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:	)	
	)	Case No. 11-2011-57
ROBERT B. GREEN	)	
	)	OAH No. 2015040073
Audiology License No. AU 1104	)	
	)	
Respondent	)	

DECISION

The attached Proposed Decision of the Administrative Law Judge, is hereby adopted by the Speech-Language Audiology and Hearing Aid Dispensers Board, State of California, as its Decision in the above titled matter. Specifically, the Order is modified to change "January 2001" to "January 2011," in paragraph number 9, under "Facts and Circumstances of the Conviction."

This Decision shall become effective on December 21, 2015

IT IS SO ORDERED November 20, 2015.

ALISON GRIMES, PRESIDENT
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
AND HEARING AID DISPENSERS BOARD

BEFORE THE
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AND HEARING AID DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against:	
ROBERT B. GREEN,	Case No. 11-2011-57
Audiologist License No. AU 1104	OAH No. 2015040073
Respondent.	

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter on August 25, 2015, in Oakland, California.

John Gatschet, Deputy Attorney General, represented Complainant.

Adam J. Richards, Attorney at Law, represented Respondent Robert B. Green.

The matter was submitted on August 25, 2015.

FACTUAL FINDINGS

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

2. The Board issued Audiologist License Number AU 1104 to Robert B. Green (Respondent) on July 6, 1987. The license is in full force and effect until June 30, 2016, and has not previously been disciplined.

Procedural and Factual Background

3. Prior to the hearing, the parties entered into a stipulation setting forth the facts at issue in the accusation. The stipulation is set forth below in Findings 4 through 15.

4. On December 24, 2010, Respondent was sworn into office as a member of the Board.[1] His term was set to expire on January 1, 2015. On October 31, 2011, Respondent resigned as a member of the Board.

5. On August 26, 2013, in Alameda County Superior Court, a criminal complaint in case number 451541, entitled *People of the State of California vs. Robert Baron Green*, was filed against Respondent. The criminal complaint alleged a single felony violation of Penal Code section 487, subdivision (b)(3) (grand theft by employee). The criminal complaint further alleged that over a 12-month period, [ending] on or about September 12, 2011, Respondent stole from Alta Bates Summit Medical Center (ABSMC). On October 15, 2013, Respondent voluntarily waived his Constitutional rights and entered a no contest plea to a misdemeanor violation of Penal Code section 487, subdivision (b)(3) (Grand Theft by Employee). Respondent then was immediately sentenced. Respondent was placed on three years of informal probation and sentenced to serve two days in jail with credit for two days served. Respondent was ordered to pay $92,374.74 in restitution as part of his sentence and he made full payment of all restitution prior to the date of this change of plea.[2]

6. On October 18, 2013, the Board received, as part of Respondent's court ordered restitution, a check from Respondent for the full investigative costs of Board case 11-2011-57 in the amount of $20,736.

7. The parties stipulate that Respondent's misdemeanor conviction of a crime, a violation of Penal Code section 487, subdivision (b)(3), in criminal case number 451541, evidences the commission of both a crime and dishonest act that is substantially related to the qualifications, functions, and duties of an audiologist.

FACTS AND CIRCUMSTANCES OF THE CONVICTION

8. On December 11, 1989, Respondent began employment as an audiologist with ABSMC. In that capacity, he provided audio logical evaluations to patients for hearing deficiencies, recommended, dispensed and provided fitting and orientation of hearing aids for patients, and to manage the hearing aid dispensing program at ABSMC. As part of his training, Respondent was provided Conflict of Interest and Code of Ethics training.

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[1] In connection with his Board service, Respondent took the following oath of office: "I, Robert Baron Green, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I'm about to enter."

[2] The parties stipulated to the admission of a certified copy of the Criminal Complaint, Change of Plea Form, and the Criminal Docket in this case.

ABSMC's Conflict of Interest policy, in effect during the entire time of Respondent's malfeasance, required Respondent to disclose:

> . . . any personal or other business relationship that is similar or may compete with Sutter Health (the corporate parent of ABSMC) or an Affiliate property, facilities, or resources; and any other actual or Potential Conflict of Interest that may call into question an employee's duty of loyalty to Sutter Health or an Affiliate.

During the time that Respondent was employed at ABSMC, he was the sole owner of East Bay Audiologists, a hearing aid dispensing business. Prior to January 2011, ABSMC was not aware of Respondent's ownership of East Bay Audiologists (EBA). At no point was there a contractual relationship between EBA and ABSMC regarding the sale of hearing aids.

9. In January 2011, ABSMC employee A.C., who served as Respondent's manager, read a publication about Respondent's appointment to the Board. The publication mentioned Respondent's ownership of EBA. A.C. consulted with ABSMC compliance officer J.R., about a possible conflict of interest. In January 2001, J. R. met with Respondent. Respondent was reminded of the Conflict of Interest Policy and warned that a violation of the policy could lead to termination. At that time, J.R. determined there was no conflict of interest between Respondent, EBA, and ABSMC.

10. In August 2011, ABSMC employee D.C., a receptionist, found a credit card receipt from EBA in an ABSMC's patient chart. D.C. notified ABSMC employee L.S., an administrative assistant, who then warned A.C. At A.C.'s direction the file was secured and reviewed by A.C.

11. On September 6, 2011, A.C. approached Respondent with the patient file and requested an explanation for why a receipt from EBA was in the patient's chart. Respondent was flustered and had no explanation. A.C. stated she would be forced to contact Human Resources at ABSMC. A short time later after their meeting, Respondent approached A.C., and stated he was "very sorry" and that he put A.C. "in a terrible position." He apologized and stated he had, "been very unhappy for a long time." Respondent noted, "I know I can lose my job over this." A.C. contacted J.D., an ABSMC employee in Human Resources to set up a meeting with Respondent.

12. On September 8, 2011, J.D., A.C., and Respondent met regarding the credit card receipt for EBA. Prior to the meeting, ABSMC had discovered an additional EBA credit card receipt in another ABSMC patient file. J.D. confronted Respondent with the first receipt and asked if he had diverted business from ABSMC. Respondent replied, "Yes." J.D. then confronted Respondent with the second receipt and asked if he had diverted business with that patient. Respondent admitted that he had diverted business with the second patient. Respondent was suspended.

13. On September 12, 2011, Respondent was terminated from employment at ABSMC. On September 20, 2011, ABSMC reported Respondent's termination to the Board.[3]

14. Following Respondent's termination, ABSMC and the Division of Investigation, Board of Consumer Affairs, on behalf of the Board, investigated Respondent's employment at ABSMC. It was learned that between January 2010, and September 2011, Respondent evaluated patients at ABSMC on behalf of ABSMC. Respondent then would create a purchase agreement for ABSMC, with the ABSMC patient. Included in the purchase agreement for the hearing aids would be the wholesale price for the hearing aids and the margin of profit that ABSMC would be expected to make on the hearing aids purchased. Respondent then would undercut the total price of the hearing aids from ABSMC and the new price would include the wholesale price of the hearing aids and a profit margin for EBA. The patient would then pay EBA by credit card rather than ABSMC, resulting in a loss of business for ABSMC. Respondent would then keep the profits that EBA received and EBA would pay the wholesale price of the hearing aids. An unfortunate consequence of the hearing aids being purchased directly from EBA led to ABSMC not be obligated to provide free on-going adjustment services within the first two years of purchase. In total, Respondent diverted 27 ABSMC patients to EBA which resulted in a net loss of $64,464.54 to ABSMC.

15. During the investigation, it was also discovered that on two occasions, Respondent dispensed hearing aids from ABSMC to patients without the hearing aids being paid for. In these situations, Respondent was responsible for hearing aids being purchased directly from ABSMC rather than a wholesaler. Respondent would then process the credit card payment for the total purchase price of the hearing aids to EBA. Respondent did not reimburse ABSMC for the hearing aids that were being purchased directly from ABSMC. This resulted in a loss of $3,895.62 to ABSMC.

Respondent's Evidence

16. Respondent acknowledged, without any excuses, the acts described in Findings 4 through 15, and took responsibility for the conduct that led to his conviction and resignation from the Board. He is very remorseful and describes the last four years as the "most painful and devastating of [his] life." Respondent has now had time to reflect, which has given him a "sense of perspective on what [he] did and who [he] is." As a result, Respondent stated "[He] would never put [himself] in [that] position again."

17. Respondent initially used EBA to sell hearing aids directly to ABSMC patients during 2010, when ABSMC was using third party vendors, similar to EBA, to

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[3] The Stipulation states: "The parties stipulate to the admission of the true and correct copy of the Notice of Disciplinary Action that is attached at Exhibit 6." However, Exhibit "6" is a copy of California Code of regulations, title 16, section 1399.155, which refers to the Board's Disciplinary Guidelines. The Disciplinary Guidelines were received as Exhibit 7.

provide hearing aids to patients. During this time, Alta Bates was not dispensing hearing aids itself. Respondent felt it was burdensome and confusing for patients, many of whom were elderly, to have their hearing tested at the hospital, but then to have to go to another location to buy and service any hearing aid they needed. When the patients bought hearing aids from EBA, they did not have to go to a separate third party provider, and Respondent anticipated he would be available to service the hearing aids.

18. In early 2011, ABSMC again began selling hearing aids directly to patients, but Respondent continued to sell them to patients through EBA. In so doing, he never charged more than ABSMC and in fact provided a discount as compared with the prices ABSMC charged. Respondent was not, however, available to service the hearing aids following his termination, and patients were not made aware that EBA was the actual seller.

19. While working at ABSMC, Respondent was employed with similar responsibilities by Contra Costa County as an audiologist.[4] Respondent's relationship with this employer was different, however, in that dispensing hearing aids to Contra Costa patients was one of his responsibilities. The hearing aids were also provided through EBA, but he was reimbursed by the county on a set schedule. Respondent continues to work three days a week for a county-based audiology clinic, where he works with an underserved and disadvantaged patient population.

20. Respondent acknowledged his misconduct with respect to the two patients described in Finding 15, when he received payment for hearing aids that were provided by ABSMC. He stated that this was an oversight, and the result of carelessness and poor bookkeeping. In the context of the Respondent's recordkeeping process, this explanation was reasonable.

21. The restitution Respondent made to ABSMC more than compensated ABSMC for the business he diverted, because ABSMC was reimbursed for hearing aids sold to patients during the time it was using third party vendors to supply hearing aids. During this period, it would not have had any sales or any profits, regardless of Respondent's conduct. Respondent also reimbursed the Board for its costs of investigating this matter.

22. Respondent experienced such remorse about his conduct that he sought and continued with counseling for two years, to gain insight into why he engaged in the behavior at issue. As a result, Respondent is now more introspective, self-critical, and sensitive to assuring his conduct is honest and ethical in all aspects of his life. Respondent's psychiatrist, Craig Rudnick, M.D., provided a letter stating:

> [Respondent] first presented to me in therapy on October 11, 2011, following his departure from the outpatient rehabilitation department at Alta Bates Hospital. We met weekly for

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[4] This employment was not a conflict of interest with ABSMC.

> approximately the next two years and I continue to see him for occasional follow-up appointments. [Respondent's] goals for therapy were to both better understand what led to his behavior and better cope with the fallout.
>
> Throughout his visits, [Respondent] showed a great capacity for introspection and self-examination and a willingness to explore sensitive aspects of his past in an effort to support growth and healing. . . . I have been pleased with [Respondent's] ability to display both humility and empathy throughout this process and see his time spent in therapy to date is a boon to the overall development of his character.

23. Respondent enjoys the support of numerous professional colleagues. Steven Brauser, M.D., has known respondent since 1990, and even though he moved to New York in 2010, continues to stay in close touch. Dr. Brauser came to the hearing and described Respondent as "considerate, thoughtful, loyal, honest, and someone to have on your side." Dr. Brauser testified that Respondent has "torn himself up" over the event, and it is "impossible that he would repeat [this conduct]." Ann Cupolo Freeman, a Licensed Clinical Social Worker, worked closely with Respondent at ABSMC and also testified at hearing. She described Respondent as "caring and intelligent, and committed to disability rights." She also spoke to his remorse, stating that his career means "so much to him; he would not blow it again."

24. Respondent also provided letters of support from physicians he has worked with. Lloyd Ford, M.D., wrote: "[Respondent] is a fantastic professional audiologist. He is intelligent, responsible, kind, respected and extremely knowledgeable in audiology. In the 15 years I've known him I have never had a negative experience."

25. Respondent earned his Master's degree in audiology in 1986 and was hired by Children's Hospital Oakland. In 2006, Respondent earned a Doctor of Audiology. He has made six trips to Vietnam with a nonprofit organization called Americans Helping Asian Children, to provide audiology services and hearing aids to impoverished children who would not otherwise have access to hearing care.

26. Respondent has no other criminal convictions, he has not previously been disciplined by the Board, and he is in compliance with the terms of his probation. Respondent's stipulation to the facts in the case simplified the hearing and demonstrated both cooperation with the Board and an acknowledgment of the underlying facts associated with the offense. In the four years since his termination from ABSMC, he has continued to practice audiology honestly and without patient complaints.

Credibility

27. Respondent's testimony was forthright, consistent and credible. He put his offense in context, without making excuses or attempting to justify the misconduct. Respondent's character witnesses were also knowledgeable and credible.

Costs

28. Complainant has incurred legal fees from the Attorney General's Office in the amount of $4,044.75, in connection with the prosecution this matter. These charges are supported by a declaration that complies with California Code of Regulations, title 16, section 1042, and they are reasonable.

LEGAL CONCLUSIONS

1. The standard of proof is clear and convincing evidence.

2. Business and Professions Code[5] section 2533, subdivision (a), together with section 2533.1, authorizes the Board to take disciplinary action against an audiologist who has committed a crime which is substantially related to the qualifications, functions and duties of an audiologist. Respondent was convicted of violating Penal Code section 487, subdivision (b)(3) (grand theft by employee). (Finding 5.) Complainant and Respondent stipulated this conviction is substantially related to the qualifications, functions and duties of an audiologist. (Finding 7.) By reason of the matters set forth in Findings 4 through 15, cause for discipline of Respondent's license exists pursuant to section 2533, subdivision (a).

3. In California Code of Regulations, title 16, section 1399.156.3, the Board has established criteria to guide the analysis of whether a respondent with a criminal conviction is sufficiently rehabilitated to be safe to practice as an audiologist. These criteria include the nature and severity of the act or offense; the total criminal record; the time that has elapsed since the commission of the offense; whether the licensee has complied with any terms of probation or other sanctions imposed; evidence of expungement of the proceedings; and evidence of rehabilitation. Inherent in any consideration of rehabilitation is also change of attitude.

4. Respondent's misconduct was serious in that he breached a duty he owed to both his employer and to his patients. In the case of ABSMC, the corporation lost profits, and more importantly, the transactions were not transparent to patients because they were not informed that they were buying their hearing aids from EBA, rather than from ABSMC. The arrangement also created the possibility that patients would be unable to have their hearing aids properly serviced. At the same time there is no evidence any patient was ever sold a hearing aid he or she did not need, and the patients saved money as compared with buying

[5] All references are to the Business and Professions Code unless otherwise indicated.

the same product from either a different third-party vendor or from ABSMC. (Finding 14.) And during the same time period, Respondent was lawfully providing hearing aids to his Contra Costa County patients. (Finding 19.)

Respondent's conduct since the date of the offense has been remorseful and forthright and he has demonstrated a changed attitude about the conduct. He reimbursed ABSMC's lost profits prior to sentencing; the Board's costs of investigation have been paid; and Respondent shortened the hearing by stipulating to the underlying facts. (Finding 13.) This is Respondent's only offense and he is in compliance with the terms of his probation. (Findings 2, 22, and 26.) Respondent cannot yet seek expungement of the conviction, but he has demonstrated in the four years since the offense a strong commitment to practicing audiology honestly and ethically.

Respondent lost his bearing during an otherwise exemplary career, and since then has done everything he can to atone for a series incidents of bad judgments. The Board's highest responsibility is public protection and not further punishment. Given the totality of evidence, the public will be adequately protected if Respondent is given a probationary license, subject to the Board's ability to audit his books and records, in addition to the standard conditions of probation.

Costs

5. Business and Professions Code section 125.3 provides that a licensee found to have committed a violation of the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

6. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Supreme Court enumerated several factors that a licensing Board must consider in assessing costs. The Board must not assess the full costs of investigation and enforcement when to do so would unfairly penalize a Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty; the Board must consider a Respondent's subjective good faith belief in the merits of his or her position and whether the Respondent has raised a colorable challenge; and the Board must consider a Respondent's ability to pay. Respondent shortened the time required for hearing by his stipulation; he raised good faith arguments against license revocation; and he has already paid the Board's investigation costs of $20,736. Considering all of these factors, a modest reduction of $1,000 in prosecution costs is warranted.

ORDER

Respondent Robert B. Green's Audiologist License No. AU 1104 is revoked. However, the order of revocation is stayed, and Respondent will be placed on probation for a period of two years on the following terms and conditions:

1. Obey All Laws

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

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

2. Comply with Probation Program

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

3. Change of Address Notification

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

4. Out-of-State Residency

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

Respondent shall notify the Board immediately upon return to California. The period of probation shall be tolled during the time respondent is residing or practicing outside California.

5. Submit Quarterly Written Declarations

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

6. Notify Employer of Probation Terms and Restrictions

When currently employed or applying for employment as a speech-language pathologist, audiologist or speech-language pathology assistant, respondent shall notify his employer of the probationary status of respondent's license. This notification to respondent's current employer shall occur no later than the effective date of the Decision placing respondent on probation. Respondent shall notify any prospective employer of his probationary status with the Board prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of the Board's Decision placing respondent on probation.

Respondent shall cause each employer to submit quarterly written declarations to the Board. These declarations shall include a performance evaluation.

Respondent shall notify the Board, in writing, of any change in his employment status, within ten (10) days of such change.

7. Interviews with Board Representatives

Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice. An initial probation visit will be required within sixty (60) days of the effective date of the Decision. The purpose of this initial interview is to introduce respondent to the Board's representatives and to familiarize respondent with specific probation conditions and requirements. Additional meetings may be scheduled as needed.

8. Employment Limitations

While on probation, respondent may not work as a faculty member in an accredited or approved school of speech-language pathology or school of audiology.

9. Educational Course

Respondent shall take and successfully complete course work in ethics substantially related to the violation. Within sixty (60) days of the effective date of the Decision, respondent shall submit a plan to comply with this requirement. Respondent must obtain approval of such plan by the Board prior to enrollment in any course of study.

Respondent shall successfully complete the required ethics education no later than the end of the first year of probation. Upon successful completion of the course, respondent shall cause the instructor to furnish proof to the Board immediately.

10. Function in Licensed Capacity

During probation, respondent shall work in his capacity in the State of California. If respondent is unable to secure employment in his capacity, the period of probation shall be tolled during that time.

11. Maintain a Valid License

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

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

12. Violation of Probation

If respondent violates probation in any respect, the Board may seek to revoke probation and carry out the disciplinary order that was stayed. Respondent shall receive prior notice and the opportunity to be heard. If a Petition to Revoke Probation, an Accusation, a Petition to Vacate Stay or other formal disciplinary action is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final.

13. Completion of Probation

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

14. Costs

Respondent shall pay to the Board its costs of enforcement in the amount of $3,044.75. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term. If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation will apply.

15. Respondent shall provide the Board access to review or audit his books and records relating to his practice of audiology upon 48 hours' notice.

DATED: September 11, 2015

DocuSigned by:
kirk miller
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KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings

FILED - STATE OF CALIFORNIA
Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board
Sacramento, California on November 14, 2014
By

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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: Robert B. Green 28 Old Town Lane Danville, CA 94526 Respondent Audiologist License No. AU 1104	Case No. 11- 2011-57 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about July 6, 1987, the Board issued Audiologist License Number AU1104 to Robert B. Green (Respondent). Audiologist License Number AU1104 was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2015, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2530.1 of the Code states: "The Legislature finds and declares that the practice of speech-language pathology and audiology and hearing aid dispensing in California affects the public health, safety, and welfare and there is a necessity for those professions to be subject to regulation and control."

5. Section 2530.2 of the Code states:

"As used in this chapter, unless the context otherwise requires:

"(a) 'Board' means the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. As used in this chapter or any other provision of law, 'Speech-Language Pathology and Audiology Board' shall be deemed to refer to the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board or any successor.

"(b) 'Person' means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, except that only individuals can be licensed under this chapter.

"..."

"(j) An 'audiologist' is one who practices audiology.

"(k) 'The practice of audiology' means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, instruction related to auditory, vestibular, and related functions and the modification of communicative disorders involving speech, language, auditory behavior or other aberrant behavior resulting from auditory dysfunction; and the planning, directing, conducting, supervising, or participating in programs of identification of auditory disorders, hearing conservation, cerumen removal, aural habilitation, and rehabilitation, including, hearing aid recommendation and evaluation procedures including, but not limited to, specifying amplification requirements and evaluation of the results thereof, auditory training, and speech reading, and the selling of hearing aids.

"(l) A 'dispensing audiologist' is a person who is authorized to sell hearing aids pursuant to his or her audiology license.

"..."

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6. Section 2531.02 of the Code states:

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

7. Section 2533 of the Code states:

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

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

"..."

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

8. Section 2533.1 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist is deemed to be a conviction within the meaning of this article. The board may order a licensee be disciplined or denied a license as provided in Section 2533 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment."

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COST RECOVERY

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

CAUSE FOR DISCIPLINE

(Substantially-related Conviction)

10. Respondent's license is subject to disciplinary action under code sections 2533(a) and 2533.1 [substantially related conviction] in that on or about October 15, 2013, he was convicted on his plea of no contest to a violation of Penal Code section 487(b)(3) [grand theft by employee.] The circumstances are as follows:

11. On or about August 26, 2013, criminal complaint no. 451541 titled *People of the State of California vs. Robert Baron Green* was filed in Alameda County Superior Court. The complaint alleged that on or about September 12, 2011, Respondent committed a felony violation of Penal Code (PC) section 487(b)(3), theft from his employer Alta Bates Summit Medical Center (ABSMC), exceeding $950.00 over a twelve month consecutive period.

12. On or about October 15, 2013, Respondent was convicted on his plea of no contest to a lesser included offense, and found guilty of a misdemeanor violation of PC 487(b)(3). He was placed on three years probation on terms and conditions including but not limited to an order to serve two days in County Jail with credit for two days; and he was ordered to pay restitution and fines. The Court noted that Respondent had paid restitution in full, per the District Attorney.

13. The circumstances surrounding the conviction are as follows:

From December 11, 1989 until September 2011, Respondent was employed as an Audiologist at Alta Bates Summit Medical Center (ABSMC). In that capacity, he provided audiological evaluations to patients for hearing deficiencies, recommended, dispensed and provided fitting and orientation of hearing aids for patients, and managed the hearing aid dispensing program at ABSMC. ABSMC provided Conflict of Interest and Code of Ethical

Conduct training to Respondent. ABSMC's Conflict of Interest policy required Respondent to disclose:

"any personal or other business relationship that is similar to or may compete with Sutter Health or an Affiliate property, facilities, or resources; and

Any other actual or Potential Conflict of Interest that may call into question an employee's duty of loyalty to Sutter Health or an Affiliate.

14. During the time Respondent was employed at ABSMC, he was also the owner of East Bay Audiologists, a hearing aid dispensing business. On or around January 2011, ABSMC learned of Respondent's ownership interest and an ABSMC Compliance Officer met with Respondent. The Compliance Officer determined that no conflict of interest existed at that point, however, she warned Respondent that a violation of the Conflict of Interest policy could result in termination.

15. On or about August, 2011, an ABSMC employee found a credit card receipt for Respondent's company, East Bay Audiologists, in a patient's file. On September 6, 2011, A.C.[1], Respondent's manager, spoke with Respondent and asked for an explanation. He was flustered, and told A.C. that he had no explanation. A.C. informed Respondent that she would notify J.D., the Human Resources (HR) Manager. Later, Respondent approached A.C. and apologized for putting her "in a terrible position" and said that he had "been very unhappy for a long time." He acknowledged that he could "lose his job over this."

16. On September 8, 2011, J.D., the HR Manager met with Respondent. At that point, ABSMC had found one additional credit card receipt indicating that East Bay Audiologists, Respondent's company, had received payment for hearing aids from an ABSMC patient. J.D. showed Respondent the first credit card receipt and asked him if he had diverted business from ABSMC to East Bay Audiologists, his company, in violation of ABSMC's policy. Respondent answered, "Yes." J.D. produced the second credit card receipt and asked the same question.

[1] Full names will be disclosed upon a Request for Discovery.

Respondent admitted that he had diverted business to his company for that patient as well, and said "but that's all." Respondent was suspended while ABSMC conducted an investigation.

17. On or about September 12, 2011, A.C. met with Respondent and informed him that his actions had created a conflict of interest and his employment was terminated. Further investigation found that from approximately January 2010 through September 2011, Respondent had diverted in excess of $50,000.00 from ABSMC to his company East Bay Audiologists.

18. On or about September 20, 2011, A.C. reported to the Board that Respondent was terminated from employment for stealing business from ABSMC and that Respondent had dispensed hearing aids through his private company while he was employed at ABSMC.

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 Audiologist Number AU1104, issued to Robert B. Green;

2. Ordering Robert B. Green 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;

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

DATED: 11/14/2014

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

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