

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

ORDER OF ADOPTION

Uniform Standards

Amend section 1399.102 of Article 1 of Division 13.3 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.102. Definitions.

For the purpose of the regulations contained in this chapter, the term:

(a) "Code" means the Business and Professions Code.

(b) "Board" means the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.

(b)(c) "Supervisor" means a person who holds a license issued pursuant to the provisions of Sections 2538.26 and 2538.27 of the Code and who accepts responsibility for the supervision and training of a person issued a temporary license under Section 2538.28 of the Code.

(e)(d) "Supervision" means adequate direction and inspection by a supervisor.

(d)(e) "Training" means the instruction of a trainee-applicant in the fitting or selling of hearing aids.

(e)(f) "Trainee-applicant" means a temporary licensee authorized to fit or sell hearing aids under Section 2538.28 of the Code under the supervision of a licensed hearing aid dispenser.

Note: Authority cited: Section 2531.06, Business and Professions Code.

Reference: Sections 2531.06 and 2538.28, Business and Professions Code.

Amend section 1399.131 of Article 6 of Division 13.3 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.131. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure

Act (Government Code Section 11400 et seq.), the ~~board~~Board shall consider the disciplinary guidelines entitled “Disciplinary Guidelines and Model Disciplinary Orders” Sixth Edition, June 1997 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the ~~board~~Board in its sole discretion determines that the facts of the particular case warrant such a deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the uniform standards for substance-abusing licensees as provided in Section 1399.131.1, without deviation, for each individual determined to be a substance-abusing licensee.

(c) Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the license.

(d) As used in this section, the term “sex offense” shall mean any of the following:

~~(a)~~(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

~~(b)~~(2) Any offense defined in Section 261.5, 313.1, 647b, 243.4 (a)-(d), or 647 subsections (a) or (d) of the Penal Code or a finding that a person committed such an act.

~~(c)~~(3) Any attempt to commit any of the offenses specified in this section.

~~(d)~~(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

Note: Authority cited: ~~Section~~Sections 315, 315.2, 315.4 and 2531.95, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 475, 480, 2533, 2533.1, 2533.2, and 2538.40, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

Add section 1399.131.1 to Article 6 of Division 13.3 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.131.1. Uniform Standards Related to Substance-Abusing Licensees.

(a) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees,” March 2019, which is hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board’s guidelines referenced in section 1399.131 in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 315, 315.2, 315.4 and 2531.95, Business and Professions Code. Reference: Sections 315, 315.2 and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

Amend section 1399.155 of Article 6 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.155. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the Board shall consider the disciplinary guidelines entitled “Disciplinary Guidelines July 16, 2004” ~~that~~which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts of the particular case warrant such a deviation—for example: the presence of mitigating factors; the age of the case and evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the uniform standards for substance-abusing licensees as provided in Section 1399.155.1, without deviation, for each individual determined to be a substance-abusing licensee.

(c) Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the license.

(d) As used in this section, the term “sex offense” shall mean any of the following:

~~(a)~~(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

~~(b)~~(2) Any offense defined in Section 261.5, 313.1, 647b, 243.4 (a)-(d), or 647 subsections (a) or (d) of the Penal Code or a finding that a person committed such an act.

~~(c)~~(3) Any attempt to commit any of the offenses specified in this section.

~~(d)~~(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

Note: Authority cited: Sections 315, 315.2, 315.4 and 2531.95, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code. Reference: Sections 315, 315.2, 315.4, 2533, 2533.1 and 2533.2, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

Adopt section 1399.155.1 of Article 6 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

§ 1399.155.1. Audiologists—Screening Tests. [Renumbered]Uniform Standards Related to Substance-Abusing Licensees.

(a) If after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a substance-abusing licensee, then the terms and conditions contained in the document entitled “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees,” March 2019, which is hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board’s guidelines referenced in section 1399.155 in any order that the Board determines would provide greater public protection.

Note: Authority cited: ~~Section~~Sections 315, 315.2, 315.4 and 2531.95, Business and Professions Code. Reference: Sections 315, 315.2 and 315.4, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.