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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: **MARION NELSON** 8414 Mariposa Avenue Citrus Heights, CA 95610 Hearing Aid Dispenser License No. HA 7416 Respondent.	Case No. 1C-2011-65 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about July 24, 2009, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board issued Hearing Aid Dispenser License Number HA 7416 to Marion Nelson (Respondent). The Hearing Aid Dispenser License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2016, 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.

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

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

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

"..."

6. Section 2538.35 of the Code states:

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

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

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

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

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

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

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

7. Section 2538.36 of the Code states:

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

"(1) Visible congenital or traumatic deformity of the ear.

"(2) History of, or active drainage from the ear within the previous 90 days.

"(3) History of sudden or rapidly progressive hearing loss within the previous 90 days.

"(4) Acute or chronic dizziness.

"(5) Unilateral hearing loss of sudden or recent onset within the previous 90 days.

"(6) Significant air-bone gap (when generally acceptable standards have been established).

"(7) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal.

"(8) Pain or discomfort in the ear.

"..."

8. Section 2538.34 of the Code states:

"(a) Every licensee who engages in the practice of fitting or selling hearing aids shall have and maintain an established retail business address to engage in that fitting or selling, routinely open for service to customers or clients. The address of the licensee's place of business shall be registered with the bureau as provided in Section 2538.33.

"(b) Except as provided in subdivision (c), if a licensee maintains more than one place of business within this sate, he or she shall apply for and procure a duplicate license for each branch office maintained. The application shall state the name of the person and the location of the place or places of business for which the duplicate license is desired.

"(c) A hearing aid dispenser may, without obtaining a duplicate license for a branch office, engage on a temporary basis in the practice of fitting or selling hearing aids at the primary or branch location of another licensee's business or at a location or facility that he or she may use on a temporary basis, provided that the hearing aid dispenser notifies the board in advance in writing of the dates and addresses of those businesses, locations, or facilities at which he or she will engage in the practice of fitting or selling hearing aides."

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

"(a) The bureau may refuse to approve or approve subject to terms and conditions a hearing aid dispenser's authority to supervise a trainee-applicant, or may suspend, revoke or impose

probationary conditions on a hearing aid dispenser's authority to supervise a trainee-applicant for any of the following causes:

"(1) The failure to comply with section 3357 of the code or any of the regulations contained in this article which is a prima facie violation, or is confirmed by an internal investigation report signed by the chief, or by a formal investigation by the Division of Investigation of the department within the preceding 36 months. "Confirmed by formal investigation" means the investigator assigned the matter has written a final investigation report which has been countersigned by a Supervising Special Investigator.

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

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

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

"..."

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

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

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

11. California Code of Regulations, title 16, section 1399.132

"For the purpose of denial, suspension, or revocation of a hearing aid dispenser's license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a hearing aid dispenser to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be limited to those involving the following:

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

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

12. Section 651 states:

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

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

"(1) Contains a misrepresentation of fact.

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[1] Section 3365.5 is now renumbered as section 2538.36.

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

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

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

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

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

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

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

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

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

"(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, 'as low as,' 'and up,' 'lowest prices,' or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

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

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

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

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

"..."

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

"Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

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

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

"Violation of this article [Article 6, commencing with Section 650 of the Code] in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in

connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and each board shall have all the powers granted therein."

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

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

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

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

". . . ."[2]

COST RECOVERY

15. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

16. Paragraph 12 above, referring to the costs provision of section 651, subsection (j), is re-alleged and incorporated herein by reference.

FACTS

Consumer P.D.

17. On or about April 19, 2011, P.D., an 84 year old woman, responded to an advertisement distributed by McDonald Hearing Aid Center (MHAC). Respondent, Marion Nelson, is employed to sell and fit hearing aids at MHAC. The MHAC mailer and newspaper advertisements promoted a limited time five-day-only special, between April 18 through 22, of up to 67% off prices, a free video ear inspection, and a $745.00 entry level hearing aid, with "satisfaction guaranteed." On April 19, 2011, P.D. entered the MHAC branch location at 1400 X Street, Suite 300, Sacramento, CA 95818. P.D. had undergone a cardiac surgical procedure two weeks before her visit to MHAC, and was consequently feeling fatigued at the time of her visit. She used a walker to ambulate.

18. Respondent conducted an audiogram hearing test on P.D. that showed a loss of hearing in P.D.'s right ear, and an air-bone gap in P.D.'s left ear. Respondent did not chart that he performed a bone conduction test for the right ear, or that he referred P.D. for testing by a physician due to the air-bone gap in the left ear.

19. Respondent told P.D. that her hearing loss was a 20 to 80 dB loss, which he claimed was a moderate to severe loss. The chart of the audiogram Respondent used incorrectly classified the ranges of hearing loss accepted by industry standards, by overstating the ranges of moderate to

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

severe hearing loss. P.D. inquired about the $745 hearing aid, but Respondent told her that this hearing aid was not suitable for her needs. He proceeded to sell her an OTE Alpha Intela-Hear hearing aid for $2,245.00. The hearing aid that was advertised by McDonald for $745.00 would have been an appropriate hearing aid for P.D., by industry standards.

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

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

Consumer D.G.

22. On or about October 16, 2012, D.G., a 77 year old woman, responded to an advertisement by MHAC for a limited time five-day-only special, between October 15 through 19, of 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 October 16, 2012, D.G. entered the MHAC branch office at 433 F Street in Lincoln, California.

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23. Respondent performed an audiogram on D. G. and informed her that she had a moderate hearing loss. The audiogram indicates that D.G.'s right ear had an air bone gap, but he did not inform D.G. of this result, and Respondent did not refer D.G. to a medical doctor for a consultation. The chart of the audiogram Respondent used incorrectly classified the ranges of hearing loss accepted by industry standards, by overstating the ranges of moderate to severe hearing loss. An unidentified person who was also working in the MHAC branch location that day showed D.G. only expensive hearing aids, not the $745.00 hearing aid advertised. D.G. reported feeling pressured into purchasing more expensive hearing aids.

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

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

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

26. Paragraphs 17-21 above are re-alleged and incorporated by reference herein.

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27. Respondent is subject to disciplinary action under section 2533, subdivision (f), gross negligence, in that he failed to perform or chart a bone conduction test of P.D.'s right ear, and failed to refer P.D. to a physician based on the charted bone-air gap in her left ear.

SECOND CAUSE FOR DISCIPLINE

(Failure to Refer to a Physician)

28. Paragraphs 17-21 above are re-alleged and incorporated by reference herein.

29. Respondent is subject to disciplinary action under section 2538.36, subdivision (a), and Title 16, section 1399.126, subdivision (a), of the California Code of Regulations, in that he failed to refer P.D. to a physician based on the apparent air-bone gap in P.D.'s left ear.

THIRD CAUSE FOR DISCIPLINE

(Fraudulent or Dishonest Act)

30. Paragraphs 17-21 above are re-alleged and incorporated by reference herein.

31. Respondent is subject to disciplinary action under section 2533, subdivision (e), which incorporates section 651, committing a fraudulent or dishonest act, 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) using an audiometric chart that misstates the industry standards of the degree of hearing loss when charting P.D.'s audiometric testing;

(b) misstating the degree of hearing loss P.D. was experiencing;

(c) entering into a purchase agreement with P.D. with the knowledge that MHAC had disseminated false and misleading statements in connection with the sale; and

(d) falsely telling P.D. that she could return the devices for a refund if the hearing aids did not work for her while omitting the 15% cancelation fee and the onerous programs she would have to complete before being considered for a refund;

(e) misrepresenting that the hearing aid was on a limited time, sale price; and

(f) recommending and selling 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.

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FOURTH CAUSE FOR DISCIPLINE

(Song-Beverly Act)

32. Paragraphs 17-21 above are re-alleged and incorporated by reference herein.

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

FIFTH CAUSE FOR DISCIPLINE

(Maintain Separate License for Each Location)

34. Paragraphs 17-21 above are re-alleged and incorporated by reference herein.

35. Respondent is subject to disciplinary action under section 2538.34(b) of the Code in that Respondent failed to apply for or obtain a branch office license for the McDonald Hearing Aid Center retail location at 1400 X Street, Sacramento, California where he was engaged in the practice of fitting or selling hearing aids on April 19 and 20, 2011.

SIXTH CAUSE FOR DISCIPLINE

(Gross Negligence)

36. Paragraphs 22-25 above are re-alleged and incorporated by reference herein.

37. Respondent is subject to disciplinary action under section 2533, subdivision (f), gross negligence, in that he incorrectly charted an air-bone gap in D.G.'s right ear, incorrectly recorded her actual hearing loss and need for hearing aids, and failed to inform her of the charted air-bone gap or refer her to a physician based on the charted bone-air gap in her right ear.

SEVENTH CAUSE FOR DISCIPLINE

(Failure to Refer to a Physician)

38. Paragraphs 22-25 above are re-alleged and incorporated by reference herein.

39. Respondent is subject to disciplinary action under section 2538.36, subdivision (a), and Title 16, section 1399.126, subdivision (a), of the California Code of Regulations, in that he failed to refer D.G. to a physician based on the apparent air-bone gap in D.G.'s right ear.

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EIGHTH CAUSE FOR DISCIPLINE

(Fraudulent or Dishonest Act)

40. Paragraphs 22-25 above are re-alleged and incorporated by reference herein.

41. Respondent is subject to disciplinary action under section 2533, subdivision (e), which incorporates section 651, committing a fraudulent or dishonest act, in that he committed fraudulent or dishonest acts in connection with the sale of a hearing aid to M.S., which include, but are not limited to the following:

(a) using an audiometric chart that misstates the industry standards of the degree of hearing loss when charting D.G.'s audiometric testing;

(b) misstating the degree of hearing loss D.G. was experiencing;

(c) entering into a purchase agreement with D.G. with the knowledge that MHAC had disseminated false and misleading statements in connection with the sale; and

(d) misrepresenting that the hearing aids were on a limited time, sale price; and

(e) recommending and selling the $6,741.00 Intela-Hear hearing aids to D.G. without at minimum offering the alternative of the $745.00 hearing aid, or explaining that hearing aids would be optional for her.

NINTH CAUSE FOR DISCIPLINE

(Song-Beverly Act)

42. Paragraphs 20-25 above are re-alleged and incorporated by reference herein.

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

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PRAYER

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

1. Revoking or suspending Hearing Aid Dispenser License Number HA 7416, issued to Respondent Marion Nelson;

2. Revoking Respondent Marion Nelson's ability to supervise trainee and temporary licensees;

2. Ordering Respondent Marion Nelson to pay the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: November 25, 2015

PAUL SANCHEZ
Executive Officer
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
Department of Consumer Affairs
State of California
Complainant

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