

By Amata Joseph

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

11 In the Matter of the Accusation Against:
12
13 HOWARD ALAN HAMBURGER
3122 Santa Monica Blvd., Ste. 101
Santa Monica, CA 90404
14
15 Respondent
16
Audiologist License No. AU 2092

Case No. 11- 2014-29

A C C U S A T I O N

17 Complainant alleges:

18 PARTIES

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

22 2. On or about July 3, 2001, the Board issued Audiologist License Number AU 2092 to
23 Howard Alan Hamburger (Respondent). Audiologist License Number AU 2092 was in full
24 force and effect at all times relevant to the charges brought herein and will expire on January 31,
25 2016, unless renewed.

26 JURISDICTION

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

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

5 5. Section 2530.2 of the Code states:

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

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

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

14 "..."

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

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

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

27 "..."

28 6. Section 2531.02 of the Code states:

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

5 7. Section 2533 of the Code states:

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

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

12 "..."

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

15 8. Section 2533.1 of the Code states:

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

25 9. California Code of Regulations, title 16, section 1399.156, states:

26 "Unprofessional conduct as set forth in Section 2533 of the Code includes, but is not
27 limited to the following:
28

1 (a) Violating or conspiring to violate or aiding or abetting any person to violate the
2 provisions of the Act or these regulations.

3 “...”

4 10. California Code of Regulations, title 16, section 1399.156.1, states:

5 “For the purposes of denial, suspension or revocation of a license or registration pursuant to
6 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be
7 substantially related to the qualifications, functions or duties of a person holding a license under
8 the Act if to a substantial degree it evidences present or potential unfitness of a person holding a
9 license to perform the function authorized by his or her license or registration in a manner
10 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
11 limited to those involving the following:

12 (a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
13 violation of, or conspiring to violate any provision or term of the Act.

14 (b) Conviction of a crime involving fiscal dishonesty.”

15 COST RECOVERY

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

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction)

22 12. Respondent’s license is subject to disciplinary action under Code sections 2533,
23 subdivision (a) and 2533.1 and California Code of Regulations, title 16, sections 1399.156,
24 subdivision (a) and 1399.156.1, subdivisions (a) and (b) in that on or about February 23, 2015, he
25 was convicted on his plea of guilty to a violation of Penal Code section 487 [grand theft]. The
26 circumstances are as follows:

27 13. On or about February 25, 2014, criminal complaint no. BA415014, in the case titled
28 *People of the State of California vs. Howard Hamburger*, was filed in Superior Court of the State

1 of California, County of Los Angeles. The complaint alleged that from on or about January 1,
2 2009, through September 15, 2013, in the County of Los Angeles, State of California,
3 Respondent, unlawfully took from the State of California (Health Care Deposit Fund) property of
4 a value in excess of four hundred dollars (\$950), in violation of Penal Code (P.C.) section 487, a
5 felony. It was further alleged that in the commission of the felony charged in Count 1, that
6 Respondent, with the intent to cause so, took, damaged, and destroyed property of a value in
7 excess of Sixty-five Thousand Dollars (\$65,000), within the meaning of P.C. section 12022.6,
8 subdivision (a)(1).

9 14. On or about February 23, 2015, Respondent was convicted on his plea of guilty of a
10 felony violation of P.C. section 487. He was placed on three years probation on terms and
11 conditions including but not limited to an order to serve forty-five (45) days in County Jail; and
12 he was ordered to pay restitution and fines. The Court noted that Respondent had paid restitution
13 in the amount of \$300.

14 15. The circumstances of the conviction are as follows:

15 First, Respondent billed Medi-Cal for hearing aids that were not dispensed or provided to
16 Medi-Cal beneficiaries. Second, Respondent billed Medi-Cal for hearing aids dispensed to Medi-
17 Cal beneficiaries without the medical necessity having been determined by a physician.
18 Respondent admitted to investigators that he billed Medi-Cal for hearing aids that he did not
19 provide and or dispense to the beneficiaries, including a list of approximately forty-four (44)
20 beneficiaries. The loss to Medi-Cal was at a minimum \$64,482.00. This amount was paid to
21 Respondent.

22 SECOND CAUSE FOR DISCIPLINE

23 (Dishonest or Fraudulent Act)

24 16. Respondent's license is subject to disciplinary action under section 2533, subdivision
25 (e) of the Code, in that Respondent committed dishonest or fraudulent acts, as more particularly
26 alleged hereinafter.

27 17. Respondent's conduct, as set forth above in paragraphs 13 through 15, is incorporated
28 by reference as if fully set forth herein and constitutes dishonest or fraudulent acts.

