

**BEFORE THE
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID
DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**MARK LEE MOORE,
McDonald Hearing Aid Center
2825 J Street, Suite 245
Sacramento, CA 95816**

Case No. 1C-2012-17

OAH No. 2016070861

Hearing Aid Dispenser License No. HA 2425

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on

April 10, 2017

It is so ORDERED

April 3, 2017



FOR THE SPEECH-LANGUAGE PATHOLOGY AND
AUDIOLOGY AND HEARING AID DISPENSERS BOARD
DEPARTMENT OF CONSUMER AFFAIRS

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA ALVAREZ
Supervising Deputy Attorney General
3 MEGAN R. O'CARROLL
Deputy Attorney General
4 State Bar No. 215479
1300 I Street, Suite 125
5 P.O. Box 944255
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7 *Attorneys for Complainant*

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

15 In the Matter of the Accusation Against:

16 **MARK LEE MOORE**
McDonald Hearing Aid Center
2825 J Street, Suite 245
Sacramento, CA 95816

17 **Hearing Aid Dispenser License No. HA 2425**

18 Respondent.

Case No. 1C-2012-17

OAH No. 2016070861

19 **STIPULATED SURRENDER OF**
20 **LICENSE AND ORDER**

21 In the interest of a prompt and speedy settlement of this matter, consistent with the public
22 interest and the responsibility of the Speech-Language Pathology and Audiology and Hearing Aid
23 Dispensers Board of the Department of Consumer Affairs, the parties hereby agree to the
24 following Stipulated Surrender and Disciplinary Order which will be submitted to the Board for
25 approval and adoption as the final disposition of the Accusation.

26 **PARTIES**

27 1. Paul Sanchez (Complainant) is the Executive Officer of the Speech-Language
28 Pathology and Audiology and Hearing Aid Dispensers Board (Board). He brought this action

1 solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney
2 General of the State of California, by Megan R. O'Carroll, Deputy Attorney General.

3 2. Mark Lee Moore, (Respondent) is represented in this proceeding by attorneys Glenn
4 W. Peterson and Steven T. Tsuyuki, whose address is 2825 J Street, Suite 245, Sacramento, CA
5 95816.

6 3. On or about October 23, 1987, the Board issued Hearing Aid Dispenser License No.
7 HA 2425 to Respondent Mark Lee Moore, which expired on October 31, 2017.

8 JURISDICTION

9 4. Accusation No. 1C-2012-17 was filed before the Board, and is currently pending
10 against Respondent. The Accusation and all other statutorily required documents were properly
11 served on Respondent on November 5, 2015. Respondent timely filed his Notice of Defense
12 contesting the Accusation. A copy of Accusation No. 1C-2012-17 is attached as Exhibit A and
13 incorporated by reference.

14 ADVISEMENT AND WAIVERS

15 5. Respondent has carefully read, fully discussed with counsel, and understands the
16 charges and allegations in Accusation No. 1C-2012-17. Respondent also has carefully read, fully
17 discussed with counsel, and understands the effects of this Stipulated Surrender of License and
18 Order.

19 6. Respondent is fully aware of his legal rights in this matter, including the right to a
20 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
21 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
22 to the issuance of subpoenas to compel the attendance of witnesses and the production of
23 documents; the right to reconsideration and court review of an adverse decision; and all other
24 rights accorded by the California Administrative Procedure Act and other applicable laws.

25 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
26 every right set forth above.

27 ///

28 ///

1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in the
3 Accusation No. 1C-2012-17, and agrees that cause exists for discipline and hereby surrenders his
4 Hearing Aid Dispensers License No. HA 2425 for the Board's formal acceptance.

5 9. Respondent understands that by signing this stipulation he enables the Board to issue
6 an order accepting the surrender of his Hearing Aid Dispenser License without further process.

7 CONTINGENCY

8 10. California Code of Regulations, Title 16, section 1399.150.3, subsection (a),
9 provides, in pertinent part, that the Board shall delegate to the Executive Officer all "functions
10 necessary to the dispatch of the Board in connection with investigative and administrative
11 proceedings under the jurisdiction of the Board, including the ability to accept default decisions
12 and to approve settlement agreements for the revocation, surrender or interim suspension of a
13 license."

14 11. This stipulation shall be subject to approval by the Executive Officer on behalf of the
15 Board. The parties agree that the Stipulated Surrender of License and Disciplinary Order shall be
16 submitted to the Executive Officer for his consideration and that the Executive Officer shall have
17 a reasonable period of time in which to consider and act on this Stipulated Surrender of License.
18 Respondent understands and agrees that counsel for Complainant and the staff of the Board may
19 communicate directly with the Executive Officer and/or Board regarding this stipulation and
20 surrender, without notice to or participation by Respondent or his counsel. By signing the
21 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
22 to rescind the stipulation prior to the time the Executive Officer/Board considers and acts upon it.
23 If the Executive Officer and/or Board fails to adopt this stipulation as its Decision and Order, the
24 Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
25 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
26 be disqualified from further action by having considered this matter.

27 ///

28 ///


1 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
2 Issues or any other proceeding seeking to deny or restrict licensure.

3 6. Respondent shall pay the Board its costs of enforcement in the amount of \$57,062.00,
4 prior to the issuance of a new or reinstated license.

5 ACCEPTANCE

6 I have carefully read the above Stipulated Surrender of License and Order and have fully
7 discussed it with my attorneys, Glenn W. Peterson and Steven T. Tsuyuki. I understand the
8 stipulation and the effect it will have on my Hearing Aid Dispenser License. I enter into this
9 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
10 be bound by the Decision and Order of the Speech-Language Pathology and Audiology and
11 Hearing Aid Dispensers Board.

12
13 DATED: 3/8/17


14 MARK LEE MOORE,
15 Respondent

16 I have read and fully discussed with Respondent Mark Lee Moore, the terms and conditions
17 and other matters contained in this Stipulated Surrender of License and Order. I approve its form
18 and content.

19 DATED: 3/8/17


20 STEVEN T. TSUYUKI
21 Attorney for Respondent
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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
for consideration by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers
Board of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ALEXANDRA ALVAREZ
Supervising Deputy Attorney General


MEGAN R. O'CARROLL
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1C-2012-17

By *Ante Perea*

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
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9 **SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID**
10 **DISPENSERS BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1C-2012-17

13 **MARK LEE MOORE,**

ACCUSATION

14 McDonald Hearing Aid Center
1400 X Street, Suite 300
15 Sacramento, California 95818

16 Hearing Aid Dispenser License No. HA 2425

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about October 23, 1987, the Speech-Language Pathology and Audiology and
25 Hearing Aid Dispensers Board issued Hearing Aid Dispenser License Number HA 2425 to Mark
26 Lee Moore, (Respondent). Respondent's Hearing Aid Dispenser's License was in full force and
27 effect at all times relevant to the charges brought herein and will expire on October 31, 2016,
28 unless renewed.

JURISDICTION

3. This Accusation is brought before the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2531.02 of the Code states:

"Protection of the public shall be the highest priority for the Speech-Language Pathology and Audiology and Hearing Aid Dispensers 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."

5. Section 2533 of the Code states:

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

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

"..."

"(d) Advertising in violation of Section 17500. Advertising an academic degree that was not validly awarded or earned under the laws of this state or the applicable jurisdiction in which it was issued is deemed to constitute a violation of Section 17500.

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

"(f) Incompetence, gross negligence, or repeated negligent acts.

"(g) Other acts that have endangered or are likely to endanger the health, welfare, and safety of the public.

"(h) Use by a hearing aid dispenser of the term 'doctor' or 'physician' or 'clinic' or 'audiologist,' or any derivation thereof, except as authorized by law.

1 "(i) The use, or causing the use, of any advertising or promotional literature in a manner
2 that has the capacity or tendency to mislead or deceive purchasers or prospective purchasers.

3 "(j) Any cause that would be grounds for denial of an application for a license.

4 "(k) Violation of Section 1689.6 or 1793.02 of the Civil Code."

5 "..."

6 6. Section 2538.35 of the Code states:

7 "A licensee shall, upon the consummation of a sale of a hearing aid, deliver to the purchaser
8 a written receipt, signed by or on behalf of the licensee, containing all of the following:

9 "(a) The date of consummation of the sale.

10 "(b) Specifications as to the make, serial number, and model number of the hearing aid or
11 aids sold.

12 "(c) The address of the principal place of business of the licensee, and the address and
13 office hours at which the licensee shall be available for fitting or post fitting adjustments and
14 servicing of the hearing aid or aids sold.

15 "(d) A statement to the effect that the aid or aids delivered to the purchaser are used or
16 reconditioned, as the case may be, if that is the fact.

17 "(e) The number of the licensee's license and the name and license number of any other
18 hearing aid dispenser or temporary licensee who provided any recommendation or consultation
19 regarding the purchase of the hearing aid.

20 "(f) The terms of any guarantee or written warranty, required by Section 1793.02 of the
21 Civil Code, made to the purchaser with respect to the hearing aid or hearing aids."

22 7. Section 2538.36 of the Code states:

23 "(a) Whenever any of the following conditions are found to exist either from observations
24 by the licensee or on the basis of information furnished by the prospective hearing aid user, a
25 licensee shall, prior to fitting or selling a hearing aid to any individual, suggest to that individual
26 in writing that his or her best interests would be served if he or she would consult a licensed
27 physician specializing in diseases of the ear or if no such licensed physician is available in the
28 community then to a duly licensed physician:

- 1 "(1) Visible congenital or traumatic deformity of the ear.
- 2 "(2) History of, or active drainage from the ear within the previous 90 days.
- 3 "(3) History of sudden or rapidly progressive hearing loss within the previous 90 days.
- 4 "(4) Acute or chronic dizziness.
- 5 "(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- 6 "(6) Significant air-bone gap (when generally acceptable standards have been established).
- 7 "(7) Visible evidence of significant cerumen accumulation or a foreign body in the ear
- 8 canal.
- 9 "(8) Pain or discomfort in the ear.
- 10 "..."

11 8. Section 2538.39 of the Code states: "A hearing aid dispenser who is the owner,
12 manager, or franchisee at a location where hearing aids are fit or sold, shall be responsible for the
13 adequacy of the fitting or selling of any hearing aid fit and sold by any licensee or licensees at
14 that location."

15 9. Section 2538.48 of the Code states: "It is unlawful to engage in the practice of
16 fitting or selling hearing aids in this state without having at the time of so doing a valid,
17 unrevoked, and unexpired license or temporary license."

18 10. Section 2538.50 of the Code states: "It is unlawful to advertise by displaying a
19 sign or otherwise or hold himself or herself out to be a person engaged in the practice of fitting or
20 selling hearing aids without having at the time of so doing a valid, unrevoked license or
21 temporary license."

22 11. California Code of Regulations, title 16, section 1399.115, states:

23 "(a) The bureau may refuse to approve or approve subject to terms and conditions a hearing
24 aid dispenser's authority to supervise a trainee-applicant, or may suspend, revoke or impose
25 probationary conditions on a hearing aid dispenser's authority to supervise a trainee-applicant for
26 any of the following causes:

27 "(1) The failure to comply with section 3357 of the code or any of the regulations contained
28 in this article which is a prima facie violation, or is confirmed by an internal investigation report

1 signed by the chief, or by a formal investigation by the Division of Investigation of the
2 department within the preceding 36 months. "Confirmed by formal investigation@ means the
3 investigator assigned the matter has written a final investigation report which has been
4 countersigned by a Supervising Special Investigator.

5 "(2) The violation of any provision of the Hearing Aid Dispensers Licensing Law or the
6 regulations contained in this chapter which is confirmed by an internal investigation report signed
7 by the executive officer, or by a formal investigation by the Division of Investigation of the
8 department within the preceding 36 months. "Confirmed by formal investigation@ means the
9 investigator assigned the matter has written a final investigation report which has been
10 countersigned by a Supervising Special Investigator.

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

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

15 "..."

16 12. California Code of Regulations, title 16, section 1399.126, states:

17 "(a) For purposes of Section 3365.5 of the code, a significant air-bone gap is defined as a
18 difference of 15 decibels or more between the higher air conduction and the lower bone
19 conduction pure tone thresholds at 2 or more succeeding octave frequencies of 500 Hertz through
20 and including 4000 Hertz.

21 "(b) Tests for significant air-bone gap shall be performed in a suitable environment using
22 appropriate equipment to establish threshold values and with appropriate masking procedures
23 employed."¹

24 13. California Code of Regulations, title 16, section 1399.132

25 "For the purpose of denial, suspension, or revocation of a hearing aid dispenser's license
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

27 _____
28 ¹ Section 3365.5 is now renumbered as section 2538.36.

1 crime or act shall be considered substantially related to the qualifications, functions, and duties of
2 a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a
3 hearing aid dispenser to perform the functions authorized by his license in a manner consistent
4 with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to
5 those involving the following:

6 "(a) Any violation of the provisions of Sections 650, 651, 651.3 and 655.2 of the code.

7 "(b) Any violation of the provisions of Chapter 7.5, Division 2 of the Business and
8 Professions Code."

9 14. Section 651 states:

10 "(a) It is unlawful for any person licensed under this division or under any initiative act
11 referred to in this division to disseminate or cause to be disseminated any form of public
12 communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image
13 for the purpose of or likely to induce, directly or indirectly, the rendering of professional services
14 or furnishing of products in connection with the professional practice or business for which he or
15 she is licensed. A 'public communication' as used in this section includes, but is not limited to,
16 communication by means of mail, television, radio, motion picture, newspaper, book, list or
17 directory of healing arts practitioners, internet, or other electronic communication.

18 "(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a
19 statement or claim that does any of the following:

20 "(1) Contains a misrepresentation of fact.

21 "(2) Is likely to mislead or deceive because of a failure to disclose material
22 facts.

23 "(3)(A) Is intended or is likely to create false or unjustified expectations of
24 favorable results, including the use of any photograph or other image that does not
25 accurately depict the results of the procedure being advertised or that has been altered
26 in any manner from the image of the actual subject depicted in the photograph or
27 image.

28 ///

1 "(B) Use of any photograph or other image of a model without clearly stating in
2 a prominent location in easily readable type the fact that the photograph or image is
3 of a model is a violation of subdivision (a). For purposes of this paragraph, a model
4 is anyone other than an actual patient, who has undergone the procedure being
5 advertised, of the licensee who is advertising for his or her services.

6 "(C) Use of any photograph or other image of an actual patient that depicts or
7 purports to depict the results of any procedure, or presents >before= and >after=
8 views of a patient, without specifying in a prominent location in easily readable type
9 size what procedures were performed on that patient is a violation of subdivision (a).
10 Any 'before' and 'after' views (i) shall be comparable in presentation so that the
11 results are not distorted by favorable poses, lighting, or other features of presentation,
12 and (ii) shall contain a statement that the same 'before' and 'after' results may not
13 occur for all patients.

14 "(4) Relates to fees, other than a standard consultation fee or a range of fees for
15 specific types of services, without fully and specifically disclosing all variables and
16 other material factors.

17 "(5) Contains other representations or implications that in reasonable
18 probability will cause an ordinarily prudent person to misunderstand or be deceived.

19 "(6) Makes a claim either of professional superiority or of performing services
20 in a superior manner, unless that claim is relevant to the service being performed and
21 can be substantiated with objective scientific evidence.

22 "(7) Makes a scientific claim that cannot be substantiated by reliable, peer
23 reviewed, published scientific studies.

24 "(8) Includes any statement, endorsement, or testimonial that is likely to
25 mislead or deceive because of a failure to disclose material facts.

26 "(c) Any price advertisement shall be exact, without the use of phrases, including, but not
27 limited to, 'as low as,' 'and up,' 'lowest prices,' or words or phrases of similar import. Any
28 advertisement that refers to services, or costs for services, and that uses words of comparison

1 shall be based on verifiable data substantiating the comparison. Any person so advertising shall
2 be prepared to provide information sufficient to establish the accuracy of that comparison. Price
3 advertising shall not be fraudulent, deceitful, or misleading, including statements or
4 advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In
5 connection with price advertising, the price for each product or service shall be clearly
6 identifiable. The price advertised for products shall include charges for any related professional
7 services, including dispensing and fitting services, unless the advertisement specifically and
8 clearly indicates otherwise.

9 "(d) Any person so licensed shall not compensate or give anything of value to a
10 representative of the press, radio, television, or other communication medium in anticipation of,
11 or in return for, professional publicity unless the fact of compensation is made known in that
12 publicity.

13 "(e) Any person so licensed may not use any professional card, professional announcement
14 card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or
15 a similar professional notice or device if it includes a statement or claim that is false, fraudulent,
16 misleading, or deceptive within the meaning of subdivision (b).

17 "(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona
18 fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

19 "(g) Any violation of this section by a person so licensed shall constitute good cause for
20 revocation or suspension of his or her license or other disciplinary action.

21 "..."

22 "(i) Each of the healing arts boards and examining committees within Division 2 shall adopt
23 appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with
24 Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

25 "Each of the healing arts boards and committees and examining committees within Division
26 2 shall, by regulation, define those efficacious services to be advertised by businesses or
27 professions under their jurisdiction for the purpose of determining whether advertisements are
28 false or misleading. Until a definition for that service has been issued, no advertisement for that

1 service shall be disseminated. However, if a definition of a service has not been issued by a
2 board or committee within 120 days of receipt of a request from a licensee, all those holding the
3 license may advertise the service. Those boards and committees shall adopt or modify
4 regulations defining what services may be advertised, the manner in which defined services may
5 be advertised, and restricting advertising that would promote the inappropriate or excessive use of
6 health services or commodities. A board or committee shall not, by regulation, unreasonably
7 prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or
8 commodities, by either outright prohibition or imposition of onerous disclosure requirements.
9 However, any member of a board or committee acting in good faith in the adoption or
10 enforcement of any regulation shall be deemed to be acting as an agent of the state.

11 "(j) The Attorney General shall commence legal proceedings in the appropriate forum to
12 enjoin advertisements disseminated or about to be disseminated in violation of this section and
13 seek other appropriate relief to enforce this section. Notwithstanding any other provision of law,
14 the costs of enforcing this section to the respective licensing boards or committees may be
15 awarded against any licensee found to be in violation of any provision of this section. This shall
16 not diminish the power of district attorneys, county counsels, or city attorneys pursuant to
17 existing law to seek appropriate relief.

18 15. Section 652 of the Code states, in pertinent part:

19 "Violation of this article [Article 6, commencing with Section 650 of the Code] in the case
20 of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation
21 of his or her license by the board by whom he or she is licensed, or if a license has been issued in
22 connection with a place of business, then for the suspension or revocation of the place of business
23 in connection with which the violation occurs. The proceedings for suspension or revocation
24 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of
25 Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and each board
26 shall have all the powers granted therein."

27 16. Section 1793.02 of the Civil Code, also known as the Song-Beverly Consumer
28 Warranty Act, provides:

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

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

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

22 ". . . ."²

23 **COST RECOVERY**

24 17. Section 125.3 of the Code states, in pertinent part, that the Board may request the
25 administrative law judge to direct a licensee found to have committed a violation or violations of
26

27 ² The text of Civil Code section 1793.02 cited here is the version that was in force at the
28 time of the events alleged in this Accusation.

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 18. Paragraph 15 above, referring to the costs provision of section 651, subsection (j), is
4 re-alleged and incorporated herein by reference.

5 **FACTS**

6 19. Respondent Mark Moore established a series of corporate entities, including but not
7 limited to McDonald Hearing Aid Center (MHAC), designed to use the profession of fitting and
8 selling hearing aids to effect unlawful schemes that target vulnerable, elderly customers. These
9 unlawful schemes use false and misleading advertising to get elderly customers into multiple
10 branch locations throughout Northern California, where licensed Hearing Aid Dispensers, and
11 unlicensed individuals acting as dispensers, are motivated by corporate policies to sell the most
12 expensive hearing aids while disregarding the standards of care and professional ethics.

13 20. Licensed Hearing Aid Dispensers fitting and selling hearing aids in Respondent's
14 branch locations are paid a minimal base salary with significantly increased rates of commission
15 for selling upgraded hearing aid products and preventing returns. As a result, consumers are sold
16 much more expensive hearing aids than necessary, and than advertised. Consumers are
17 frightened and pressured into purchasing expensive hearing aids with false and scientifically
18 unsupported statements.

19 21. Respondent's methods of false and misleading advertising include advertising a
20 \$745.00 hearing aid product to lure consumers into stores where they are pressured and misled
21 into purchasing products costing several thousand dollars. Respondent further uses former news
22 anchor Stan Atkinson as a paid spokesperson without acknowledging his paid status to create a
23 false sense of trustworthiness.

24 22. Respondent advertises the sales to be "no risk" and "satisfaction guaranteed," but
25 consumers are subjected to onerous cancelation fees and return policies. One such policy is the
26 "Patient Journey." The Patient Journey is a six-week program created by Respondent that
27 requires the consumer to return to a MHAC branch location at least five times over the course of
28 six weeks to complete a series of exercises while wearing the hearing aids. Respondent informs

1 consumers that this program is required under the Song-Beverly Act, but actually uses the
2 program to evade the application of Song-Beverly, by manipulating the date on which the fitting
3 is deemed by the dispenser to be complete. If the consumer seeks to return the hearing aids
4 before the Patient Journey is complete, the dispenser will claim the consumer failed to complete
5 the fitting. Alternately, if the consumer completes the patient journey, which requires longer than
6 thirty days, the dispenser can claim the consumer failed to seek an adjustment or return the
7 hearing aids within thirty days.

8 23. Regardless of whether the consumer completes the Patient Journey, Respondent
9 requires all consumers seeking to return hearing aids to complete a form, checking a box
10 indicating the grounds for return. The boxes, however, all correspond to reasons for return that
11 relate to price. Respondent then instructs dispensers to deny any refunds based on his
12 interpretation of Song-Beverly to preclude a consumer from returning hearing aids when the
13 consumer is dissatisfied with the price of the hearing aids.

14 24. MHAC is the second largest seller of hearing aids in the Sacramento Valley area,
15 with Costco as its nearest competitor. Between January 2007 and November 2013, MHAC
16 grossed 45 million dollars in sales of hearing aids. The grounds for discipline that follow
17 illustrate the application of the unlawful business practices developed and employed by
18 Respondent.

19 Consumer P.D.

20 25. On or about April 19, 2011, P.D., an 84 year old woman, responded to an
21 advertisement distributed by Respondent's corporation, McDonald Hearing Aid Center (MHAC),
22 advertising a limited time five-day-only special, between April 18 through 22, of up to 67% off
23 prices, a free video ear inspection, and a \$745.00 entry level hearing aid, with "satisfaction
24 guaranteed." On April 19, 2011, P.D. entered the MHAC branch location at 1400 X Street, Suite
25 300, Sacramento, CA 95818. P.D. had undergone a cardiac surgical procedure two weeks before
26 her visit to MHAC, and was consequently feeling fatigued at the time of her visit. She used a
27 walker to ambulate.

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1 26. Hearing Aid Dispenser (HAD) Marion Nelson, (HA License No. 7416), employed by
2 Respondent, conducted an audiogram hearing test on P.D. that showed a loss of hearing in P.D.'s
3 right ear, and an air-bone gap in P.D.'s left ear. Nelson did not chart that he performed a bone
4 conduction test for the right ear, or that he referred P.D. for testing by a physician due to the air-
5 bone gap in the left ear.

6 27. HAD Nelson told P.D. that her hearing loss was a 20 to 80 dB loss, which he claimed
7 was a moderate to severe loss. The chart of the audiogram Nelson used incorrectly classified the
8 ranges of hearing loss accepted by industry standards, by overstating the ranges of moderate to
9 severe hearing loss. P.D. inquired about the \$745 hearing aid, but Nelson told her that this
10 hearing aid was not suitable for her needs. He proceeded to sell her an OTE Alpha Intela-Hear
11 hearing aid for \$2,245.00. The hearing aid that was advertised by McDonald for \$745.00 would
12 have been an appropriate hearing aid for P.D., by industry standards.

13 28. On April 20, 2011, Nelson and P.D. entered into a Purchase Agreement in which P.D.
14 purchased an OTE Alpha RIE Intela-Hear digital hearing aid for \$2,245.00. The purchase
15 agreement indicated that the hearing aid P.D. purchased was \$4,990.00 and that P.D. was being
16 given a 50% and AAA discount in order to arrive at the price of \$2,245.00. Respondent and P.D.
17 signed the Purchase Agreement, and P.D. paid a deposit of \$1,200.00 by credit card on April 20,
18 2011.

19 29. On or about June 16, 2011, P.D. was tested at the University of California, Davis,
20 Medical Center (Medical Center). The test administered by the Medical Center showed a mild
21 hearing loss with no significant air-bone gap in either ear. After being tested by the Medical
22 Center, P.D. sought to cancel her order with MHAC, and obtain a full refund from Respondent.
23 HAD Melissa Peacock (HA License No. 7070), employed by Respondent as the Chief
24 Compliance Officer for MHAC corresponded with P.D. informing her that her cancelation was
25 subject to a \$336.83 cancelation fee. Under the MHAC's Purchase Agreement, MHAC imposed
26 a fifteen percent cancelation fee on P.D. of \$336.83.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Gross Negligence/Owner Responsible for Fit and Sale)

3 30. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

4 31. Respondent is subject to disciplinary action under section 2538.39, (Owner
5 Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the gross
6 negligence of HAD Nelson in the fit and sale of a hearing aid to P.D. HAD Nelson violated
7 section 2533, subdivision (f), gross negligence, in that he failed to perform or chart a bone
8 conduction test of P.D.'s right ear, and failed to refer P.D. to a physician based on the charted
9 bone-air gap in her left ear.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (Failure to Refer to a Physician/Owner Responsible for Fit and Sale)

12 32. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

13 33. Respondent is subject to disciplinary action under section 2538.39, (Owner
14 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the failure of
15 HAD Nelson to refer to a physician based on the charted air-bone gap of P.D.'s left ear. HAD
16 Nelson violated section 2538.36, subdivision (a), and Title 16, section 1399.126, subdivision (c),
17 of the California Code of Regulations, in that he failed to refer P.D. to a physician based on the
18 apparent air-bone gap in P.D.'s left ear.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

21 34. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

22 35. Respondent is subject to disciplinary action under section 2538.39, (Owner
23 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or
24 dishonest act of HAD Nelson. HAD Nelson violated section 2533, subdivision (e), committing a
25 fraudulent or dishonest act, in that he misrepresented the industry standards for hearing loss, and
26 misrepresented P.D.'s degree of hearing loss to her.

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36. HAD Nelson committed a dishonest or fraudulent act when he recommended and sold the \$2,245.00 Intela-Hear hearing aid to P.D. without offering the alternative of the \$745.00 hearing aid that was advertised by MHAC and appropriate for P.D.

FOURTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act)

37. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

38. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of a hearing aid to P.D., which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait \$745 hearing aid, with the knowledge that his corporate policies encouraged HAD Nelson to upsell P.D. to a higher priced hearing aid;

(b) disseminating an advertisement with the promise of “satisfaction guaranteed” and “nothing to lose” while maintaining a 15% cancellation fee provision in the purchase agreement;

(c) disseminating an advertisement with the false claim of a limited-time discounted price;

and

(d) maintaining audiogram charts that misrepresent the industry standards of hearing loss ranges.

FIFTH CAUSE FOR DISCIPLINE

(Use of Promotional or Advertising in a Manner that Has Tendency to Mislead)

39. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

40. Respondent is subject to disciplinary action under section 2533, subsection (i), in that he caused the use of promotional literature in a manner that has the capacity or tendency to mislead or deceive in connection with the sale of a hearing aid to P.D.

SIXTH CAUSE FOR DISCIPLINE

(Violation of the Song-Beverly Act)

41. Paragraphs 19 -27 above are incorporated by reference as if fully set forth herein.

42. Respondent is subject to disciplinary action under section 2533, subsection (k), in that he violated Section 1793.02 (Song-Beverly Act), by maintaining a purchase agreement that imposed a 15% cancelation fee.

Consumer M.B.

43. During January of 2012, Sister M.B., an elderly catholic nun, received a hearing test at a Kaiser Permanente Facility and was advised that she had a mild to moderate hearing loss that would benefit from hearing aids. Sister M.B. relayed this information to the financial advisor of her diocese, who advised her of their policy to conduct a price-comparison before making any large purchase. Sister M.B. consulted with another nun, Sister F.W., who had observed several advertisements for MHAC's sale on \$700.00 hearing aids. Sister F.W. provided the advertisements to Sister M.B., and agreed to accompany her to the MHAC branch location to compare prices.

44. On or about January 2012, Sister M.B. and F.W. entered the MHAC branch location in Lodi. Sister M.B. immediately explained that she was not authorized to make any purchases herself without consulting with her Order's financial advisor, and that she was merely there to conduct a price comparison of the \$700.00 hearing aids she saw advertised. Sister M.B. was separated from Sister F.W., and led into a room by HAD Robert Bennett, (HA License No. 7365), who conducted a hearing test.

45. After the hearing test was completed Sister M.B. observed a woman who was wearing a white coat enter the room waving a graph dramatically, who stated, "you have a very serious hearing loss." The woman in the white coat, Ashley Brown, was issued HAD Trainee License No. 8678 on or about May 25, 2010, and the license expired on or about November 30, 2011. Brown was not licensed to fit or sell hearing aids during her interactions with Sister M.B. Sister M.B. was shaken and upset by the statements that she had a serious hearing loss, and found that HAD Bennett was speaking a rush of words at her, and felt she could not get a word in. Sister M.B. asked Brown about the \$700.00 hearing aids advertised, but Brown told her that those are only suitable for people in the top part of the graph, and her hearing loss extended to the bottom of the graph. Sister M.B. restated to Bennett and Brown that she cannot make any large

1 expenditures without prior authorization from her Order. Bennett brought out paperwork for an
2 order for hearing aids, and explained that if she did not fill out the forms, the offer would not be
3 available later. Sister M.B. asked if she could take the paperwork with her to review before
4 signing anything. Brown told her that she had already entered into the contract, and it did not
5 really matter if she signed the paperwork or not. Sister M.B. finally signed the paperwork
6 because she felt shaken up and wanted to leave.

7 46. MHAC records show that Sister M.B. entered into a purchase agreement with HAD
8 Bennett on January 20, 2012, for the purchase of a pair of Intela-Hear hearing aids at the cost of
9 \$9,000.00. The records further show that she opened a credit card through Credit Care to finance
10 the purchase. Once Sister M.B. left the MHAC branch location and began reviewing the
11 purchase agreement, she saw that she had opened a credit card and had purchased an expensive
12 hearing aid package. As a result of her shock and distress, Sister M.B. was unable to drive herself
13 home, and she and Sister F.W. stayed the night in a nearby hotel. Sister M.B. was still shaken up
14 that evening, and tripped and fell, causing her wrist to fracture.

15 47. On or about January 23, 2012, Sister M.B. called MHAC and left a message for
16 Bennett explaining that she wanted to cancel her order. On or about January 26, 2012, Bennett
17 returned Sister M.B.'s call and told her that any cancelation would incur a 15% cancelation fee,
18 but that she could avoid the cancelation fee if she went through with the order and completed the
19 Patient Journey and was not satisfied with the hearing aids.

20 48. On or about February 15, 2012, HAD Melissa Peacock, Chief Compliance Officer for
21 MHAC, wrote a letter to Sister M.B. advising her that a cancelation fee of \$673.65 was being
22 imposed, but that she could choose to apply that fee towards the purchase of another Intela-Hear
23 hearing aid instrument through MHAC.

24 SEVENTH CAUSE FOR DISCIPLINE

25 (Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

26 49. Paragraphs 19-22 and 41-46 above are incorporated by reference as if fully set forth
27 herein.

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50. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the fraudulent or dishonest acts of HAD Bennett and the unlicensed individual Ashley Brown who fit and sold hearing aids to Sister M.B. at the Lodi Branch location. HAD Bennett and Brown violated section 2533, subdivision (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that they committed fraudulent or dishonest acts in connection with the sale of hearing aids to Sister M.B., which include, but are not limited to the following:

(a) Brown made misleading statements to Sister M.B. as to the severity of her hearing loss and the suitability of the \$745.00 hearing aid for her needs;

(b) Brown claimed that Sister M.B. had entered into a contract with MHAC regardless of whether she signed a purchase agreement or not;

(c) Bennett persuaded Sister M.B. to enter into a purchase agreement, and to open a line of credit, despite her statements that she was not authorized to make a purchase and was only seeking information for purposes of price comparison; and

(d) Brown made recommendations as to the suitability of hearing aids for Sister M.B. despite lacking a valid license to do so.

EIGHTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act)

51. Paragraphs 19-22 and 41-46 above are incorporated by reference as if fully set forth herein.

52. Respondent is subject to disciplinary action under section 2533, subsection (e), and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed fraudulent or dishonest acts in connection with the sale of hearing aids to M.B., which include, but are not limited to the following:

(a) disseminating an advertisement promoting a bait \$745 hearing aid, with the knowledge that his corporate policies encouraged HAD Bennett and unlicensed Brown to upsell Sister M.B. to a higher priced hearing aid she did not intend to purchase;

- 1 (b) disseminating an advertisement with the promise of "satisfaction guaranteed" and
2 "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement;
3 (c) disseminating an advertisement with the false claim of a limited-time discounted price;
4 and
5 (d) permitting an unlicensed individual to work in a branch location owned by MHAC.

6 **NINTH CAUSE FOR DISCIPLINE**

7 (Owner Responsibility/Unlicensed person)

8 53. Paragraphs 19-22 and 41-46 above are incorporated by reference as if fully set forth
9 herein.

10 54. Respondent is subject to disciplinary action under section 2538.39, (Owner
11 Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the actions of
12 Brown, an unlicensed individual, in the fit and sale of hearing aids to M.B. Brown violated
13 sections 2538.48 and 2538.50 by fitting and selling and holding herself out as an individual
14 licensed to fit and sell hearing aids to Sister M.B. on or about January 20, 2012.

15 **TENTH CAUSE FOR DISCIPLINE**

16 (Use of Promotional Literature or Advertising in a Manner that Has Tendency to Mislead)

17 55. Paragraphs 19-22 and 41-46 above are incorporated by reference as if fully set forth
18 herein.

19 56. Respondent is subject to disciplinary action under section 2533, subsection (i), in that
20 he caused the use of promotional literature in a manner that has the capacity or tendency to
21 mislead or deceive in connection with the sale to Sister M.B.

22 **Consumer M.S.**

23 57. On or about February 10, 2012, M.S., an 81 year old woman, responded to an
24 advertisement by MHAC, advertising a limited time 10-day sale, of 50-67% off prices, with a free
25 video ear inspection and audiometric testing, and a \$745.00 entry level hearing aid, with a six-
26 week guarantee, "no risk," and "nothing to lose." On or about February 10, 2012, M.S. entered
27 the Fair Oaks MHAC branch location at 5480 Dewey Drive, Suite 110, in Fair Oaks, California.
28

1 58. On or about February 10, 2012, M.S. was given an audiometric hearing test by HAD
2 Michele Moreland (HA License No. HA 7507). HAD Moreland then introduced M.S. to Ashley
3 Brown who was not licensed to fit or sell hearing aids in California. Brown told M.S. that she
4 had a "50% hearing loss" and advised her to purchase a pair of hearing aids for \$4,990.00. M.S.
5 asked Brown why she could not have the \$745.00 hearing aid advertised, and Brown told her that
6 the entry level hearing aid was not suitable for her needs. M.S. told Brown that she would like to
7 have a second opinion. Brown told her that it was unnecessary as MHAC had been in business for
8 60 years. Brown proceeded to make molds of M.S.'s ears.

9 59. On or about February 10, 2012, M.S. entered into a purchase agreement for a pair of
10 Intel-a Hear model hearing aids for a total cost of \$4,990.00. The purchase agreement indicated
11 that the hearing aid package M.S. purchased was \$9,980.00 and that M.S. was being given a 50%
12 discount in order to arrive at the price of \$4,990.00. M.S. paid the full amount with her Discover
13 credit card. As soon as M.S. returned home, she was concerned that she overspent on hearing
14 aids, when she only intended to purchase the \$745.00 hearing aid, given that she was on a fixed
15 income and care-giver to her elderly World War II veteran husband. She contacted her credit
16 card company and requested that it stop payment, but the company told her that it was too late.
17 On or about February 13, 2012, M.S. contacted MHAC to ask about rescinding her purchase, and
18 was told she could not.

19 60. On or about March 2, 2012, M.S. went to MHAC and told HAD Moreland that she
20 did not want to continue with the hearing aid purchase. Moreland told her that she would be able
21 to return the devices for a refund if the hearing aids did not work for her. M.S. accepted delivery
22 of the hearing aids on March 2, 2012. On or about March 12, 2012, M.S. had another
23 appointment with MHAC, during which she told Moreland that the hearing aids were not
24 working, and she was seeking a second opinion. Between March 12, and May 2, 2012, M.S.
25 persisted in seeking a refund from MHAC. Staff at MHAC repeatedly told her that she must
26 come into the branch locations and make appointments to see Moreland to discuss her case,
27 which required several more trips for her. On or about April 2, 2012, M.S. received a letter from
28

1 MHAC informing her that her request for a refund was denied, and that she must complete the
2 patient journey.

3 61. On or about May 2, 2012, M.S. received a written evaluation from her physician
4 stating that she had a mild to moderately severe sensorineural hearing loss consistent with
5 presbycusis. The physician opined that for M.S.'s condition and her degree of hearing loss,
6 hearing aids are optional. M.S. provided this document to MHAC. On or about May 30, 2012,
7 MHAC refunded the purchase on the Discover credit card.

8 ELEVENTH CAUSE FOR DISCIPLINE

9 (Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

10 62. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth
11 herein.

12 63. Respondent is subject to disciplinary action under section 2538.39, (Owner
13 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or
14 dishonest acts of HAD Moreland and the unlicensed individual Ashley Brown who fit and sold
15 hearing aids to M.S. at the Fair Oaks Branch location. HAD Moreland and Brown violated
16 section 2533, subdivision (e), and California Code of Regulations, title 16, section 1399.132,
17 which incorporates section 651, in that they committed fraudulent or dishonest acts in connection
18 with the sale of hearing aids to M.S., which include, but are not limited to the following:

19 (a) Brown made misleading and unscientific statements to M.S. when she told her that she
20 had a "50%" hearing loss;

21 (b) Brown recommended and sold the \$4,990.00 Intela-Hear hearing aids to M.S. and
22 falsely claimed that the alternative of the \$745.00 hearing aid that was advertised by MHAC was
23 not appropriate for M.S.;

24 (c) Moreland entered into a purchase agreement with M.S. with the knowledge that MHAC
25 had disseminated false and misleading statements in connection with the sale;

26 (d) Moreland falsely told M.S. that she could return the devices for a refund if the hearing
27 aids did not work for her while omitting the 15% cancelation fee and the onerous programs she
28 would have to complete before being considered for a refund; and

1 (e) Brown made recommendations as to the suitability of hearing aids for M.S. despite
2 lacking a valid license to do so.

3 **TWELFTH CAUSE FOR DISCIPLINE**

4 (Fraudulent Dishonest Act)

5 64. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth
6 herein.

7 65. Respondent is subject to disciplinary action under section 2533, subsection (e), and
8 California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that
9 he committed fraudulent or dishonest acts in connection with the sale of hearing aids to M.S.,
10 which include, but are not limited to the following:

11 (a) disseminating an advertisement promoting a bait \$745 hearing aid, with the knowledge
12 that his corporate policies encouraged HAD Moreland and unlicensed Brown to upsell M.S. to a
13 higher priced hearing aid she did not intend to purchase;

14 (b) disseminating an advertisement with the promise of "satisfaction guaranteed" and
15 "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement;

16 (c) disseminating an advertisement with the false claim of a limited-time discounted price;
17 and

18 (d) permitting an unlicensed individual to work in a branch location owned by MHAC.

19 **THIRTEENTH CAUSE FOR DISCIPLINE**

20 (Owner Responsibility/Unlicensed person)

21 66. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth
22 herein.

23 67. Respondent is subject to disciplinary action under section 2538.39, (Owner
24 Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the actions of
25 Brown, an unlicensed individual, in the fit and sale of hearing aids to M.S. Brown violated
26 sections 2538.48 and 2538.50 by fitting and selling and holding herself out as an individual
27 licensed to fit and sell hearing aids to M.S. on or about February 10, 2012.

28 ///

1 **FOURTEENTH CAUSE FOR DISCIPLINE**

2 (Use of Promotional Literature or Advertising in a Manner that Has Tendency to Mislead)

3 68. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth
4 herein.

5 69. Respondent is subject to disciplinary action under section 2533, subsection (i), in that
6 he caused the use of promotional literature in a manner that has the capacity or tendency to
7 mislead or deceive in connection with the sale to M.S.

8 **FIFTEENTH CAUSE FOR DISCIPLINE**

9 (Violation of the Song-Beverly Act)

10 70. Paragraphs 19-22 and 55-59 above are incorporated by reference as if fully set forth
11 herein.

12 71. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
13 he violated Section 1793.02 (Song-Beverly Act), by imposing a 15% cancelation fee and failing
14 to promptly refund M.S.'s entire purchase price.

15 **Consumer D.G.**

16 72. On or about October 16, 2012, D.G., a 77 year old woman, responded to an
17 advertisement by MHAC for a limited time five-day-only special, between October 15 through
18 19, of up to 67% off prices, a free video ear inspection, and a \$745.00 entry level hearing aid,
19 with "satisfaction guaranteed" and a six-week, no risk, nothing to lose guarantee. The
20 advertisement showed a picture of Stan Atkinson holding a hearing aid, with the words "Stan
21 Atkinson, Intela-Hear Wearer" next to his picture. There was no disclaimer indicating that Stan
22 Atkinson was a paid spokesman for the product or for MHAC. On October 16, 2012, D.G.
23 entered the MHAC branch office at 433 F Street in Lincoln, California.

24 73. HAD Nelson performed an audiogram on D.G. and informed her that she had a
25 moderate hearing loss. The audiogram indicates that D.G.'s right ear had an air bone gap, but he
26 did not inform D.G. of this result, and HAD Nelson did not refer D.G. to a medical doctor for a
27 consultation. The chart of the audiogram Nelson used incorrectly classified the ranges of hearing
28 loss accepted by industry standards, by overstating the ranges of moderate to severe hearing loss.

1 An unidentified HAD working in the MHAC branch location that day showed D.G. only
2 expensive hearing aids, not the \$745.00 hearing aid advertised. D.G. reported feeling pressured
3 into purchasing more expensive hearing aids.

4 74. On October 16, 2012, D.G. entered into a purchase agreement with Nelson for a pair
5 of Intela-Hear model hearing aids for \$6,741.00. The purchase agreement indicated that the
6 hearing aids D.G. purchased were \$14,980.00 and that D.G. was being given a 50% and AAA
7 discount in order to arrive at the price of \$6,741.00. The next day, on October 17, 2012, D.G.
8 decided to cancel the contract, and she went in person to the Lincoln office but it was closed. She
9 telephoned another MHAC office to cancel but was told that she had to come in person to the
10 office to cancel. On October 18, 2012, D.G. went to the MHAC office in Lincoln and met with
11 Nelson. D.G. signed a Request for Cancellation. A few days later, D.G. received a statement
12 from HealthiPlan, a credit company, for \$6,741.00. D.G. did not realize that on October 16,
13 2012, she had signed an application for financing of the hearing aids. D.G. contacted HAD
14 Melissa Peacock, Chief Compliance Officer for MHAC, and was told she would be charged a
15 15% cancellation fee of \$1,011.15.

16 75. On or about November 6, 2012, D.G. went to the University of California at Davis
17 Medical Center for an audiological evaluation. The test results indicated that her hearing loss was
18 mild, and she was not a candidate for hearing aids. When shown this paperwork, MHAC agreed
19 to waive the 15% cancellation fee.

20 SIXTEENTH CAUSE FOR DISCIPLINE

21 (Gross Negligence/Owner Responsible for Fit and Sale)

22 76. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth
23 herein.

24 77. Respondent is subject to disciplinary action under section 2538.39, (Owner
25 Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the gross
26 negligence of HAD Nelson in the fit and sale of hearing aids to D.G. HAD Nelson violated
27 section 2533, subdivision (f), gross negligence, in that he incorrectly charted an air-bone gap in
28 D.G.'s right ear, incorrectly recorded her actual hearing loss and need for hearing aids, and failed

1 to inform her of the charted air-bone gap or refer her to a physician based on the charted bone-air
2 gap in her right ear.

3 **SEVENTEENTH CAUSE FOR DISCIPLINE**

4 (Failure to Refer to a Physician/Owner Responsible for Fit and Sale)

5 78. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth
6 herein.

7 79. Respondent is subject to disciplinary action under section 2538.39, (Owner
8 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the failure of
9 HAD Nelson to refer to a physician based on the charted air-bone gap of D.G.'s right ear. HAD
10 Nelson violated section 2538.36, subdivision (a), and Title 16, section 1399.126, subdivision (c),
11 of the California Code of Regulations, in that he failed to refer D.G. to a physician based on the
12 apparent air-bone gap in D.G.'s right ear.

13 **EIGHTEENTH CAUSE FOR DISCIPLINE**

14 (Dishonest or Fraudulent Act/Owner Responsible for Fit and Sale)

15 80. Respondent is subject to disciplinary action under section 2538.39, (Owner
16 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or
17 dishonest act of HAD Nelson. HAD Nelson violated section 2533, subdivision (e), committing a
18 fraudulent or dishonest act, in that he misrepresented the industry standards for hearing loss, and
19 misrepresented to D.G. that she had a moderate hearing loss and required hearing aids.

20 81. HAD Nelson committed a dishonest or fraudulent act when he recommended and sold
21 the \$6,741.00 Intela-Hear hearings aid to D.G. without offering the alternative of the \$745.00 aid,
22 or advising her that hearing aids would be optional for her hearing loss.

23 **NINETEENTH CAUSE FOR DISCIPLINE**

24 (Fraudulent or Dishonest Acts)

25 82. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth
26 herein.

27 83. Respondent is subject to disciplinary action under section 2533, subsection (e), and
28 California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that

1 he committed fraudulent or dishonest acts in connection with the sale of hearing aids to M.S.,
2 which include, but are not limited to the following:

3 (a) disseminating an advertisement promoting a bait \$745 hearing aid, with the knowledge
4 that his corporate policies encouraged HAD Nelson to upsell D.G. to a higher priced hearing aid
5 she did not intend to purchase;

6 (b) disseminating an advertisement with the promise of "satisfaction guaranteed" and
7 "nothing to lose" while maintaining a 15% cancellation fee provision in the purchase agreement;

8 (c) disseminating an advertisement with the false claim of a limited-time discounted price;

9 (d) using a paid celebrity spokesperson Stan Atkinson in the advertisement without
10 indicating that Stan Atkinson was a paid spokesman for the product or for MHAC;

11 (e) claiming that MHAC was offering a free video ear inspection, with a statement of the
12 monetary value of the ear inspection, while omitting the information that it is illegal for a hearing
13 aid dispenser to charge for audiometric testing or ear inspection in connection with the fitting or
14 sale of hearing aids; and

15 (f) maintaining audiogram charts that misrepresent the industry standards of hearing loss
16 ranges.

17 **TWENTIETH CAUSE FOR DISCIPLINE**

18 (Use of Promotional Literature or Advertising in a Manner that Has Tendency to Mislead)

19 84. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth
20 herein.

21 85. Respondent is subject to disciplinary action under section 2533, subsection (i), in that
22 he caused the use of promotional literature in a manner that has the capacity or tendency to
23 mislead or deceive in connection with the sale to D.G.

24 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

25 (Violation of the Song-Beverly Act)

26 86. Paragraphs 19-22 and 70-73 above are incorporated by reference as if fully set forth
27 herein.

28 ///

87. Respondent is subject to disciplinary action under section 2533, subsection (k), in that he violated Section 1793.02 (Song-Beverly Act), by refusing to permit cancelation of an order for hearing aids that had not yet been placed with a manufacturer, and by using a purchase agreement that imposes a 15% cancelation fee, or requires that any purchase price paid be applied toward the purchase of another hearing aid purchase with MHAC.

Consumer A.A.

88. On or about November 13, 2013, A.A., an elderly man in his 80's, responded to an advertisement by MHAC for a limited time five-day-only special with up to 67% off prices, a free video ear inspection, and a \$745.00 entry level hearing aid, with "satisfaction guaranteed" and a six-week no risk, nothing to lose guarantee. The advertisement showed a picture of Stan Atkinson holding a hearing aid, with the words "Stan Atkinson, Intela-Hear Wearer" next to his picture. There was no disclaimer indicating that Stan Atkinson was a paid spokesman for the product or for MHAC. On or about November 13, 2013, A.A. entered the MHAC branch office at 433 Butano Drive, in Sacramento, California.

89. A.A. was seen by two licensed HADs at the Butano Branch location on November 13, 2013, HAD Karen Roark (HA License No. 7546), and HAD Michelle Moreland. HAD Moreland conducted audiometric testing on A.A. The results of the hearing test show that a bone conduction test was performed on A.A.'s left ear, but no bone conduction test was performed on A.A.'s right ear. Following the hearing testing, Roark told A.A. that the \$745 hearing aids advertised would not meet his needs for hearing assistance, and that he required a more expensive set of hearing aids, costing \$4,045.00 each, with the special limited time sale. Roark assured A.A. that the more expensive hearing aids would increase his hearing by 90%, and that it was a risk-free guarantee, and that he could receive his money back if he was not satisfied with the hearing aids.

90. On or about November 13, 2013, A.A. entered into a purchase agreement with MHAC for the purchase of a pair of “Intela-Hear” brand hearing aids, model Nexus XD, at a price of \$4,045.00 each for a total of \$8,200.00. The purchase agreement indicates that the normal price of these hearing aids would have been \$17,980.00 for the pair. At the time of sale,

1 A.A. paid half the price, writing a check to MHAC for \$4,045.00. A.A. reported that he felt
2 rushed through the purchase, and did not fully understand the details on the purchase agreement
3 until he reviewed the document at his home that evening. He was concerned about having made
4 such a large purchase, but decided that if the hearing aids were able to restore 90% of his hearing,
5 it would be worth the cost.

6 91. On or about November 29, 2013, A.A. returned to the Butano Branch location of
7 MHAC to accept delivery of the hearing aids. A.A. found the hearing aids to be uncomfortable
8 the first time he put them on, with the left hearing aid causing him pain due to his arthritis, which
9 extends into his head.

10 92. On or about December 13, 2013, A.A. attempted to return the hearing aids, indicating
11 he had spoken with an audiologist who informed him MHAC had misrepresented the degree of
12 hearing improvement he could achieve with hearing aids in that a 90% increase in hearing for his
13 condition was impossible with any known technology. MHAC refused to cancel the purchase
14 agreement and informed A.A. that he was required to complete the MHAC "Patient Journey"
15 before he could be eligible for a refund. On or about December 18, 2013, A.A. again attempted
16 to return his hearing aids for a refund. Once again MHAC informed him he was required to
17 complete the Patient Journey before he would be eligible for a refund. A.A. became angry
18 because he felt he had been misled with the "Satisfaction Guarantee, No Risk Refund"
19 advertisement. A.A. left his hearing aids at the MHAC branch location.

20 93. On or about December 18, 2013, A.A. contacted the Board to report the problem he
21 was having with MHAC. Investigators with the Department of Consumer Affairs received a
22 summary of his interactions with MHAC from A.A., and agreed to accompany him on his next
23 meeting with MHAC. On or about December 19, 2013, Undercover Investigator No. 1 (Inv. 1)
24 accompanied A.A. to the Butano Branch location assuming the role of A.A.'s
25 granddaughter. When they arrived, a receptionist told them that they must see HAD Moreland,
26 because she was responsible for A.A.'s fitting process and she is only in the Butano Branch
27 location on Tuesdays and Thursdays. Inv. 1 and A.A. returned to the Butano Branch location the
28 next day, Tuesday December 20, 2013, and met with Moreland. Inv. 1 told Moreland that A.A.

1 was unhappy with the hearing aids, because they hurt his ears due to his arthritis, and he wanted
2 to return the hearing aids and obtain a refund. Moreland explained that A.A. cannot qualify for a
3 refund under state law until he has provided an opportunity for seller to adjust and fit the hearing
4 aids, and that under the terms of the purchase agreement A.A. entered into, the fitting must be
5 completed through MHAC's Patient Journey which requires five separate appointments and
6 approximately four to six weeks to complete. She further reminded A.A. that he owed the second
7 payment \$4,045.00 for the purchase of the hearing aids.

8 94. When Inv. 1 asked why A.A. was not eligible for a refund, Moreland stated that A.A.
9 had made a statement complaining that the sales process was misleading and complained that the
10 hearing aids were overpriced. Moreland claimed that under California law a consumer is not
11 entitled to a refund of hearing aids due to buyer's remorse over the cost. A.A. denied that he was
12 dissatisfied with the cost, and clarified that he felt the hearing aids were not of the quality
13 promised for the price, and that the hearing aids were hurting his ear. Moreland acknowledged
14 A.A. had complained of pain, but stated that even if the hearing aids are not fit properly or do not
15 work, the consumer must still give the seller the ability to adjust and fit the hearing aids.

16 95. During the December 20, 2013 visit with the Inv. 1, A.A. requested that Moreland
17 alter the fit of the hearing aids because the aids were causing pain to his left ear. Moreland took
18 the hearing aids to another room and returned, reporting that she had adjusted the shell casing to
19 minimize the material putting pressure on the canal walls of A.A.'s ears. A.A. placed the hearing
20 aids in his ears, and made another appointment for a fitting on January 8, 2013. On the drive
21 home from MHAC, A.A. complained to Inv. 1 that the hearing aids were still hurting his ear.

22 96. On or about January 4, 2014, and January 8, 2014, Inv. 1 and A.A. returned to the
23 Butano Branch location and sought a refund, complaining that the hearing aids still hurt A.A.'s
24 ear. A.A. filled out a request for a refund. On or about January 17, 2014, HAD Melissa Peacock
25 sent a letter to A.A. informing him that he was not entitled to a refund because he kept the hearing
26 aids for longer than 30 days after delivery without seeking an adjustment, that he did not allow
27 the dispenser to perform an adjustment, and because complaints about price are not a valid
28 ground for a refund.

1 97. In reviewing consumer A.A.'s complaint MHAC, the Board obtained a report from an
2 independent expert who opined that for a person with A.A.'s hearing loss there would be very
3 little difference in power between the \$745.00 hearing aid and the \$4,045 hearing aid Moreland
4 sold to A.A.

5 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

6 (Gross Negligence/Owner Responsible for Fit and Sale)

7 98. Paragraphs 19-22 and 86-95 above are incorporated by reference as if fully set forth
8 herein.

9 99. Respondent is subject to disciplinary action under section 2538.39, (Owner
10 Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the gross
11 negligence of HAD Moreland and HAD Roark in the fit and sale of hearing aids to A.A.
12 Moreland and Roark violated section 2533, subdivision (f), gross negligence, in that they failed to
13 perform or chart a bone conduction test of A.A.'s right ear before proceeding with the sale of
14 hearing aids to A.A.

15 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

16 (Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

17 100. Paragraphs 19-22 and 86-95 above are incorporated by reference as if fully set forth
18 herein.

19 101. Respondent is subject to disciplinary action under section 2538.39, (Owner
20 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or
21 dishonest acts of HADs Moreland, Roark and Peacock. HADs Moreland, Roark, and Peacock
22 violated section 2533, subdivision (e), committing fraudulent or dishonest acts in connection with
23 the sale of hearing aids to A.A., which include, but are not limited to the following:

24 (a) Roark made misleading and unscientific statements to A.A. when she told him that the
25 hearing aids would improve his hearing by 90%;

26 (b) Moreland and Roark recommended and sold the \$8,200.00 set of Intela-Hear hearing
27 aids to A.A. and falsely claimed that the alternative of the \$745.00 hearing aid that was advertised
28 by MHAC was not appropriate for A.A.;

1 (c) Moreland entered into a purchase agreement with A.A. with the knowledge that MHAC
2 had disseminated false and misleading statements in connection with the sale;

3 (d) Moreland and Roark falsely represented that the sale price was a limited time 50% off
4 price;

5 (e) Roark falsely told A.A. that his purchase had a risk-free guarantee, and that he could
6 receive his money back if he was not satisfied with the hearing aids while omitting the 15%
7 cancelation fee and the onerous programs he would have to complete before being considered for
8 a refund;

9 (f) Moreland misrepresented A.A.'s rights under the Song-Beverly Act and falsely denied
10 that she had not made adjustments to the hearing aids during the initial 30 days after delivery of
11 the hearing aids to A.A.; and

12 (g) Peacock misrepresented A.A.'s rights to return the hearing aids, and denied A.A. the
13 right to return the hearing aids based on false statements.

14 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

15 (Fraudulent or Dishonest Acts)

16 102. Paragraphs 19-22 and 86-95 above are incorporated by reference as if fully set forth
17 herein.

18 103. Respondent is subject to disciplinary action under section 2533, subsection (e), and
19 California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that
20 he committed fraudulent or dishonest acts in connection with the sale of hearing aids to A.A.,
21 which include, but are not limited to the following:

22 (a) disseminating an advertisement promoting a bait \$745 hearing aid, with the knowledge
23 that his corporate policies encouraged HADs Roark and Moreland to upsell A.A. to a higher
24 priced hearing aid;

25 (b) disseminating an advertisement with the promise of "satisfaction guaranteed" and
26 "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement
27 and onerous return policy;

1 (c) disseminating an advertisement with the false claim of a limited-time discounted price;
2 and

3 (d) using a paid celebrity spokesperson Stan Atkinson in the advertisement without
4 indicating that Stan Atkinson was a paid spokesman for the product or for MHAC.

5 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

6 (Violation of the Song-Beverly Act)

7 104. Paragraphs 19-22 and 86-95 above are incorporated by reference as if fully set forth
8 herein.

9 105. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
10 he violated Section 1793.02 (Song-Beverly Act), by maintaining corporate policies that denied
11 A.A. the ability to return and be refunded for hearing aids that were not fit for his needs.

12 **Consumer A.K.**

13 106. On or about May 9, 2012, A.K., an 82-year old woman, entered the Roseville Branch
14 of the MHAC at 1601 Douglas Boulevard, Roseville, California. She was met by HAD Robert
15 Bennett and HAD Melissa Peacock. HADs Peacock and Bennett conducted an audiogram test,
16 showing A.K. had a moderate to severe hearing loss. The audiogram test results show that A.K.
17 had an air-bone gap in the right ear of greater than 15dB, and does not show than any bone
18 conduction testing was done in the left ear. In the Medical History Form A.K. completed at
19 MHAC, she checked the box to indicate yes to the following three conditions: "pain and
20 Discomfort in the Ear"; "acute or recurring dizziness"; and "Ringing in the Ears." Despite these
21 indications and the air-bone gap shown on the audiogram, Bennett and Peacock failed to refer
22 A.K. for a medical clearance or consultation before proceeding with the sale of hearing aids.

23 107. On or about May 9, 2012, A.K. entered into a purchase agreement with HAD Bennett
24 for a pair of Intela-Hear hearing aids, for a total price of \$4,941.00. The purchase agreement
25 indicated that the original cost of the pair was \$10,980.00 and the she received a 50% off sale,
26 with an additional AARP discount. A.K. returned to the branch location on or about May 24,
27 2012 and was seen by HAD Bennett and fitted with hearing aids. A.K. has degenerative arthritis
28 in her jaws, and small ear canals. When she started wearing the hearing aids, she began to

1 develop pain in her ears. She tried to keep wearing the hearing aids in the hope that she would
2 get used to them, but after four days the pain persisted and got worse, and she removed them.

3 108. Even after removing the hearing aids, A.K. continued to have pain, and saw her
4 doctor who referred her to an otolaryngologist. The otolaryngologist advised her to stop wearing
5 the hearing aids, and return them. On or about June 1, 2012, A.K. returned to MHAC and asked
6 to return the hearing aids due to severe degenerative arthritis, causing pain in her ears. Staff at
7 MHAC told A.K. to continue wearing the hearing aids. On or about June 12, 2012, A.K. returned
8 to MHAC, and provided staff with a copy of the otolaryngologist's note instructing her not to
9 wear the hearing aids. MHAC refused to accept the return, and continued to advise A.K. to wear
10 the hearing aids, or to allow an exchange of different hearing aids. Even after speaking with the
11 otolaryngologist who treated A.K., MHAC refused to accept the return and refund A.K. the
12 purchase price. After additional telephone calls and written communication with the
13 otolaryngologist, MHAC agreed to provide A.K. with a refund on or about August of
14 2012. MHAC did not refund A.K. the purchase price until November 27, 2012.

15 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

16 (Gross Negligence/Owner Responsible for Fit and Sale)

17 109. Paragraphs 19-22 and 104-106 above are incorporated by reference as if fully set
18 forth herein.

19 110. Respondent is subject to disciplinary action under section 2538.39, (Owner
20 Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the gross
21 negligence of HAD Bennett and HAD Peacock in the fit and sale of hearing aids to A.K. Bennett
22 and Peacock violated section 2533, subdivision (f), gross negligence, in the fit and sale of hearing
23 aids to A.K. at the Roseville branch in that they failed to perform or chart a bone conduction test
24 of A.K.'s left ear, and failed to refer A.K. to a physician based on the charted air-bone gap in her
25 right ear or for the reported pain and dizziness.

26 ///

27 ///

28 ///

1 **TWENTY-SEVENTH CAUSE FOR DISCIPLINE**

2 (Failure to Refer to a Physician/Owner Responsible for Fit and Sale)

3 111. Paragraphs 19-22 and 104-106 above are incorporated by reference as if fully set
4 forth herein.

5 112. Respondent is subject to disciplinary action under section 2538.39, (Owner
6 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the failure of
7 HAD Bennett or HAD Peacock to refer A.K. to a physician. Bennett and Peacock violated section
8 2538.36, subdivision (a), and Title 16, section 1399.126, subdivision (c), of the California Code
9 of Regulations, in that they failed to refer A.K. to a physician based on the apparent air-bone gap
10 in her right ear, or her complaints of pain and dizziness.

11 **TWENTY-EIGHTH CAUSE FOR DISCIPLINE**

12 (Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

13 113. Paragraphs 19-22 and 104-106 above are incorporated by reference as if fully set
14 forth herein.

15 114. Respondent is subject to disciplinary action under section 2538.39, (Owner
16 Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the fraudulent or
17 dishonest acts of HAD Bennett who fit and sold hearing aids to A.K. at the Roseville Branch
18 location. HAD Bennett violated section 2533, subdivision (e), and California Code of
19 Regulations, title 16, section 1399.132, which incorporates section 651, in that he committed
20 fraudulent or dishonest acts in connection with the sale of hearing aids to A.K., by entering into a
21 purchase agreement that falsely stated that the cost of the hearing aids being sold was 50% off the
22 regular price.

23 **TWENTY-NINTH CAUSE FOR DISCIPLINE**

24 (Violation of the Song-Beverly Act)

25 115. Paragraphs 19-22 and 104-106 above are incorporated by reference as if fully set
26 forth herein.

27 116. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
28 he violated Section 1793.02 (Song-Beverly Act), by maintaining corporate policies that denied

1 A.K. the ability to return and be refunded for her hearing aid purchase for several months despite
2 documentation from an ears, nose, and throat physician recommending that A.K. not be fit with
3 hearing aids.

4 **Consumer J.C.**

5 117. On or about January 24, 2012, J.C. an elderly man in his 90's, responded to an
6 advertisement by MHAC for a \$745.00 hearing aid special offer, which claimed Satisfaction
7 Guaranteed, Full Refund, and No risk-Nothing to lose. The advertisement showed a picture of
8 Stan Atkinson holding a hearing aid, with a testimonial in which he claims Intela-Hear hearing
9 aids have improved his hearing remarkably. There is no disclaimer indicating that Stan Atkinson
10 is a paid spokesperson. On or about January 24, 2012, J.C. entered the Roseville Branch of the
11 MHAC at 1601 Douglas Boulevard, Roseville, California. He was met by HAD Moreland and
12 HAD Peacock.

13 118. HAD Moreland did audiometric testing on J.C., reporting that he had a moderate to
14 severe hearing loss. J.C. inquired about the \$745 hearing aid, but was told he was not a candidate
15 for that hearing aid due to the severity of his hearing loss. On or about January 24, 2012, J.C.
16 entered into a purchase agreement with HAD Moreland for the purchase of a pair of Intela-Hear
17 hearing aids costing \$6,290.00, recommended by Moreland as state of the art, and appropriate for
18 his needs.

19 119. On or about February 7, 2012, J.C. returned to the Roseville branch location and met
20 with HAD Peacock. He was fit with the hearing aids he purchased, and signed the receipt for
21 acceptance. Throughout February and March of 2012, J.C. returned to the Roseville branch
22 location on at least six occasions to participate in the "Patient Journey" and to have multiple
23 adjustments made to the hearing aids.

24 120. Following completion of the "Patient Journey" as defined by MHAC, J.C. still found
25 that the hearing aids were not working well for him, and were unbearable to wear. On or about
26 March 12, 2012, he submitted a request to return the hearing aids for a refund as stated in the
27 advertisements and the terms of the purchase agreement.

1 121. Between March and May of 2012, J.C. and MHAC exchanged correspondence
2 regarding the request to return the hearing aids. On or about March 12, 2012, HAD Peacock
3 provided J.C. with a form called "Request for a Refund" requesting that he check one of four
4 boxes citing the reason for the return. The four options "Financial Hardship," "Purchase
5 Elsewhere," "Too Expensive," and "Other." J.C. checked Too Expensive and Other. On or about
6 March 19, 2012, MHAC mailed J.C. an unsigned letter indicating that he did not qualify for a
7 refund because a hearing aid dispenser is not required by law to provide a refund if the reason for
8 return is that they buyer feels he paid too much. The letter states that J.C. does not qualify for a
9 refund under the Song-Beverly Act, but that he can exchange his hearing aids or put the cost
10 toward the purchase of another pair of hearing aids to be purchased through MHAC.

11 122. In follow up statements and correspondence with HAD Peacock and MHAC, J.C.
12 explained that the reason he checked both Too Expensive and Other, was that he was trying to
13 communicate that the hearing aids were not working as promised, and that they are too expensive
14 for a defective product that is not working as represented. MHAC denied J.C.'s requests
15 informing him that his only reason for seeking to return the hearing aids was that he was unhappy
16 with the price.

17 **THIRTIETH CAUSE FOR DISCIPLINE**

18 (Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

19 123. Paragraphs 19-22 and 115-120 above are incorporated by reference as if fully set
20 forth herein.

21 124. Respondent is subject to disciplinary action under section 2538.39, (Owner
22 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or
23 dishonest acts of HADs Moreland and Peacock. HADs Moreland and Peacock violated section
24 2533, subdivision (e), committing fraudulent or dishonest acts in connection with the sale of
25 hearing aids to J.C., which include, but are not limited to the following:

26 (a) Moreland entered into a purchase agreement with J.C. with the knowledge that MHAC
27 had disseminated false and misleading statements in connection with the sale;

28 (b) Moreland falsely represented that the sale price was a limited time 50% off price; and

1 (c) Peacock misrepresented J.C.'s rights to return the hearing aids, and denied J.C. the right
2 to return the hearing aids based on false statements.

3 **THIRTY-FIRST CAUSE FOR DISCIPLINE**

4 (Fraudulent or Dishonest Acts)

5 125. Paragraphs 19-22 and 115-120 above are incorporated by reference as if fully set
6 forth herein.

7 126. Respondent is subject to disciplinary action under section 2533, subsection (e), and
8 California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that
9 he committed fraudulent or dishonest acts in connection with the sale of hearing aids to J.C.,
10 which include, but are not limited to the following:

11 (a) disseminating an advertisement promoting a bait \$745 hearing aid, with the knowledge
12 that his corporate policies encouraged HADs Moreland and Peacock to upsell J.C. to a higher
13 priced hearing aid;

14 (b) disseminating an advertisement with the promise of "satisfaction guaranteed" and
15 "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement
16 and onerous return policy;

17 (c) disseminating an advertisement with the false claim of a limited-time discounted price;
18 and

19 (d) using a paid celebrity spokesperson Stan Atkinson in the advertisement without
20 indicating that Stan Atkinson was a paid spokesman for the product or for MHAC.

21 **THIRTY-SECOND CAUSE FOR DISCIPLINE**

22 (Violation of the Song-Beverly Act)

23 127. Paragraphs 19-22 and 115-120 above are incorporated by reference as if fully set
24 forth herein.

25 128. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
26 he violated Section 1793.02 (Song-Beverly Act), by maintaining corporate policies that denied
27 J.C. the ability to return and be refunded for hearing aids that were not fit for his needs.

28 ///

Consumer E.W.

129. On or about May 9, 2012, E.W., an 88 year old man and World War II veteran who had suffered hearing loss from German artillery fire, responded to an advertisement by MHAC for a limited time four-day-only special with 50% to 67% off prices, and a \$745.00 entry level hearing aid, with the printed statements "satisfaction guaranteed" and "Patient Journey program guarantees better hearing in 6 weeks or receive a full refund... No risk—Nothing to Lose." On or about May 9, 2012, E.W. entered the Elk Grove branch of MHAC at 9139 West Stockton Boulevard, Suite 140 in Elk Grove, California and was met by HAD Christopher Simon (HA License No. 7485). HAD Simon conducted an audiometric test, which showed E.W. had a moderate to severe hearing loss.

130. On or about May 9, 2012, E.W. entered into a purchase agreement with HAD Simon for a pair of Intela-Hear hearing aids at a cost of \$8,091.00. The purchase agreement stated that the price was 50% off the usual price for the pair of \$17,980.00. HAD Simon told E.W. that if he was dissatisfied with the product, he could return it for a refund within 30 days.

131. On or about May 21, 2012, E.W. met again with HAD Simon and accepted delivery of the hearing aids. After wearing the hearing aids for a few weeks, and returning to MHAC for numerous appointments to participate in the Patient Journey, E.W. found that the new hearing aids did not improve his hearing any better than his old hearing aids. On or about June 18, 2012, he returned to the Elk Grove branch location and informed staff that he was not satisfied with the hearing aids and wanted to return them. On or about June 18, 2012, he filled out the return form, checking the box "Hearing Aids" and indicating that the hearing aids did not improve his hearing beyond what his old hearing aids had done.

132. Between June 18, 2012 and throughout July of 2012, MHAC corresponded with E.W. on several occasions, refusing his request for a return and refund, and informing him he was required to complete the Patient Journey before he could be considered for a refund. During June and July of 2012, E.W. returned to MHAC's Elk Grove branch on at least four occasions and completed the Patient Journey. At the completion, E.W. reported that he was still not satisfied with the product, and sought to return the product for a refund.

1 133. On or about June 27, 2012, MHAC sent E.W. a letter indicating that he was not
2 eligible for a refund under the Song-Beverly Act, because he had not allowed HAD Simon to
3 make adjustments during the 30-day period after receiving the hearing aids. E.W. denied that he
4 had been offered an adjustment of the hearing aids during that time.

5 **THIRTY-THIRD CAUSE FOR DISCIPLINE**

6 (Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

7 134. Paragraphs 19-22 and 127-131 above are incorporated by reference as if fully set
8 forth herein.

9 135. Respondent is subject to disciplinary action under section 2538.39, (Owner
10 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or
11 dishonest acts of HAD Simon. HAD Simon violated section 2533, subdivision (e), committing
12 fraudulent or dishonest acts in connection with the sale of hearing aids to E.W., which include,
13 but are not limited to the following:

14 (a) Simon entered into a purchase agreement with E.W. with the knowledge that MHAC
15 had disseminated false and misleading statements in connection with the sale;

16 (b) Simon falsely represented that the sale price was a limited time 50% off price; and

17 (c) Simon misrepresented E.W.'s rights to return the hearing aids, and denied E.W. the
18 right to return the hearing aids based on false statements.

19 **THIRTY-FOURTH CAUSE FOR DISCIPLINE**

20 (Fraudulent or Dishonest Acts)

21 136. Paragraphs 19-22 and 127-131 above are incorporated by reference as if fully set
22 forth herein.

23 137. Respondent is subject to disciplinary action under section 2533, subsection (e), and
24 California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that
25 he committed fraudulent or dishonest acts in connection with the sale of hearing aids to E.W.,
26 which include, but are not limited to the following:

27 (a) disseminating an advertisement promoting a bait \$745 hearing aid, with the knowledge
28 that his corporate policies encouraged HAD Simon to upsell E.W. to a higher priced hearing aid;

1 (b) disseminating an advertisement with the promise of "satisfaction guaranteed" and
2 "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement
3 and onerous return policy; and

4 (c) disseminating an advertisement with the false claim of a limited-time discounted price.

5 **THIRTY-FIFTH CAUSE FOR DISCIPLINE**

6 (Violation of the Song-Beverly Act)

7 138. Paragraphs 19-22 and 127-131 above are incorporated by reference as if fully set
8 forth herein.

9 139. Respondent is subject to disciplinary action under section 2533, subsection (k), in that
10 he violated Section 1793.02 (Song-Beverly Act), by maintaining corporate policies that denied
11 E.W. the ability to return and be refunded for hearing aids that were not fit for his needs.

12 **Undercover Investigator's Trip to Roseville Branch of MHAC**

13 140. On or about May 9, 2013, an older male Investigator with the Department of
14 Consumer Affairs assumed the role of a hearing aid consumer for the purpose of conducting an
15 undercover operation at MHAC. This male undercover investigator, (Inv. 2), worked in
16 coordination with Inv. 1. For the purposes of this investigation, Inv. 1 assumed the role of a
17 relative of Inv. 2. Investigator 2 had a hearing test with a licensed audiologist in preparation of
18 the undercover operation. Inv. 2 provided the results of his hearing test to a Board expert, to
19 determine whether the advertised \$745.00 entry level hearing aid would be suitable for his
20 hearing loss. The Board expert determined that the entry level hearing aid would be suitable.

21 141. On or about May 9, 2013, Invs. 1 and 2 entered the Roseville branch of MHAC
22 located at Douglas Boulevard in Roseville, California, explaining that they had seen an
23 advertisement for hearing aids, and would like to learn more. The receptionist made an
24 appointment for Inv. 2, for the following day, explaining that a factory representative would be
25 available then to discuss hearing aids with Inv. 2.

26 142. On or about May 10, 2013, Inv. 1 and Inv. 2 returned to the Roseville Branch location
27 and were met by HAD Geraci-Staub (HA License No. 7585), and HAD Roy Bostick (HA License
28 No. 7278). HADs Geraci-Staub and Bostick led Inv. 2 to a separate room to perform a hearing

1 test on Inv. 2. While Inv. 1 was waiting for Inv. 2 to complete his testing, Inv. 1 observed Stan
2 Atkinson enter the branch location. Inv. 1 observed Stan Atkinson speak with the receptionist,
3 explaining that he was at the branch location to assist in the promotional sale. Stan Atkinson
4 spoke with another consumer waiting in the waiting area, and explained that he works for MHAC
5 to help them sell hearing aids.

6 143. HAD Geraci-Staub returned to the waiting area to speak with the receptionist. She
7 held a piece of paper to the left side of her mouth to help conceal her words, but Inv. 1 could hear
8 Geraci-Staub tell the receptionist that she needed Allen Schoen, (HT License No. 8930), the
9 factory representative, to be present to make the sale. The receptionist asked Geraci-Staub if she
10 could do it, and Geraci-Staub responded that she could, but that she would rather have Schoen
11 there as he is more successful.

12 144. Inv. 1 next observed the receptionist, Geraci-Staub, Bostick, and Atkinson gather
13 together in the area where hearing aids are adjusted. Inv. 1 heard them converse about the best
14 way to approach Inv. 2 about the purchase of hearing aids. Geraci-Staub told Atkinson to talk to
15 Inv. 2 about his grandchildren, as that is "the key" to selling hearing aids.

16 145. Geraci-Staub led Inv. 1 into the room where Inv. 2 was waiting and few minutes later
17 Stan Atkinson came into the room and spoke to Inv. 1 and Inv. 2. Stan Atkinson did not try to
18 sell any individual product, but he told Inv. 2 what a good product MHAC provided to him, and
19 how his hearing aids have changed his life, especially with his interactions with his
20 grandchildren. Stan Atkinson explained that he has the best product MHAC offers.

21 146. After Stan Atkinson left the room, Hearing Aid Trainee Allen Schoen entered the
22 room and said that he would explain the hearing test and offer recommendations on hearing aids.
23 Inv. 2 showed Schoen an advertisement for a \$745.00 hearing aid, and explained that was what
24 brought him into the store. Schoen told Inv. 2 that the entry level hearing aid was only
25 appropriate for people with a 35-40 decibel hearing loss. Schoen said that Inv. 2's hearing loss is
26 not within that range, and that he would not be happy with the entry level hearing aid, and would
27 miss certain frequencies. Schoen said Inv. 2 did not need the high end hearing aids, but could not
28

1 use the entry-level ones either, and that the most appropriate hearing aids for him would be in the
2 middle, in the \$3,500 to \$5,500 price range.

3 147. Schoen showed Inv. 1 and Inv. 2 a price sheet, with higher and lower prices, and
4 explained that the lower prices were the promotional sale currently going on. Schoen
5 recommended Inv. 2 purchase a hearing aid package, and told him that an additional 30% off sale
6 was currently in effect, but that the price would increase if he returned on Monday. He told Inv. 2
7 that MHAC offered a 60 day program to help him with the hearing aids, and that if he is not
8 satisfied after the 60 days he can return the aids for a refund. He did not indicate that there were
9 any limits or restrictions on the refund. Inv. 2 told Schoen that he would need to speak with his
10 wife before he made any purchase, and Inv. 1 and 2 left the store.

11 **THIRTY-SIXTH CAUSE FOR DISCIPLINE**

12 (Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

13 148. Paragraphs 19-22 and 138-145 above are incorporated by reference as if fully set
14 forth herein.

15 149. Respondent is subject to disciplinary action under section 2538.39, (Owner
16 Responsibility for the Fit and Sale at a Location Owned/Managed by Him), for the fraudulent or
17 dishonest acts of HAD Schoen. HAD Schoen violated section 2533, subdivision (e), committing
18 fraudulent or dishonest acts in connection with the fit and sale of hearing aids to Inv. 2, which
19 include, but are not limited to the following:

20 (a) Schoen recommended and attempted to sell the expensive Intela-Hear hearing aids to
21 Inv. 2, and falsely claimed that the alternative of the \$745.00 hearing aid that was advertised by
22 MHAC was not appropriate for Inv. 2;

23 (b) Schoen falsely represented that the sale price was a limited time 50% off price, with
24 additional limited time discounts; and

25 (c) Schoen told Inv. 2 that he could obtain a refund if he was not happy with the product,
26 while omitting significant restrictions and qualifications on the refund process.

27 ///

28 ///

1 **THIRTY-SEVENTH CAUSE FOR DISCIPLINE**

2 (Fraudulent or Dishonest Acts)

3 150. Paragraphs 19-22 and 138-145 above are incorporated by reference as if fully set
4 forth herein.

5 151. Respondent is subject to disciplinary action under section 2533, subsection (e), and
6 California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in that
7 he committed fraudulent or dishonest acts in connection with the sale of hearing aids, which
8 include, but are not limited to the following:

9 (a) disseminating an advertisement promoting a bait \$745 hearing aid, with the knowledge
10 that his corporate policies encouraged HAD Schoen to attempt to upsell Inv. 2 to a higher priced
11 hearing aid;

12 (b) disseminating an advertisement with the promise of "satisfaction guaranteed" and
13 "nothing to lose" while maintaining a 15% cancelation fee provision in the purchase agreement
14 and onerous return policy; and

15 (c) disseminating an advertisement with the false claim of a limited-time discounted price.

16 **Undercover Investigator's Trip to Santa Rosa Branch of MHAC**

17 152. On or about August 21, 2013, Inv. 1 and Inv. 2 went to MHAC branch location in
18 Santa Rosa in an undercover capacity with an appointment set up for Inv. 2 at 11:00 a.m. Inv. 1
19 and 2 entered the Santa Rosa branch location at 1425 Fulton Road, Suite 315, in Santa Rosa,
20 California, and were met by HAD Michelle Nielson (HA License No. 7276). HAD Nielson took
21 Inv. 2 to another room to perform a hearing test. After the hearing test was completed, Inv. 1
22 returned to the room with Inv. 2, and waited.

23 153. HAD Gregory Scott (HA License No. 3126), approached Inv. 2 and took him to
24 another room to discuss his test and recommend hearing aids. HAD Scott told Inv. 2 that he
25 should wear hearing aids. Scott told Inv. 2 that because of his hearing loss, his brain function is
26 starting to drop, and he is losing his ability to distinguish speech. Scott told Inv. 2 that this is
27 causing his short-term memory to be affected. Scot told Inv. 2 that wearing hearing aids will help
28 his ability to distinguish speech, and improve his memory.

154. HAD Scott showed Inv. 2 a hearing aid that would cost \$7,500.00 each. Scott explained that it is a medical device to retrain the brain, and that if he is not satisfied with them after six weeks, he can return them for a refund. Inv. 2 asked Scott about the \$745.00 hearing aid, and Scott told him that he “might be able to get away” with a pair of hearing aids costing \$3,490, but that he should not get any hearing aids lower in cost than that. Scott explained that the important thing is for Inv. 2 to wear hearing aids to prevent his short-term memory from being impaired, as the theory now is that the precursor to dementia is hearing loss.

THIRTY-EIGHTH CAUSE FOR DISCIPLINE

(Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

155. Paragraphs 19-22 and 150-152 above are incorporated by reference as if fully set forth herein.

156. Respondent is subject to disciplinary action under section 2538.39, (Owner Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the fraudulent or dishonest acts of HAD Scott. HAD Scott violated section 2533, subdivision (e), committing fraudulent or dishonest acts in connection with the attempted sale of hearing aids to Inv. 2 in that he:

(a) made misleading and unscientific statements to Inv. 2 when he told him that his hearing loss is causing his brain function and memory to decline and by claiming that hearing aids will prevent and/or cure brain dysfunction or cognitive decline; and

(b) made misleading statements to Inv. 2 as to the severity of his hearing loss and the suitability of the \$745.00 advertised hearing aid for his needs.

Undercover Investigator's Trip to Walnut Creek Branch of MHAC

157. On or about August 21, 2013, after Inv. 1 and 2 left the Santa Rosa branch location, they traveled to the Walnut Creek branch location of MHAC. On or about August 21, 2013, Inv. 1 and 2 entered the Walnut Creek branch of MHAC at 1399 Ygnacio Valley, Suite 21, in Walnut Creek, California, explaining that they did not have an appointment. Inv. 2 completed some paperwork, and was seen by unlicensed individual Ashley Brown.

1 158. Ms. Brown directed Inv. 2 to go another room to have a hearing test with an
2 audiologist. While Inv. 1 was waiting for Inv. 2 to complete his hearing test, she overheard
3 Brown tell another customer that she does not give out business cards because she does not want
4 consumers to call her after they leave the store.

5 159. After Inv. 2 completed the hearing test, Inv. 1 and 2 were led to another room where
6 they met with Ms. Brown. Brown discussed the hearing test, and what hearing aids would work
7 best for him. Brown told Inv. 2 that he had 80% trouble with his high frequency hearing. She
8 told him that if the volume of sound is turned up for him, he will have 100% hearing, and bring
9 his hearing back up to normal limits. Brown recommended that Inv. 2 purchase hearing aids that
10 cost \$3,000.00.

11 160. As Inv. 1 and 2 continued to discuss hearing aids with Brown, she altered her
12 statement and said that she recommended Inv. 2 purchase hearing aids in the range of \$5,000.00
13 to \$7,000.00. She further explained that Inv. 2 would need to return once a week for adjustments,
14 for six weeks. She informed Inv. 2 that if he was not happy with the hearing aids after the six
15 weeks, he could return them for a full refund, but that if he canceled the order "today, tomorrow
16 or next week," he would be charged a 15% cancelation fee. Inv. 2 made a selection, and Ms.
17 Brown began to assemble paperwork for the sale. Then Inv. 1 and 2 informed Brown that they
18 are law enforcement officers, and cited her for a misdemeanor offense of fitting or selling hearing
19 aids without a valid license.

20 **THIRTY-NINTH CAUSE FOR DISCIPLINE**

21 (Owner Responsibility/Unlicensed person)

22 161. Paragraphs 19-22 and 155-158 above are incorporated by reference as if fully set
23 forth herein.

24 162. Respondent is subject to disciplinary action under section 2538.39, (Owner
25 Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the actions of
26 Brown, an unlicensed individual, in the attempted fit and sale of hearing aids to Inv. 2. Brown
27 violated sections 2538.48 and 2538.50 by attempting to fit and sell and holding herself out as an
28 individual licensed to fit and sell hearing aids to Inv. 2 on or about August 21, 2013.

1 **FORTIETH CAUSE FOR DISCIPLINE**

2 (Fraudulent Dishonest Act/Owner Responsible for Fit and Sale)

3 163. Paragraphs 19-22 and 155-158 above are incorporated by reference as if fully set
4 forth herein.

5 164. Respondent is subject to disciplinary action under section 2538.39, (Owner
6 Responsibility for the Fit and Sale at a Location Owned/Managed by Him) for the fraudulent or
7 dishonest acts of unlicensed individual Ashley Brown who attempted to fit and sell hearing aids
8 to Inv. 2 at the Walnut Creek branch location. Ms. Brown violated section 2533, subdivision (e),
9 and California Code of Regulations, title 16, section 1399.132, which incorporates section 651, in
10 that she committed fraudulent or dishonest acts in connection with the attempted sale of hearing
11 aids to Inv. 2., which include, but are not limited to the following:

12 (a) Brown made misleading statements to Inv. 2 as to the severity of his hearing loss and
13 the suitability of the \$745.00 hearing aid for his needs;

14 (b) Brown told Inv. 2 that he could return the hearing aids for a full refund while omitting
15 significant information about limits and restrictions on the refund policy;

16 (c) Brown made scientifically unsupported statements to induce Inv. 2 to purchase hearing
17 aids, such as that the hearing aids would bring his hearing back to 100%; and

18 (d) Brown made recommendations as to the suitability of hearing aids for Inv. 2 despite
19 lacking a valid license to do so.

20 **FORTY-FIRST CAUSE FOR DISCIPLINE**

21 (Violation of the Song-Beverly Act)

22 165. Paragraphs 19-162 are hereby incorporated by reference and re-alleged as if fully set
23 forth herein.

24 166. Respondent is further subject to disciplinary action under section 1793.02 of the Civil
25 Code, (also known as the Song-Beverly Act), in that he established policies making it difficult or
26 impossible for consumers to return hearing aids even when the aids were not specifically fit for
27 their needs, or had been sold to them based on misinformation or unlawful business practices.
28

1 Respondent effected this through manipulation of contract terms and establishment of a "Patient
2 Journey" program designed to evade the application of the Song-Beverly Act.

3 167. The "Patient Journey" is a program created by MHAC in which consumers perform a
4 series of tasks involving written materials, five computer-based exercises, and meetings with a
5 MHAC employee. The computer-based exercises are referred to by the acronym "AWARE" and
6 require the consumer to return to MHAC to use a computer terminal on at least five separate
7 occasions. The written materials are referred to by the acronym "COZI" and require consumers
8 to track their "progress" using the hearing aids. Follow up visits during which hearing aid
9 dispensers are intended to adjust the fit are also required. The entire program requires at least
10 five separate trips to the MHAC branch location for the consumer, and approximately six weeks
11 to complete.

12 168. The MHAC employee responsible for administering the return policy and responding
13 to requests for refunds is HAD Melissa Peacock. Documents found on her computer during
14 execution of a search warrant at MHAC include a document titled "Guarantee Satisfaction
15 Program," which outlines the Patient Journey and states that if a patient does not complete the
16 process then he or she did not meet the requirement under the Song-Beverly Act for a refund.
17 The document continues with instructions to the HAD that state: "YOU are the expert. YOU tell
18 the patient their treatment program. YOU tell the patient what their expectations are going to
19 be..Never let the patient tell you what they want you to do. YOU are in control of the patient's
20 journey, not them." During interviews with investigators, Respondent stated that he interprets the
21 Song-Beverly Act as predicating a consumer's right to return a hearing aid on the "completion of
22 the fitting by the seller." He stated that due to lack of clarity in the law, a Hearing Aid Dispenser
23 has the right to define what constitutes "completion of the fitting," and he defines it as having
24 completed the Patient Journey.

25 169. MHAC uses the lengthy process of the Patient Journey to ensure that when a
26 consumer completes the Patient Journey, he or she will no longer qualify for a refund because
27 completion of the Patient Journey requires more than thirty days. This is illustrated in the case of
28 Consumer A.A. as alleged in Paragraphs 90-103 above. A.A. accepted delivery of his hearing

1 aids on November 29, 2013, and first sought a return on December 13, 2013, but was told he was
2 required to complete the Patient Journey. He made appointments and returned to MHAC to work
3 on his Journey on December 18, and 20, 2013, and January 4, and 7, 2014, each time seeking to
4 return the aids, and being told he cannot do so until he completed the Journey. On or about
5 January 17, 2014, after A.A. completed the Journey, MHAC sent him a letter refusing to issue a
6 refund, in part, because he kept the hearing aids for longer than 30 days after delivery without
7 seeking an adjustment.

8 170. Similarly, during June and July 2012, E.W. completed the Patient Journey, and was
9 then told he did not qualify for a refund because he had not allowed HAD Simon to make
10 adjustments during the 30-day period after receiving the hearing aids.

11 171. This is a deliberate MHAC policy to prevent returns authorized by the Song-Beverly
12 Act. This policy is explicit in HAD Peacock's email to an employee, chastising the employee for
13 attempting to fulfill her professional obligations under the Song-Beverly Act. "Because you
14 adjusted the aids at the same time she wanted to return, now she qualifies. It was clear from the
15 notes..that she was frustrated with the price..so ended with Costco and bought something
16 else..cheaper, I'm sure. Even though she didn't mark price, I could have written her a "not
17 qualified" letter with no adjustment and price as the reason. Then she would have had to return
18 the Costco ones and kept ours." This email continues to instruct the employee: "I don't like to
19 jump patients to fill out the form but I will if I know the patient won't qualify. If they want to
20 return first visit back, then DO NOTHING to the aids, fill out the form and they will NEVER
21 qualify."

22 172. The letters HAD Peacock issues denying returns are designed to effect Respondent's
23 plan of evading the obligations under the Song-Beverly Act. Peacock makes this explicit in the
24 email by directing the employee that: "It would help all of you if you think of the reasons why
25 they can't return and what scenario works for/with the letters before you pull out the form or
26 jump to fix the problem..."

27 173. Another MHAC policy designed to evade the application of the Song-Beverly Act is
28 to provide a form document to the consumer, or elicit statements from the consumer indicating

1 that the consumer is dissatisfied with the price of the product. Respondent has interpreted the
2 Song-Beverly Act not to require a HAD to return hearing aids if the consumer is dissatisfied with
3 the price. Toward that end, consumers are provided with a form letter to check boxes indicating
4 their reason for seeking to return the hearing aids. One such form gave options: "Financial
5 Hardship," "Purchased Elsewhere," "Too Expensive," and "Other." All three of the specified
6 choices are designed to elicit responses on which MHAC will claim it is not required to issue a
7 refund because the consumer is complaining about the price. This is seen in the case of consumer
8 J.C., who marked too expensive and other, in an attempt to indicate that the hearing aids did not
9 function as promised or as they should for the expensive price. MHAC denied his refund, partly
10 on the false ground that he had not sought an adjustment within the thirty days, and also because
11 his reason for return was the "impermissible" issue of price.

12 174. Respondent's conduct in using corporate policies to evade the application of the
13 Song-Beverly Act, constitutes a violation of section 1793.02 of the Civil Code.

14 **FORTY-SECOND CAUSE FOR DISCIPLINE**

15 (Use of Testimonials in a Way Likely to Mislead or Deceive in violation of section 651)

16 175. Respondent is further subject to disciplinary action under section 651, subsection
17 (b)(8), in that he used customer testimonials in a manner likely to mislead or deceive. The
18 circumstances are as follows.

19 176. On or about August 20, 2013, consumer K.H., submitted a complaint to the Board
20 concerning testimonials he had seen in advertisements for MHAC. K.H. reported that he had
21 observed advertisement for MHAC in the Sacramento Bee and Grass Valley Union newspapers of
22 February 5, 2013, that both listed four testimonials of purported customers of MHAC. The
23 testimonials listed in both newspapers were exactly the same, including the same names and same
24 language, with the only difference being the location at which the purported customers received
25 services. He later observed another advertisement for MHAC in the August 12, 2013 Marysville
26 Appeal-Democrat, again containing the same four testimonials, with the location of branch
27 changed.
28

1 177. On or about August 21, 2013, while conducting undercover activities at the Walnut
2 Creek and Santa Rosa branch locations of MHAC, Inv. 1 observed advertisements that used the
3 same four purported customer testimonials, with the location of the consumers listed as Walnut
4 Creek and Santa Rosa, respectively.

5 178. Respondent's conduct in using testimonials purporting to be from actual customers,
6 but were not, constitutes a violation of section 651 subdivision (b)(8), of the Code.

7 **FORTY-THIRD CAUSE FOR DISCIPLINE**

8 (Rebranding to Prevent Price Comparisons in Violation of Section 651)

9 179. Respondent is further subject to disciplinary action under section 651, subsection
10 (b)(2), in that he falsely represented he was selling a product distinguishable from the GN
11 Resound hearing aid products, for the purpose of preventing price comparisons with other sellers
12 of same Resound products. The circumstances are as follows.

13 180. Respondent entered into an agreement with hearing aid manufacturer GN Resound to
14 re-label certain of their hearing aid products with a the name "Intela-Hear," the rights to which
15 Respondent purchased for consideration. The result of this agreement is that the Resound
16 products are issued from the factory with the Intela-Hear label affixed to them, and such labeled
17 devices are not shipped to any other retailer other than Respondent. A document located on HAD
18 Peacock's computer directed employees that: "Before you ever switch to a Sonic product, you
19 must be sure that they will not be satisfied with any GN ReSound/Intel-A-Hear product, that's
20 why [you're] exchanging and switching brands."

21 181. The advertising provided by consumers to investigators and the mock-up ad
22 discovered during execution of search warrants at Respondent's place of business contain
23 statements claiming to provide better prices than competitors. For example, advertisements
24 contain the statements that MHAC will "beat any competitor's price on exact models," and
25 encourage consumers to bring in a written quote. During execution of search warrant on
26 December 19, 2013, investigators discovered a handwritten document in Respondent's office
27 which stated, "Why consider Intela-hear private label hearing instruments--Stops patient from
28 shopping for the best price on the same product."

1 182. Respondent's conduct in rebranding Resound hearing aids with a separate, exclusive
2 use label for the purpose of preventing price comparisons with other sellers of same products
3 constitutes a violation of section 651 subdivision (b)(8), of the Code.

4 **FORTY-FOURTH CAUSE FOR DISCIPLINE**

5 (Use of Paid Celebrity Spokesperson in Violation of Section 651)

6 183. Respondent is further subject to disciplinary action under section 651, subsection (d),
7 in that he compensated a member of the press in return for publicity without indicating the paid
8 status of the spokesperson. The circumstances are as follows.

9 184. Respondent employed Stan Atkinson and paid him to use his likeness on advertising
10 and at promotional events. Respondent had a personal services agreement between MHAC and
11 Stan Atkinson for payment of \$2,500.00 per month, and 5% of incremental increase of sales per
12 year, in addition to free hearing aids, batteries, and hearing aid services. Mr. Atkinson was
13 featured in almost all advertisements distributed during the years 2012, and 2013, and during
14 portions of the advertising on other years. MHAC advertising records show that it sent 250,000
15 mailers out per month within a 50-100 mile radius of Sacramento, and ran another 5-10
16 advertisements in newspapers throughout the Sacramento Valley per month. These pictures and
17 statement of Mr. Atkinson were present in the advertisements viewed by consumers D.G., A.A.,
18 and J.C., and others.

19 185. Respondent's conduct in using Stan Atkinson as a paid spokesperson without
20 disclosing his paid status constitutes a violation of section 651 subdivision (d), of the Code.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Speech-Language Pathology and Audiology and Hearing Aid
4 Dispensers Board issue a decision:

5 1. Revoking or suspending Hearing Aid Dispenser License Number HA 2425, issued to
6 Respondent Mark Lee Moore;

7 2. Revoking Respondent Mark Lee Moore's ability to supervise trainee and temporary
8 licensees;

9 3. Ordering Respondent Mark Lee Moore, to pay the Speech-Language Pathology and
10 Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and
11 enforcement of this case, pursuant to Business and Professions Code section 125.3 and 651;

12 4. Revoking the registration of branch office locations issued to Respondent Mark Lee
13 Moore; and

14 5. Taking such other and further action as deemed necessary and proper.

15
16 DATED: November 5, 2015


17 PAUL SANCHEZ

18 Executive Officer

19 Speech-Language Pathology and Audiology and Hearing Aid
20 Dispensers Board

Department of Consumer Affairs

State of California

Complainant

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