070100

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17
18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Paul Sanchez ("Complainant") is the Executive Officer of the Speech-Language
23 Pathology and Audiology and Hearing Aid Dispensers Board. He brought this action solely in his
24 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
25 State of California, by Christina L. Sein, Deputy Attorney General.

26 2. Respondent Kwang Ho (Ken) Lee ("Respondent") is representing himself in this
27 proceeding and has chosen not to exercise his right to be represented by counsel.

28 ///

1 CULPABILITY

2 9. Respondent does not contest that, at an administrative hearing, Complainant could
3 establish a *prima facie* case with respect to the charges and allegations contained in Accusation
4 No. 1C-2012-62.

5 10. Respondent agrees that his Hearing Aid Dispenser License is subject to discipline and
6 he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
7 below.

8 11. Respondent agrees that if he ever petitions for early termination or modification of
9 probation, or if an accusation and/or petition to revoke probation is filed against him before the
10 Board, all of the charges and allegations contained in Accusation No. 1C-2012-62 shall be
11 deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or
12 any other licensing proceeding involving Respondent in the State of California.

13 CONTINGENCY

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

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

28 ///

1 14. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following
3 Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Hearing Aid Dispenser License No. HA 7552 issued to
6 Respondent KWANG HO (KEN) LEE is revoked. However, the revocation is stayed and
7 Respondent is placed on probation for three (3) years on the following terms and conditions.

8 1. **SEVERABILITY CLAUSE.** Each term and condition of probation is a
9 separate and distinct term and condition. If any term or condition of this Decision and Order, or
10 any application thereof, is declared unenforceable in whole, in part, or to any extent, the
11 remainder of this Decision and Order, and all other applications thereof, shall not be affected.
12 Each term and condition of this Decision and Order shall separately be valid and enforceable to
13 the fullest extent permitted by law.

14 2. **OBEY ALL LAWS.** Respondent shall obey all federal, state, US Military
15 and local laws, including all statutes and regulations governing the practice of the licensee.
16 Further, Respondent shall, within five (5) days of any arrest, submit to the Board in writing a full
17 and detailed account of such arrest.

18 3. **COMPLY WITH PROBATION PROGRAM.** Respondent shall fully
19 comply with the Board's probation program, and shall, upon notice, report to the Board's staff.
20 Respondent shall contact enforcement staff regarding any questions specific to the probation
21 order. Respondent shall not have any unsolicited or unapproved contact with victims or
22 complainants associated with the case or persons serving the Board as expert consultants.

23 4. **CHANGES OF NAME AND CONTACT INFORMATION.** Respondent
24 shall notify the board in writing, within five (5) days of a change of name, residence or mailing
25 address, telephone number, and email address.

26 5. **SUBMIT QUARTERLY REPORTS.** Respondent shall submit to the
27 Board quarterly reports and verification of actions signed under penalty of perjury. These reports
28 shall certify and document compliance with all the terms and conditions of probation.

1 6. EMPLOYEE NOTIFICATION. When currently employed, applying for
2 employment, or contracted to provide services as a speech-language pathologist, audiologist,
3 dispensing audiologist, speech-language pathology assistant, or hearing aid dispenser,
4 Respondent shall notify his or her employer and supervisor or contractor of the probationary
5 status of Respondent's license. This notification to the Respondent's current employer and
6 supervisor, or contractor shall occur no later than the effective date of the Decision placing
7 Respondent on probation. Respondent shall notify any prospective employer and supervisor or
8 contractor of his or her probationary status with the Board prior to accepting such employment.
9 This notification shall include a copy of the Board's Decision placing Respondent on probation.

10 Respondent shall provide to the Board the names, physical addresses, and telephone
11 numbers of all employers, supervisors and contractors.

12 Respondent shall complete and sign an agreement with the employer and supervisor, or
13 contractor, and the Board to allow the Board to communicate with the employer and supervisor or
14 contractor.

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

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

19 7. INTERVIEWS WITH BOARD REPRESENTATIVES. Respondent shall
20 appear in person for interviews with the Board, or its designee, upon request at various intervals
21 and with reasonable notice.

22 8. EMPLOYMENT LIMITATIONS. While on probation, Respondent may
23 not work as a faculty member or instructor in an accredited or approved school of speech-
24 language pathology or school of audiology.

25 9. ETHICS COURSE. Respondent shall take and successfully complete an
26 ethics course. Within sixty (60) days of the effective date of the Decision, Respondent shall
27 submit a plan to comply with this requirement. Respondent must obtain approval of such plan by
28 the Board prior to enrollment in any course of study. Respondent shall successfully complete the

1 required educational course no later than the end of the first year of probation. Within seven (7)
2 days of completion of the course, Respondent shall furnish proof of completion to the Board
3 immediately.

4 10. CONSUMER RESTITUTION FOR HEARING AID WARRANTY
5 ISSUES. The Board, or its designee, shall contact the consumers named in the Accusation
6 (referenced as "M.Y." and "J.H.") regarding return of the hearing aids purchased from
7 Respondent for a full refund. Upon return of the hearing aids to Respondent, Respondent shall
8 make restitution to M.Y. in the amount of \$2,600.00 and J.H. in the amount of \$1,400.00, within
9 one (1) year of the effective date of the decision. Restitution payments may be made in
10 installments, subject to approval by the Board, or its designee, as to the frequency and amount of
11 the installment payments. Respondent shall provide the Board copies of the cancelled checks to
12 each consumer within ten (10) days of receiving said cancelled checks, or an alternate proof of
13 payment approved in advance by the Board. The cost of providing copies of the cancelled checks
14 or other proof of payment shall be paid by the Respondent.

15 11. RECOVERY OF COSTS. Respondent shall pay to the Board its costs of
16 investigation and enforcement in the amount of \$2,400.00. Such costs shall be payable to the
17 Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board and are to be paid
18 regardless of whether probation is tolled. Failure to pay such costs shall be considered a violation
19 of probation. Any and all requests for a payment plan shall be submitted in writing by
20 Respondent and approved by the Board, with full payment of all costs required by this condition
21 to be received by the Board no later than sixty (60) days prior of the end of probation.

22 Respondent shall pay to the Board its cost of probation monitoring on a monthly basis
23 during the probationary term.

24 12. FUNCTION AS A LICENSEE. Respondent, during the period of
25 probation, shall engage in the practice of hearing aid dispensing in California for a minimum of
26 sixteen (16) hours per week or sixty-four (64) hours per calendar month. For the purpose of
27 compliance with this section, "engaged in the practice of hearing aid dispensing in California"
28 may include, when approved by the Board, volunteer work in hearing aid dispensing, or work in

1 any non-direct patient position that requires licensure. In the event Respondent should leave
2 California to practice outside the state, Respondent must provide written notification (within five
3 (5) calendar days) to the Board of the dates of departure and anticipated return to the state.
4 Respondent's probation is tolled, if and when Respondent ceases practicing in California.
5 Practice outside of California will not apply to the reduction of the probationary period.

6 In the event Respondent ceases to practice a minimum of sixteen (16) hours per calendar
7 week or sixty-four (64) hours per calendar month in California, Respondent must provide written
8 notification of that fact to the Board. The period when the Respondent is not practicing the
9 minimum number of hours noted above, will not apply to the reduction of the probationary
10 period. Absence from practice shall not relieve the Respondent from maintaining a current
11 license. For purposes of this term and condition, non-practice due to Board ordered suspension
12 shall not be considered a period of non-practice. If Respondent stops practicing in California for
13 a total of five (5) years for a speech-language pathologist, audiologist, or speech-language
14 pathology assistant, or three (3) years for a hearing aid dispenser, and fails to renew his license,
15 Respondent's license shall be automatically cancelled.

16 If Respondent has not complied with this term and condition during the probationary
17 period, and Respondent has presented sufficient documentation of his or her good faith efforts to
18 comply with this term and condition, and if Respondent is in compliance with all other probation
19 terms and conditions, the Board, in its sole discretion, may grant an extension of Respondent's
20 probation period up to one year without further hearing in order to comply with this term and
21 condition. During the one year extension, all original terms and conditions of probation shall
22 apply unless they have been modified by the Board via a petition for modification of probation.

23 13. VOLUNTARY LICENSE SURRENDER. During Respondent's term of
24 probation, if he or she wishes to cease practice, Respondent may request in writing to surrender
25 the license(s) to the Board. The Board shall evaluate the request based on the factual
26 circumstances surrounding that particular request, and notify Respondent in writing whether is
27 has been granted. Upon formal acceptance of the license surrender, Respondent's license will no
28 longer be subject to the terms and conditions of probation. Respondent shall return the pocket

1 license(s) and wall certificate(s) to the Board within ten (10) days of the effective date of the
2 surrender.

3 Surrender of Respondent's license shall be considered a disciplinary action and shall
4 become a part of Respondent's license history with the Board. If Respondent re-applies for a
5 license, the application shall be treated as a petition for reinstatement of a revoked license.

6 14. VIOLATION OF PROBATION. If Respondent violates probation in any
7 respect, the Board may seek to revoke probation and carry out the disciplinary order that was
8 stayed. The Respondent shall receive prior notice and the opportunity to be heard. If a Petition to
9 Revoke Probation, an Accusation, a Petition to Vacate Stay or other formal disciplinary action is
10 filed against Respondent during probation, the Board shall have continuing jurisdiction and the
11 period of probation shall be extended and Respondent shall comply with all probation terms and
12 conditions until the matter is final. No petition for modification or termination of probation shall
13 be considered while there is an accusation or petition to revoke probation pending against
14 Respondent.

15 15. COMPLETION OF PROBATION. Respondent's license will be fully
16 restored upon successful completion of probation.

17 16. PRACTICE RESTRICTIONS: SERVING AS A SUPERVISOR.
18 Respondent may not function as a supervisor for any required professional experience (RPE)
19 candidate, or any registered paraprofessional support personnel, or trainee during the period of
20 probation or until approved by the Board.

21 17. SUPERVISED PRACTICE. Within thirty (30) days of the effective date
22 of this decision, Respondent shall submit to the Board, for its prior approval, the name and
23 qualifications of one or more proposed supervisors. Each supervisor shall have been licensed in
24 California for at least three (3) years and have no current or prior disciplinary action by the
25 Board. An administrative citation and fine does not constitute discipline and therefore, in and of
26 itself, is not a reason to deny an individual as a supervisor. The supervisor shall be independent,
27 with no current or prior business, or professional relationship, other relationship that could
28

1 reasonably be expected to compromise the ability of the supervisor to provide impartial and
2 unbiased supervision of the Respondent.

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

7 The plan of supervision shall be general and not require the physical presence of the
8 supervisor during the time services are performed, but does require an occasional, random review
9 of the work performed as well as quarterly monitoring visits at the office or place of practice.
10 Additionally, the supervisor shall have full and random access to all patient records of
11 Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of
12 Respondent's areas of deficiencies.

13 Each proposed supervisor shall be a California licensed Hearing Aid Dispenser who shall
14 submit written reports to the Board on a quarterly basis verifying that supervision has taken place
15 as required and include an evaluation of Respondent's performance. It shall be Respondent's
16 responsibility to assure that the required reports are filed in a timely manner.

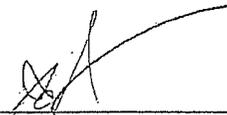
17 If the supervisor terminates his or her supervision or is no longer available to serve in the
18 supervisory role, Respondent must submit to the Board the name or names of a new supervisor
19 within fifteen (15) days. If a new supervisor is not approved by the Board within thirty (30) days
20 from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

23 18. ANNUAL INSPECTION. Throughout the entire probation period, Respondent
24 shall allow for an annual inspection of records to be conducted by the Board or Board
25 representatives. The first inspection of records shall occur within six (6) months of the effective
26 date of this decision. Respondent is responsible for the entire cost of each inspection and shall
27 reimburse the Board for said costs within thirty (30) days of written notification of the total cost
28 of each inspection. If, after two annual inspections, Respondent's records do not show a pattern

1 of violations, the Board may waive future inspection requirements.

2 ACCEPTANCE

3 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
4 stipulation and the effect it will have on my Hearing Aid Dispenser License. I enter into this
5 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
6 to be bound by the Decision and Order of the Speech-Language Pathology and Audiology and
7 Hearing Aid Dispensers Board.

8
9 DATED: 2-19-2016 
10 KWANG HO (KEN) LEE
11 Respondent

12 ENDORSEMENT

13 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
14 submitted for consideration by the Speech-Language Pathology and Audiology and Hearing Aid
15 Dispensers Board.

16
17 Dated: Respectfully submitted,
18 KAMALA D. HARRIS
19 Attorney General of California
20 JUDITH T. ALVARADO
21 Supervising Deputy Attorney General

22 CHRISTINA L. SEIN
23 Deputy Attorney General
24 *Attorneys for Complainant*

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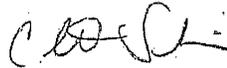
10 KWANG HO (KEN) LEE
11 Respondent

12 ENDORSEMENT

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14 submitted for consideration by the Speech-Language Pathology and Audiology and Hearing Aid
15 Dispensers Board.

16
17 Dated: 2/29/16

18 Respectfully submitted,
19 KAMALA D. HARRIS
20 Attorney General of California
21 JUDITH T. ALVARADO
22 Supervising Deputy Attorney General



23 CHRISTINA L. SEIN
24 Deputy Attorney General
25 *Attorneys for Complainant*

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Exhibit A

Accusation No. IC-2012-62

1 KAMALA D. HARRIS
Attorney General of California
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11 **STATE OF CALIFORNIA**

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14 **3130 W. Olympic Blvd., #290**
Los Angeles, CA 90006
15 **Hearing Aid Dispenser License No. HA**
16 **7552,**
17 Respondent.

Case No. 1C-2012-62

A C C U S A T I O N

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 (Board).

24 2. On or about September 30, 2009, the Board issued Hearing Aid Dispenser License
25 Number HA 7552 to Kwang Ho (Ken) Lee (Respondent). Said license was in full force and
26 effect at all times relevant to the charges brought herein and will expire on September 30, 2015,
27 unless renewed.
28

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

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

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

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

10 “....

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

15 “....

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

18 “....”

19 6. Section 2533 of the Code states:

20 “The board may refuse to issue, or issue subject to terms and conditions, a license on the
21 grounds specified in Section 480, or may suspend, revoke, or impose terms and conditions upon
22 the license of any licensee for any of the following:

23 “....

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

26 “(f) Incompetence, gross negligence, or repeated negligent acts.

27 “....

28 “(k) Violation of Section 1689.6 or 1793.02 of the Civil Code.”

1 7. Section 2538.11 of the Code states:

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

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

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

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

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

17 8. Section 2538.35 of the Code states:

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

20 "(a) The date of consummation of the sale,

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

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

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

28 "(e) The number of the licensee's license and the name and license number of any other

1 hearing aid dispenser or temporary licensee who provided any recommendation or consultation
2 regarding the purchase of the hearing aid.

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

5 9. Section 2538.36 of the Code states:

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

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

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

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

15 "(4) Acute or chronic dizziness.

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

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

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

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

21 "(b) No referral for medical opinion need be made by any licensee in the instance of
22 replacement only of a hearing aid that has been lost or damaged beyond repair within one year of
23 the date of purchase. A copy of the written recommendation shall be retained by the licensee for
24 the period provided for in Section 2538.38. A person receiving the written recommendation who
25 elects to purchase a hearing aid shall sign a receipt for the same, and the receipt shall be kept with
26 the other papers retained by the licensee for the period provided for in Section 2538.38. Nothing
27 in this section required to be performed by a licensee shall mean that the licensee is engaged in
28 the diagnosis of illness or the practice of medicine or any other activity prohibited by the

1 provisions of this code."

2 10. California Code of Regulations, title 16, section 1399.126, states:

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

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

10 11. California Code of Regulations, title 16, section 1399.127, subdivision (9) states:

11 "(9) Refers to a dispenser's certification by a professional organization but either does not
12 include the name of the certifying organization or, includes the name written in a manner not
13 easily understood by consumers.

14 Correct: John Doe, Hearing Aid Dispenser Lic. No. HA-xxxx

15 NB-HIS, Certified by the National Board of Certification in Hearing Instrument Sciences

16 Incorrect: John.Doe, NB-HIS."

17 12. California Code of Regulations, title 16, section 1399.130, subdivision (d) states:

18 "Notwithstanding the causes for action listed under Section 2533 of the Code, the Board
19 may deny, issue subject to terms and conditions, suspend, or revoke a license, or impose
20 conditions of probation upon a licensee, for any of the following causes:

21 "....

22 "(d) Failure to cooperate and participate in any board investigation pending against the
23 licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed
24 by the Fifth Amendment to the Constitution of the United States, or any other constitutional or
25 statutory privileges. This subsection shall not be construed to require a licensee to cooperate with
26 a request that would require the licensee to waive any constitutional or statutory privilege or to
27 comply with a request for information or other matters within an unreasonable period of time in
28 light of the time constraints of the licensee's practice. Any exercise by a licensee of any

1 constitutional or statutory privilege shall not be used against the licensee in a regulatory or
2 disciplinary proceeding against the licensee.”

3 **SONG-BEVERLY CONSUMER WARRANTY ACT**

4 13. Civil Code Section 1793.02 states in pertinent part:¹

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

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

16 “(c) If the buyer returns the device within the period specified in the written warranty, the
17 seller shall, without charge and within a reasonable time, adjust the device or, if appropriate,
18 replace it with a device that is specifically fit for the particular needs of the buyer. If the seller
19 does not adjust or replace the device so that it is specifically fit for the particular needs of the
20 buyer, the seller shall promptly refund to the buyer the total amount paid, the transaction shall be
21 deemed rescinded, and the seller shall promptly return to the buyer all payments and any assistive
22 device or other consideration exchanged as part of the transaction and shall promptly cancel or
23 cause to be canceled all contracts, instruments, and security agreements executed by the buyer in
24 connection with the sale. When a sale is rescinded under this section, no charge, penalty, or other
25 fee may be imposed in connection with the purchase, fitting, financing, or return of the device.

26 “....”

27 ¹ The text of section 1793.02 of the Civil Code quoted herein is the text of the section as it
28 existed on the dates of the violations alleged.

1 COST RECOVERY

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

6 COMPLAINT FILED BY M. Y.

7 15. M. Y., a 77-year-old male (at the time of purchase), saw an advertisement for hearing
8 aids promising clear sound without noise or distortion. The advertisement was by "Ken Lee:
9 HIS", "Board Certified UCLA" of Modus Hearing Aids (Modus). On or about December 2,
10 2010, M. Y. went to Modus and, at first, he did not want to purchase the hearing aids because it
11 was still difficult to understand what others were saying. Respondent, however, assured M. Y.
12 that it would only take a few adjustments of the hearing aids. Accordingly, M. Y. purchased a
13 pair of Starkey S, High End hearing aids, serial no. 11001422 (right) and no. 11001421 (left) for
14 \$2,600.

15 16. From the date of purchase until July 16, 2012, M. Y. states he had approximately 20
16 adjustments with no improvement and contends that the hearing aids were getting worse. M. Y.
17 alleges that he asked for a refund, but was refused.

18 17. M. Y. provided the Board a copy of the invoice dated December 2, 2010 and signed
19 by Respondent on December 3, 2010. The invoice does not have a hearing aid license number
20 printed on it, the hearing aid serial numbers, or the date and signature indicating the
21 consummation of the hearing aid sale (delivery or fitting date). The Song-Beverly Consumer
22 Warranty Act is not printed in bold, does not appear to be 10-point or larger font, the terms of the
23 warranty are not explained, and the language has been modified with statements added regarding
24 the retention of fees in the event of a refund. The warranty also does not include the office hours
25 that Respondent would be available for fitting or post-fitting adjustments and servicing of the
26 hearing aids.

27 18. In response to the Board's request for all documents relating to M. Y., including the
28 purchase agreement, delivery receipt, and chart notes, Respondent provided a registration form

1 lacking the required FDA questions, an unidentified copy of a test with air conduction testing
2 only and no patient name, and a copy of an invoice dated December 2, 2010, which lacked
3 hearing aid serial numbers and contained modified language from the Song-Beverly Consumer
4 Warranty Act.

5 19. In response to the Board's repeated requests for chart notes regarding adjustments to
6 M. Y.'s hearing aids, Respondent provided audio testing from Noah dated December 3, 2010 with
7 air conduction testing only, and Starkey software fitting summaries dated December 3, 2010,
8 January 12, 2011, and October 25, 2011, with no notes or comments. The hearing aid serial
9 numbers identified on the Noah testing and fitting summaries do not match M. Y.'s hearing aid
10 serial numbers.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Incompetence, Gross Negligence, and/or Repeated Negligent Acts)**

13 20. Respondent's license is subject to disciplinary action under sections 2533,
14 subdivision (f), 2538.11, subdivision (c), 2538.35, subdivisions (b), (e), and (f), and 2538.36 of
15 the Code, section 1793.02, subdivisions (a), (b), and (c) of the Civil Code, and Title 16, sections
16 1399.126, subdivision (b), 1399.127, subdivision (9), and 1399.130, subdivision (d), of the
17 California Code of Regulations, in that Respondent exhibited incompetence, gross negligence,
18 and/or committed repeated negligent acts in his care and treatment of M. Y., as more particularly
19 alleged hereinafter:

20 21. Respondent's practice as set forth above in Paragraphs 15 through 19 are incorporated
21 by reference as if fully set forth herein.

22 22. Respondent's practice includes the following acts and/or omissions which constitute
23 extreme departures from the standard of care, incompetence and repeated negligent acts:

24 A. Respondent's registration form lacked the required FDA questions necessary to
25 determine the need for medical referral and clearance prior to the selling or fitting of hearing aids.

26 B. Respondent failed to perform bone conduction testing of M. Y. as required to
27 determine the need for medical referral and clearance prior to the selling or fitting of hearing aids.

28 C. Respondent failed to perform post-fitting verification testing.

1 D. Respondent's invoice failed to comply with the requirements for written
2 receipts and violated the Song-Beverly Consumer Warranty Act.

3 E. Respondent's advertisement does not properly identify himself as a hearing aid
4 dispenser, which should show his California hearing aid dispensing license number, and holds
5 himself out as being "Board Certified UCLA" when there are no schools in California which offer
6 Board Certification in hearing aid dispensing.

7 F. Respondent demonstrated poor recordkeeping and failed to comply with the
8 Board's repeated requests to provide complete documentation related to M.Y.'s records.

9 23. Respondent's acts and/or omissions as set forth in paragraphs 20 through 22, above,
10 whether proven individually, jointly, or in any combination thereof, constitute incompetence,
11 gross negligence, and/or repeated negligent acts pursuant to section 2533, subdivision (f), of the
12 Code. Therefore, cause for discipline exists.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Dishonest or Fraudulent Act That is Substantially Related to the Qualifications, Functions,
or Duties of a Licensee)**

15 24. Respondent's license is subject to disciplinary action under sections 2533,
16 subdivision (e), and 651, subdivisions (a), (b), and (e), of the Code, section 1793.02, subdivisions
17 (a), (b), and (c) of the Civil Code, and Title 16, sections 1399.127, subdivision (9), and 1399.130,
18 subdivision (d), of the California Code of Regulations, in that Respondent committed a dishonest
19 or fraudulent act, as more particularly alleged hereinafter:

20 25. Respondent's practice as set forth above in Paragraphs 15 through 19 are incorporated
21 by reference as if fully set forth herein.

22 26. Respondent's practice includes the following dishonest or fraudulent acts:

23 A. Respondent's invoice failed to comply with the requirements for written
24 receipts and violated the Song-Beverly Consumer Warranty Act.

25 B. Respondent's advertisement does not properly identify himself as a hearing aid
26 dispenser, which should show his California hearing aid dispensing license number, and holds
27 himself out as being "Board Certified UCLA" when there are no schools in California which offer
28

1 Board Certification in hearing aid dispensing.

2 **THIRD CAUSE FOR DISCIPLINE**

3 **(Violation of the Song-Beverly Consumer Warranty Act)**

4 27. Respondent's license is subject to disciplinary action under sections 2533,
5 subdivision (k), of the Code and section 1793.02, subdivisions (a), (b), and (c), of the Civil Code,
6 in that Respondent's written warranty violates the Song-Beverly Consumer Warranty Act, as
7 more particularly alleged hereinafter:

8 28. Respondent's practice as set forth above in Paragraphs 15 through 19 are incorporated
9 by reference as if fully set forth herein.

10 29. The Song-Beverly Consumer Warranty Act is not printed in bold on Respondent's
11 written warranty, does not appear to be 10-point or larger font, the terms of the warranty are not
12 explained, and the language has been modified with statements added regarding the retention of
13 fees in the event of a refund. The warranty also does not include the office hours that Respondent
14 would be available for fitting or post-fitting adjustments and servicing of the hearing aids.

15 **COMPLAINT FILED BY J. H.**

16 30. J. H., a 63-year-old male (at the time of purchase), alleges that he visited Modus in
17 June 2012 to have his hearing tested by Respondent, who recommended a left hearing aid. J. H.
18 purchased the hearing aid for \$1,400 and alleges that, after five adjustments occurring in the July
19 through November 2012 timeframe, the hearing aid was useless and provided no benefit.

20 31. In July 2013, Respondent told J. H. that no further adjustments were possible and
21 recommended that J. H. continue using the hearing aid. J. H. continued to wear the hearing aid,
22 which he claimed had zero effectiveness, and requested a refund in August 2013. Respondent
23 refused to provide a refund.

24 32. J. H. provided the Board a copy of an invoice dated July 9, 2012 for a Starkey S, high
25 end, RIC hearing aid. In response to the Board's request, Respondent provided a copy of an
26 invoice for J. H. dated October 9, 2012. The invoices do not have a hearing aid license number
27 printed on it, the hearing aid serial numbers, or the date and signature indicating the
28 consummation of the hearing aid sale (delivery or fitting date). The Song-Beverly Consumer

1 Warranty Act is not printed in bold, does not appear to be 10-point or larger font, the terms of the
2 warranty are not explained, and the language has been modified with statements added regarding
3 the retention of fees in the event of a refund. The warranty also does not include the office hours
4 that Respondent would be available for fitting or post-fitting adjustments and servicing of the
5 hearing aids.

6 33. In response to the Board's request for all documents relating to J. H., including the
7 purchase agreement, delivery receipt, and chart notes, Respondent provided the October 9, 2012
8 invoice mentioned above and a computer printout of an audiogram with the printed date of
9 evaluation as September 5, 2012, however, handwritten next to that date is "June 10, 2012." The
10 provided audiogram lacks bone conduction testing.

11 34. The Board renewed its request for all documents related to J. H. having not received
12 all previously requested documents. Respondent never responded to the Board's last request.

13 FOURTH CAUSE FOR DISCIPLINE

14 **(Incompetence, Gross Negligence, and/or Repeated Negligent Acts)**

15 35. Respondent's license is subject to disciplinary action under sections 2533,
16 subdivision (f), 2538.11, subdivision (c), 2538.35, subdivisions (b), (e), and (f), and 2538.36 of
17 the Code, section 1793.02, subdivisions (a), (b), and (c) of the Civil Code, and Title 16, sections
18 1399.126, subdivision (b), 1399.127, subdivision (9), and 1399.130, subdivision (d), of the
19 California Code of Regulations, in that Respondent exhibited incompetence, gross negligence,
20 and/or committed repeated negligent acts in his care and treatment of J. H., as more particularly
21 alleged hereinafter:

22 36. Respondent's practice as set forth above in Paragraphs 30 through 34 are incorporated
23 by reference as if fully set forth herein.

24 37. Respondent's practice includes the following acts and/or omissions which constitute
25 extreme departures from the standard of care, incompetence and repeated negligent acts:

26 A. There was no patient case history or information forms, chart notes, or any
27 documentation with the required FDA questions necessary to determine the need for medical
28 referral and clearance prior to the selling or fitting of hearing aids.

1 B. Respondent failed to perform bone conduction testing of J. H. as required to
2 determine the need for medical referral and clearance prior to the selling or fitting of hearing aids.

3 C. The audiogram has conflicting dates of evaluation and the test should have been
4 performed prior to the sale and fitting of the hearing aid.

5 D. Respondent failed to perform post-fitting verification testing.

6 E. Respondent's invoice failed to comply with the requirements for written
7 receipts and violated the Song-Beverly Consumer Warranty Act.

8 F. Respondent demonstrated poor recordkeeping and failed to comply with the
9 Board's repeated requests to provide complete documentation related to J. H.'s records.

10 38. Respondent's acts and/or omissions as set forth in paragraphs 35 through 37, above,
11 whether proven individually, jointly, or in any combination thereof, constitute incompetence,
12 gross negligence, and/or repeated negligent acts pursuant to section 2533, subdivision (f), of the
13 Code. Therefore, cause for discipline exists.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Violation of the Song-Beverly Consumer Warranty Act)**

16 39. Respondent's license is subject to disciplinary action under sections 2533,
17 subdivision (k), of the Code and section 1793.02, subdivisions (a), (b), and (c), of the Civil Code,
18 in that Respondent's written warranty violates the Song-Beverly Consumer Warranty Act, as
19 more particularly alleged hereinafter:

20 40. Respondent's practice as set forth above in Paragraphs 30 through 34 are incorporated
21 by reference as if fully set forth herein.

22 41. The Song-Beverly Consumer Warranty Act is not printed in bold on Respondent's
23 written warranty, does not appear to be 10-point or larger font, the terms of the warranty are not
24 explained, and the language has been modified with statements added regarding the retention of
25 fees in the event of a refund. The warranty also does not include the office hours that Respondent
26 would be available for fitting or post-fitting adjustments and servicing of the hearing aids.

27 ///

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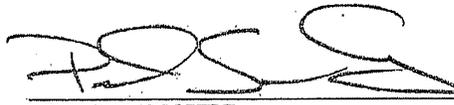
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PRAYER

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

1. Revoking or suspending Hearing Aid Dispenser License Number HA 7552, issued to Kwang Ho (Ken) Lee;
2. Ordering Kwang Ho (Ken) Lee to pay the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: April 23, 2015



PAUL SANCHEZ
Executive Officer
Speech-Language Pathology and Audiology and Hearing
Aid Dispensers Board
Department of Consumer Affairs
State of California
Complainant

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