

## PROPOSED FEE SCHEDULE FOR HEARING AID DISPENSER LICENSURE

- Non-refundable application fee ~~\$75~~ ..... **\$150**
- Trainee license fee: ~~\$100~~ ..... **\$200**  
*Under B&P Code section 3357, the trainee license is issued for 6 months and may be renewed twice. (The renewal fee is \$100 for each additional 6-month period.)*
- Temporary license fee: ~~\$100~~ ..... **\$200**
- Hearing aid dispenser written exam (and re-exam): ~~\$100.~~ .. **\$200\***
- Practical examination (and re-exam): ~~\$285~~ ..... **\$400\***
- Initial permanent license: ~~\$280~~ ..... **\$560**
- Renewal Fee hearing aid dispensers license ~~\$280~~ ..... **\$560**

The proposed fees shown here in red are estimates and may serve as statutory ceilings for fees currently established in law.

\* These fees are currently established by the Board and are not set by statute or regulation, but instead are set to offset actual examination administration costs.



## **DCA 2011 LEGISLATIVE PROPOSAL CONCEPT PAPER**

### **PROGRAM**

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

### **TITLE**

The Song Beverly Consumer Warranty Act – Exclusions for Hearing Aids

### **SUMMARY**

The Song Beverly Consumer Warranty Act, Section 1793.02 of the Civil Code provides warranty provisions for consumers of assistive devices. Hearing aids are an assistive device and as such, the product warranty or “right of return” provisions of the Song Beverly apply to the sell and refund of hearing aids. Historically, the provisions of Song Beverly have been difficult to enforce as the warranty language is vague and may be interpreted in several different ways.

### **IDENTIFICATION OF PROBLEM**

At present, the lack of clarity of the Song Beverly Act as applied to warranty provisions for hearing aids is a detriment to both the consumer and the provider dispensing the device. The provisions do not clearly define the terms of the 30-day trial period that the consumer is afforded which specifies a guarantee of a full refund for the cost of the hearing aids and all related services, if not satisfied with the hearing aids. The Song Beverly includes the term, “completion of fitting” which has been interpreted several ways and as such, places the burden on the provider to determine when the 30-day warranty period starts. Often, these subjective interpretations lead to disagreements between the provider and the consumer as “completion of fitting,” implies some level of consumer satisfaction with the initial fit of the hearing aid device. Basing the start of the warranty period on consumer satisfaction is difficult to define and enforce. In addition, the Song Beverly does not adequately address periods of time when the hearing aid device may require adjustment or repair and is not in the possession of the consumer for at some point within the first 30-days. Other pertinent issues regarding hearing aid dispensing are not covered in the Song Beverly Act, including, the number of “trial” devices a consumer is entitled to, documentation of non-possession of the hearing aid by consumer, any non-refundable services provided by the hearing aid dispensers that are not directly connected to the hearing aid device, etc. The lack of clarity and specificity in the Song Beverly Act provisions result in disputes between consumers and hearing aid dispensers and ultimately some form of legal recourse, or mediation is initiated. It is difficult for the Board to mediate such complaints when the parties involved have different interpretations of their rights and responsibilities and the underlying facts are difficult to substantiate.

### **PROPOSED SOLUTION**

The Board is proposing to amend the Song-Beverly Consumer Warranty Act to include an authorization for the Board to adopt implementing regulations to carry out the purposes and objectives of the warranty provisions, thereby, creating further clarity to the consumer's right of return for hearing aid devices.

Another alternative to the proposed amendment to Civil Code Section 1793.02 would be for the Board to exempt hearing aids from the Song-Beverly Act entirely and craft language in the Business and Professions Code outlining the right of return for hearing aid devices. This alternative would likely create opposition as those who provide other related devices subject to the terms of Song-Beverly may view such an exemption as unfair.

### **JUSTIFICATION**

The Board must pursue statutory changes in order to obtain the authority to clearly define warranty provisions for hearing aid devices by regulation. The existing laws in Civil Code Section 1793.02 do not provide for such authority.

The proposed amendments will enable the Board to provide clear warranty or "right of return" provisions for hearing aid devices thus, assisting both consumers and providers in understanding their rights and obligations. Implementing regulations which clearly define warranty provisions and include specified timeframes for returning hearing aid devices will: reduce consumer complaints involving warranty issues; assist the Board in its mediating efforts; and, reduce both the time and expense parties incur in seeking legal recourse for such warranty matters.

### **PROGRAM BACKGROUND/LEGISLATIVE HISTORY**

In 2004, the Governor conducted his California Performance Review (CPR) to examine all state operations and agencies and recommend reforms. This included a review of all of the boards and bureaus under DCA. On August 3, 2004, CPR issued a report, which included specific recommendations that including the elimination of the Hearing Aid Dispensers Bureau. The former Speech-Language Pathology and Audiology Board (SLPAB) set licensing standards and enforced the laws governing the practices of speech-language pathology and audiology. SLPAB investigated complaints against licensed and unlicensed practitioners and took disciplinary action whenever appropriate. The former Hearing Aid Dispensers Bureau (HADB) regulated the licensing of hearing aid dispensers. HADB informed consumers of their legal rights and obligations when purchasing or returning hearing aids and maintained advertising standards as well as evaluated the competence of individual dispensers. HADB mediated consumer complaints and enforced statutory and regulatory requirements related to the practice of hearing aid dispensers.

Assembly Bill 1535, effective January 1, 2010, merged the Speech-Language Pathology and Audiology Board and the Hearing Aid Dispensers Bureau to create one oversight

body, The Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board, that is responsible for regulating the professions of speech-language pathology,

audiology, and hearing aid dispensing. There are roughly 1,650 licensed audiologists in California and approximately 50% of them are authorized to dispense hearing aids. There are approximately 2,200 licensed hearing aid dispensers.

Roughly 40-50% of complaints received by the Board each year are related to refunds on hearing aids. It has been the Board and previously the "Bureau's" experience through the use of Complaint Resolution staff's that when reviewing, investigating, and obtaining documentation to substantiate complaints related to refunds requested, refused or not received, that many complainants (mainly seniors) do not have records/documentation related to adjustments, replacements, or repairs of their hearing aids. This makes determining the facts of the complaint difficult, if not impossible at times. If the allegations cannot be substantiated, the Board is unable to take administrative action, because there is insufficient evidence to confirm a violation of the law. Therefore, the complainant must then pursue resolution through Small Claims Court or a private legal action.

## **ARGUMENTS PRO AND CON**

The proposal should reduce the number of complaints and the time spent on complaints received by the Board for hearing aid warranty issues. This will enable Board enforcement staff to devote its time and resources to other egregious violations.

The Board is also aware that the Song-Beverly language as currently interpreted places unfair business practices on hearing aid dispensing businesses and can cause financial hardship on the businesses.

## **PROBABLE SUPPORT AND OPPOSITION**

Both the California Academy of Audiology and the Hearing Health Care Providers of California support the proposal. The Board does not anticipate opposition by other affected parties.

## **FISCAL IMPACT**

The Board does not anticipate any significant fiscal impact to its program or operation as a result of the proposal. The Board may experience a reduction in complaint activity for cases involving warranty issues for hearing aid devices.

## **ECONOMIC IMPACT**

There may be a cost savings to private individuals who are unsuccessful in resolving their warranty issues with the Board, and must seek recourse through private legal

action, e.g., civil remedies. However, the Board does not have data to support the number of cases that are resolved through legal remedies outside the Board's complaint proceedings.

## **COMPARISON WITH OTHER STATES**

### Laws Related to Refunds>Returns of Hearing Aids in Other States

#### **Florida – Thirty-day trial period; purchaser's right to cancel; notice; refund; cancellation fee; criminal penalty....**

- 1) The seller must provide the buyer with written notice of a 30-day trial period and money-back guarantee. The guarantee must permit the purchaser to cancel the purchase for a valid reason as defined by the board within 30 days after receiving the hearing aid, by returning the hearing aid or mailing written notice of cancellation to the seller. If the hearing aid must be repaired, remade, or adjusted during the 30-day trial period, the running of the 30-day trial period is suspended 1 day for each 24-hour period that the hearing aid is not in the purchaser's possession. A repaired, remade, or adjusted hearing aid must be claimed by the purchaser within 3 working days after notification of availability. The running of the 30-day trial period resumes on the day the purchaser reclaims the repaired, remade, or adjusted hearing aid or on the fourth day after notification of availability.
- 2) The licensee may retain charges for ear molds, services provided, and a cancellation fee as prescribed by the board. If a rule regarding the above is not set forth by the board, a licensee may not charge a cancellation fee which exceeds 5 percent of the total amount available for refund, shall be provided in writing to the purchaser prior to signing the contract.
- 3) The seller must provide the refund within 30 days.

#### **Texas – Conditions of Sale**

- 1) The buyer must be informed of a 30-day trial period by written contract including all charges associated with such trial period.
- 2) The buyer shall be entitled to a refund of the purchase price less the agreed-upon amount upon return of the hearing aid(s) in good condition within the 30-day trial period ending 30 days from the date of delivery. Should the order be cancelled prior to delivery, the licensee may retain the agreed-upon charges and fees. Refund is due by the 30<sup>th</sup> day after the date the buyer cancels or returns the hearing aid(s).
- 3) If the hearing aid(s) must be repaired, remade, or adjusted during the 30-day trial period, the 30-day trial period is suspended for one day for each 24-hour period that the aid(s) are not in the buyer's possession. The 30-day trial period resumes on the day the buyer reclaims the repaired, remade, or adjusted aid(s) or within five working days of notification.

**Oregon – Right to rescind hearing aid purchase; grounds; notice of rescission; time limit; refund.**

- 1) In addition to any other rights and remedies the purchaser may have, the purchaser shall have the right to rescind the transaction if:
  - (a) the purchaser consults with a physician or audiologist subsequent to purchasing the hearing aid, and the licensed physician advises the purchaser against purchasing or using a hearing aid and in writing specifies the medical reason;
  - (b) the seller fails to adhere to the practice standards provided in the law, or fails to provide the statement required in the law;
  - (c) the fitting of the hearing aid failed to meet current industry standards; or
  - (d) the licensee fails to meet any standard of conduct prescribed in the law or rules regulating fitting and dispensing of hearing aids and this failure affects in any way the transaction which the purchaser seeks to rescind.
- 2) The purchaser of a hearing aid shall have the right to rescind the transaction, for other than the seller's breach, if the purchaser returns the product in good condition less normal wear and tear and gives written notice of the intent to rescind the transaction by written notice of the intent to rescind sent by certified mail, return receipt, to the licensee's regular place of business or returning the product with written notice of intent to rescind to an authorized representative of the company from which it was purchased.
- 3) The notice described above shall state that the transaction is cancelled pursuant to this section and must be postmarked within 30 days of the original delivery or within specified time periods if the 30-day period has been extended in writing by both parties. The consumer's rescission rights can only be extended through a written agreement by both parties.
- 4) If conditions stated above have been met, the seller shall issue a refund within 10 days after the cancellation. The licensee may retain a portion of the purchase price as specified by rule of the Oregon Health Licensing Agency when the sale is rescinded during the 30-day rescission period. The seller shall return all goods traded in and the purchaser shall incur no additional liability for the cancellation.

**Illinois – Thirty-Business-Day Return Privilege**

- 1) All hearing instruments offered for sale must be accompanied by a 30-business-day return privilege.
  - a) At the time of delivery, the licensee must furnish to the buyer a fully completed receipt or copy of the contract that contains a statement informing the buyer that he/she may return the hearing instrument for a refund within 30 business days and the day by which the refund period extends in bold 10 point type.

- b) If a nonrefundable fee will be withheld from the buyer in the event of return, the dollar amount must be clearly stated in 10-point bold type on the face of the receipt or contract.
- 2) If during the 30-business-day refund period the hearing instrument and/or accessories are returned for adjustment or repair, the refund period will be extended, affording the buyer the remainder of the refund period. The extension shall be provided to the buyer in writing.

**PERFORMANCE INDICATORS**

The Board will track all complaints received regarding hearing aid warranty issues to determine whether the proposal results in a reduction in complaints of this nature and will also monitor the effectiveness of its complaint resolution efforts for matters involving hearing aid return and refund issues.

**OTHER AFFECTED AGENCIES AND THEIR ROLES/VIEWS**

(Indicate other state entities that will be impacted. Discuss their roles and views regarding the proposed legislation.) – N/A

**APPOINTMENTS**

N/A

**LANGUAGE**

Attached

**Amend Section 1793.02 of the Civil Code to read:**

**1793.02.** (a) All new and used assistive devices sold at retail in this state shall be accompanied by the retail seller's written warranty which shall contain the following language: "This assistive device is warranted to be specifically fit for the particular needs of you, the buyer. If the device is not specifically fit for your particular needs, it may be returned to the seller within 30 days of the date of actual receipt by you or completion of fitting by the seller, whichever occurs later. If you return the device, the seller will either adjust or replace the device or promptly refund the total amount paid. This warranty does not affect the protections and remedies you have under other laws." In lieu of the words "30 days" the retail seller may specify any longer period.

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

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

(d) With respect to the retail sale of an assistive device to an individual, organization, or agency known by the seller to be purchasing for the ultimate user of the device, this section and subdivision (b) of Section 1792.2 shall be construed to require that the device be specifically fit for the particular needs of the ultimate user.

(e) This section and subdivision (b) of Section 1792.2 shall not apply to any of the following sales of assistive devices:

(1) A catalog or similar sale, as defined in subdivision (q) of Section 1791, except a sale of a hearing aid.

(2) A sale which involves a retail sale price of less than fifteen dollars (\$15).

(3) A surgical implant performed by a physician and surgeon, or a



restoration or dental prosthesis provided by a dentist.

(f) The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are not subject to waiver under Section 1792.3. The rights and remedies of the buyer under this section and subdivision (b) of Section 1792.2 are cumulative, and shall not be construed to affect the obligations of the retail seller or any other party or to supplant the rights or remedies of the buyer under any other section of this chapter or under any other law or instrument.

(g) Section 1795.5 shall not apply to a sale of used assistive devices, and for the purposes of the Song-Beverly Consumer Warranty Act the buyer of a used assistive device shall have the same rights and remedies as the buyer of a new assistive device.

(h) The language in subdivision (a) shall not constitute an express warranty for purposes of Sections **1793.2** and **1793.3**.

(i) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board created pursuant to Section 2531 of the Business and Professions Code may adopt regulations to carry out the purposes and objectives of Subdivisions (a), (b) and (c). Until the board adopts regulations under this subdivision, subdivisions (a), (b) and (c) shall remain in effect.

## ORDER OF ADOPTION

### SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

#### Title 16, Division 13.4, California Code of Regulations Speech-Language Pathology and Audiology Regulations

##### Article 8. Miscellaneous

(1) Amend section 1399.157 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

##### 1399.157. Fees.

(a) The application fee shall be \$60.00 for any person applying for a speech-language pathology or non-dispensing audiology license.

(b) The application fee shall be \$280 for any person applying for a dispensing audiology license.

~~(b)~~ (c) The biennial renewal fee for licensed speech-language pathologists and audiologists which expire prior to January 31, 2002 shall be \$75.00. Effective January 1, 2002, the biennial renewal fee for licensed speech-language pathologists or audiologists shall be \$110.00.

~~(e)~~ (d) The annual renewal fee for a licensed audiologist authorized to dispense hearing aids shall be \$280.

~~(e)~~ (e) The fee for registration of an aide shall be \$10.00

~~(d)~~ (f) The application and the biennial renewal fee for a continuing professional development provider is a \$200 non-refundable fee.

~~(e)~~ (g) The fee for issuance of a license status and history certification letter shall be \$10.00.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.  
Reference: Sections 163.5, 2532.6(f), and 2534.2, Business and Professions Code.

##### Article 11. Continuing Professional Development

(2) Amend section 1399.160.3 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

##### 1399.160.3. Continuing Professional Development Requirements.

(a) A licensee, whose license expires in the year 2001, shall accrue at least twelve (12) hours of continuing professional development courses as defined in Section 1399.160.4. A licensee may accrue no more than four (4) hours of continuing professional development courses through self-study courses during this renewal period.

(b) A licensee who holds both a speech-language pathology license and an audiology license that expire in the year 2001, shall accrue at least eight (8) hours of continuing professional development courses as defined in Section 1399.160.4. for each license. A licensee may accrue

no more than two (2) hours of continuing professional development courses through self-study courses for each license.

(c) A licensee shall accrue at least twenty-four (24) hours during a single renewal period of continuing professional development courses as defined in Section 1399.160.4. A licensee may accrue no more than eight (8) hours of continuing professional development courses through the following activities during a single renewal period:

(1) No more than six (6) hours of self-study activities,

(2) No more than four (4) hours from courses related to the discipline of speech-language pathology or audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

(3) Not more than 50% of the continuing professional development hours required of a licensed audiologist, shall be obtained from courses where the content focuses on equipment, devices, or other products of a particular publisher, company or corporation.

(d) A licensee who holds both a speech-language pathology license and an audiology license, shall accrue at least sixteen (16) hours of continuing professional development courses as defined in Section 1399.160.4 for each license. A licensee may accrue no more than five (5) hours of continuing professional development through the following activities for each license:

(1) No more than two and one-half (2.5) hours of self-study activities,

(2) No more than two and one-half (2.5) hours from courses related to the discipline of speech-language pathology or audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

(e) A licensed audiologist authorized to dispense hearing aids as provided by Section 2539.1 of the code shall accrue at least twelve (12) hours of continuing professional development as defined in Section 1399.160.4 annually. A licensed audiologist authorized to dispense hearing aids may accrue no more than (3) hours of continuing professional development courses through the following activities during a single renewal period:

(1) No more than one and a half (1.5) hours of self-study activities,

(2) No more than one and a half (1.5) hours from courses related to the discipline of audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

(3) Exactly 50% of the continuing professional development hours required of a licensed audiologist authorized to dispense hearing aids, shall be obtained from courses related to hearing aid dispensing but shall not be obtained from courses where the content focuses on the equipment, devices, or other products of a particular manufacturer or company. The remaining 50% of the continuing professional development hours required of a dispensing audiologist shall be relevant to the practice of audiology as defined in Section 2530.2 (k) and shall not be obtained from hearing aid dispensing courses as provided for in this section.

(e) (f) If a licensee teaches a course offered by a provider registered with the board or an entity listed in Section 2532.6 of the Code, the licensee may claim credit for the same course only once, receiving the same amount of hours of continuing professional development credit as a licensee who attended the course.

(f) (g) A licensee may not claim credit for the same course more than once for hours of continuing professional development.

(g) (h) A licensee who takes a course as a condition of probation resulting from disciplinary action by the board may not apply the course as credit towards the continuing professional development.

**NOTE:** Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.  
Reference: Section 2532.6(b), (c), and (e), and 2539.1(a)-(b) Business and Professions Code.

(3) Section 1399.160.4 is not being modified, however, the section is provided below to assist one in understanding the proposed changes in context.

#### **1399.160.4. Continuing Professional Development Course Content.**

(a) A licensed speech-language pathologists shall determine that the content and learning outcomes of a course are relevant to the practice of speech-language pathology as defined in Section 2530.2(d).

(b) A licensed audiologist shall determine that the content and learning outcomes of a course are relevant to the practice of audiology as defined in Section 2530.2(k).

(c) The content of a course shall pertain to direct, related, or indirect patient/client care.

(1) Examples of direct patient/client care courses for the practice of speech-language pathology include: fluency disorders, voice disorders, motor disorders of speech, dysphagia, speech science, oral and written language disorders, aphasia and neurogenic disorders of language and cognition, augmentative and alternative communication, phonological/articulatory disorders language science, and patient/client counseling to facilitate recovery from, or adjustment to, a communication disorder.

(2) Examples of direct patient/client care courses for the practice of audiology include auditory and vestibular assessment, auditory habilitation/rehabilitation, hearing assistive technology, industrial audiology/hearing conservation and hearing science.

(3) Indirect patient/client care courses cover pragmatic aspects of speech-language pathology or audiology practice (e.g., legal or ethical issues, consultation, record-keeping, office management, managed care issues, research obligations, technological applications related to assessment/diagnosis or intervention).

(4) Courses that are related to the discipline of speech-language pathology or audiology may cover general medical or educational offerings including, but not limited to, social interaction, cultural and linguistic diversity as it applies to service delivery for diverse populations, professional service delivery models, interdisciplinary case management issues, or medical pathologies related to neurological disorders that also result in communication difficulties.

(d) A provider shall ensure that a course has specific objectives that are measurable.

(e) Upon completion of a course, a licensee shall evaluate the course through some type of evaluation mechanism.

(f) Courses considered outside the scope of continuing professional development include, but are not limited to, those in the following areas:

(1) money management, the licensee's personal finances or personal business matters;

(2) general physical fitness or the licensee's personal health;

(3) presentations by political or public figures or other persons that do not deal primarily with the practice of either speech-language pathology or audiology;

(4) tort liability;

(5) courses that address increased office production or computerization, financial planning, employee benefits, marketing or motivational topics to increase productivity or profitability; and

(6) courses in which the primary beneficiary is the licensee, not the consumer.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.  
Reference: Section 2532.6(b), (c), and (e), Business and Professions Code.

(4) Section 1399.160.5 is not being modified, however, the section is provided below to assist one in understanding the proposed changes in context.

**1399.160.5.Hours of Continuing Professional Development.**

- (a) One hour of instruction is equal to one hour of continuing professional development credit.
- (b) One academic quarter unit is equal to ten (10) hours of continuing professional development credit.
- (c) One academic semester unit is equal to fifteen (15) hours of continuing professional development credit.
- (d) One academic trimester unit is equal to thirteen (13) hours of continuing professional development credit.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.  
Reference: Section 2532.6(b), and (c), Business and Professions Code.

**(5) Amend section 1399.160.6 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:**

**1399.160.6.Continuing Professional Development Course Approval.**

- (a) A licensee shall only be credited with continuing professional development hours if he or she takes a course from a board-approved provider with a valid, current approval as a provider or from an entity listed in Section 2532.6 (e)(1) of the Code.
- (b) Courses related to the dispensing of hearing aids as offered by hearing aid manufacturers or companies shall be reviewed by the Board prior to the offering of the course. The continuing professional development provider must submit such request for course approval to the Board according to the timeline in Section 1399.151.1 (e). Such request shall include:
  - (1) The name of the sponsoring institution, the Board issued professional development provider number (with the exception of those entities listed in Section 2532.6(e)(1)), the address, telephone number and contact person.
  - (2) Course title, date(s), location(s), and number of continuing professional development hours offered.
  - (3) Type and method of educational instruction and learner outcomes to be met.
  - (4) A course outline, course description, and instructor information and qualifications.
  - (5) If available, advertisements intended to be used by the provider to advertise the relevant course.
- ~~(b)~~(c) A licensee or a continuing professional development provider may voluntarily petition Board consideration of any courses offered by an approved provider or an entity listed in Section 2532.6 (e)(1) of the Code. The licensee or continuing professional development provider must submit such request for course approval to the Board according to the timeline in Section 1399.151.1 (e). Such request shall include:
  - (1) The name of the sponsoring institution, the Board issued professional development provider number (with the exception of those entities listed in Section 2532.6(e)(1)), the address, telephone number and contact person.
  - (2) Course title, date(s), location(s), and number of continuing professional development hours offered.
  - (3) Type and method of educational instruction and learner outcomes to be met.
  - (4) A course outline, course description, and instructor information and qualifications.
  - (5) If available, advertisements intended to be used by the provider to advertise the relevant course.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.  
Reference: Section 2532.6(b), (e)(1) and (e) (2), Business and Professions Code.

(6) Section 1399.160.7 is not being modified, however, the section is provided below to assist one in understanding the proposed changes in context.

**1399.160.7.Board-Approved Providers.**

(a) A continuing professional development provider shall meet the board’s course content and instructor qualifications criteria, as provided under this article, to qualify to become a board-approved provider.

(b) An applicant for continuing professional development provider shall submit a completed Continuing Professional Development Provider Application (form no. 77A-50, new 1/99), hereby incorporated by reference, remit the appropriate fees, submit a complete operational plan, and obtain a continuing professional provider number from the board to become a board-approved provider.

(c) A provider approval issued under this section shall expire twenty-four months after the approval issue date. To renew an unexpired provider approval, the provider shall, on or before the expiration date of the approval, pay the biennial renewal fee set forth in Section 1399.157 of these regulations.

(d) A provider approval that is not renewed by the expiration date may not be renewed, restored, reinstated, or reissued thereafter, but the provider may apply for a new approval.

(e) Board-approved provider status is not transferable.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.  
Reference: Section 2532.6(e)(1) and (e)(2), Business and Professions Code.

Dated: August 23, 2010

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Annemarie Del Mugnaio  
Executive Officer  
Speech-Language Pathology & Audiology &  
Hearing Aid Dispensers Board

# **SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD**

## **FINDING OF EMERGENCY**

The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board ("Board") finds that the adoption of regulations on an emergency basis is necessary to conform existing regulations governing the practice of audiology and hearing aid dispensing in California. The Board specifically finds that these emergency regulations are necessary for the immediate preservation of the public health and safety, and general welfare of the citizens of California, and that AB 1535, Chapter 309 Statutes of 2009, requires the Board to adopt regulations immediately in order to implement the merger provisions of the bill, which includes the regulation of licensed audiologists authorized to dispense hearing aids in the state and provisions for securing a sufficient funding source for the administration of such oversight.

## **SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION**

AB 1535, effective January 1, 2010, merged the Speech-Language Pathology and Audiology Board and the Hearing Aid Dispensers Bureau to create one oversight body that is responsible for regulating the professions of speech-language pathology, audiology, and hearing aid dispensing. The bill also significantly amended existing provisions governing the practice of audiology in the state. These legislative changes required the promulgation of implementing regulations in order to establish new renewal requirements for licensed audiologists authorized to dispense hearing aids as provided for in the bill. It was the intent of the Board, to begin the regulatory process in early February 2010, and propose the new regulation language to the Board for adoption. However, since the provisions of AB 1535, required constituting a new board and the appointment of new governing board members, it wasn't until late February 2010, that such appointments were made. The first Board meeting of the newly merged Board was not held until March 24-25, 2010. It was then that the need for regulatory amendments were discussed, however, agreement of the actual proposed language occurred over the course of two Board meetings, March 24-25, 2010 and the subsequent meeting of May 26-27, 2010. It was also critical for the Board to analyze the end of the fiscal year's June 2010 fund condition for the Hearing Aid Dispensers Fund in order to ensure that the fees paid to support the Board in its regulation of licensed audiologists who sell hearing aids and hearing dispensers are fairly appropriated and are sufficient to support the administration of the Board. Section 55 of AB 1535 specifically called for such fiscal scrutiny. More specifically, this section requires the Board to review existing fees, by January 1, 2011, to ensure that adequate revenue is being generated to support Board operations as they relate to audiologists who dispense hearing aids and hearing aid dispensers. This regulatory proposal fulfills the Board's directive by implementing a necessary restructuring of the dispensing audiologists (DAU's) application fee, renewal fee cycle, and renewal fee amount as fund projections demonstrate the immediate need for greater revenue in order to support the administrative oversight of the dispensing practitioners.

## **AUTHORITY AND REFERENCE CITATIONS**

Authority Cited: Sections 2531.95, 2532.25, 2532.6, 2539.1, and 2534.2, Business and Professions Code. Reference: Sections 2539.1(a), 2532.2(a), 2532.6(a) and 2534.2(a)(2), Business and Professions Code.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **Amends Sections 1399.157, 1399.160.3, and 1399.160.6 of Division 13.4 of Title 16 of the California Code of Regulations**

The Speech-Language Pathology & Audiology (SLPA) & Hearing Aid Dispensers (HAD) Board (“Board”) is authorized by Business and Professions Code Section 2531.95 to adopt regulations necessary to implement the Speech-Language Pathology and Audiology Licensure Act. Section 2539.1 sets forth new provisions for licensed audiologists to dispense hearing aids under the audiology license provided all specified licensing qualifications have been met. Section 2532.6 mandates that licensed audiologists engage in continuing professional development (CPD) and learning as related to the licensed profession. In addition, Section 2534.2 establishes the associated application fees and renewal fees for “dispensing audiologists.” These Sections provide the Board the authority to establish CPD renewal requirements and fees for the dispensing audiology license.

Section 1399.157(b): Adds the application fee for an individual applying for the DAU license.

Section 1399.157(d): Adds the new renewal fee and establishes the annual renewal cycle for a DAU.

Section 1399.160.3(e): Makes changes to the CPD requirements for DAU’s, which coincide with the annual renewal cycle, and includes provisions for obtaining specified coursework related to the dispensing of hearing aids as the professional service is authorized under the dispensing audiology license provided all qualifications have been met.

Section 1399.160.6: Adds provisions for the Board to review and approve courses related to hearing aid dispensing to ensure that such courses meet the proposed course content criteria of CPD and are not designed to market products or devices of a particular manufacturer or company. The proposed amendments also specify the type of information that must be submitted by a CPD provider for each course offered.

Sections 1399.160.4, 1399.160.5, and 1399.160.7 are not being modified, but are included in the proposed language to assist one in understanding the proposed changes to the affected Sections above in context.



## **FISCAL IMPACT ESTIMATES**

### **Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding to the State:**

This proposed regulation would clarify and make specific licensing requirements for Dispensing Audiologists, CPD requirements, and course approval for providers. The CPD requirements for licensees and course approval requirements for providers are not anticipated to have fiscal implications since it is assumed the providers will pay the SPLA/HAD Board the same fees previously paid to the former HAD Bureau. Since DAU's would no longer be required to maintain a separate audiology license, the initial license fee of \$25 and the \$110 biennial fee paid to Board by licensees would no longer be collected. The \$35 application fee currently paid by audiologists to obtain the Temporary Required Professional Experience (RPE) License which authorizes applicants to obtain the professional experience required for entry level licensure (CCR Section 1399.153.2) will still be collected. As a result of the proposed regulations, the SPLA Fund (0376) would experience an annual revenue loss of \$52,931 annually or \$105,862 biennially.

All Dispensing Audiology fees paid to the former HAD Bureau will now be collected by the Board but deposited into the HAD account (0208).

Overall, the SPLA/HAD Board does not estimate any increased costs with this regulatory proposal.

**Nondiscretionary Costs/Savings to Local Agencies:** None

**Local Mandate:** None

**Cost to Any Local Agency or School District for Which Government Code Section 17500-17630 Requires Reimbursement:** None

**Business Impact:** The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states

There may be a minor cost to businesses to comply with this regulation as Board-approved providers must submit course materials to the Board for approval. Business and Professions Code Section 3456 (h) authorizes the Board to collect a fifty dollar (\$50) fee for each submitted course. However, all current approved hearing aid dispensing continuing education providers currently pay the established course-approval application fee and would likely be the target providers of the requisite CPD courses for dispensing audiologists.

There are approximately fifty (50) approved hearing aid dispenser continuing education providers approved by the Board and approximately two-hundred (200) approved courses as further described below:

- CE Provider assumptions:
  - 50 CE providers in California
  - 150-250 approved courses
  - \$50 fee for each submitted course. Courses valid for 12 months.
  - Providers who offer both HAD courses and audiology courses pay a \$200 renewal fee biennially.

Under this proposal, it is assumed that existing providers would offer the same courses for DAU's. No significant fiscal implications are anticipated.

## **AND**

The following studies/relevant data were relied upon in making the above determination:  
None

**Impact on Jobs/New Businesses:** Under current laws and regulations, continuing education providers of hearing aid courses are required to apply for course approval by the Board and pay a course approval application fee of \$50 for each course application. The proposed amendments would merely implement the provisions of AB 1535 (Jones, Chapter 309, Statutes of 2009), within the CPD regulation requirements for audiologists authorized to dispense hearing aids. As such, there is no change to the existing process for businesses which offer continuing education in hearing aid dispensing; and therefore, the Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

**Cost Impact on Private Persons or Entities:** The following provides detail regarding any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action as:

- Licensed audiologists who dispensed hearing aids under a separate hearing aid license prior to the enactment of the new statutes under Section 2539.1, were required to pay a \$75 application and a \$280 initial license fee for the hearing aid license and an additional \$60 application fee for the audiology license (\$35 application fee which is collect for the Temporary RPE License process and the \$25 initial license fee). Under the new provisions, an individual applying for a DAU license, must pay the \$35 application for the Temporary RPE License and the \$280 application fee for the DAU license. The \$25 initial license fee would no longer be collected of the DAU.
- In addition, license audiologists who dispensed hearing aids under the separate hearing aid license prior to the enactment of the new statutes under Section 2539.1, were required to pay the biennial audiology license renewal fee of \$110 and a

separate hearing aid dispensers license fee of \$280 annually. Under the new provisions, licensed audiologists who qualify as DAU's must pay only one license renewal fee for the dispensing audiology license which has been established at \$280 annually. As such, the DAU will save the \$110 biennially (\$55 annually) for the separate license fees previously paid for the audiology license.

- Existing regulations require licensed speech-language pathologists and audiologists to obtain twenty-four (24) hours of CPD course work from a Board-approved provider every two years, coinciding with the biennial license renewal cycles. Of the twenty-four (24) hours required, licensed speech-language pathologists and audiologists may obtain a maximum of four (4) hours in related or indirect client care courses and another six (6) hours in self-study. Licensed audiologists are also limited to a maximum of number of hours that may be obtained in courses where the content focuses on equipment, devices or other products of a particular manufacturer or company. The proposed amendments to Section 1399.160.3 would establish a distinct set of CPD requirements for audiologists authorized to dispense hearing aids and would require twelve (12) hours annually with fifty percent (50%) of the requisite CPD hours to be obtained through hearing aid related courses where the content does not focus on equipment, devices or other products of a particular manufacturer or company. In addition, the DA may accumulate one and one-half (1.5) hours in indirect or related client care courses and another one and one-half (1.5) hours in self-study courses. Since completion of CPD is already a mandate for licensed audiologists, licensees already pay for CPD courses. The change noted above does require licensed audiologists authorized to dispense hearing aids to complete a specified number of hours within one year, that being twelve (12) hours of CPD, which is half of the current requirement of twenty-four (24) hours required in the two-year license renewal period. As such, the Board does not believe the change in the CPD requirements results in a cost impact to the licensee.

As noted above, continuing education providers are already required to submit course approval applications and fees to the Board for any hearing aid dispenser courses offered to licensees. The proposed changes do not place additional requirements on the Board-approved providers.

**Effect on Housing Costs:** None

**DEPARTMENT OF CONSUMER AFFAIRS  
SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY  
& HEARING AID DISPENSERS BOARD**

**TITLE 16 CALIFORNIA CODE OF REGULATIONS**

**DIVISION 13.3**

**ARTICLE 2  
APPLICATIONS**

**§ 1399.110. Applications.**

In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice hearing aid dispensing safely because the applicant's ability to practice may be impaired due to mental or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant. If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the board may deny the application.

**Authority cited:** Sections 3328, Business and Professions Code. Reference: Sections 3352 and 3357, Business and Professions Code.

**ARTICLE 6  
ENFORCEMENT**

**§ 1399.130. Violations**

Notwithstanding the causes for action listed under 3401 of the Code, the Board may deny, issue subject to terms and conditions, suspend, or revoke a license, or impose conditions of probation upon a licensee, for any of the following causes:

(a) Commission of an act of sexual abuse or misconduct.

(b) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(c) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the

documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

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

(e) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(f) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

**Authority cited:** Section 726 and 3328, Business and Professions Code.  
**Reference:** Section 3401, Business and Professions Code.

### **§ 1399.130.1. Required Actions Against Registered Sex Offenders**

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, 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.

(2) Promptly revoke the license of the individual, 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, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the

jurisdiction that required registration; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a licensee under any other provision of state law.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny a license or discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

**Authority cited:** Section 3328, Business and Professions Code. Reference: Section 3401, Business and Professions Code.

### **1399.131. Disciplinary Guidelines.**

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the ~~director~~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 ~~director~~board in his or her 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.

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.

As used in this section, the term "sex offense" shall mean any of the following:

(a) 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) 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) Any attempt to commit any of the offenses specified in this section.

(d) 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."

**Authority cited:** Section 3328, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code. Reference: Sections 729, 3400, 3401, 3402 and 3403, Business and Professions Code; ~~and~~ Sections 11400.20, ~~and~~ 11425.50(e), and 11500, Government Code; and Section 44010, Education Code.

## DIVISION 13.4

### ARTICLE 1 GENERAL PROVISIONS

#### § 1399.150.3. Delegation of Functions.

(a) Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer of the board, ~~or in his or her absence, the executive director of the Medical Board~~, all functions necessary to the dispatch of the board in connection with investigative and administrative proceedings under the jurisdiction of the board including, but not limited to, the ability to accept default decisions and the authority to approve settlement agreements for the revocation, surrender or interim suspension of a license.

(b) ~~The executive officer is further authorized, subject to the approval of the board,~~ to investigate and evaluate each applicant for licensure under the Act; and to issue a license in conformance with the provisions of the Act and this chapter.

### ARTICLE 2 APPLICATION

#### § 1399.151. Applications for License.

(a) An application for a license as a speech-language pathologist or audiologist shall be filed with the board at its principal office.

(b) Every application shall be typed or written in ink, signed under the penalty of perjury and accompanied by the appropriate application fee and by such evidence, statements, or documents as therein required.

(c) The applicant shall be notified, in writing, of the results of the evaluation of the application for license if the application is rejected.

(d) An applicant shall be deemed to have abandoned his or her licensure application if the requirements for licensure are not completed within two years from the date on which application was filed unless the applicant has requested extension by the board. An application submitted subsequent to an abandoned application shall be treated as a new application.

(e) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice speech-language pathology or audiology safely because the applicant's ability to practice may be impaired due to mental or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant. If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the board may deny the application.

**Authority cited:** Section 2531.95, Business and Professions Code.  
Reference: Sections 2531.4 and 2532.1, Business and Professions Code.

## ARTICLE 6 DISCIPLINARY GUIDELINES

### **1399.155 Disciplinary Guidelines.**

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 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.

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 as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the license.

**Authority cited:** Sections 2531.95, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 729, 2533 and 2533.1, Business and Professions Code; ~~and~~ Sections 11400.20, ~~and~~ 11425.50(e), and 11500, Government Code; and Section 44010, Education Code.



**ARTICLE 7**  
**DENIAL, SUSPENSION AND REVOCATION OF LICENSURE**

**§ 1399.156. Unprofessional Conduct.**

Unprofessional conduct as set forth in Section 2533 of the code includes, but is not limited to the following:

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

(b) Committing any corrupt act, or any abusive act against a patient, which is substantially related to the qualifications, functions or duties of a speech-language pathologist or audiologist.

(c) Incompetence or negligence in the practice of speech-language pathology or audiology which has endangered or is likely to endanger the health, welfare, or safety of the public.

(d) Commission of an act of sexual abuse or misconduct.

(e) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.

(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.

(f) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

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

(h) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(i) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

**Authority cited:** Section 726 and 2531.95, Business and Professions Code. Reference: Section 2533, Business and Professions Code.

**§ 1399.156.5. Required Actions Against Registered Sex Offenders**

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:

(1) Deny an application by the individual for licensure, 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.

(2) Promptly revoke the license of the individual, 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, and shall not stay the revocation nor place the license on probation.

(3) Deny any petition to reinstate or reissue the individual's license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

**Authority cited:** Section 2531.95, Business and Professions Code. Reference: Section 2533, Business and Professions Code; Section 11500, Government Code; and Section 290, Penal Code.

## **TITLE 16. SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD**

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at **2005 Evergreen Street, Hearing Room 1150, Sacramento, California, at \_\_\_\_\_**. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at its office no later than 5:00 p.m. on \_\_\_\_\_, or must be received by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at the hearing. The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 726, 2018, 2531.4, 2531.5, 2531.25, 2531.95 and 3328, Business and Professions Code and Section 11400.20, 11425.50(e) and 11500, Government Code; and to implement, interpret or make specific Sections 729, 2531.4, 2532.1, 2533, 2533.13352, 3357, 3400, 3401, 3402, 3403, Business and Professions Code; Sections 11400.20, 11425.50(e) and 11500, Government Code; Section 44010 Education Code; and Section 290, Penal Code; the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board is considering changes to Divisions 13.3 and 13.4 of Title 16 of the California Code of Regulations as follows:

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 2531.95 authorizes the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) to adopt, amend, or repeal regulations as may be necessary to enable it to carry into effect the provisions of the laws and regulations relating to the practice of Speech-Language Pathology and Audiology and Hearing Aid Dispensing. The Board is proposing the following changes:

Business and Professions Code section 2531.02 mandates that protection of the public shall be the highest priority of the 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.

This proposal would make specific regulatory changes to enhance the Board's mandate of consumer protection.

This proposal would delegate authority to the Executive Officer the ability to accept default decisions, to approve settlement agreements for revocation, surrender, or interim suspension of a license.

This proposal would authorize the Board to order an applicant for licensure to submit to a physical or mental examination if it appears that the applicant may be unable to safely perform the duties and functions of a licensee due to physical or mental illness affecting competency. Additionally, if after receiving the evaluation report the Board determines that the applicant is unable to practice safely, the Board may deny the application.

This proposal would also require that in specific cases of a licensee having sexual contact with a patient or any finding that a licensee has committed a sex offense, or been convicted of a sex offense, a proposed decision would contain an order revoking the license. The proposed order could not contain an order staying the revocation of the license.

Additionally, this proposal would define required disciplinary action to be taken by the Board against registered sex offenders who are applicants or licensees.

The proposal would, in addition to conduct described in Business and Professions Code Sections 2533 and 3401, establish as unprofessional conduct or a violation the prohibition of including provisions in civil dispute settlement agreements that prohibit a person from contacting, cooperating with, filing, or withdrawing a complaint with the Board.

The definition of Unprofessional Conduct and expansion of violations would also include failure of the licensee to provide lawfully requested documents; the commission of any act of sexual abuse or misconduct; failure to cooperate with an investigation pending against the licensee; failure to report an indictment, charging a felony, arrest, conviction of the licensee; failure to report any disciplinary action taken by another licensing entity or authority; or failure to comply with a court order issued in the enforcement of a subpoena mandating the release of records to the Board.

## FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Minor.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None.

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because it only affects individual licensees.

AND

The following studies/relevant data were relied upon in making the above determination: None.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California because it only affects individual licensees.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are costs associated with a disciplinary order. Costs only affect individuals who are applying for licensure or licensees being disciplined. These costs may include fees for a physical or mental examination and attorney fees associated with license denial or disciplinary action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses because the regulations are applicable only to applicants or licensees who are disciplined by the Board.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

## INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. It may be obtained at the hearing or prior to the hearing upon request from the Board at 2005 Evergreen Street, Suite 2100, Sacramento, California 95815 or on the Board's website at: [www.speechandhearing.ca.gov](http://www.speechandhearing.ca.gov).

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2005 Evergreen Street, Suite 2100, Sacramento, California 95815 or on the Board's website: [www.speechandhearing.ca.gov](http://www.speechandhearing.ca.gov).

## AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

## CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name:	Annemarie Del Mugnaio
Address:	2005 Evergreen Street, Suite 2100 Sacramento, CA 95815
Telephone No.:	(916) 263-2666
Fax No.:	(916) 263-2668
E-Mail Address:	<a href="mailto:annemarie.delmugnaio@dca.ca.gov">annemarie.delmugnaio@dca.ca.gov</a>

The backup contact person is:

Name: Kathi Burns  
Address: 2005 Evergreen Street, Suite 2100  
Sacramento, CA 95815  
Telephone No.: (916) 561-8779  
Fax No.: (916) 263-2668  
E-Mail Address: kathi.burns@dca.ca.gov

Website Access : Materials regarding this proposal can be found at:  
[www.speechandhearing.ca.gov](http://www.speechandhearing.ca.gov).

**SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND  
HEARING AID DISPENSERS BOARD**

**INITIAL STATEMENT OF REASONS**

Hearing Date: TBD

Subject Matter of Proposed Regulations:

Sections Affected:

Division 13.3, Sections 1399.110, 1399.130, 1399.130.1, 1399.131 and 1399.523  
Division 13.4, Sections 1399.150.3, 1399.151, 1399.155, 1399.156 and 1399.156.5

Specific Purpose of each adoption, amendment, or repeal:

Business and Professions Code Section 2531.02 mandates that protection of the public shall be the highest priority of the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (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.

This proposal would make specific regulatory changes to enhance the Board's mandate of consumer protection.

This proposal would delegate authority to the Executive Officer the ability to accept default decisions, to approve settlement agreements for revocation, surrender or interim suspension of a license.

This proposal would authorize the Board to order an applicant for licensure to submit to a physical or mental examination if it appears that the applicant may be unable to safely perform the duties and functions of a licensee due to physical or mental illness affecting competency. Additionally, if after receiving the evaluation report the Board determines that the applicant is unable to practice safely, the Board may deny the application.

This proposal would also require that in specific cases of a licensee having sexual contact with a patient or any finding that a licensee has committed a sex offense, or been convicted of a sex offense, a proposed decision would contain an order revoking the license. The proposed order could not contain an order staying the revocation of the license.

Additionally, this proposal would define required disciplinary action to be taken by the Board against registered sex offenders who are applicants or licensees.

The proposal would, in addition to conduct described in Business and Professions



Code Sections 2533 and 3401, establish as unprofessional conduct or a violation of law, the prohibition of including provisions in civil dispute settlement agreements that prohibit a person from contacting, cooperating with, filing, or withdrawing a complaint with the Board.

The definition of “Unprofessional Conduct” and expansion of violations would also include failure of the licensee to provide lawfully requested documents; the commission of any act of sexual abuse or misconduct; failure to cooperate with an investigation pending against the licensee; failure to report an indictment, charging a felony, arrest, conviction of the licensee; failure to report any disciplinary action taken by another licensing entity or authority; or failure to comply with a court order issued in the enforcement of a subpoena mandating the release of records to the Board.

### Factual Basis/Rationale

Factual basis for determination that each proposed change is necessary:

During July 2009, a series of articles appeared in the Los Angeles Times newspaper pointing out consumer protection issues and findings of egregious licensee misconduct at a specific healing arts licensing board within the Department of Consumer Affairs (Department). The articles addressed systemic problems with how the board handled complaints, investigations, disciplinary actions, and probation monitoring.

Based on these findings, the Department held a series of meetings to address these findings. The Department also reviewed existing enforcement processes of other Department healing arts boards. The review discovered systematic problems, due to legal, procedural, and inadequate resources that limit a board’s ability to investigate and act on cases in a timely manner.

The Department worked with the healing arts boards to identify areas that could be improved administratively to better coordinate the Department’s enforcement objectives, improve services provided to the boards, and establish streamlined processes and procedures. The Department recognized the need for all healing arts boards to review their processes and realign consumer protection laws and regulations to ensure that consumer protection is paramount.

In response to this review, the Department launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement processes used by healing arts boards within the Department.

This regulatory proposal is in response to the Department’s request to implement regulations to enhance the Board’s mandate of consumer protection.

Specific changes:

## 1. Amend Section 1399.150.3. Delegation of Functions:

Existing law requires that the Board, itself, vote to adopt all stipulated settlement agreements proposed to be entered into by the Board's Executive Officer.

After an Accusation is filed against a licensee, the respondent has fourteen days to file a Notice of Defense. If the respondent does not file a Notice of Defense, then a Default Decision is granted. If the respondent files a Notice of Defense, the matter then moves to the Office of Administrative Hearings which schedules a pre-hearing conference and a formal hearing. A Proposed Stipulated Decision may be developed either at the pre-hearing conference or at the formal hearing. Additionally, the respondent may also elect to voluntarily surrender the license via a Stipulated Settlement.

Under existing law, the Executive Officer has the obligation to pursue administrative action against licensee who has violated the law. Ultimately, it is the Board that votes on all proposed decisions including stipulated settlements and default decisions. This proposal would delegate to the Board's Executive Officer the authority to accept default decisions, adopt settlement agreements (stipulated decisions) for revocation, surrender, default decisions, or interim suspension of a license.

Because the respondent has failed to respond to the Accusation, agreed to a Stipulated Settlement, or agreed to surrender the license, there is little or no discretion for the Board to exercise in those situations.

Authorizing the Board's Executive Officer to accept Default Decisions and approve Stipulated Settlements resulting in revocation, surrender of a license, or interim suspension will allow the Board to focus on more pressing disciplinary matters and will shorten the timeline for Default Decisions or Stipulated Surrender cases to take effect, thus adding to consumer protection by allowing the orders to become effective in a more timely manner.

## 2. Amend sections 1399.110. Applications and 1399.151. Applications for License:

This proposal would authorize the Board to compel an applicant for licensure that has physical or mental health issues to submit to physical or mental examinations to assist the Board in determining an applicant's fitness for licensure. The proposal would also permit the Board to deny the application if the applicant is unable to safely practice, based on the review of the evaluation report.

Although the Board can compel a licensee to submit to a physical or mental examination when the licensee's fitness to practice is compromised based on suspected physical or mental illness, this authority does not apply to applicants for licensure. The authority to compel a physical or mental examination for an applicant for licensure would provide an additional enforcement tool and would enhance the Board's mandate to protect the public given the potential harm to the public presented by

applicants who may have physical or mental illness that would impact their ability to practice safely.

3. Amend sections 1399.131 and 1399.155. Disciplinary Guidelines:

Existing regulations allow that when reaching a decision on a disciplinary action under the Administrative Procedures Act, the Board shall consider the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board's Disciplinary Guidelines. Deviation from the guidelines and orders, including standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of a particular case warrant such deviation.

This proposal would require that proposed decisions in any disciplinary matter where there is a finding that the licensee engaged in sexual misconduct with a patient, a finding that the licensee committed a sex offense against any person regardless of whether the licensee was convicted for the same, or was convicted of a sex offense automatically order the penalty of revocation. The Board will still have the power to non-adopt proposed decisions.

Because of the seriousness of sex offense, and the potential threat to consumers that sex offenders pose, this proposal would establish proposed decisions that have an automatic penalty of revocation in any licensee engaged in sexual misconduct.

4. Add sections 1399.130.1 and 1399.156.5. Required Actions Against Registered Sex Offenders.

This proposal would require the Board to deny applications, revoke licenses, or deny any petition to reinstate or reissue licenses to individuals who must register as a sex offender.

This section provides some exceptions to this penalty, such as for those individuals who are relieved of their duty to register as a sex offender under Penal Code Section 290.5, those individuals who are required to register as sex offenders solely because of a misdemeanor conviction under Penal Code section 314, or those individuals whose administrative proceedings are fully adjudicated before the effective date of the regulation.

The Board recognizes that registered sex offenders represent a potential threat to consumers and therefore should not be granted a speech-language pathology, audiology, or hearing aid dispensers' license. Additionally, licensees who are required to register as sex offenders should not be permitted to practice as speech-language pathologists, audiologists, or hearing aid dispensers.

5. Add section 1399.130. Violations and Amend section 1399.156. Unprofessional conduct.

In addition to the conduct described in Business and Professions Code Sections 2533 and 3401, this proposal would define, as Unprofessional Conduct, or establish as a violation, including or permitting to be included in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of the action; provisions that would prohibit another party to the dispute from contacting, cooperating with, filing a complaint with the Board; or requiring the other party to the dispute to attempt to withdraw a complaint the party has filed with the Board.

The increasing use of agreements to provisions in civil dispute settlements prohibiting the other party from contacting, cooperating with, or filing complaints, hereafter, an "agreement not to pursue," denies consumers the right to file complaints and prevents the Board from investigating and disciplining licensees who present a danger to consumers. These licensees may continue to practice and harm the public because the Board is not aware of civil dispute settlements. This proposal would prevent licensees who have violated the law from avoiding disciplinary action against their licenses.

"Agreements not to pursue" can delay and thwart the Board's effort to investigate possible cases of misconduct, thereby preventing the Board from protecting the public. These clauses delay action by the Board and tarnish the reputation of competent and reputable licensed health care professionals. By allowing repeat offenders who injure patients to hide their legal acts from the Board further prevents the Board from protecting consumers.

It has been argued that a licensee should not be subject to review by the Board after a civil settlement has been reached. Protection from license disciplinary action does not attach to civil proceedings or subsequent administering proceedings. Criminal, civil, and administrative proceedings each serve entirely different legal functions. No ordinary citizen can claim immunity from one proceeding because he or she already underwent the other. It necessarily follows that Board licensees should not enjoy any exception to the rule of legal process.

This proposal would also define as "Unprofessional Conduct" or establish as a violation, failure to provide the Board with lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever occurs later.

Patient medical records can only be obtained under two circumstances: 1) the patient has given written authorization for release of the records to the Board; and 2) the Board or the Attorney General has sought a court order and the court has issued a subpoena mandating the release of the records. Under both circumstances penalties would apply

if the records are not supplied by those who have both possession and control over the records.

Failure of a licensee to provide lawfully requested documents also would delay the Board's investigation of consumer complaints. The obtaining and inspection of documents is crucial in investigating consumer complaints and taking appropriate action against a licensee who may cause patient harm.

Because licensees committing acts of sexual abuse or misconduct pose a potential threat to consumers, this proposal would also include as "Unprofessional Conduct" or establish as a violation, the commission of any act of sexual abuse or misconduct.

Also defined as "Unprofessional Conduct" or a violation, is the failure to cooperate and participate in any Board investigation pending against the licensee. Again, failure of the licensee to cooperate with the Board in an investigation further erodes the Board's mandate of consumer protection. This proposal would not, however, deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution or other constitutional or statutory privileges. Additionally, this proposal would not require the licensee to cooperate with a request that would require them to waive any constitutional or statutory privilege.

This proposal would further define as "Unprofessional Conduct" or establish as a violation, the failure of a licensee to report to the Board within 30 days the bringing of an indictment or information charging a felony, an arrest, conviction of a crime; any disciplinary action taken against another licensing entity; or failure or refusal to comply with a court order issued in the enforcement of a subpoena mandating the release of records to the Board.

As part of the licensing process, all applicants for licensure are fingerprinted for purposes of conducting criminal history background checks through the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). In most cases, the Board receives subsequent arrest notifications for licensees convicted of crimes. The Board, however, may not always be made aware of convictions or other actions. Additionally, other agencies may not be required to report actions or not be aware that the individual is licensed in California.

By requiring licensees to report this information, the Board gains an additional enforcement tool so that a determination may be made to pursue disciplinary action against the licensee, as appropriate.

#### Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any): None.

#### Business Impact

This regulation will not have a significant adverse economic impact on businesses because it only impacts those licensed by the Board.

#### Specific Technologies or Equipment

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

#### Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulations. This alternative was rejected because the Board has identified areas of concern regarding enhanced protection of consumers
2. Adopt regulations. The Board determined that this alternative is the most feasible because it will assist the Board in its mandate of consumer protection.