



# MEMORANDUM

DATE	October 21, 2022
TO	Hearing Aid Dispensers Committee
FROM	Maria Liranzo, Legislation/Regulation/Budget Analyst
SUBJECT	Agenda Item 3: Discussion and possible action to Amend regulations regarding Hearing Aid Dispensers Trainee and Temporary License as stated in Title 16, CCR sections 1399.114 through 1399.119

## **Background**

This proposed regulation will revise Hearing Aid Dispenser (HAD) trainee and supervisor requirements, and specify requirements for application, waivers, and notifications.

The last Board discussion and action on this proposed regulation were made at the November 2018 Board meeting. The HAD Committee met on August 11, 2022, to review changes identified by Board staff and recommended additional changes.

## **Summary of Changes**

The proposed changes include changes identified by the Committee during their discussion on August 11, 2022 and Board staff:

- Removed section 1399.114 after amending it to specify the “licensing examination” to include both written and practical examination and remove 1399.114(d). This section will be included in a regulatory package after the HAD Exam regulatory package is promulgated.
- Amended section 1399.115 to make it applicable to both hearing aid dispensers and dispensing audiologists, and trainee and temporary license holder. The Hearing Aid Dispensers Licensing law was renamed to cite the section.
- Amended section 1399.116 to maintain current supervision limitation, and make it applicable to both hearing aid dispensers and dispensing audiologists. Board staff added language pertaining to the waiver process and specify an effective date.

- Amended section 1399.118 to specify the masking and speech testing techniques, remove “knowledge” from real ear measurements, add another circumstance that affect the duration of supervision, and add recordkeeping requirement. Board staff added language pertaining to the supervision termination process.
- Amended section 1399.119 per DCA Legal’s suggestion and to clarify the timeframe after the first 90 days, specify the “licensing examination” to include both written and practical examination, and add recordkeeping requirement.

### **Discussion Questions**

1. Are the requirements in section 1399.115(a) and (b) in alignment with 1399.116(b) (See Attachment B)?
2. Regarding section 1399.115(c), should the termination of supervision be specified in both sections regarding training, 1399.118, and supervision, 1399.119, or in one section? If one, it should be located in 1399.119 instead of 1399.118 as supervision is applicable to both license type and not the training.
3. Section 1399.116(d) states that a “minimum of four (4) hours of continuing education in supervision training prior to the commencement of supervision.” Is this prior to every supervision?
4. For 1399.116(d), should CE record maintenance for this requirement be different from the CE requirements?

HAD CE as stated in 1399.140 – “...for two (2) years following the renewal period in which it was earned.”

SLP/AU CPD as stated in 1399.160.12 – “...at least two (2) years from the date of license renewal for which the course was completed.”

SLPA supervision as proposed in 1399.170.15 – “...two years from the speech-language pathology assistant's renewal date.”

No record maintenance specified for RPE supervision.

5. BPC section 2538.30 states a “temporary or trainee licensee shall not be the sole proprietor of, manage, or independently operate a business which engages in the fitting or sale of hearing aids.” Do the supervision requirements in section 1399.119 reduce the likelihood of violations to this Code?

- a. Does the trainee need an alternate supervisor if their supervisor is unable to work due to sickness, vacation, or other temporary leave? If so, should there be language regarding multiple supervision?
  - b. Is it common for trainees to work in multiple location? If so, should there be language regarding multiple location or branch office?
6. Should any of the definitions found in section 1399.102 be amended? Board staff suggest adding “supervising dispenser” in the definition of supervisor and determine if these requirements should be applicable to dispensing audiologists.
- a. “Supervisor” or “supervising dispenser” means a person who holds a license issued pursuant to the provisions of Sections 2538.26 and 2538.27 of the Code and who accepts responsibility for the supervision and training of a person issued a temporary license under Section 2538.28 of the Code.
  - b. “Supervision” means adequate direction and inspection by a supervisor.
  - c. “Training” means the instruction of a trainee-applicant in the fitting or selling of hearing aids.
  - d. “Trainee-applicant” means a temporary licensee authorized to fit or sell hearing aids under Section 2538.28 of the Code under the supervision of a licensed hearing aid dispenser.

### **Action Requested**

Staff recommends the Committee review and discuss the provided materials. The Committee may wish to determine whether or not to recommend the regulatory language to the Board to initiate the rulemaking process.

Attachment A: HAD Trainee and Temporary License Proposed Language  
Attachment B: Sections 1399.115 and 1399.116 Comparison

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

**PROPOSED REGULATORY LANGUAGE**  
**Hearing Aid Dispensers Trainee and Temporary License Supervision**

<b>Legend:</b>	Added text is indicated with an <u>underline</u> . Omitted text is indicated by (* * * *) Deleted text is indicated by <del>strikeout</del> .
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**Amend Sections.115, 1399.116, 1399.117, 1399.118, and 1399.119 of Article 6 of Division 13.3 of Title 16 as follows:**

**§ 1399.115. Denial, Suspension, or Revocation of Authority to Supervise.**

(a) The Board may refuse to approve, or approve subject to terms and conditions, a ~~hearing aid supervising~~ dispenser's authority to supervise a trainee-applicant or temporary license holder, or may suspend, revoke, or impose probationary conditions on a ~~hearing aid supervising~~ dispenser's authority to supervise a trainee-applicant or temporary license holder for any of the following causes:

(1) The failure to comply with ~~section~~Section 2538.28 of the Code or any of the regulations contained in this ~~article~~Article which is a prima facie violation, or is confirmed by an internal investigation report signed by the Executive Officer, or by a formal investigation by the Division of Investigation of the department within the preceding 36 months. "Confirmed by formal investigation" means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

(2) The violation of any provision of Article 8 of Chapter 5.3 of Division 2 of the Code~~Hearing Aid Dispensers Licensing Law~~ or the regulations contained in this division which is confirmed by an internal investigation report signed by the Executive Officer, or by a formal investigation by the Division of Investigation of the department within the preceding 36 months. "Confirmed by formal investigation" means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

(3) The dispenser's license has been revoked, suspended, or subject to any restrictions within the preceding 36 months.

(4) An Accusation has been filed against the dispenser under the Administrative Procedure Act by the Attorney General's office and the charges are pending.

(5) The provision of false or misleading information during the application process.

(6) The conviction of a crime involving fiscal dishonesty for which the dispenser has been on probation or parole within the preceding 36 months.

(b) The Board shall refuse to approve a ~~hearing-aid~~supervising dispenser's authority to supervise a trainee-applicant or temporary license holder if the ~~hearing-aid~~supervising dispenser has not possessed a valid, active license as a ~~hearing-aid~~supervising dispenser in California for at least three (3) years preceding the date on which the application for approval was received by the Board.

(c) A ~~hearing-aid~~supervising dispenser may appeal the denial, suspension, revocation, or imposition of probationary conditions upon ~~his or her~~her authority to supervise a trainee-applicant or temporary license holder by filing such an appeal in writing with the Board's office in Sacramento within 60 days of denial, suspension, revocation or imposition of probationary conditions. The appeal will be considered by the Board within 45 days of receipt of the appeal in the Board's office. If action under this section results in the termination of supervision ~~and training~~ of a trainee-applicant or temporary license holder, then the supervising ~~hearing-aid~~ dispenser shall so notify the Board in accordance with section 1399.118, subsection (g).

Note: Authority cited: Section 2531.06, Business and Professions Code. Reference: Sections 2531.4 and 2538.28, Business and Professions Code.

### **§ 1399.116. Supervision of Trainee Applicants Requirements of the Supervisor.**

(a) A licensed ~~hearing-aid~~supervising dispenser shall not supervise more than one trainee-applicant or temporary license holder at any one time unless a ~~specific~~-waiver has been granted by the Board. Criteria for such a waiver shall be:

(1) A written request to the Board with the following information:

(A) Supervisor's full legal name, address of record, license number, business telephone number, business name, business address, and the supervisor's email address, if any;

(B) The applicant's full name, business name, business address, business telephone number, applicant's license number, and the applicant's email address, if any;

(C) A written statement, signed by the applicant certifying that the applicant has discussed the plan for supervision with this supervisor and agree to its implementation and will not provide professional services until the applicant has been issued a license, and further certifying under

penalty of perjury under the laws of the state of California that all of the statements made in the application are true and correct, and that any misrepresentation may be cause for denial of a license.

(D) A written statement, signed by the supervisor certifying that the supervisor has discussed the plan for supervision with the applicant and accepts responsibility for their performance, understands that professional services cannot be rendered until a license has been issued, and further certifying that under penalty of perjury under the laws of the state of California all of the statements made in the application are true and correct.

(b) To supervise trainee-applicants or temporary license holders, a supervising dispenser shall meet the following criteria prior to the commencement of supervision:

(1) the supervising dispenser shall have possessed a valid current, active, and unrestricted license as a hearing aid dispenser or dispensing audiologist and engaged in the practice of fitting and selling hearing aids for at least three (3) consecutive years;

(2) the supervising dispenser has not been the subject of successful disciplinary action or of a complaint which has been investigated and verified by internal investigation report or the department's Division of Investigation within the preceding three (3) years; and

(3) the supervising dispenser shall not have been found to be in violation of any of the regulations contained in this article within the preceding three (3) years.

(bc) A licensed hearing aids supervising dispenser shall not in any circumstance supervise more than three (3) trainee-applicants or temporary license holders at any one time.

(d) Any supervision commencing on Month XX, 20XX (next full year after the effective date), the supervising dispenser shall complete a minimum of four (4) hours of continuing professional education in supervision training prior to the commencement of supervision, and complete two (2) hours of continuing education in supervision every four (4) years thereafter. Continuing education obtained by a Board-approved provider as defined in section 1399.141 may be applied towards the continuing education requirement for licensees set forth in section 1399.140.

Note: Authority cited: Section 2531.06, Business and Professions Code. Reference: Sections 2531.4 and 2538.28, Business and Professions Code.

### **§ 1399.117. Representation of Trainee-Applicant Temporary License.**

A trainee-applicant or temporary license holder shall, when engaged in the fitting or selling of hearing aids, present ~~himself or herself~~themselves to the public as a hearing aid dispenser trainee or temporary license holder. Trainee-applicants or temporary license holders may not refer to themselves in any advertising or promotional literature as anything but a hearing aid dispenser trainee or temporary license holder, as appropriate.

Note: Authority cited: Section 2531.06, Business and Professions Code. Reference: Sections 335, 2538.30, and 2533, Business and Professions Code.

### **§ 1399.118. Supervision and Training Required.**

The ~~supervision and training of a trainee-applicant under Section 2538.28 of the Code engaged in the fitting or selling of hearing aids~~ shall include the following:

- (a) Intervention into the fitting and selling process by the supervisor.
- (b) Inspection of the fitting and selling process by the supervisor.
- (c) Training consisting of at least the following for the duration of the trainee-applicant's temporary license:
  - (1) ~~Review and counter signing of the results of each fitting and sale of a hearing aid~~Pure tone air and bone conduction audiometry;
  - (2) ~~Reevaluation of the fitting and selling techniques of the trainee-applicant at least weekly~~Speech Recognition Threshold;
  - (3) ~~Being readily available to the trainee-applicant to render advice and give instruction and assistance in the fitting and selling of hearing aids~~Most Comfortable Loudness;
  - (4) Word Recognition;
  - (5) Uncomfortable Loudness;
  - (6) Masking for pure tone air and bone conduction audiometry, Speech Recognition Threshold, and Word Recognition;
  - (7) Electroacoustic analysis equipment and essential American National Standards Institute standards;
  - (8) Choosing appropriate hearing aid styles relative to hearing loss, client dexterity, and cosmetic concerns;

(9) Hearing aid fitting software;

(10) Verification techniques for hearing aid fitting including real ear measurements;

(11) Hearing aid troubleshooting;

(12) Assessment of ear mold impression and creation of ear mold impressions; and

(13) Otoscopic inspection of the ear.

(d) Instruction in the procedures for the fitting and selling of hearing aids required by Chapter ~~5.37.5~~, Division 2 of the Code.

(e) Training with instruments and equipment generally considered to produce valid hearing measurements necessary to the fitting and selling of hearing aids.

(f) A statement that the supervisor has agreed to accept the responsibility for the ~~supervision and training~~ of the applicant as required by Section 2538.28 of the Code.

(g) The supervisor shall be responsible for providing ~~supervision~~training until whichever of the following first occurs:

(1) The trainee-applicant obtains a permanent license~~;~~

(2) The supervisor or trainee-applicant gives written notification to the Board that ~~he or she is~~they are terminating supervision and training~~;~~ or

(A) Written notification for the purposes of this subdivision shall include the full legal name, license number, and signature of both the trainee-applicant and supervisor; the supervisor's business address, business telephone number, email address, if any, and the effective date of the termination.

(B) The notification shall contain certification under penalty of perjury under the laws of the State of California that all statement made in the Termination of Supervision document are true and correct in every respect and that misstatements or omissions of material facts may be cause for denial of the application to terminate supervision, or for suspension or revocation of a license.

(3) The trainee-applicant reaches the maximum renewal period set forth in Section 2538.28(c) of the Code.



(h) The supervisor shall maintain a record in the trainee-applicant's personnel file that verifies that they met the requirements set forth in this section.

Note: Authority cited: Section 2531.06, Business and Professions Code. Reference: Section 2538.28, Business and Professions Code.

### **§ 1399.119. Direct Supervision Requirements.**

~~A trainee-applicant under Section 2538.28 of the Code shall fit or sell hearing aids only under the direct supervision of the supervising licensed hearing aid dispenser. Supervision shall be provided by the supervising dispenser for the duration of the temporary license. "Direct supervision" as used in this section means all of the following: Supervision shall not include supervision by telephonic or electronic means.~~

(a) "Direct supervision" means the supervising dispenser is on-site and in proximity to where the trainee-applicant or temporary license holder is engaged in the practice of fitting and selling of hearing aids, and the supervising dispenser is available at all times to provide observation, guidance, and assistance to the trainee-applicant or temporary license holder.

(b) "Immediate supervision" means the supervising dispenser is physically present and immediately available in the same room to give aid, direction, and instruction to the trainee-applicant or temporary license holder.

(c) Pursuant to Section 2538.30(a) of the Code, "manage" means to be in charge of, oversee, or administer the day-to-day operations of a business which engages in the fitting or sale of hearing aids.

(d) The supervising dispenser shall provide immediate supervision any time one of these services are provided: otoscopic inspection of the ear, or ear impressions for hearing aids or ear molds.

~~(ae) The supervising dispenser is present within the same work setting a minimum of 20 shall provide immediate supervision one hundred (100) percent of the time in which the trainee-applicant is providing services during the first ninety (90) calendar days of the supervision.~~

(bf) After a minimum of ninety (90) calendar days or until the supervisor determines competency, whichever occurs later, with the exception of those services provided in subsection (d), the supervising dispenser shall approve the selection of hearing aid by a trainee-applicant, provide direct supervision.

(eg) The supervising dispenser shall countersign the audiogram and all sales documents prepared and consummated by a trainee-applicant or temporary license holder.

~~(d<sub>h</sub>) If a trainee-applicant or temporary license holder fails ~~the license examination the~~ written and/or the practical examination, the supervising dispenser is required to be ~~physically present~~ provide immediate supervision at all fittings and sales made by the trainee-applicant or temporary license holder ~~regardless of whether these occur in or~~ outside the supervising dispenser's business location.~~

(i) The supervisor shall maintain a record in the trainee-applicant's or temporary license holder's personnel file that verifies that they met the requirements set forth in this section.

Note: Authority cited: Section 2531.06, Business and Professions Code. Reference: Sections 2538.11, 2538.28, and 2538.30, Business and Professions Code.

## Sections 1399.115 and 1399.116 Comparison

### Section 1399.115

(a)(1) The failure to comply with ~~section~~Sections 2538.27 and 2538.28 of the Code or any of the regulations contained in this ~~article~~Article which is a prima facie violation, or is confirmed by an internal investigation report signed by the Executive Officer, or by a formal investigation by the Division of Investigation of the department within the preceding 36 months. "Confirmed by formal investigation" means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

(a)(2) The violation of any provision of Article 8 of Chapter 5.3 of Division 2 of the Code~~Hearing Aid Dispensers Licensing Law~~ or the regulations contained in this division which is confirmed by an internal investigation report signed by the Executive Officer, or by a formal investigation by the Division of Investigation of the department within the preceding 36 months. "Confirmed by formal investigation" means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

(a)(3) The dispenser's license has been revoked, suspended, or subject to any restrictions within the preceding 36 months.

(a)(4) An Accusation has been filed against the dispenser under the Administrative Procedure Act by the Attorney General's office and the charges are pending.

(a)(5) The provision of false or misleading information during the application process.

(a)(6) The conviction of a crime involving fiscal dishonesty for which the dispenser has been on probation or parole within the preceding 36 months.

### Section 1399.1156

**(b)**(2) the supervising dispenser has not been the subject of successful disciplinary action or of a complaint which has been investigated and verified by internal investigation report or the department's Division of Investigation within the preceding three (3) years; and

**(b)**(3) the supervising dispenser shall not have been found to be in violation of any of the regulations contained in this article within the preceding three (3) years.

Section 1399.115

(b) The Board shall refuse to approve a ~~hearing aid~~ supervising dispenser's authority to supervise a trainee-applicant or temporary license holder if the ~~hearing aid~~ supervising dispenser has not possessed a valid, active license as a ~~hearing aid~~ supervising dispenser in California for at least three (3) years preceding the date on which the application for approval was received by the Board.

Section 1399.1156

**(b)**(1) the supervising dispenser shall have possessed a ~~valid~~ current, active, and unrestricted license as a hearing aid dispenser and engaged in the practice of fitting and selling hearing aids for at least three (3) consecutive years;