

**TITLE 16. SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
AND HEARING AID DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date

No public hearing has been scheduled for this proposed regulatory action.

Subject Matter of Proposed Regulations

Hearing Aid Dispensing Advertising

Sections Affected

Amend section 1399.127 of Article 5 of Division 13.3 of Title 16, California Code of Regulations (CCR).¹

Background and Statement of the Problem

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) is a state agency vested with the authority to license, regulate, and discipline within the practices of speech-language pathology, audiology, and hearing aid dispensing in accordance with the Business and Professions Code (BPC) sections 2530.1 and 2531.02. The Board's mandate and its mission is to protect the public by regulating approximately 35,000 speech-language pathologists, speech-language pathology assistants, speech-language pathology aides, audiologists, dispensing audiologists, audiology aides, hearing aid dispensers, hearing aid dispenser trainees, and temporary hearing aid dispensers who are licensed and registered with the Board and disciplining licensees or registrants who violate the law. In order to protect the public, the Board requires licensees authorized to dispense hearing aids to advertise in such a way that isn't false, fraudulent, misleading, or deceptive (BPC section 651).

Existing law, under BPC sections 2531.06 and 2531.95, authorizes the Board to adopt, amend, or repeal regulations that may be necessary to execute any provisions of the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act. The Board intends to use its authority to amend regulations that enforces BPC section 651.

There is no existing federal regulation or statute comparable to this proposed regulation.

¹ All CCR references are to Title 16 unless otherwise noted

Due to inquiries the Board has received regarding the lack of clarity with advertising regulations for the practices of hearing aid dispensing, the Board seeks to revise this regulation to ensure that information advertised will not cause a person to misunderstand the information, be deceived by the information, or both.

Purpose, Rationale, and Anticipated Benefits

Amend section 1399.127 of Article 5 of Division 13.3 of Title 16 of the CCR

Purpose: Subsection (a) is amended to clarify that anyone licensed to dispense hearing aids can advertise the fitting and selling of hearing aids in accordance with BPC section 651 and this regulatory section.

Anticipated Benefit/Rationale: Making these changes will make advertising requirements consistent for all who are authorized to sell hearing aids. The Board has other license types who are authorized to sell hearing aids such as dispensing audiologists, hearing aid dispenser temporary licensees, and hearing aid dispenser trainees. The Board has the authority to adopt regulations to enforce BPC section 651, which this rulemaking does.

Purpose: Subsection (b) is amended to clarify that advertising in violation of Article 8, Chapter 5.3 of Division 2 of the Code, beginning with Section 2538.10, is a violation of BPC section 651. Existing paragraphs (1) through (10) of this subsection are removed.

Anticipated Benefit/Rationale: These changes are necessary because other portions of the Board's Licensure Act specify advertising requirements specific to the practice of hearing aid dispensing that maintain public safety. An example is BPC section 2538.12, which requires licensees to present a written statement upon the conclusion of each hearing screening conducted at a health fair or similar event. By making the changes proposed in this rulemaking, the Board seeks to increase transparency in its advertising requirements for the practice of hearing aid dispensing. Removing existing paragraphs (1) through (10) increases clarity by removing language and tables that have caused confusion. The content removed will be clearly re-stated as new subsections (c) through (h).

Purpose: Subsection (c) and paragraphs (1) and (2) are added to require licensees in the practice of hearing aid dispensing to include specific information when advertising. Paragraph (1) will require business address(es) to be included in an advertisement. Paragraph (2) will require the licensee's license number to be included in an advertisement.

Anticipated Benefit/Rationale: Requiring licensees to disclose business addresses and their license number reduces the possibility of allegations of misleading or deceptive advertising. This information provides consumers with the identity of the licensee who is advertising fitting and selling hearing aids. Licensees engaged in the practice of fitting or

selling hearing aids are required to maintain an established business address that is routinely open for service pursuant to BPC section 2538.51. Because licensees can maintain more than one place of business within the state, the Board is requiring that the address of the principal place of business and the address where the licensee is available for fitting or post-fitting adjustments and servicing hearing aids. It would be unduly burdensome to require licensees to advertise three or more addresses. This requirement is analogous to the statutory requirement for the sale of hearing aids that uses proprietary programming software or locked, nonproprietary programming software (BPC section 2538.35). The Board is permitted to promulgate regulations that require licensees to include their license numbers in any advertising pursuant to BPC section 137. Consumers can use license numbers to check that status of a license issued by the Board and learn whether the license is current or subject to discipline, using the Department of Consumer Affairs' license search database.

Purpose: Subsection (d) and paragraphs (1) through (7) are added to specify prohibited assertions in advertisements, such as advertising an unearned academic degree, using the term "doctor" without specifying the field in which it was earned, using a job title or certification without clearly identifying the organization it came from, hearing aid dispensers offering to conduct a hearing test without stating that it is for the purpose of fitting or selling hearing aids, advertising audiological services without a licensed audiologist present, presetting appointment without the consumer's consent, and the use of rebate coupons or check without all the information related to the price.

Anticipated Benefit/Rationale: These changes enhance consumer protection by ensuring information presented in advertisements will not cause a person to misunderstand the information, be deceived by the information, or both. Paragraphs (1) and (2) are added to clarify the provision removed from existing subsection (b), paragraph (7). The Board can suspend, revoke, or impose terms and conditions on a license for "advertising an academic degree that was not validly awarded or earned;" or using the "term 'doctor' or 'physician' or 'clinic' or 'audiologist,' or any derivation" pursuant to BPC sections 2533(d) and 2533(h). The Board is repeating this information in order to clarify it because licensees can earn an academic degree or a doctoral degree that permits them to validly be called "doctor." Therefore, the Board will require that licensees present those degrees by identifying the academic field in which the degree was earned. Paragraph (3) is added to clarify provisions removed from existing subsection (b), paragraphs (8), (9), and (10) because licensees can acquire title(s) from certification or training programs that are different from the ones listed in the regulations. This paragraph clarifies how licensees can present those title(s). Paragraph (4) is added to clarify the provision removed from existing subsection (b), paragraph (5) because hearing aid dispensers are permitted to administer a hearing test "solely for the fitting and selling of hearing aids" or "in connection with the fitting and selling of hearing aids" (BPC sections 2530.5(b) and 2538.11). This paragraph requires that any hearing test advertised by a hearing aid dispenser must state that information without requiring the particular language that licensees should use in the advertisement. Paragraph (5) is added to clarify the provision removed from existing subsection (b), paragraph (4)

because the Board does not regulate business names, which are filed with the California Secretary of State. To reduce the risk of a person misunderstanding the functions or duties of a licensee in the practice of hearing aid dispensing, the paragraph requires that a licensed audiologist practice at the advertised address, if audiological services are advertised. Paragraph (6) is added to clarify the provision removed from existing subsection (b), paragraph (6) regarding preset appointment information and it adds the statement that the consumer has not made a request for the appointment. This is necessary because licensees may send preset appointment information to their clients for appointments the clients had requested to receive appointment reminders for. Paragraph (7) is added to clarify the provision removed from existing subsection (b), paragraph (6) regarding rebate coupons or checks. Because the Board cannot prevent lawful forms of advertising of services or commodities, the Board is imposing disclosure requirements that are similar to price comparison that is being added by this proposed regulation as subsection (f) for the use of rebates. To protect the public from advertising meant to induce consumer to pay for the furnishing of products or rendering of services, the Board found it reasonable to require the disclosure of all information related to the standard price and discount or sale regardless if the discount or sale is at the time of sale (rebate coupon) or after the sale (rebate check).

Purpose: Subsection (e) is added to permit the advertisement of services for the purpose of research or a field study if it doesn't result in the sale of hearing aids.

Anticipated Benefit/Rationale: Adding this provision to the regulations is necessary because licensed hearing aid dispensers are permitted to engage in practices and procedures solely for the fitting and selling of hearing aids (BPC sections 2530.5(b) and 2538.11). However, licensees may be required to engage in practices and procedures for the fitting but not the selling of hearing aids when conducting research or a field study. Therefore, the Board is clarifying the advertisement of services authorized in the practice of hearing aid dispensing for the purpose of research or a field study is permitted if it doesn't result in the sale of hearing aids. The Board has similar requirement in BPC section 2538.21 for licensees engaged in the practice of fitting hearing aids "for a governmental agency, or private clinic, or is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public, charitable institution or other nonprofit organization."

Purpose: Subsection (f) is added to require price advertisements to state all charges related with the purchase and fitting of hearing aids and require advertisement that uses a sale, discount, or price comparison to be based on verifiable data that can be provided to the Board upon request. Paragraphs (1), (2), and (3) are added to specify requirements as such as the actual price of the hearing aid or a method to determine its actual price; the dates if the advertised price is for a specified time period; and any terms, conditions, or restrictions associated with the advertised price.

Anticipated Benefit/Rationale: Subsection (f) and paragraphs (1), (2), and (3) are added to clarify the provision removed from existing subsection (b), paragraphs (1), (2), and (3)

without requiring the particular language that licensees should use in advertisements. BPC section 651(c) states that “the price for each product or service shall be clearly identifiable” and “include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.” The Board is repeating this information in order to specify additional requirements for advertisements related to price or the use of sales, discount, and price comparison. This is necessary for consumer protection because an informed decision cannot be made if all the information is not provided. Therefore, the Board is requiring the disclosure of all cost related to the purchase and fitting of hearing aids and information to establish the accuracy of a price. The Board is requiring advertisement that uses a sale, discount, or price comparison to be based on verifiable data that can be provided to the Board upon request. This is because the Board investigates complaints related to the sale of hearing aids. Without this information on file, the Board would be unable to determine if the advertising was deceptive or misleading to consumers. The Board is specifying in subsection (f), paragraphs (1), (2), and (3) the type of information required to establish the accuracy of a price for the purpose of uniformity. The Board has determined this type of information is sufficient to establish the accuracy of a price because it provides consumers the original price and any limitations to qualify for the advertised price.

Purpose: Subsection (g) is added to require licensees retain the information used to substantiate the accuracy of an advertised price for one year after the advertisement is published or disseminated.

Anticipated Benefit/Rationale: The Board is establishing a one-year retention period for advertisements that uses a sale, discount, or price comparison to protect consumers from misleading or false advertising and ensure the Board has the ability to investigate complaints effectively. The Board investigates complaints related to the sale of hearing aids. Without this information on file, the Board would be unable to determine if the advertising was deceptive or misleading to consumers. One year is a reasonable amount of time as it is the Board’s overall goal to complete consumer complaints within twelve to eighteen months from when it receives a complaint.

Purpose: Subsection (c) is renumbered to subsection (h). Paragraphs (1) and (2) are added to exempt national advertisements from the requirement stated in existing subsection (c) and to discipline licensees who complete a sale as a result of an advertisement that violates BPC section 651.

Anticipated Benefit/Rationale: This subsection is renumbered to reflect the changes made to this section by these proposed regulatory changes. Paragraph (1) is added to exempt national advertisements from subsection (c) because it would be unduly burdensome to advertise information for any and all dispensers of a national hearing aid retailer within the geographical area where the national advertisement is published or disseminated. Furthermore, the Board has found it reasonable because any person not a licensee who advertises on behalf of a licensee incurs no liability for advertising a

licensee's license number exactly as provided by the licensee or for failure to advertise such number if none is provided by the licensee (BPC section 137). Paragraph (2) is added to hold licensees accountable if they complete a sale as a result of a national advertisement that violates BPC section 651. Because state laws related to advertisement vary from state to state, a national hearing aid retailer may broadcast an advertisement in California that violates BPC section 651 without the dispenser realizing it violates state law. For this reason, the Board finds it reasonable to specify that a sale must result from such advertisements as licensees are required to adhere to all "laws and regulations relating to the fitting or selling of hearing aids" which includes any new requirements established by these proposed regulatory changes (BPC section 2538.49).

Underlying Data

1. October 2011 Committee Meeting Agenda, relevant materials, and Minutes
2. October 2011 Board Meeting Minutes
3. January 2012 Committee Meeting Agenda, relevant materials, and Minutes
4. April 2012 Board Meeting Agenda, relevant materials, and Minutes
5. July 2012 Committee Meeting Agenda, relevant materials, and Minutes
6. October 2012 Board Meeting Agenda, relevant materials, and Minutes
7. January 2013 Board Meeting Agenda, relevant materials, and Minutes
8. June 2013 Committee Meeting Agenda, relevant materials, and Minutes
9. June 2013 Board Meeting Minutes
10. May 2016 Board Meeting Agenda, relevant materials, and Minutes
11. February 2017 Board Meeting Agenda, relevant materials, and Minutes
12. May 2017 Board Meeting Agenda, relevant materials, and Minutes
13. August 2017 Board Meeting Agenda, relevant materials, and Minutes
14. Board's Sunset Review Report 2021
15. August 2022 Committee Meeting Agenda, relevant materials, and Minutes
16. April 2023 Board Meeting Agenda, relevant materials, and Minutes

Business Impact

The Board has made the initial determination that this proposed regulatory action will not have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that advertising is part of business operations and the type and amount of advertising undertaken is determined by business owners.

Because the Board does not have statutory authority to establish an inspection program to verify if advertisements comply with the proposed regulatory changes, the Board is unable to determine how many businesses will be required to comply, or the cost that they may incur, to replace existing advertisements that do not comply with these proposed regulatory changes.

The Board is not aware of any other economic costs that may occur. The Board is also not aware of any effect the proposed regulatory action will have on housing costs or impact to local agencies or federal funding to the State.

The Board is aware of benefits that may occur for businesses or individuals that comply with this regulation over its lifetime. Because the Board's authority is over licensees and not over all businesses within the industries the Board regulates, the Board cannot provide any estimates for the total number or type of businesses (e.g., private, nonprofit, public, or small business) that may be impacted by this proposed regulation. The Board anticipates over 1,300 licensees in the practice of hearing aid dispensing will be impacted by this proposed regulation.

The Board anticipates an increase in clarity, transparency, and accountability. Licensees will benefit from this regulatory proposal clarifying and making the requirements more transparent to the requirement regarding advertising. The public will benefit from licensees being held accountable in how they advertise information, especially information as it relates to prices. These types of benefits are unquantifiable and cannot be easily measured or estimated. Therefore, the Board cannot provide information on possible statewide benefits that may occur as a result of this regulation over its lifetime.

Economic Impact Assessment

This Board has determined that this regulatory proposal will have the following effects:

It will not create new businesses or jobs within the State of California because the proposed regulatory action is related to existing law on hearing aid dispenser advertising, and does not enhance or inhibit industry growth within the industries the Board regulates.

It will not eliminate existing businesses or jobs because the proposed regulatory action is related to existing law on hearing aid dispenser advertising, and does not enhance or inhibit industry growth within the industries the Board regulates.

It will not affect the expansion of businesses within the State of California because the proposed regulatory action is related to existing law on hearing aid dispenser advertising, and does not enhance or inhibit industry growth within the industries the Board regulates.

It does positively affect the health and welfare of California residents. The Board anticipates an increase in clarity, transparency, and accountability. Licensees will benefit from clarity and transparency in the requirements regarding advertising. The public will benefit from licensees being held accountable in how they advertise information as it relates to prices.

It will not affect worker safety because the proposed regulatory action is related to advertising, and does not concern or impact worker safety.

It will not affect the state's environment because the proposed regulatory action is related to advertising, and does not concern or impact the State's environment.

Specific Technologies or Equipment

This regulatory proposal does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

The Board's initial determination is that there is no reasonable alternative to the proposed regulatory action which would be more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons, and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Board welcomes comments from the public.