

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

**Title 16, Chapter 13.3
Hearing Aid Dispensers Regulations
Article 7. Continuing Education
Proposed Language**

Amend Sections 1399.140 – 1399.143 of Article 6 of Division 13.3 of Title 16 as follows:

Section 1399.140 - Continuing Education Required.

(a) Any hearing aid license that expires on or after January 31, 2011, Each dispenser is required to complete at least six (6) twelve (12) hours of continuing education from a provider approved under Section 1399.141 below during each calendar year preceding one-year renewal period. For all licenses which expire on and after January 1, 1997, all holders of licenses shall complete nine (9) hours of continuing education per year, and n.

(1) Not more than three (3) hours of continuing education may be credited in any of the following areas related to hearing aids: related, or indirect client care courses as provided in Section 1399.140.1 ethics (including the ethics of advertising and marketing) or business practices.

(2) Not more than three (3) hours of the required continuing education may be credited for self-study or correspondence-type coursework, e.g., recorded courses, home study materials, or computer courses. Self-study does not include live or on-demand courses. A self-study course does not mean a course taken at an accredited university towards a degree, not does it include any interactive courses offered via electronic media where the course offering affords participants to interact with an instructor and/or other course participants.

(b) Records showing completion of each continuing education course shall be maintained by the dispenser for three (3) years following the renewal period. Records shall be provided to the Board in response to a compliance audit conducted.

(b) (c) Each dispenser renewing his or her license under the provisions of Section 3451 of the code shall be required to submit proof satisfactory to the board of compliance with the provisions of this article.

(e) (d) Such proof shall be submitted at the time of license renewal on a form provided by the board.

(d) Any dispenser who cannot complete the minimum hours required under subsection (a) may have his or her license renewed, but shall make up any deficiency during the following year. If the dispenser does not complete the deficient hours in addition to the minimum hours for the current year, he or she shall be ineligible for the next renewal of his or her license unless such dispenser applies for and obtains a waiver pursuant to Section 1399.144 below.

(e) (f) This article shall not apply to any dispenser who is renewing a license for the first time following was issued the issuance of an initial permanent license for the first time within the preceding calendar year.

(f) (g) Any person whose hearing aid dispenser's license has been expired for two years or more shall complete the required hours of approved continuing education for the prior two years before such license may be restored.

Note: Authority and reference cited: Section 3327.5, Business and Professions Code.

Section 1399.140.1 - Continuing Education Course Content

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

(1) Direct client care courses cover current practices in the fitting of hearing aids.

(2) Indirect patient/client care courses cover practical aspects of hearing aid dispensing (e.g., legal or ethical issues (including the ethics of advertising and marketing, consultation, record-keeping, office management, managed care issues, business practices).

(3) Courses that are related to the discipline of hearing aid dispensing may cover general health condition or educational course offerings including, but not limited to, social interaction, cultural and linguistic diversity as it applies to service delivery for diverse populations, service delivery models, interdisciplinary case management issues, or medical pathologies related to neurological disorders that also result in hearing difficulties.

1399.141. Approval of Continuing Education Providers.

(a) In order to be approved by the board as a continuing education provider the following information shall be submitted with an application, incorporated herein by reference, forms () provided by the board:

(1) Description of course content of all courses to be offered. The course content for all courses, including ethics and business practices, shall be current practices related to the fitting of hearing aids for aiding or compensating for impaired human hearing or any of the subjects listed in subsection (a) of section 1399.140, and within the scope of practice for a dispenser as defined by the Code and generally shall be for the benefit of the consumer. The course content shall be information related to the fitting of hearing aids, and this information shall be at a level above that basic knowledge required for licensure as set forth in Section 3353 of the Code, except that basic knowledge which would serve as a brief introduction to the course. The phrase “at a level above that basic knowledge” means any subjects, issues, topics, theories, or findings that are more advanced than the entry level of knowledge described in those basic subjects listed in subdivision (b) of Section 3353. Examples of courses that are considered outside the scope of acceptable course content include: personal finances and business matters; marketing and sales, and office operations that are not for the benefit of the consumer.

(2) Method of instruction for course(s) offered. Teaching methods for each course or program shall be described, e.g., lecture, seminar, audiovisual, simulation, etc.

(3) Education objectives. Each course or program shall clearly state the educational objective that can be realistically accomplished within the framework of the course or program, and the number of hours of continuing education credit which may be obtained by completion of a specified course.

(4) Qualifications of instructors. Instructors shall be qualified to teach the specified course content by virtue of their prior education, training and experience. A provider shall ensure that an instructor teaching a course has at least two of the following minimum qualifications: (a) a license, registration, or certificate in an area related to the subject matter of the course. The license, registration, or certificate shall be current, valid, and free from restrictions due to disciplinary action by the Board or any other health care regulatory agency; (b) training, certification, or experience in teaching courses in the subject matter; or (c) at least two years' experience in an area related to the subject matter of the course. A resume of each instructor shall be forwarded with the application for approval.

(5) Evaluation. Each course or program shall include an evaluation method which documents that educational objectives have been met, such as, but not limited to, a written evaluation or written examination by each participant.

(6) Open to Licensees. Only those courses or programs which are open to all licensed hearing aid dispensers shall be approved by the board.

(b) Providers shall maintain a record of attendance of each participant who is licensed as a hearing aid dispenser ~~and submit that record to the board no later than December 31 of each calendar year~~ for a period of four (4) years, and shall provide such record to the board upon request. The record shall indicate those dispensers who have complied with the requirements of the course or program offered.

(c) Applications for approval of a continuing education provider shall be submitted to the board at its Sacramento office ~~at least 45 days before the date of the first course or program offering to be approved~~ allowing for sufficient time for review and prior approval as follows. The Board will inform the provider within 30 days of receipt of the application whether the application is complete or deficient. The provider shall cure any deficiency within 30 days of such notice. The Board will approve or deny the application within 30 days of the date that the application is complete, or the last date to cure the deficiency. A provider may appeal to the Executive Officer of the Board the denial of approval of any course. Such appeal shall be filed with the Executive Officer of the Board not more than 30 days after the date of notice of such denial. The Executive Officer shall notify the provider within ten (10) days of the final decision of the appeal.

(d) Any change in the course content or instructor shall be reported to the board on a timely basis.

(e) The board may withdraw the approval of any provider for failure to comply with the provisions of this section.

(f) Each provider shall submit to the board on an annual basis a description or outline of each approved course to be offered the following year and a resume of any new instructor who will be presenting the course. This information shall be submitted prior to the re-offering of the course within the ~~time limit~~ timeframe set forth in subsection (c).

Note: Authority cited: Section 3327.5, Business and Professions Code. Reference: Section 3327.5, Business and Professions Code.

1399.142. Sanctions for Noncompliance.

(a) Any dispenser who does not complete the required number of hours of continuing education will be required to make up any deficiency during the next calendar year and renewal cycle. Such dispenser shall document to the board the completion of any deficient hours. Any dispenser who fails to make up the deficient hours and the hours of required continuing education for the current year shall be ineligible for the next renewal of his or her license to dispense hearing aids until such time as the deficient hours of continuing education are documented to the board.

(b) ~~Fraudently~~ In addition to any other sanction, fraudulently misrepresenting compliance with the continuing education requirements of Section 3327.5 of the code and this article shall constitute “obtaining a license by fraud or deceit” as those terms are used in Section 3401, subd. ~~(e)~~ (e), of the code.

Note: Authority cited: Sections 3327.5 and 3328, Business and Professions Code. Reference: Section 3327.5, Business and Professions Code.

1399.143. Repetition of Courses.

Credit will not be given toward approved continuing education coursework which is substantially similar to coursework which was successfully completed within the preceding ~~three (3)~~ two (2) years and used to meet the continuing education requirements of this article and Section 3327.5 of the code.

Note: Authority and reference cited: Section 3327.5, Business and Professions Code.

1399.144. Waiver of Requirement.

(a) The board, may, in its discretion exempt from the continuing education requirements, any dispenser who for reasons of health, military service, or undue hardship cannot meet those requirements. Applications for waivers shall be submitted to the board for its consideration.

(b) Any dispenser who submits an application for a waiver which is denied by the board, shall otherwise comply with the provisions of this article or be subject to the sanctions for noncompliance set forth in Section 1399.142.

Amend Section 1793.02 of the Civil Code to read:

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

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

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

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

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

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

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

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

restoration or dental prosthesis provided by a dentist.

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

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

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

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

Proposed Regulatory Provisions for Song Beverly Consumer Warranty Act

Pursuant to the provisions of Civil Code Section 1793.02 et seq., The Song Beverly Consumer Warranty Act, and Business and Professions Code Section 3365 (f), the following express warranty provisions shall apply to hearing aid devices:

- a) A consumer shall be entitled to a refund of the cost of a hearing aid device, less the amount not to exceed \$200 of which the provider shall be permitted to retain, should the device be returned to the hearing aid dispenser for a refund within thirty (30) days from the date the consumer acquired the device from the hearing aid dispenser.
- b) The above “right of return” provision shall be “tolled” in the event that the hearing aid device is returned by the consumer to the hearing aid dispenser for service or adjustment. The time period the hearing aid device is in the possession of the hearing aid dispenser, shall be excluded from the thirty (30) day right of return period:
- c) Any period of time that the hearing aid dispenser is in possession of a device that has been serviced or adjusted and fails to notify the consumer the device is available for retrieval, or fails to make the device available to the consumer for retrieval, shall be deemed “tolled” and shall be excluded from the right of return period.
- d) Should the consumer fail to retrieve the hearing aid device from the hearing aid dispenser within seven (7) business days of being notified that the device has been repaired or adjusted, the right of return period shall commence.
- e) The hearing aid dispenser shall provide the consumer with a written purchase agreement signed by both the hearing aid dispenser and the consumer that contains the following: the specified date(s) the device was initially delivered to the consumer, the date(s) the device was returned to the hearing aid dispenser for service or adjustment, and the date(s) the device was retrieved by the consumer.

Pediatric Audiology Specialty Certification



NEW! For a quick overview of the PASC, click [here](#).

Obtaining Specialty Certification in Pediatrics means that an audiologist has demonstrated a high level of knowledge in the area of pediatric audiology. While a certification is not a guarantee of any particular skill or competency, an audiologist holding this certification has demonstrated the ability to pass a rigorous examination in pediatric audiology and has a minimum of two years of audiological practice.

The development of the Pediatric Audiology Specialty Certification (PASC) was supported in part by an educational grant from the American Academy of Audiology Foundation, funded by Phonak Hearing Systems, Starkey Laboratories and contributions from many members of the Academy. The American Board of Audiology thanks these friends for their generous support!

- [Eligibility Requirements](#)
- [Exam Subject Area Content](#)
- [Suggested Readings](#)
- [FAQs](#)

Eligibility Requirements

Education and Credentials:

Applicants for ABA Board Certification in Audiology must hold a doctoral degree in Audiology granted from a regionally accredited institution. Applicants for only the Certified Specialist in Pediatric Audiology certification need only hold a graduate degree in Audiology granted from a regionally accredited institution.

Documentation:

- a. Official transcript mailed directly from the registrar's office.
- b. Copy of current , valid license to practice audiology.

Experience:

AUD Committee Meeting Agenda Item III

One year post-degree full-time (2,000 hours) paid professional experience as an audiologist.

Documentation:

- a. Curriculum vitae. The candidate must demonstrate 550 direct pediatric patient contact hours and 50 hours of case management of pediatric cases over two consecutive years within the past five years. Direct patient contact may include the following areas: screening and diagnostic evaluation, counseling (patient and family) and habilitation/rehabilitation. Case management may include involvement in team meetings, school visits and interfacing with other agencies involved in pediatric patient care.
- b. Two letters from professionals (preferably supervisor(s) familiar with the candidate's work in the area of pediatric audiology verifying the number of hours worked and eligibility for the specialty credential. (Please see Form 2 in this handbook).

Carefully review the application(s) before submissions. An incomplete or improperly executed application(s) may cause a delay in processing. Such a delay could possibly preclude you from sitting for the Pediatric Audiology examination on the date for which you have applied and you may need to sit at a subsequent examination administration.

Examination Fee:

Fees may be paid by credit card, cashier's check or money order made payable to ABA. Application fee of \$100 unless already Board Certified plus \$350 examination fee.

[You may download an application here!](#) Please [e-mail us](#) for more details.

Exam Subject Area Content

The two-hour, 100 question examination* is developed through a collaborative effort. A group of experts drawn from a wide variety of work environments and geographical areas write the examination items. The examination consists of multiple-choice and multiple-response items (also known as multiple true-false or select all that apply). All questions have four response options. The content of the exam is shown below.

1. Laws and Regulations
2. General Knowledge about Hearing and Hearing Loss
3. Child Development
4. Screening and Assessment Procedures

AUD Committee Meeting Agenda Item III

5. Counseling
6. Communication Enhancement Technology
7. Habilitation/Rehabilitation Strategies, Educational Supports

Suggested Readings

The references listed below may prove helpful in the review of the subject matter areas included on the examination. The listing of these references is intended for use as a study aid only. The ABA does not intend the list to be exhaustive or to imply endorsement of these specific references, nor are the examination questions necessarily taken from these sources.

- [AAA Clinical Practice Guideline: Diagnosis, Treatment and Management of Children and Adults with Central Auditory Processing Disorders](#)
- [AAA Clinical Practice Guidelines: Remote Microphone Hearing Assistance Technologies for Children and Youth from Birth to 21 Years](#)
- [AAA Pediatric Amplification Protocol](#)
- [AAA Pediatric Assessment and Treatment Clinical Practice Guidelines](#)
- [ASHA Pediatric Guidelines](#)
- [Assessment and Management of Central Auditory Processing Disorders in the Educational Setting from Science to Practice \(2nd ed\)](#)
- [Children with Hearing Impairment](#)
- [Clinical Management of Children with Cochlear Implants](#)
- [Comprehensive Handbook of Pediatric Audiology](#)
- [Counseling in Audiologic Practice](#)
- [Counseling Persons with Communication Disorders and Their Families \(4th ed\)](#)
- [EHDI Program Information](#)
- [Foundations of Pediatric Audiology](#)
- [Handbook of Auditory Evoked Responses](#)
- [Hearing in Children \(5th ed\)](#)
- [IDEA Advocacy for Children who are Deaf or Hard of Hearing](#)
- [Infection Control in the Audiology Clinic](#)
- [JCIH Pediatric Guidelines](#)
- [Legal Rights: The Guide for Deaf and Hard of Hearing \(5th ed\)](#)
- [NCHAM Resource Guide for Early Hearing Detection and Intervention](#)
- [Pediatric Audiological Medicine \(2nd ed\)](#)
- [Pediatric Audiology](#)
- [Rehabilitative Audiology: Children and Adults \(3rd ed\)](#)
- [Sound Field Amplification: Amplifications to Speech Perception and Classroom Acoustics \(2nd ed\)](#)

TITLE 16 - DEPARTMENT OF CONSUMER AFFAIRS SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY & HEARING AID DISPENSERS

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board (Board) is proposing to take the action described in the Informative Digest. No public hearing has been scheduled on the proposed action. However, any interested person or such person's duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on **July 5, 2011**. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Business and Professions Code Sections 2531.95, 2532.25, 2532.6, and 2534.2 to implement, interpret or make specific Sections 163.5, 2532.2, 2532.6 and 2534.2, and 2539.1 of the Business and Professions Code, the Board is considering changes to Division 13.4 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

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

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

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

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

FISCAL IMPACT ESTIMATES

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

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

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

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

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

established course approval application fee and would likely be the target providers of the requisite continuing professional development courses for dispensing audiologists.

There are approximately fifty (50) approved hearing aid dispenser continuing education providers approved by the Board and approximately two-hundred (200) approved courses.

CE Provider assumptions:

- 50 CE providers in California
- 150-250 approved courses
- \$50 fee for each submitted course. Courses valid for 12 months.
- No application fee or renewal fee required.

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

AND

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

Impact on Jobs/New Businesses: Under current laws and regulations, continuing education providers of hearing aid courses are required to apply for course approval by the Board and pay a course approval application fee of \$55 for each course application. The proposed amendments would merely implement the provisions of Assembly Bill 1535 (Jones, Chapter 309, Statutes of 2009), within the continuing professional development regulation requirements for audiologists authorized to dispense hearing aids. As such, there is no change to the existing process for businesses which offer continuing education in hearing aid dispensing; and therefore, the Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

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

- Licensed audiologists who dispensed hearing aids under a separate hearing aid license prior to the enactment of the new statutes under Section 2539.1, were required to pay (1) a \$75 application, (2) a \$280 initial license fee for the hearing aid license, and (3) an additional \$60 application fee for the audiology license (\$35 application fee which is collect for the Temporary RPE License process and the \$25 initial license fee). Under the new provisions, an individual applying for a DAU license, must pay the \$35 application for the Temporary RPE License and the \$280 application fee for the DAU license. The \$25 initial license fee would no longer be collected of the DAU.
- In addition, licensed audiologists who dispensed hearing aids under the separate hearing aid license prior to the enactment of the new statutes under Section 2539.1, were required to pay the biennial audiology license renewal fee of \$110 and a separate hearing aid dispensers license fee of \$280 annually. Under the new provisions, licensed audiologists who qualify as DAUs must pay only one license renewal fee for the dispensing audiology license which has been established at \$280 annually. As such, the DAU will save the \$110 biennially (\$55 annually) for the separate license fees previously paid for the audiology license.
- Existing regulations require licensed speech-language pathologists and audiologists to obtain twenty-four (24) hours of CPD course work from a Board-approved provider every two years,

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

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

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulatory action would not affect small businesses as it makes changes to provisions regarding licensed dispensing audiologists' renewal fees and continuing professional development. The proposed changes do not place additional requirements on small business or on individuals eligible for employment by small business.

CONSIDERATION OF ALTERNATIVES

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

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF THE PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at 2005 Evergreen Street, Suite 2100, Sacramento, CA 95815.

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

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

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

CONTACT PERSON

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

Name: Annemarie Del Mugnaio
Address: 2005 Evergreen Street, Suite 2100
Sacramento, CA 95815
Telephone No.: (916) 263-2909
Fax No.: (916) 263-2668
E-Mail Address: Annemarie.delmugnaio@dca.ca.gov

The backup contact person is:

Name: Cynthia Alameda
Address: 2005 Evergreen Street, Suite 2100
Sacramento, CA 95815
Telephone No.: (916) 263-2291
Fax No.: (916) 263-2668
E-Mail Address: Cynthia.alameda@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.speechandhearing.ca.gov.



HEARING AID DISPENSERS PRACTICE COMMITTEE MEETING MINUTES

January 26, 2011
Kensington Park Hotel
450 Post Street
"Sherwood Room"
San Francisco, CA
(916) 263-2666

Committee Members Present

Deane Manning, Hearing Aid Dispenser
Robert Green, Au.D.
Sandra Danz, Hearing Aid Dispenser
Alison Grimes, Au.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
LaVonne Powell, Legal Counsel
Cynthia Alameda, Staff
Yvonne Crawford, Staff
Debbie Newcomer, Staff

Board Members Present

Carol Murphy, M.A.
Monty Martin, M.A.

Board Members Absent

Rodney Diaz, M.D.

Guests Present

Cynthia Peffers, HHP CA
Jody Winzelberg, Director of Rehabilitative Services, Lucile Packard Children's Hospital at Stanford
Marcia Raggio, California Academy of Audiology (CAA)
Rebecca Binge, University of California, San Francisco (UCSF)
Randy Sager, HHP CA
Chelsea Diles, InSound Medical

I. Call To Order

Deane Manning called the meeting to order at 1:00 p.m.

II. Introductions

Those in attendance introduced themselves.

III. Proposed Regulation Amendments Pertaining to Continuing Education Requirements for Licensed Hearing Aid Dispensers – California Code of Regulations Section 1399-140-1399.143

Ms. Del Mugnaio explained that the proposed regulations were discussed at previous meetings. She stated that the Committee has discussed the need to include provisions related to self-study courses, stating that “self-study” does not include live or interactive courses offered through electronic means. The added provisions should assist in educating practitioners that web-based courses that include attendee participation and an instructor are not categorized as self-study courses and are not deemed independent learning.

Mr. Manning asked about the definition of on-demand courses.

Ms. Grimes responded that on-demand courses provided through such sites as Audiology Online are pre-recorded courses and are not interactive.

The Committee discussed the proposed self-study definition and agreed to strike “tape recorded” courses and “videotaped materials” from the language.

Ms. Del Mugnaio suggested the language, “Any interactive course that provides an opportunity for participation is not deemed self-study and not limited to the three hour maximum described in Subsection (1).”

Ms. Del Mugnaio mentioned another section of the proposed regulations that was previously discussed related to the waiver, and it was recommended at the last meeting that the waiver language be retained at this point. The waiver allows that a dispenser who does not complete all of the required CE hours in the one-year license renewal period be allowed to make up the deficiency during the next renewal period.

Ms. Grimes suggested changing the word “pragmatic” to “practical” under Section 1399.140.1 (a) (2).

Ms. Del Mugnaio reviewed the proposed changes pursuant to discussion at this meeting, which included:

- Changing the term “pragmatic” to “practical” in Section 1399.140.1(a) (2)
- Amending Section 1399.140(a)(2) to include a qualifier regarding self-study courses as follows: “Any interactive course that provides opportunity for participation is not deemed self-study and is not limited to the three hour maximum described in Subsection (1)”
- Striking antiquated language, such as “recorded courses” and “video-tape materials” from the existing definition of self-study.

M/S/C: Grimes/Danz

The Committee moved to recommend the full Board approve the continuing education amendments discussed above and notice the proposed regulatory changes for public hearing.

**IV. Regulatory Proposal re Song-Beverly Consumer Warranty Act
(California Code of Regulations Section 1399-140-1399.143)**

Ms. Del Mugnaio referenced a draft regulatory proposal she prepared related to the provisions of the Song-Beverly Consumer Warranty Act, which includes information provided by Committee members Robert Green and Deane Manning and incorporates background information regarding longstanding legal issues with how Song-Beverly has been misinterpreted. She stated that the draft regulatory proposal outlines return and refund provisions and would provide an exception/exemption within the Civil Code for right-of-return provisions for hearing aids. Ms. Del Mugnaio stated that the draft proposal is a working document that the Board may present to the Legislature to explain the intent of the amendments to Civil Code Section 1793.02 (i), which would provide the Board with regulatory authority to adopt specific provisions for return and refund policies related to the dispensing of hearing aids. She asked the Committee to review the draft and provide advice/recommendations as to whether the proposal addresses the long-standing legal issues. Ms. Del Mugnaio stated that the Board has not been able to secure an author for the legislative proposal to date, as the amendments are not deemed omnibus in nature, and it may be necessary to seek assistance from the professional association.

Mr. Manning mentioned that it was his understanding that Section (a)(1) was included in order to make it less confusing for consumers and hearing aid dispensers to interpret Song-Beverly. He suggested that the regulatory proposal include a flat fee that could be charged to a consumer for services rendered related to the dispensing of the hearing aid.

Mr. Green agreed that a list of what the fee may include should be identified.

Ms. Winzelberg mentioned that other states have done this on a percentage of the sale instead of a flat fee.

Ms. Del Mugnaio stated that this language was modeled after other states' provisions, where a list of items deemed non-refundable was included in the provisions, and a limit on the total dollar amount or a percentage was noted. She suggested that the draft regulatory document be viewed as a fluid discussion document.

Discussion ensued related to how fees retained by dispensers should be included, concerns related to percentage of costs, defining an exclusionary list of services, etc. The Committee agreed that a specific amount that can be retained by the hearing aid dispenser should be identified.

Ms. Del Mugnaio suggested the following: "Provider is permitted to retain an amount not to exceed \$200.00 per hearing aid upon return of the device for costs incurred in the dispensing of the hearing aid. She indicated this could be a place holder and could be revised later.

The Committee suggested the language regarding a consumer's responsibility for retrieving a hearing aid from the provider upon request be changed from two (2) business days to seven (7) business days.

Ms. Del Mugnaio added that there is also a provision regarding the information that should be documented on the purchase agreement, which states: "The hearing aid dispenser shall provide the consumer with a written purchase agreement signed by both the dispenser and consumer that contains the following: the specified date the device was purchased (the Committee requested that purchased be changed to delivered), the date(s) the device was returned to the hearing aid dispenser for service or adjustment, and the date(s) the device was retrieved by the consumer."

She stated that date the consumer was informed the hearing aid was available for delivery could be included.

Discussion ensued regarding the charging of a flat fee, including an explanation of the charges not to exceed \$200.00 per aid.

Ms. Del Mugnaio asked all Committee members to bring unbundled costs and documentation to the next meeting from each of the following settings: a hearing aid dispenser office, a dispensing audiologist's office, and a UC system clinic.

M/S/C: Grimes/Green

The Committee recommended the full Board to approve the draft regulatory document as a working document to provide to interested parties during the Legislative discussions regarding the amendments to the Song-Beverly Consumer Warranty Act.

V. Hearing Aid Dispensers Examination Program – 2011 Occupational Analysis

Ms. Del Mugnaio requested that the Committee members provide the Board with references of individuals who may serve as Subject Matter Experts (SMEs) for the Occupational Analysis (OA) study beginning in June 2011. She explained that funding was provided for an OA study for the hearing aid dispensers examination program as part of the merger of the Speech-Language Pathology and Audiology Board with the Hearing Aid Dispensers Bureau. The Board is moving forward with the OA, which typically takes about a year and a half to complete. Any changes to the examination format/content would be implemented in 2013. There is a series of workshops, questionnaires, interviews, and items-writing tasks that must occur in order for the Office of Professional Examination Services (OPES) to determine if the exam is a valid in terms of testing for entry-level practice for hearing aid dispensers. The OPES will begin conducting workshops and interviews for which a diverse group of subject matter experts representing a range of practice settings and professional experience will be utilized to assist in crafting a comprehensive knowledge, skills, and abilities survey form. The survey will then be distributed to the licensee population for rating. The returned information is compiled and analyzed to determine its congruence to the current examination content. Ms. Del Mugnaio asked the Committee to provide names of individuals they believe may be well suited for the assignment and provide their names to Debbie Newcomer. She commented that dispensing audiologists who participate in this process must remember that this is an entry-level exam for hearing aid dispensers, so audiology practice cannot factor into the professional input.

Additionally, Ms. Del Mugnaio explained that an OA is required every five to seven years, and the last hearing aid dispenser OA was done in 2007, which was about 4 years ago. She stated that the 2011 OA is being conducted in response to concerns that were raised during the legislative discussions of the Board/Bureau. Ms. Del Mugnaio stated that the funding provided for the OA must be applied to the project during this budget year.

Ms. Del Mugnaio announced that the first OA Workshop will be held June 23, 2011. Ms. Newcomer responded that the June 23 workshop is already full, and no other workshop dates have been scheduled at this time. Ms. Newcomer added that there will be several workshops: three prior to the survey and two after. Approximately 10-20 SMEs will be needed for interviews, and approximately 40 SMEs will be needed for the workshops. Ms. Newcomer explained that the

survey will be condensed to make it less time-consuming for licensees than in the past, and will be available on-line. She explained the shortened survey, and that readily available access should encourage more licensees to provide input.

Ms. Del Mugnaio explained that the Board will be the decision-maker when the validation study is complete, and will have to vote to adopt or not adopt the final report.

Ms. Powell stated there is a Department policy regarding Board members participation in an OA and the exam process. It was explained that Board Member will be recruiters and decision makers, and recruitment of SMEs will be done by Board staff contacting licensees by phone.

Ms. Winzelberg asked if the information and a request for interested individuals could be added to the Board's Web site.

Ms. Del Mugnaio indicated that the announcement will be placed on the Board's website.

VI. Scope of Practice Limitations on Deep Insertion Hearing Aid Devices

Ms. Del Mugnaio stated that it has come to the attention of the Board that there have been some issues and filed a complaint about deep-insertion hearing aids, where the aids are inserted deeper into the ear canal than a traditional hearing aid. This issue had come up previously as a Song-Beverly issue related to return rights. At that time, these aids were fit only by physicians, but are now being fit by physicians, audiologists, and hearing aid dispensers. Therefore, the Board needs to address whether the deep-insertion procedure constitutes a consumer protection issue that is outside the scope of practice for hearing aid dispensers and possibly audiologists.

Mr. Manning brought a letter from the Federal Drug Administration that states that the devices should be fit by physicians, audiologists, and hearing aid specialists, but that does not mean that the scope of practice defined by the state regulatory board for hearing aid dispensers and audiologists allows this type of service.

Ms. Powell asked if deep-insertion aids were fit beyond the eardrum.

Committee members responded that they are fit millimeters from the eardrum, and they are not implantable.

Ms. Grimes added that an ear impression for a traditional hearing aid can also go beyond the second bend of the ear canal.

Discussion pursued regarding the placement of deep-insertion and extended-wear hearing aids.

Ms. Crawford reviewed the issues that have been brought previously to the Bureau regarding deep-insertion hearing aids, which included warranty issues, potential consumer harm, bait and switch, and training received related to fitting deep-insertion hearing aids. She also explained that the Board is not aware of any hearing aid dispensers fitting deep insertion hearing aids at this time.

Ms. Powell responded that there may be a standard of care issue rather than a scope of practice issue, as the law does not differentiate between deep-insertion hearing aids and non-deep insertion hearing aids. She stated that standard of care provisions may be added to the regulations; however,

as professional services and technology continue to evolve, changes to the regulations would be necessary.

Ms. Grimes explained that there are two events involved here: the taking of ear impressions and prolonged use of the hearing aids. She commented that setting limitations on how deep an ear impression can be inserted would be unreasonable, as each individual's ear canal and hearing loss is unique, and impressions vary for each individual situation. Ms. Grimes commented that the more pressing issue would be the length of time, often three months, which the deep-insertion hearing aid remains in the ear canal.

Ms. Powell commented that this is an FDA issue. Discussion ensued regarding the FDA's approval of deep-insertion hearing aids, consumer protection issues that may arise, complaints regarding deep-insertion hearing aids, and physicians' involvement in inserting the hearing aids.

Ms. Powell responded that the Board should refer cases to an SME to determine if the subject followed the standard of care; then, based on the recommendation of the SME, the Board may adopt or not adopt whether the standard of care was appropriate and move forward with regulations.

The Committee agreed that staff should pursue this matter using the assistance of an SME.

The Committee adjourned at 3:00 p.m.



SPEECH-LANGUAGE PATHOLOGY PRACTICE COMMITTEE MEETING
January 26, 2011

Kensington Park Hotel
450 Post Street
"Sherwood Room"
San Francisco, CA
(415) 351-4148

Committee Members Present

Carol Murphy, M.A., Chair
Lisa O'Connor, M.A.
Monty Martin, M.A.

Committee Members Absent

Rodney Diaz, M.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
LaVonne Powell, Legal Counsel
Cynthia Alameda, Staff
Yvonne Crawford, Staff
Debbie Newcomer, Staff

Guests Present

Alison Grimes, Au.D.
Robert Green, Au.D.
Sandra Danz, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Jody Winzelberg, Director of Rehabilitative Services
Lucile Packard Children's Hospital at Stanford
Marcia Raggio, California Academy of Audiology (CAA)
Rebecca Bingea, University of California, San Francisco (UCSF)
Robert Powell, California Speech-Language-Hearing Association (CSHA)
Cindy Peffers, HHP CA

I. Call to Order

Carol Murphy, Committee Chair, called the meeting to order at 3:00 p.m.

II. Introductions

Those in attendance introduced themselves.

III. Telepractice as a Mode of Service Delivery for Speech-Language Pathology Services & Supervision Models via Electronic Observation

Chairperson Murphy reviewed the documents provided for discussion, which included two separate but related documents prepared by the American Speech-Language-Hearing Association (ASHA) on

recognizing telepractice as an acceptable form of service delivery and on framework for regulation of interstate practice through the use of a limited licensing provision.

The Committee members discussed the ASHA documents and commented on the role of telepractice and its success as a method of delivery for speech-language pathology services.

Lisa O'Connor shared with the committee information she obtained during a presentation on telepractice at the annual conference for the National Council of State Boards of Examiners for Speech-Language Pathology and Audiology (NCSB) in Santa Fe, New Mexico. Ms. O'Connor further shared that many boards from other states had adopted telepractice regulations and inquired on current California regulations.

LaVonne Powell provided clarification that current laws stipulate that all practitioners providing speech-language pathology services to California consumers, regardless of method, must be licensed by the Board.

Annemarie Del Mugnaio added that the Board does receive questions on telepractice by out-of-state practitioners inquiring on their ability to provide services to California consumers, and she confirmed that the Board does inform these individuals that they may offer telepractice services to Californians, but they must first be licensed by the Board.

The Committee requested that information on Board requirements regarding out of state practitioners providing services in California, regardless of method, be highlighted on the website. Ms. Powell stated that she would collaborate with Ms. Del Mugnaio on language for the Board's website on this topic. The issue regarding supervision via telepractice of speech-language pathology assistants (SLPA) was raised, and the Committee elected to move the discussion of this concern to agenda item IV.

IV. Speech-Language Pathology Assistants

A. Proposed Regulatory Changes Regarding Supervision and Field Work Experience Requirements

The Committee resumed their discussion regarding the feasibility of supervision of SLPAs via telepractice.

Monty Martin inquired about the other committee members' knowledge regarding the use of telepractice in speech-language pathology and commented that, in his experience, it was not yet emerging in the school setting.

Ms. O'Connor stated that she has made the recommendation in her practice for consideration of speech-language pathology services via telepractice when services were not available in a client's local area. Ms. O'Connor further stated that she believed that telepractice was a valuable option for clients in rural areas with limited access to critical services. Additionally, Ms. O'Connor stated that she was aware of a telepractice company that is hiring speech-language pathologists specifically for providing services via telepractice.

The Committee discussed the feasibility of providing adequate supervision for SLPAs via telepractice and agreed that it was an acceptable method of supervision.

The Committee agreed that Section 1399 170(c) of the California Code of Regulation (CCR) should be amended to include supervision by electronic means as an acceptable option for direct onsite supervision of SLPAs.

The Committee discussed the need to amend CCR Section 1399.170.10(2) to reflect the most current 2004 ASHA Guidelines for Training, Use, and Supervision of Speech-Language Pathology Assistants, as well as the appropriate Appendix reference. The Committee further discussed the need to amend subsection (c)(2)(B) of the above section to increase the minimum number of field work experience hours from 70 to 100, given the standards in the current ASHA guidelines, as well as the current lack of adequate field work experience hours needed for establishing competency.

The Committee further discussed the need to amend CCR Section 1399.170.15(b)(4) to require supervisors for SLPAs to obtain not fewer than six (6) hours of continuing professional development in supervision training prior to the commencement of supervision in place of the previous requirement that allowed for the completion in the initial two-year period of supervision.

M/S/C: O'Connor/Murphy

The Committee recommended to the Board to approve the amendments to the SLPA regulations in California Code of Regulations Sections 1399.170 (c), 1399.170.10 (c)(2)(B), 1399.170.11(c), and 1399.170.15 (b)(4) as referenced above.

B. Employment Challenges

The Committee discussed the current employment challenges as well as practice concerns for SLPAs who have different educational credentials.

Ms. O'Connor stated that she had concerns regarding the educational training for those SLPAs who received their education in a BA degree program, which is structured to train an independent practitioner, in contrast to the AA degree program, which is structured to train an individual to provide services as support personnel.

Ms. Del Mugnaio addressed Ms. O'Connor's concerns by calling attention to the fieldwork requirement that both AA and BA degree students are required to complete, which ensures that they are educated on the appropriate level of service that the SLPA is authorized to provide.

Ms. O'Connor further stated a concern that employers prefer the BA level SLPA to the AA level SLPA and then utilize the BA level SLPA inappropriately as more of an independent practitioner given their higher degree of education. Specifically, Ms. O'Connor's concern surrounded school districts allowing the BA level SLPAs to function in the capacity of a speech-language pathologist.

Ms. Del Mugnaio responded that the Board's responsibility is to ensure that licensees are qualified and competent, and that employers' preferences of a BA to an AA degree holder was not in particular a consumer protection issue. Additionally, Ms. Del Mugnaio stated that the misuse of SLPAs is an issue that can be addressed through the Board's enforcement program.

Chairperson Murphy stated that she conducted an informal survey of several special education directors in Northern California regarding the use of SLPAs. Ms. Murphy stated that the results from the survey indicated that, in addition to confusion among the directors on the distinction between speech-language pathologists, assistants, and aides, as well as the supervision required for each of the paraprofessional categories, directors had difficulty establishing salary schedules for SLPAs with varying degrees of education.

Ms. Del Mugnaio shared with the Committee that the Board had compiled a comprehensive package for all school districts when the SLPA license category was developed to mitigate confusion regarding the SLPA license. Ms. Del Mugnaio reported that the information is available on the

Board's website. Ms. Del Mugnaio further noted that when answering the questions of special education program coordinators regarding the SLPA scope of responsibility, school personnel have referenced the information provided by the Board.

Ms. Murphy provided a regional map of California showing the areas of residence for the current SLPA population. It was noted by the Committee that the SLPA population was concentrated in the areas that also offered the SLPA training programs.

The Committee discussed the possibility of further surveying school district special education programs as well as private practices to inquire on employer preferences regarding SLPA BA versus AA degree holders and their experiences with the performance and competencies of SLPAs with the different degrees.

V. English Language Competency as a Prerequisite to Licensure and the Proposal for Conducting a Standard Setting Study for the Test of English for International Communication (TOEIC) Examination

The Committee revisited the consideration for implementing an English language competency prerequisite for licensure.

Ms. Del Mugnaio reported that ASHA was not currently interested in partnering with the Educational Testing Service (ETS) and the Board to conduct the standard setting process needed to establish the appropriate passing score for speech-language pathologists for the TOEIC writing and speaking assessments. Currently, the TOEIC has standards for speech-language pathologists for both reading and listening but not the writing and speaking elements deemed necessary by the Board for adequate evaluation.

The Committee requested that Ms. Del Mugnaio contact ETS, again for the cost for the Board to have the standard setting process conducted for the writing and speaking assessments for speech-language pathologists. The Committee also requested that Ms. Del Mugnaio inquire on the possible timeframes that ETS anticipates completing their own standard setting for the writing and speaking assessments for all healing arts professions.

Carol Murphy, Committee Chair, adjourned the meeting at 4:15 p.m.



FULL BOARD MEETING MINUTES

January 27, 2011

Kensington Park Hotel
450 Post Street
"Sherwood Room"
San Francisco, CA
(415) 351-4148

Board Members Present

Lisa O'Connor, M.A., Chairperson
Alison Grimes, Au.D., Vice Chairperson
Sandra Danz, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Carol Murphy, M.A.,
Robert Green, Au.D.
Monty Martin, M.A.

Staff Present

Annemarie Del Mugnaio, Executive Officer
LaVonne Powell, Legal Counsel
Cynthia Alameda, Staff
Yvonne Crawford, Staff
Debbie Newcomer, Staff

Board Members Absent

Rodney Diaz, M.D.

Guests Present

Cynthia Peffers, HHP CA
Jody Winzelberg, Director of Rehabilitative Services, Lucile Packard Children's Hospital at Stanford
Marcia Raggio, California Academy of Audiology (CAA)
Rebecca Binge, University of California, San Francisco (UCSF)
Robert Powell, California Speech-Language-Hearing Association (CSHA)
Kimberly Kirchmeyer, Executive Staff, Department of Consumer Affairs (DCA)
Cindy Kanemoto, DCA
Randy Sager, HHP CA
Chelsea Diles, InSound Medical
Hallie Morrow, California Department of Health Care Services
Jennifer Sherwood, California Department of Health Care Services

I. Call to Order

Chairperson O'Connor called the meeting to order at 9:10 a.m.

II. Introductions

Those in attendance introduced themselves.

III. Approval of Meeting Minutes:

A. **July 26, 2010 Hearing Aid Dispensers Committee Meeting & Full Board Meeting Minutes**

The Board discussed minor edits to the meeting minutes of the July 26, 2010 Hearing Aid Dispensers Committee and full Board meeting minutes.

M/S/C: Grimes/Murphy

The Board voted to approve the meeting minutes as amended.

B. September 14, 2010 Teleconference Board Meeting Minutes

The Board reviewed the telephonic meeting minutes of September 14, 2010.

M/S/C: Grimes/Green

The Board voted to approve the meeting minutes.

C. November 29, 2010 Teleconference Board Meeting Minutes

The Board reviewed the telephonic meeting minutes of November 29, 2010.

M/S/C: Grimes/Danz

The Board voted to approve the meeting minutes.

IV. Budget Review and Proposal for a Fee Increase for the Hearing Aid Dispensers Written and Practical Examinations.

Ms. Del Mugnaio referenced the budget projection reports based on operational expenditures through November 30, 2010, as included in the meeting packets for both the Speech-Language Pathology and Audiology budget and the Hearing Aid Dispensers budget. She also referenced a historical budget expenditure and revenue report for the Hearing Aid Dispensers program, which included a five-year history of program expenditures and revenues. Ms. Del Mugnaio stated that, as mentioned in prior meetings, the Hearing Aid Dispensers fund will be insolvent within the next two years if the Board does not increase fees to generate additional revenue, as the program is projected to under-collect revenue by approximately 40% in fiscal year 2010/2011 and thereafter. She explained that many program areas have become more costly (e.g., examination administration and enforcement costs), and these increased costs have resulted in a fund imbalance. Ms. Del Mugnaio referenced a proposal included in the meeting packets that documented a need for an increase in the hearing aid dispensers examination fees for both the written and practical examinations. She reported that, after conducting an analysis of actual examination costs (including staff time and respective salaries, examination development, occupational analysis, and actual costs to administer the examinations), the Board's existing fees of one-hundred dollars (\$100) for the written examination and two-hundred and eighty-five dollars (\$285) for the practical examination were not adequate to fund the Board's examination program. Ms. Del Mugnaio stated that in order to fund the examination program sufficiently, the Board would need to increase the examination fees to two-hundred and twenty-five dollars (\$225) for the written examination and five hundred dollars (\$500) for the practical examination. She indicated that such fees are not established by statute or regulation, but may be set by resolution of the Board, and she requested the Board's consideration of the proposed fee increase.

Mr. Manning inquired about the actual examination costs and how the costs were identified. He inquired which costs are set costs versus costs that may fluctuate or may be reduced by forced savings. He also inquired about the dollar amount noted for "examination expenditures" and asked about the breakdown of expenditures included under this heading.

Ms. Del Mugnaio responded and referenced the cost analysis document included in the Board packets, which provided estimates of staff resources and actual contractual expenses for the examination vendor to

administer the written hearing aid dispensers examination, as well as costs associated with the inter-agency agreement with the Department of Consumer Affairs Office of Examination Resources to provide examination development and validation services.

Ms. Grimes inquired about the number of times the Board must offer the hearing aid dispensers practical examination annually.

Ms. Del Mugnaio stated that the statute requires the Board to administer the examination at least twice annually; however, the Board has historically offered the practical examination three or four times per year, as there is typically a number of candidates waiting to take the examination in order to begin practicing hearing aid dispensing.

Mr. Sager stated that the Hearing Health Care Providers of CA (HHP) does not have an issue with increasing the examination fees.

Ms. Del Mugnaio indicated that the increase in examination costs would be noticed to the public before the next hearing aid dispensers practical examination, which is scheduled for early April 2011.

The Board discussed the proposed examination fee(s) increase and the additional revenue stream the new fees will provide to off-set the cost of administering the hearing aid dispensers written and practical examinations.

**M/S/C: Grimes/Green
Unanimous**

The Board resolved that the fees for the hearing aid dispensers examination shall be increased effectively immediately, raising the written examination fee from \$100 to \$225 and the practical examination fee from \$285 to \$500.

V. Report from the Department of Health Care Services Newborn Hearing Screening Program- Provider and Facility Standards, Screening Statistics, and Future Goals- (Program Representatives: Hallie Morrow, M.D., Jennifer Sherwood, Au.D.)

Vice Chairperson Grimes introduced the discussion item regarding the status of the Newborn Hearing Screening Program's (NHSP) standards, policies, and future goals. She identified herself as a longstanding California Childrens Services (CCS) provider and outlined four (4) general issues with the NHSP program for which she would like input from the NHSP representatives:

1. *Availability of uniform or standardized parent resource materials for deaf or hard of hearing children:* Ms. Grimes stated that she does not believe the state has met its mandate of publishing appropriate resource materials and, thus, was the impetus of Assembly Bill 2072, which was heard during the 2010 Legislative session.
2. *California lost-to-follow-up statistics:* Currently, the California statistics are not published on the Center for Disease Control's website; however, most all other states' statistics do appear. Statistics provided by the Department of Health Care Services (DHCS), as published on the DHCS website, indicate a 3.6% lost-to-follow-up average, which is drastically below the national average of 46%, as reported on the CDC website.
3. *Eligibility standards for CCS paneled providers:* Provider retention, removal of incompetent providers, and methods for educating paneled providers regarding standard of care issues.
4. *Referral patterns and practices:* Time frames for referrals from failed hospital screenings, to diagnostic evaluations, to intervention.

Hallie Morrow and Jennifer Sherwood addressed the Board and provided a response or information regarding the four (4) items outlined by Chairperson Grimes:

1. Hallie Morrow reported that the NHSP has been unsuccessful in developing wording for “uniform” parent resource materials, as not all interested parties can agree upon the information that should be included in a universal pamphlet. There is debate surrounding the methodology that should be recommended for children born deaf or hard of hearing. However, the NHSP does provide resource materials published by other governmental organizations upon request of a family. NACHEM materials are available to families through the various Hearing Coordination Centers (HHCs) throughout the state.
2. Hallie Morrow also explained that the national statistics for lost-to-follow-up represent the number of children that are not tracked by a state agency after an infant fails the initial hospital screening. California has a much lower rate of lost-to-follow-up because it employs the HHCs to track every infant who is recorded as failing a hospital screening. There are approximately 550,000 babies born in California hospitals each year. Approximately, 10,000 babies are referred for diagnostic evaluations at the time of hospital discharge. An estimated 1,000 babies that should be referred at the time of hospital discharge are not recorded. An estimated 12,000 babies are tracked by the HHCs at any given time; only 3.6% of babies are identified as lost-to-follow-up. If a family moves out of state after an infant fails a hospital re-screen or does not respond to the HHC, the case for that infant is closed and is not reported as a lost-to-follow-up case. The CDC’s statistics track only infants that require diagnostic testing or who were never provided out-patient screening, and their statistics do not capture data on out-patient re-screens, while California’s statistics include these data. Using the CDC’s formula, comparative data for California would reflect a 14.5% lost-to-follow-up rate.
3. Jennifer Sherwood provided information on provider qualifications. Individuals qualify as paneled providers under CCS by holding a valid, clear license and two-years of experience working with the pediatric population. Paneled providers work and provide services within approved facilities that are classified as level A, B, and C facilities based on available equipment and the experience of the providers employed at the facility. CCS is not an enforcement agency, but rather provides support and education to its providers. Any issues regarding competency should be reported to the Board for further investigation or disciplinary action. In 2009, the NHSP held a pediatric symposium as an educational outreach effort for its providers and is also considering holding webinars to provide further education and guidance in terms of program expectation.

Chairperson Grimes inquired about whether the NHSP is considering requiring some form of a prerequisite examination as a provider standard for pediatric audiologists, and suggested that the NHSP research the American Board of Audiology Pediatric Specialty Certification examination.

Jennifer Sherwood stated that a specialty certification should be a licensing standard and not mandated through the NHSP.

Chairperson Grimes recommended that a joint letter of the Board and the NHSP be sent to the American Board of Audiology to inquire about the prerequisites to take the pediatric specialty examination and whether the examination would be available to any licensed audiologist.

4. Jennifer Sherwood outlined referral patterns and backlogs. Delays in referrals to available clinics may be anywhere from three to four months, as there are a limited number of facilities and providers available to provide pediatric diagnostic services. HHCs will call large facilities to determine appointment availability and communicate

wait times to families so that infants may be seen by the facility with the earliest appointment available.

Jody Winzelberg commented on the provider access issues and stated that inadequate reimbursement to providers within the CCS system is a major contributing factor to the low number of providers. She indicated that a few years ago, the California Academy of Audiology, the DHCS-CCS, and the EDS, met with Assembly Member Dave Jones to try to flush out some of the reimbursement issues, error detection procedures, and general policies that made it difficult for providers to obtain authorizations and reimbursement for services provided under CCS. Ms. Winzelberg stated that she would be interested in the Board re-energizing these conversations, as she believes little has been done to address untimely and low reimbursement to providers. Ms. Winzelberg commented that she has heard discussions regarding Assembly Bill 2072 being reintroduced this year and stated that much of the dissention regarding the bill last year surrounded disagreement between providing services to hard of hearing children versus deaf children. She stated that she would like to appeal to the Department of Education to request the Department develop an unbiased informational pamphlet to provide to families with hard of hearing children, which would outline appropriate communication options.

Chairperson Grimes thanked the representatives from the DHCS for attending the meeting of the Board and for their concerted efforts managing the NHSP given the tremendous resource challenges.

VI. Executive Officer's Report

A. Status of Proposed Regulations

1. Dispensing Audiologists Renewal Fee/Continuing Professional Development Amendments (California Code of Regulations Sections -1399.157, 1399.160.3-1399.160.6)

Ms. Del Mugnaio reported that the regulations have been approved by State and Consumer Services Agency and that the emergency proposal will be submitted to the Office of Administrative Law within the next few weeks. She stated that the emergency regulations should take effect within approximately six (6) weeks.

2. Consumer Protection Enforcement Initiative (California Code of Regulations 1399.150.3, 1399.151, 1399.156, & 1399.156.5)

Ms. Del Mugnaio referenced the proposed regulations in the meeting packets and stated that while the Board had approved the language at a previous meeting, she had been advised by interested parties of changes to the language that should be presented to the Board for consideration. Ms. Del Mugnaio stated that CCR Sections 1399.130 and 1399.156 regarding unprofessional conduct have been amended to state that a licensee shall not be held responsible for civil settlements where a "gag clause" is enforced unless the licensee has some independent control over the terms of the settlement. She explained that in many instances, the licensee is not consulted or included in the negotiating of a civil settlement, yet is named as a party to the settlement.

Ms. Powell agreed that licensees should not be held accountable for settlements that they are not involved with in the terms of the settlement.

Ms. Kirchmeyer suggested that the Board consider striking the language "including, but not limited to" in CCR Section 1399.150.3 (a) regarding the delegation to the Executive Officer to accept default decisions, approve settlement agreements for revocation, and the surrender or interim suspension of the license, as the language may suggest the Executive Officer's authority extends beyond the decisions and agreements included in the section.

**M/S/C: Grimes/Danz
Unanimous**

The Board voted to approve the proposed regulations as amended and delegated to Ms. Del Mugnaio to notice the regulatory proposal.

B. Administration Transition Issues- Hiring Freeze/ Staff Recruitment/ Personnel Issues

Ms. Del Mugnaio stated that the Department and all boards and bureaus are still subject to the state hiring freeze, although there is some flexibility for employees of the Department, and the boards and bureaus within the Department, to transfer to other programs if the employee is transferring to a position within the same civil service classification.

Ms. Del Mugnaio reported that she is currently recruiting for a Staff Services Manager position and the Non-Sworn Investigator position and is considering applications from employees within the Department.

VII. Chairperson's Report

Report from the National Council of State Boards of Examiners for Speech-Language Pathology and Audiology (NCSB) Meeting 2010

Chairperson O'Connor provided a written report, which included topics from the NCSB meeting and the Department's Director Board Chair and Vice Chair Conference Call.

NCSB Conference issues included:

1. Regulations pertaining to telepractice
2. CE regulations pertaining to self study
3. Supervision of assistants/aides when providing services through telepractice

January 11th Director's Conference Call with Board Chairs items discussed were:

1. Transition to new Governor
 - The hiring freeze is still in place until Gov. Brown says otherwise.
 - The state budget released in January does not adversely impact the Department
 - Departments are asked to reduce cell phones by 50% and re-justify the use of state-issued credit cards.
 - Reorganization and consolidation of state agencies is being considered.
2. Continuing Competency
 - Podiatric Medicine has instituted a new model of continuing competency: CE plus a continuing competency exam or other options. There are multiple pathways to show continuing competency (e.g., peer review, Board certification exam, hospital privileges, etc.). Business and Professions Code 2496 (applicable to Podiatric Medicine) states that proof of competency must be demonstrated every two years.
 - The Department recommends that all boards research different models of continued competency.
3. BREEZE
 - Should be up and running by December 2012.
 - There is an interim solution to provide on-line license renewal payment until Breeze is available. There is a 2% fee charged to each Board for each renewal and the licensee pays \$1.00. Ms. Del Mugnaio indicated that the Board has made a request to be included in the interim program.
4. Performance Measure Regarding Enforcement. Department web site has data on each board.
5. Expert Consultants. New Guidelines for employing experts to serve in examination, licensing and enforcement capacities.

VIII. Practice Committee Reports

- A. Hearing Aid Dispensers Committee Report and Recommendations for Proposed Regulatory Amendments Continuing Professional Development Provisions, Proposed Regulations to Implement the Song Beverly Consumer Warranty Act, and Scope of Practice Limitations on Deep Insertion Hearing Aid Devices**

Mr. Manning provided an overview of the matters discussed at the Hearing Aid Dispensers Committee Meeting and outlined the recommendations of the Committee before the Board (included under the Hearing Aid Dispensers Committee Meeting Minutes).

M/S/C: Grimes/Murphy

The Board voted to adopt the recommendation of the Committee and approve the filing of the regulation amendments (California Code of Regulations Sections 1399.140 – 1399.143) regarding continuing education (CE) for hearing aid dispensers

M/S/C: Manning/Diaz

The Board voted to adopt the recommendation of the Committee to approve the draft regulation document as a discussion document for the legislative proposal to amend the Song Beverly Consumer Warranty Act.

Chairperson O'Connor requested that the matter regarding the hearing aid dispenser CE regulations be re-opened, as she was unclear as to the changes to the provisions of Section 1399.140(e) regarding CE waivers and grace periods.

Ms. Del Mugnaio explained that subsection (e) does not address waiver exemptions; instead it provides a one-year grace period for licensed hearing aid dispensers to make up deficient CE from the previous license renewal period. She explained that waiver exemptions are covered in a separate CCR Section, 1399.144.

M/S/C: Grimes/Green

The Board voted to re-open the Committee action and Board discussion regarding the proposed CE changes for hearing aid dispensers.

The Board discussed the difference between the grace period currently in regulation for hearing aid dispensers and waiver exemptions for substantiated hardships, which are also available to licensees.

Ms. Del Mugnaio stated that she is unaware of other healing arts boards that allow grace periods for deficiencies in CE.

Mr. Manning suggested that the issue regarding subsection (e) be addressed in a Committee meeting, thus respecting the process for discussions surrounding hearing aid dispensers license authorization.

Ms. Powell stated that the proposed regulations may be noticed and a hearing scheduled. The Committee will have another opportunity to revisit the policy issues surrounding the grace period prior to any final action.

M/S/C: Danz/Grimes

Oppose: Manning

The Board voted to approve the recommendation of the Committee to notice the proposed CE regulations for hearing aid dispensers, but voted to strike Section 1399.140(e) and eliminate a grace period for licensees to make-up deficient CE hours.

B. Speech-Language Pathology Committee Report and Recommendations Regarding Telepractice, Proposed Regulatory Amendments for Speech-Language Pathology Assistant

Field Work Requirement, and Status of the Proposal to Conduct a Standard Setting Study for the Test of English for International Communication (TOEIC) Examination

Chairperson O'Connor summarized the discussion from the Speech-Language Pathology Practice Committee Meeting (included under the Speech-Language Pathology Practice Committee Meeting Minutes).

M/S/C: Danz/Grimes

The Board voted to approve the recommendation of the Committee to notice the proposed regulations for speech-language pathology assistant field work hours and supervision (CCR Section 1399.170.1399.170.10, 1399.170.11, & 1399.170.15)

IX. Department of Consumer Affairs Director's Report

Kimberly Kirchmeyer addressed the Board on behalf of Director Brian Stiger:

- *Emergency regulations:* Reported that she was informed that the Board's emergency regulations for dispensing audiologists were approved by the State and Consumer Services Agency.
- *CPEI regulations:* The Board's Consumer Protection and Enforcement Initiative (CPEI) regulations were reviewed by the Department and are ready to file.
- *Hiring freeze:* The Administration indicated that the Department should continue to operate under the hiring freeze conditions. However, critical positions including CPEI positions will be forwarded to State and Consumer Services Agency for hiring freeze exemption consideration.
- *Cell phone reduction:* All agencies were required to reduce the number of cell phones allotted to their organization by fifty-percent (50%). The Board has met its reduction.
- *Transition issues:* Currently, there is not an Agency Secretary appointed to State and Consumer Services Agency. Mr. Brian Stiger has been asked by the Governor's Office to remain in his Director capacity until further notice.
- *Performance Measures:* These are posted on the Department's website for all boards/bureaus. Board members should review the measures.
- *Breeze Project:* Department is pursuing an integrated data system for licensing, enforcement, examinations, legislative reports, continuing education, etc. Several workshops are being held to prepare for the data conversion.
- *Senate Bill 1441-Uniform Standards for Substance Abusing Licensees:* All Boards are encouraged to incorporate the provisions of SB 1441 into their respective diversion programs or disciplinary guidelines.
- *Board meeting materials posted on the website:* Thanked the Board for making its materials available to the public on its website and for webcasting its meetings, as it provides greater public access to Board deliberations.
- *Expert Consultants:* Must be paid through personnel services contracts.
- *Continued Competency:* The Department will be holding a telephonic meeting to discuss the pathways for continued competency.

X. Legislation

Ms. Del Mugnaio provided the following written legislative report:

A. Amendments to 1793.02 Civil Code Regarding Warranty Provisions for Assistive Devices-Hearing Aids

The legislative proposal amending Civil Code Section 1793.02 was submitted to the Department early November 2010. The Department's Legislative and Regulatory Affairs Unit is assisting the Board with finding an author for the bill. However, the Board may need to work with the professional organizations to secure an author, as the proposal is not considered omnibus.

Ms. Peffers stated that the HHP is pursuing an author for the legislative proposal and will work with the Board and the California Academy of Audiology on the measure.

B. Merger of the Speech-Language Pathologist and Audiologist/Hearing Aid Dispensers Practice Act(s)

The Board is pursuing a legislative proposal to merge its Practice Acts for the Speech-Language Pathologist and Audiologist B&P Chapter 5.3 (Sections 2530 et.seq.) and the Hearing Aid Dispensers Chapter 7.5 (Sections 3300 et.seq.) pursuant to the merger of the two oversight bodies under AB 1535. Since dispensing audiologists are subject to many of the provisions of both Acts, and the authority to carry out the mandates of the professions is under one Board, it makes sense to merge the statutes for clarity in administering and enforcing the provisions. The Department is assisting the Board with this endeavor and submitting the measure as an omnibus proposal that may be carried by either the Senate Business Professions and Economic Development Committee or an independent author. Ms. Del Mugnaio is currently working with Legislative Counsel on the consolidation of some of the statutory provisions and the inclusion of others under one Article within the Business and Professions Code.

C. Entry Level Licensing Standards for Audiologists and 4th year Audiology Doctoral Students Completing the Required Professional Experience (Business and Professions Code Section 2532.25)

At its July 26, 2010 meeting, the Board discussed the issue of amending the entry-level licensure requirements for AuD students, as law currently requires a 12-month externship. This is problematic as some programs calculate completion of the 4th year in hours, not months, and the hours do not always total a full 12-month time period. If a student completes the externship early, the student is often forced to find other employment and supervision in order to complete the 12-month experience. Ms. Grimes had offered to work with the American Academy of Audiology to identify some standard in the number of hours required by university programs that would be accepted as a minimum standard for program accreditation. Chairperson Grimes indicated that, to date, the information is not available from the Academy, as a separate task force has been assigned to define the standards for the 4th year externship.

D. Other Legislation of Interest to the Board

No other legislation was discussed by the Board.

XI. Corporate and Employment Practices for Licensees

Ms. Del Mugnaio reviewed the existing provisions regarding the Knox Keene Act and the Business and Professions Code provisions regarding professional corporations and general law corporations. She stated that there are a number of challenges in interpreting existing statutes, as the issues of corporate practice versus employment relationships of various health care providers are complex. Ms. Del Mugnaio stated that the Department's Legal Office is in the process of preparing a legal opinion regarding the corporate practice and employment arrangements for Physical Therapists. She indicated that the legal opinion may assist the Board in determining whether statutory changes to its corporate practice provisions should be pursued.

Ms. Powell stated that many of the existing laws governing corporate structure may need to be revisited, as the provisions have not kept pace with the changes in the health care delivery system.

Ms. Del Mugnaio stated that the Board has a unique challenge in navigating unlawful employment arrangements, as speech-language pathologists and audiologists must practice under professional corporations, while hearing aid dispensers may be employed under general law corporations. She stated this is problematic, as there are a number of employment relationships between audiologists, hearing aid dispensers, and physicians where the "corporation" is employing the health care providers, but not all the

providers are licensed to dispense hearing aids, which is a violation of Business and Professions Code Section 655.2.

Ms. Powell suggested the Board review the legal opinion developed for the Physical Therapy Board once it's released and then revisit the discussion of amending its corporate practice provisions and employment arrangement restrictions.

XII. Licensing / Enforcement/Examination Statistical Data

The Board reviewed the statistical data as provided by staff and requested information regarding the gathering of statistical information.

Each program area was presented independently, and a thorough review of the data was facilitated by Board staff.

XIII. Public Comment on Items Not on the Agenda/ Future Agenda Items

A member of the public inquired about the enforcement process for subject matter experts to issue opinions regarding scope of practice issues and whether such opinions are public information.

Ms. Del Mugnaio stated that if the subject matter opinion were to be adopted by the Board and incorporated as a policy decision to be codified in regulation, the policy decision would be public information.

Ms. Winzelberg addressed the Board and stated that she is aware of a Medi-Cal trailer bill that will increase the hearing aid benefit to \$1,510 per year per device. She stated that the standard for replacing a hearing aid device is approximately every three (3) years and that the new language is incredibly costly to the state. Ms. Winzelberg commented that last year, audiology services were removed as a covered benefit under Medi-Cal and was presented as a necessary cost reduction for the state. She stated that removing audiology services as a covered benefit presents a serious consumer protection issue for elderly patients who desperately need such services, and that increasing the hearing aid benefit to an annual benefit is unnecessary and is cost prohibitive to the state.

A member of the public commented that in the past, courses on pediatric hearing loss or intervention have not been approved by the Hearing Aid Dispensers Bureau for CE credit and was curious as to why such courses would be denied.

Ms. Del Mugnaio indicated that she would need to research the specific courses in question to be able to provide an appropriate response.

XIV. Announcements- Future 2011 Board Meetings- July 14-15, 2011 Sacramento/ October 20-21, San Francisco Next Scheduled Board Meeting April 13-14, 2011 San Diego

Ms. O'Connor stated that the next scheduled Board meeting would be held in San Diego. The Board discussed the option of holding the Board meeting on a Thursday and Friday since furloughs were no longer an issue.

The Board confirmed the dates of the July and October meetings as noticed.

The April meeting was rescheduled to April 14-15, 2011 in San Diego.

VII. Adjournment

Chairperson O'Connor adjourned the meeting at 3:20 p.m.

DEPARTMENT OF CONSUMER AFFAIRS
Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board
Speech-Language Pathology and Audiology

BUDGET REPORT

FY 2010-11 Expenditure Projection

BASED ON MARCH 2011 CALSTARS REPORT

Month Number	9
Mo. Remaining	3

OBJECT DESCRIPTION	FY 2009-10		FY 2010-11					STRAIGHT LINE	METHODOLOGY
	ACTUAL EXPENDITURES (MONTH 13)	EXPENDITURES AS OF 3/31/2010	Final BUDGET ALLOTMENT	EXPENDITURES AS OF 3/31/2011	EXPENDITURE PROJECTIONS AT YEAR END	UNENCUMBERED BALANCE AT YEAR END			
PERSONAL SERVICES									
Salary & Wages	234,423	170,016	265,567	198,748	#REF!	#REF!	264,997	ROSTER	
Temp Help 907	18,928	15,803	14,007	9,721	#REF!	#REF!	12,961	ROSTER	
Bd/Comm (901,920)	1,200	1,200	5,854	3,000	6,400	-546	4,000	PRIOR YEAR	
Overtime	0	0	0	876	1,168	-1,168	1,168	STRAIGHT LINE	
Benefits	93,656	69,601	107,671	92,921	#REF!	#REF!	123,895	PY STAFF-BENEFIT RATIO	
Salary Savings	0	0	(23,293)	0	0	-23,293	0	BUDGET AMOUNT	
TOTAL PERS SVS	348,207	256,620	369,806	305,266	#REF!	#REF!	407,021		
OPERATING EXPENSES & EQUIPMENT									
Fingerprints	5,559	3,570	19,439	4,029	5,372	14,067	5,372	STRAIGHT LINE	
General Expense	8,167	5,031	23,136	4,048	8,167	14,969	5,397	PRIOR YEAR	
Minor Equipment 226	114	122	9,000	0	9,000	0	0	FULL BUDGET	
Printing	7,254	4,865	10,964	1,546	5,000	5,964	2,061	ESTIMATE	
Communication	9,501	2,620	6,374	2,646	8,000	-1,626	3,528	ESTIMATE	
Postage	15,150	12,979	2,096	5,193	10,000	-7,904	6,924	ESTIMATE	
Noc-Insurance	0	0	0	0	0	0	0	PRIOR YEAR	
Travel In State	11,858	7,969	13,118	1,027	5,000	8,118	1,120	ESTIMATE	
Travel Out of State	0	0	0	0	0	0	0	PRIOR YEAR	
Training	288	147	4,813	0	288	4,525	0	PRIOR YEAR	
Facilities Ops	59,297	58,237	64,576	60,697	60,697	3,879	80,929	YEAR TO DATE	
Alterations	0	0	0	0	0	0	0	PRIOR YEAR	
C&P Serv. Internal	0	0	2,753	0	0	2,753	0	PRIOR YEAR	
**C&P Serv. External	0	0	0	0	0	0	0	PRIOR YEAR	
DEPARTMENTAL PRORATA									
DP Billing (OIS)	61,860	51,921	71,264	50,482	71,264	0	67,309	FULL BUDGET	
Indirect Dist. Cost	41,795	31,401	42,768	32,076	42,768	0	42,768	FULL BUDGET	
DOI - Prorata	1,569	1,269	1,655	1,241	1,655	0	1,655	FULL BUDGET	
Public Affairs	1,921	2,907	3,361	2,521	3,361	0	3,361	FULL BUDGET	
CCED	2,040	1,530	2,044	1,532	2,044	0	2,043	FULL BUDGET	
OPP Support Serves	0	0	0	0	0	0	0	FULL BUDGET	
Interagency Agreement (IAC)	0	0	93	0	93	0	0	FULL BUDGET	
Share Services (MBC)	0	0	0	0	0	0	0	FULL BUDGET	
CONSOLIDATED DATA CENTERS									
Consolidated Data Cntr (Teale)	588	2,000	5,460	2,000	588	4,872	2,667	PRIOR YEAR	
DATA PROCESSING									
DP Maint & supplies (432,436)	10	10	3,806	0	10	3,796	0	PRIOR YEAR	
IT Hardware	0	0	0	0	0	0	0	PRIOR YEAR	
Electric Waste/Recycle	0	0	0	0	0	0	0	PRIOR YEAR	
CENTRAL ADMINISTRATIVE SVC									
Central Adm. Services (Statewide Pror)	34,942	26,207	27,014	20,261	27,014	0	27,015	FULL BUDGET	
EXAMS									
Exam supplies & freight	0	0	0	0	0	0	0	PRIOR YEAR	
Exam Site rental	0	0	0	0	0	0	0	PRIOR YEAR	
Expert Exam	0	0	0	0	0	0	0	PRIOR YEAR	
Exam Contracts	0	0	0	0	0	0	0	PRIOR YEAR	
Expert Examiners (SME)	500	0	0	10,864	10,864	-10,864	14,485	YEAR TO DATE	
ENFORCEMENT									
Attorney General	41,465	35,085	48,572	24,300	#REF!	#REF!	32,400	ESTIMATE	
Off of Admin Hearings	3,088	993	5,112	690	3,088	2,024	920	PRIOR YEAR	
Evidence/Witness	12,210	4,700	6,428	2,338	10,000	-3,572	3,117	PRIOR YEAR	
Court Reporter Serves	700	0	0	0	700	-700	0	PRIOR YEAR	
Div of Investigations	0	0	34,933	26,200	34,933	0	34,933	FULL BUDGET	
MAJOR EQUIPMENT									
Major Equipment	0	0	0	0	0	0	0	YEAR TO DATE	
OTHER									
MOU with VET MED (SSA - 5 Months)	0	0	0	0	0	0	0	ESTIMATE	
Tort Payment	0	0	0	0	0	0	0	PRIOR YEAR	
Total OE & E	319,876	253,563	408,779	253,691	#REF!	#REF!	338,006		
TOTAL EXPENDITURES	668,083	510,183	778,585	558,957	#REF!	#REF!	745,027		
Scheduled Reimbursements	(6,426)	(8,355)	(24,000)	(9,674)	(9,674)	(14,326)	(16,584)	YEAR TO DATE	
Unscheduled Reimbursements	(8,089)	(1,150)	0	(6,527)	(6,527)	6,527	(11,189)	YEAR TO DATE	
Total Reimbursements	(14,515)	(9,505)	(24,000)	(16,201)	(16,201)	(7,799)	(27,773)		
NET APPROPRIATION	653,568	500,678	754,585	542,756	#REF!	#REF!	689,481		

NOTES/ASSUMPTIONS

1. CY expenditures include YTD+ Encumbrances

TOTAL PROJECTED DEFICIT/SURPLUS	#REF!
ADJUSTED DEFICIT/SURPLUS:	#REF!

DEPARTMENT OF CONSUMER AFFAIRS

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

Speech-Language Pathology and Audiology

REVENUE BUDGET REPORT

FY 2010-11 Expenditure Projection

BASED ON MARCH 2011 CALSTARS REPORT

Month Number	9
Mo. Remaining	3

REVENUE FOR FY 2010-11					% OF ESTIMATE COLLECTED	PRIOR YEAR FY 2009-10
CATEGORY	CODE	ESTIMATED	YTD	+ / -		
FINGERPRINTS	991937.01	\$ 22,000.00	\$ 4,894.00	(17,106.00)	22%	6,426.00
PUBLIC SALES	991937.02	\$ 2,000.00	\$ 4,780.00	2,780.00	239%	6,675.00
UNSCHEDULED	995988	\$ -	\$ 6,527.08	6,527.08	-	1,414.44
	TOTAL:	\$ 24,000.00	\$ 16,201.08	(7,798.92)	68%	14,515.44
OTHER	125600	\$ 15,850.00	\$ 8,210.00	(7,640.00)	52%	16,480.00
INITIAL APPLICATION	125700	\$ 74,810.00	\$ 55,671.00	(19,139.00)	74%	89,842.00
RENEWAL	125800	\$ 746,141.00	\$ 567,440.00	(178,701.00)	76%	715,095.00
DELINQUENT	125900	\$ 15,850.00	\$ 11,078.00	(4,772.00)	70%	14,224.00
INTEREST	150300	\$ 10,000.00	\$ 2,952.97	(7,047.03)	30%	7,939.81
MISCELLANEOUS	161000	\$ -	\$ 461.00	461.00	-	145.00
MISCELLANEOUS	161400	\$ -	\$ 260.00	260.00	-	215.00
	TOTAL:	\$ 862,651.00	\$ 646,072.97	(216,578.03)	75%	843,940.81
	TOTAL:	\$ 886,651.00	\$ 662,274.05	(224,376.95)	75%	858,456.25

DEPARTMENT OF CONSUMER AFFAIRS
Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board
Hearing Aid Dispensers

BUDGET REPORT
FY 2010-11 Expenditure Projection
BASED ON MARCH 2011 CALSTARS REPORT

Month Number	9
Mo. Remaining	3

OBJECT DESCRIPTION	FY 2009-10		FY 2010-11					STRAIGHT LINE	METHODOLOGY
	ACTUAL EXPENDITURES (MONTH 13)	EXPENDITURES AS OF 3/31/2010	Final BUDGET ALLOTMENT	EXPENDITURES AS OF 3/31/2011	EXPENDITURE PROJECTIONS AT YEAR END	UNENCUMBERED BALANCE AT YEAR END			
PERSONAL SERVICES									
Salary & Wages	170,036	128,404	210,945	125,246	#REF!	#REF!	166,995	ROSTER	
Temp Help 907	1,375	1,375	12,333	0	#REF!	#REF!	0	ROSTER	
Bd/Comm (901,920)	700	700	5,822	0	0	5,822	0	ESTIMATE	
Allocated Proctor Comp	1,242	1,007	0	903	0	0	0	ESTIMATE	
Overtime	1,677	77	0	749	0	0	999	ESTIMATE	
Benefits	65,140	52,212	80,345	WORKFORCE CAP OF \$12,333 BUILT IN ON WORKSHEET		#REF!	65,259	PY STAFF BENEFIT RATIO	
Salary Savings	0	0	(18,736)	0	0	-18,736	0	FULL BUDGET	
TOTAL PERS SVS	240,170	183,775	290,709	175,842	#REF!	#REF!	233,252		
OPERATING EXPENSES & EQUIPMENT									
Fingerprints	542	287	9,000	0	542	8,458	0	PRIOR YEAR	
General Expense	8,505	3,311	18,242	1,039	5,000	13,242	1,385	ESTIMATE	
Minor Equipment 226	19,784	19,784	3,000	0	3,000	0	0	FULL BUDGET	
Printing	1,893	1,128	12,429	899	1,199	11,230	1,199	STRAIGHT LINE	
Communication	3,008	2,431	8,433	999	3,008	5,425	1,332	PRIOR YEAR	
Postage	7,503	5,329	12,429	9,269	12,359	70	12,359	STRAIGHT LINE	
Noc-Insurance	0	0	0	0	0	0	0	PRIOR YEAR	
Travel In State	8,997	4,059	23,120	1,048	5,000	18,120	1,143	ESTIMATE	
Travel Out of State	0	0	0	0	0	0	0	PRIOR YEAR	
Training	0	0	3,489	0	0	3,489	0	PRIOR YEAR	
Facilities Ops	48,220	43,214	47,549	43,376	43,376	4,173	57,835	YEAR TO DATE	
Alterations	0	0	0	0	0	0	0	PRIOR YEAR	
C&P Serv. Internal	0	0	35,137	0	35,137	0	0	FULL BUDGET	
**C&P Serv. External	0	0	0	0	0	0	0	PRIOR YEAR	
DEPARTMENTAL PRORATA									
DP Billing (OIS)	38,932	31,221	36,403	26,765	36,403	0	35,687	FULL BUDGET	
Indirect Dist. Cost	55,319	41,562	44,357	33,267	44,357	0	44,356	FULL BUDGET	
DOI - Prorata	1,257	1,017	974	730	974	0	973	FULL BUDGET	
Public Affairs	1,532	2,322	1,994	1,495	1,994	0	1,993	FULL BUDGET	
CCED	54,302	43,380	78,553	58,653	78,553	0	78,204	FULL BUDGET	
OPP Support Serves	0	0	0	0	0	0	0	FULL BUDGET	
Interagency Agreement (IAC)	32,178	32,210	99,351	32,210	99,351	0	42,947	FULL BUDGET	
IA Share Services	0	0	96	0	96	0	0	FULL BUDGET	
CONSOLIDATED DATA CENTERS									
Consolidated Data Cntr (Teale)	504	6,000	2,555	6,000	504	2,051	8,000	PRIOR YEAR	
DATA PROCESSING									
DP Maint & supplies (432,436)	0	0	13,146	0	0	13,146	0	PRIOR YEAR	
IT Hardware	0	0	0	0	0	0	0	PRIOR YEAR	
Electric Waste/Recycle	0	0	0	0	0	0	0	PRIOR YEAR	
CENTRAL ADMINISTRATIVE SVC									
Central Adm. Services (Statewide Prorata)	22,692	17,019	25,837	19,378	25,837	0	25,837	FULL BUDGET	
EXAMS									
Exam Rent - State Owned	1,539	1,615	0	0	1,539	-1,539	0	PRIOR YEAR	
Exam Rent - Non State	0	0	7,663	0	0	7,663	0	PRIOR YEAR	
Administrative - Ext S	15,250	15,250	25,542	15,250	25,542	0	20,333	FULL BUDGET	
C/P Svs - Expert Exam	0	0	37,913	0	0	37,913	0	PRIOR YEAR	
C/P Svs - Ext Sub Ma	38,885	23,337	0	10,163	38,885	-38,885	13,551	PRIOR YEAR	
ENFORCEMENT									
Attorney General	39,318	20,986	41,995	11,088	#REF!	#REF!	14,784	ESTIMATE	
Off of Admin Hearings	4,087	3,759	16,637	0	4,087	12,550	0	PRIOR YEAR	
Evidence/Witness	560	0	1,277	0	560	717	0	PRIOR YEAR	
Court Reporter Serves	1,000	0	0	0	1,000	-1,000	0	PRIOR YEAR	
Div of Investigations	146,512	120,465	190,858	143,143	190,858	0	190,857	FULL BUDGET	
MAJOR EQUIPMENT									
Major Equipment	0	0	5,000	0	5,000	0	0	FULL BUDGET	
OTHER									
Vehicle Operations	0	0	15,000	0	5,000	10,000	0	ESTIMATE	
Tort Payment	0	0	0	0	0	0	0	YEAR TO DATE	
Total OE & E	552,319	439,686	817,979	414,772	#REF!	#REF!	552,775		
TOTAL EXPENDITURES	792,489	623,461	1,108,688	590,614	#REF!	#REF!	786,027		
Scheduled Reimbursements	(392)	(306)	(9,000)	(251)	(251)	(8,749)	(430)	YEAR TO DATE	
Unscheduled Reimbursements	(3,100)	(2,375)	0	(5,996)	(5,996)	5,996	(10,279)	YEAR TO DATE	
Total Reimbursements	(3,492)	(2,681)	(9,000)	(6,247)	(6,247)	(2,753)	(10,709)		
NET APPROPRIATION	788,997	620,780	1,099,688	584,367	#REF!	#REF!	#REF!		

NOTES/ASSUMPTIONS

1. CY expenditures include YTD+ Encumbrances

TOTAL PROJECTED DEFICIT/SURPLUS	#REF!
ADJUSTED DEFICIT/SURPLUS:	#REF!

DEPARTMENT OF CONSUMER AFFAIRS

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

Hearing Aid Dispensers

REVENUE BUDGET REPORT

FY 2010-11 Expenditure Projection

BASED ON MARCH 2011 CALSTARS REPORT

Month Number	9
Mo. Remaining	3

REVENUE FOR FY 2010-11					% OF ESTIMATE COLLECTED	FY 2009-10
CATEGORY	CODE	ESTIMATED	YTD	+ / -		Actual
SCHEDULED INTERNA	991913 00	\$ 9,000.00	\$ -	(9,000.00)	-	0.00
FINGERPRINTS	991937 01	\$ -	\$ 16.00	16.00	-	392.00
PUBLIC SALES	991937 02	\$ -	\$ 235.00	235.00	-	3,100.00
UNSCHEDULED	995988	\$ -	\$ 5,996.16	5,996.16	-	0.00
	TOTAL:	\$ 9,000.00	\$ 6,247.16	(2,752.84)	69%	3,492.00
OTHER	125600	\$ 2,000.00	\$ 1,370.00	(630.00)	69%	1,575.00
INITIAL APPLICATION	125700	\$ 134,000.00	\$ 89,640.00	(44,360.00)	67%	139,790.00
RENEWAL	125800	\$ 385,000.00	\$ 308,550.00	(76,450.00)	80%	400,583.00
DELINQUENT	125900	\$ 5,000.00	\$ 3,100.00	(1,900.00)	62%	4,500.00
INTEREST	150300	\$ 12,000.00	\$ 2,417.05	(9,582.95)	20%	8,077.17
MISCELLANEOUS	161000	\$ -	\$ 310.00	310.00	-	200.00
MISCELLANEOUS	161400	\$ -	\$ -	0.00	-	175.00
	TOTAL:	\$ 538,000.00	\$ 405,387.05	(132,612.95)	75%	554,900.17
	TOTAL:	\$ 547,000.00	\$ 411,634.21	(135,365.79)	75%	558,392.17

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

TITLE 16 CALIFORNIA CODE OF REGULATIONS

DIVISION 13.3

**ARTICLE 2
APPLICATIONS**

§ 1399.110. Applications.

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

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

**ARTICLE 6
ENFORCEMENT**

§ 1399.130. Violations

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

- (a) Commission of an act of sexual abuse or misconduct.
- (b) To the extent a licensee has control over the terms of an agreement; including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:
 - (1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.
 - (2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.
- (c) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel.

This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

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

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

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

(2) The arrest of the licensee.

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

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

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

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

§ 1399.130.1. Required Actions Against Registered Sex Offenders

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

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

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

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

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to deny or discipline a licensee under any other provision of state law.

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

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

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

1399.131. Disciplinary Guidelines.

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

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

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

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

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

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

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

NOTE: Authority cited: Section 3328, Business and Professions Code; Sections 11400.20 and 11425.50(e), Government Code. Reference: Sections 729, 3400,

3401, 3402 and 3403, Business and Professions Code; and Sections 11400.20, ~~and 11425.50(e), and 11500~~, Government Code; and Section 44010, Education Code.

DIVISION 13.4

ARTICLE 1 GENERAL PROVISIONS

§ 1399.150.3. Delegation of Functions.

(a) Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer of the board, ~~or in his or her absence, the executive director of the Medical Board~~, all functions necessary to the dispatch of the board in connection with investigative and administrative proceedings under the jurisdiction of the board including, the ability to accept default decisions and the authority to approve settlement agreements for the revocation, surrender or interim suspension of a license.

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

NOTE: Authority cited: Section 2531.95, Business and Professions Code.
Reference: Sections 2531.4 and 2531.5, Business and Professions Code.

ARTICLE 2 APPLICATION

§ 1399.151. Applications for License.

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

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

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

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

(e) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice speech-language pathology or audiology safely because the applicant's ability to practice may be impaired due to mental or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such

examination. An applicant's failure to comply with the requirement shall render his or her application incomplete. The report of the evaluation shall be made available to the applicant. If after receiving the evaluation report the board determines that the applicant is unable to safely practice, the board may deny the application.

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

ARTICLE 6 DISCIPLINARY GUIDELINES

1399.155 Disciplinary Guidelines.

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

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

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

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

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

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

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

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

ARTICLE 7
DENIAL, SUSPENSION AND REVOCATION OF LICENSURE

§ 1399.156. Unprofessional Conduct.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The arrest of the licensee.

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

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

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

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

§ 1399.156.5. Required Actions Against Registered Sex Offenders

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

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.

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

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

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

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

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

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

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

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board is proposing to take the action described in the Informative Digest. No public hearing has been scheduled on the proposed action. However, any interested person or such person's duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at its office no later than 5:00 p.m. on June 27, 2011, or must be received by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at the hearing. The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

Business and Professions Code section 2531.02 mandates that protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

This proposal would make specific regulatory changes to enhance the Board's mandate

of consumer protection.

Division 13.3 Hearing Aid Dispensers: Adopts Sections 1399.110, 1399.130, and 1399.130.1 and Amends Section 1399.131

Division 13.4 Speech-Language Pathology and Audiology: Amends Sections 1399.150.3, 1399.151, 1399.155, and 1399.156 and Adopts Section 1399.156.5

Amends Section 1399.150.3

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

Adopts Section 1399.110; Amends Section 1399.151

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

Adopts Sections 1399.130 ,1399.130.1 & 1399.156.5; Amends Sections 1399.131, 1399.155, & 1399.156.

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

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

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

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

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

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

AND

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

Impact on Jobs/New Businesses:

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

The Board does not license businesses or small businesses; rather, it licenses individuals to practice as licensed speech-language pathologists, audiologists and hearing aid dispensers. Licensees may work for businesses and, thus, businesses may be indirectly impacted if an individual licensee is affected by the proposed regulation by, for example, having his or her license revoked or otherwise disciplined pursuant to the proposed regulations. The Board has approximately 17,000 licensees.

Cost Impact on Representative Private Person or Business:

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

To the extent that this proposal potentially increases the penalties for individual

licensees, an economic impact could occur with the fees licensees may pay for attorney services. The fees would vary depending on the complexity, and amount of time an attorney would devote to a case.

Additionally, applicants who would be required to submit to medical or mental evaluations may incur costs for these evaluations, costing on average of \$1,000.

There will be no economic impact on licensees who do not violate the law.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

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

CONSIDERATION OF ALTERNATIVES

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

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 2005 Evergreen Street, Suite 2100, Sacramento, California 95815 or on the Board's website: www.speechandhearing.ca.gov.

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

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

below.

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

CONTACT PERSON

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

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

The backup contact person is:

Name: Cynthia Alameda
Address: 2005 Evergreen Street, Suite 2100
Sacramento, CA 95815
Telephone No.: (916) 263-2291 Fax No.: (916) 263-2668
E-Mail Address: Cynthia.alameda@dca.ca.gov

Website Access : Materials regarding this proposal can be found at:
www.speechandhearing.ca.gov.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed action

Subject Matter of Proposed Regulations: Enforcement Program Enhancements

Sections Affected:

Division 13.3 Hearing Aid Dispensers: Adopts Sections 1399.110, 1399.130, and 1399.130.1 and Amends Section 1399.131

Division 13.4 Speech-Language Pathology and Audiology: Amends Sections 1399.150.3, 1399.151, 1399.155, and 1399.156 and Adopts Section 1399.156.5

Introduction

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

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

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

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

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

Business and Professions Code Section 2531.02 mandates that protection of the public shall be the highest priority of the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other

interests sought to be promoted, the protection of the public shall be paramount.

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

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

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

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

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

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

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

Specific Purpose of each adoption, amendment, or repeal:

1. Amends Section 1399.150.3. Delegation of Functions:

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

After an Accusation is filed against a licensee, the respondent has fourteen days to file a Notice of Defense. If the respondent does not file a Notice of Defense, then a Default Decision is granted. If the respondent files a Notice of Defense, the matter then moves to the Office of Administrative Hearings, which schedules a pre-hearing conference and

a formal hearing. A Proposed Stipulated Decision may be developed either at the pre-hearing conference or at the formal hearing. Additionally, the respondent may also elect to voluntarily surrender the license via a Stipulated Settlement.

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

Factual Basis/Rationale

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

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

2. Adopts Sections 1399.110. Applications; Amends Section 1399.151. Applications for License:

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

Factual Basis/Rationale

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

3. Amends Section 1399.131 and 1399.155. Disciplinary Guidelines:

Existing regulations allow that when reaching a decision on a disciplinary action under the Administrative Procedures Act, the Board shall consider the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board's Disciplinary Guidelines.

Deviation from the guidelines and orders, including standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of a particular case warrant such deviation.

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

Factual Basis/Rationale

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

4. Adopts Sections 1399.130.1 and 1399.156.5. Required Actions Against Registered Sex Offenders.

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

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

Factual Basis/Rationale

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

5. Adopts Section 1399.130. Violations and Amends Section 1399.156. Unprofessional conduct.

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

withdraw a complaint the party has filed with the Board.

Factual Basis/Rationale

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

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

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

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

Patient medical records can only be obtained under two circumstances: 1) the patient has given written authorization for release of the records to the Board; and 2) the Board or the Attorney General has sought a court order and the court has issued a subpoena mandating the release of the records. Under both circumstances, penalties would apply if the records are not supplied by those who have both possession and control over the records.

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

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

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

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

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

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

Underlying Data

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

Business Impact

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

The Board does not license businesses or small businesses; rather, it licenses individuals to practice as licensed speech-language pathologists, audiologists and hearing aid dispensers. Licensees may work for businesses and, thus, businesses may be indirectly impacted if an individual licensee is affected by the proposed regulation by, for example, having his or her license revoked or otherwise disciplined pursuant to the proposed regulations. The Board has approximately 17,000 licensees.

Specific Technologies or Equipment

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

Consideration of Alternatives

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

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

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



EXCERPTS FROM THE CALIFORNIA BUSINESS AND PROFESSIONS CODE FOR SPEECH-LANGUAGE PATHOLOGY ASSISTANT

2538. A person seeking approval as a speech-language pathology assistant shall make application to the board for that approval.

2538.1. (a) The board shall adopt regulations, in collaboration with the State Department of Education, the Commission on Teacher Credentialing, and the Advisory Commission on Special Education, that set forth standards and requirements for the adequate supervision of speech-language pathology assistants.

(b) The board shall adopt regulations as reasonably necessary to carry out the purposes of this article, that shall include, but need not be limited to, the following:

(1) Procedures and requirements for application, registration, renewal, suspension, and revocation.

(2) Standards for approval of Associate Degree Speech-Language Pathology Assistant training programs based upon standards and curriculum guidelines established by the National Council on Academic Accreditation in Audiology and Speech-Language Pathology, or the American Speech-Language-Hearing Association, or equivalent formal training programs consisting of two years of technical education, including supervised field placements.

(3) Standards for accreditation of a Speech-Language Pathology Assistant Training program's institution by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges, or the Senior College Commission of the Western Association of Schools and Colleges, or equivalent accreditation.

(4) The scope of responsibility, duties, and functions of speech-language pathology assistants, that shall include, but not be limited to, all of the following:

(A) Conducting speech-language screening, without interpretation, and using screening protocols developed by the supervising speech-language pathologist.

(B) Providing direct treatment assistance to patients or clients under the supervision of a speech-language pathologist.

(C) Following and implementing documented treatment plans or protocols developed by a supervising speech-language pathologist.

(D) Documenting patient or client progress toward meeting established objectives, and reporting the information to a supervising speech-language pathologist.

(E) Assisting a speech-language pathologist during assessments, including, but not limited to, assisting with formal documentation, preparing materials, and performing clerical duties for a supervising speech-language pathologist.

(F) When competent to do so, as determined by the supervising speech-language pathologist, acting as an interpreter for non-English-speaking patients or clients and their family members.

(G) Scheduling activities and preparing charts, records, graphs, and data.

(H) Performing checks and maintenance of equipment, including, but not limited to, augmentative communication devices.

(I) Assisting with speech-language pathology research projects, in-service training, and family or community education.

The regulations shall provide that speech-language pathology assistants are not authorized to conduct evaluations, interpret data, alter treatment plans, or perform any task without the express knowledge and approval of a supervising speech-language pathologist.

(5) The requirements for the wearing of distinguishing name badges with the title of speech-language pathology assistant.

(6) Minimum continuing professional development requirements for the speech-language pathology assistant, not to exceed 12 hours in a two-year period. The speech-language pathology assistant's supervisor shall act as a professional development advisor. The speech-language pathology assistant's professional growth may be satisfied with successful completion of state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication and related disorders.

(7) Minimum continuing professional development requirements for the supervisor of a speech-language pathology assistant.

(8) The type and amount of direct and indirect supervision required for speech-language pathology assistants.

(9) The maximum number of assistants permitted per supervisor.

(10) A requirement that the supervising speech-language pathologist shall remain responsible and accountable for clinical judgments and decisions and the maintenance of the highest quality and standards of practice when a speech-language pathology assistant is utilized.

2538.3. (a) A person applying for approval as a speech-language pathology assistant shall have graduated from a speech-language pathology assistant associate of arts degree program, or equivalent course of study, approved by the board. A person who has successfully graduated from a board approved bachelor's degree program in speech-language pathology or communication disorders shall be deemed to have satisfied an equivalent course of study.

2538.5. This article shall not be construed to limit the utilization of a speech aide or other personnel employed by a public school working under the direct supervision of a credentialed speech-language pathologist as set forth in subdivision (c) of Section 3051.1 of Title 5 of the California Code of Regulations.

2538.7. (a) No person who is not registered as a speech-language pathology assistant shall utilize the title speech-language pathology assistant or a similar title that includes the words speech or language when combined with the term assistant.

(b) No person who is not registered as a speech-language pathology assistant shall perform the duties or functions of a speech-language pathology assistant, except as provided by this chapter.

TITLE 16 CALIFORNIA CODE OF REGULATIONS SPEECH-LANGUAGE PATHOLOGY ASSISTANT

1399.170. Definitions.

As used in this article:

(a) "Accountability" means being legally responsible and answerable for actions and inaction's of self or others during the performance of a task by the speech-language pathology assistant.

(b) "Client" shall have the same meaning and effect as the term "patient" and "student," when referring to services provided in a school setting, for purposes of interpreting the provisions in this Article.

(c) "Direct supervision" means ~~on-site~~ observation and guidance by the supervising speech-language pathologist provided on-site or via electronic means, while a clinical activity is performed by the speech-language pathology assistant. Direct supervision performed by the supervising speech-language pathologist may include, but is not limited to, the following: observation of a portion of the screening or treatment procedures performed by the speech-language pathology assistant, coaching the speech-language pathology assistant, and modeling for the assistant.

(d) "Immediate supervision" means the supervising speech-language pathologist is physically present during services provided to the client by the speech-language pathology assistant.

(e) "Indirect supervision" means the supervising speech-language pathologist is not at the same facility or in close proximity to the speech-language pathology assistant, but is available to provide supervision by electronic means. Indirect supervision activities performed by the supervising speech-language pathologist may include, but are not limited to, demonstration, record review, review, and evaluation of audio or video-taped sessions, interactive television, and supervisory conferences that may be conducted by telephone or electronic mail.

(f) "Medically fragile" is the term used to describe a client that is acutely ill and in an unstable condition and if treated by a speech-language pathology assistant, immediate supervision by a speech-language pathologist is required.

(g) "Screening" is a pass-fail procedure to identify, without interpretation, clients who may require further assessment following specified screening protocols developed by the supervising speech-language pathologist.

(h) "Supervision" for the purposes of this article, means the provision of direction and evaluation of the tasks assigned to a speech-language pathology assistant. Methods for providing supervision include direct supervision, immediate supervision, and indirect supervision.

(i) "Support personnel" means individuals who, following academic and/or on-the-job training, perform tasks as prescribed, directed, and supervised by a speech-language pathologist. There are different levels of support personnel based on training and scope of responsibilities.

1399.170.1. Responsibilities, Duties, and Functions of a Speech-Language Pathology Assistant

(a) A speech-language pathology assistant shall be limited to the responsibilities, duties, and functions as provided in Section 2538.1 of the Code.

(b) A speech-language pathology assistant shall disclose while working, his or her name and registration status, as granted by the state, on a name tag in at least 18-point type.

1399.170.2. Types of Supervision Required for Duties Performed by a Speech-Language Pathology Assistant

(a) Duties performed by the speech-language pathology assistant that require immediate supervision may include, but are not limited to, any direct client activity involving medically fragile patients. In such instances, the speech-language pathology assistant shall act only under the direction of the supervisor.

(b) Duties performed by the speech-language pathology assistant that require direct supervision may include, but are not limited to, any new screening or treatment activity that the assistant has been trained to perform by the supervisor, but has not yet been performed by the speech-language pathology assistant in direct client care.

(c) Duties performed by the speech-language pathology assistant that require indirect supervision may include, but are not limited to, the following:

(1) Screening or treatment activities where the supervisor has previously given instructions as to how to perform the task, has observed the assistant in the conduct of these activities, and is satisfied that the activities can be competently performed by the speech-language pathology assistant, i.e., repetitive drill exercises, generalization or carryover activities;

(2) Clerical tasks such as record keeping, materials preparation, scheduling, equipment maintenance; and,

(3) Other non-client care activities.

1399.170.3. Activities, Duties, and Functions Outside the Scope of Responsibilities of a Speech-Language Pathology Assistant.

A speech-language pathology assistant may not conduct evaluations, interpret data, alter treatment plans, or perform any task without the express knowledge and approval of a supervising speech-language pathologist. The speech-language pathology assistant may not perform any of the following functions:

(a) Participate in parent conferences, case conferences, or inter-disciplinary team conferences without the supervising speech-language pathologist or another speech-language pathologist being present;

(b) Provide counseling or advice to a client or a client's parent or guardian which is beyond the scope of the client's treatment;

(c) Sign any documents in lieu of the supervising speech-language pathologist, i.e., treatment plans, client reimbursement forms, or formal reports;

(d) Discharge clients from services;

(e) Make referrals for additional services;

(f) Unless required by law, disclose confidential information either orally or in writing to anyone not designated by the supervising speech-language pathologist;

(g) Represent himself or herself as a speech-language pathologist; and,

(h) Perform procedures that require a high level of clinical acumen and technical skill, i.e., vocal tract prosthesis shaping or fitting, vocal tract imaging, and oropharyngeal swallow therapy with bolus material.

1399.170.4. Application for Approval of Speech-Language Pathology Assistant Training Programs.

(a) To be eligible for approval by the Board as a speech-language pathology assistant training program (hereinafter referred to as "program"), the sponsoring institution shall be accredited by the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.

(b) An educational institution seeking approval of a speech-language pathology assistant program shall:

(1) Notify the Board in writing, by submitting a request from the officially designated representative of the sponsoring institution and the speech-language pathology assistant program director, of who must hold valid and clear license in speech-language pathology or equivalent credentials, of its intent to offer a new program.

(2) No later than six (6) months prior to the enrollment of students, submit a formal proposal to the Board demonstrating how the program will meet the requirements of Sections 1399.170.5. through 1399.170.10. The Board, at its sole discretion, may retroactively approve programs that enrolled students prior to the effective date of the regulations.

(c) The Board shall review the request and formal proposal and may thereafter grant or deny approval. The Board may request additional information to evaluate the request for approval and shall notify the program of its decision in writing within sixty (60) days from receipt of all requested documents.

(d) A material misrepresentation by the program of any information required to be submitted to the Board may be grounds for denial of approval or removal of the program from the approved list.

1399.170.5. Approval Requirements for Programs

(a) In order for the program to be approved by the Board or to retain its approval, it shall comply with all requirements set forth in this article.

(b) The letter of approval shall be returned to the Board when the program's approval has been revoked.

1399.170.6. Requirements of the Sponsoring Institution.

(a) Responsibilities of the sponsoring institution and of each field work site shall be clearly established by formal agreement or memorandum of understanding.

(b) The sponsoring institution shall assume primary responsibility for receiving and processing applications for student admissions, curriculum planning, selection of course content, coordination of classroom teaching and supervised field work, appointment of faculty, and granting the completion certificate or degree, or otherwise documenting satisfactory completion of the program.

(c) Student records including admission, enrollment, academic performance directed observation, field work clock hours, and demonstration of field work competencies shall be maintained by the sponsoring institution according to its policies. Grades and credits for courses must be recorded on students' transcripts and shall be maintained by the sponsoring institution. Hours for field work experiences and supervision shall be recorded and documented by supervisory staff.

(d) The program director of the sponsoring institution shall be responsible for ensuring that the scope of responsibilities delegated to students during field work experiences are appropriate to the training received and the clients assigned, and consistent with the American Speech-Language-Hearing Association's Guidelines for the Training, Credentialing, Use, and Supervision of Speech-Language Pathology Assistants (1996, Spring ASHA 2004), incorporated herein by reference, and that all approved criteria for speech-language pathology assistant training has been met.

1399.170.7. Administration and Organization of the Program.

(a) There shall be a written statement of program objectives which serves as a basis for curriculum structure. Such statement shall be nondiscriminatory with respect to race, color, creed, gender, age, or disabling conditions.

(b) The policy and procedures by which the program is administered shall be in writing, shall reflect the objectives of the program, and shall be provided to all applicants. The policy and procedures shall include all of the following:

(1) Completion requirements that are accurately stated and published;

(2) Procedures for processing student and faculty grievances;

(3) Policies and procedures regarding student academic probation, field work suspension, and program dismissal;

(4) Provisions for the health and safety of clients, students, and faculty associated with training activities.

(5) Requirements to become registered by the Board as a speech-language pathology assistant.

(c) The program shall have a written plan for evaluation of the effectiveness and outcomes of the program, including admission and selection procedures, attrition and retention of students, and measurements of student achievements. The results of the evaluation shall be reflected in the curricular changes and other modifications of the program.

(d) The program shall have sufficient resources, including faculty, library, staff and support services, physical space and equipment to achieve the program's objectives.

(e) The student/teacher ratio shall:

(1) Permit the achievement of the stated objectives of the program;

(2) Be compatible with accepted practices of the sponsoring institution;

(3) Ensure student and client safety, and quality training in laboratory and field work experiences by adjustment of faculty/student ratios when required; and

(4) Be consistent with available resources, i.e. faculty, field work sites, materials, and equipment.

1399.170.8. Field Work Experience.

(a) A program shall not utilize agencies and/or community facilities for field work experience without prior program approval by the Board. Each program must submit evidence that it has complied with the requirements of subdivision (b) and (c) of this section.

(b) A program that utilizes agencies and/or community facilities for field work experience shall maintain written objectives for students learning in such facilities, and shall assign students only to facilities that can provide the experience necessary to meet those objectives.

(c) Each such program shall maintain written agreements with such facilities and such agreements shall include the following:

(1) Assurance of the availability and appropriateness of the learning environment in relation to the program's written objectives;

(2) Provision for orientation of faculty and students;

(3) A specification of the responsibilities and authority of the facility's staff as related to the program and to the educational experience of the students;

(4) Assurance that staff is adequate in number and quality to insure safe and continuous health care services to patients;

(5) Provisions for continuing communication between the facility and the program; and

(6) A description of the responsibilities of faculty assigned to the facility utilized by the program.

1399.170.9. Compliance with Site Visits.

(a) The Board may, through its Executive Officer, inspect all programs and their respective field work facilities in this state at such time as the Board shall deem necessary.

(1) The program and/or institution shall fully cooperate with Board representatives during site visits, including but not limited to, providing access to all records which the Board deems necessary or appropriate to determine whether the program meets the standards of this chapter.

(2) The program and/or institution shall facilitate the Board's onsite visit including the inspection of records, inspection of all facilities and equipment, observation of class sessions, or interviews with officers, administrators, faculty, or students.

(b) Written reports of the Executive Officer's visits shall be made to the Board which shall thereupon approve the programs that meet the requirements defined in this Article.

1399.170.10. Required Curriculum.

(a) A program's curriculum shall not be implemented or revised until it has been approved by the Board.

(b) The curriculum shall be designed so that a speech-language pathology assistant who completes the program will have the knowledge and skills necessary to function in accordance with the minimum standards set forth in Section 2538.1(b)(3) of the Business and Professions Code.

(c) The curriculum shall consist of not less than sixty (60) semester units or ninety (90) quarter units, which shall include the following:

(1) Twenty (20) to thirty (30) semester units or thirty (30) to forty-five (45) quarter units in general education requirements, including but not limited to, basic communication skills, knowledge of mathematics, liberal arts, and biological, behavioral and health sciences.

(2) Thirty (30) to forty (40) semester units or forty-five (45) to sixty (60) quarter units in course work that satisfies the competencies curriculum defined in the American Speech-Language-Hearing Association's Guidelines for the Training, Credentialing, Use, and Supervision of Speech-Language Pathology Assistants Appendix-G B-Speech-Language Pathology Assistant Suggested Competencies Sample Course Work and Field Work for the Speech-Language Pathology Assistant (1996, Spring-ASHA 2004) including the following observation and field work experiences:

(A) A minimum of fifteen (15) clock hours of directed observation; and

(B) A minimum of ~~seventy (70)~~ one-hundred (100) clock hours of field work experience.

(d) The course of instruction shall be presented in semester or quarter units under the following formula:

(1) One (1) hour of instruction in theory each week throughout a semester or quarter equals one (1) unit.

(2) Three (3) hours of field work practice each week throughout a semester or quarter equals one (1) unit.

1399.170.11. Qualifications for Registration as a Speech-Language Pathology Assistant.

To be eligible for registration by the Board as a speech-language pathology assistant, the applicant must possess at least one of the following qualifications:

(a) An associate of arts or sciences degree from a speech-language pathology assistant program accredited by the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges, and approved by the Board; or

(b) Evidence of completion of a bachelor's degree program in speech-language pathology or communication disorders from an institution listed in the "Accredited Institutions of Postsecondary Education" handbook issued by the American Council on Education, and completion of the field work experience as required in Section 1399.170.10(c)(2)(B) from a Board-approved program, or completion of a minimum of ~~seventy (70)~~ one-hundred (100) hours of field work experience or clinical experience equivalent to that required in Section 1399.170.10(c)(2)(B) in a bachelor's degree program as recognized in this subsection.

(1) The equivalent field work hours or clinical experience completed in a bachelor's degree program in speech-language pathology or communication disorders shall be evaluated for verification by the current training program director.

(2) In the event that the field work experience or clinical experience completed in the bachelor's degree program is deemed deficient by the authorized representative of a board-approved speech-language pathology assistant training program, the applicant may petition the Board for reconsideration.

(3) In lieu of completion of the ~~seventy (70)~~ one-hundred (100) hours of field work experience or clinical experience in a bachelor's degree program as defined in subsection (b) above, the Board may consider the completion of nine months of full-time work experience performing the duties of a speech-language pathology assistant enumerated in paragraph (4) of subsection (b) of Section 2538.1 of the Business and Professions Code as equivalent to the required clinical training.

(c) Evidence of completion of an equivalent speech-language pathology assistant associate of arts or science degree program, which includes the ~~competencies~~ curriculum in the American Speech-Language-Hearing Association's Guidelines for the Training, ~~Credentiaing~~, Use, and Supervision of Speech-Language Pathology Assistants, Appendix ~~C B- Speech-Language Pathology Assistant Suggested Competencies~~ Sample Course Work and Field Work for the Speech-Language Pathology Assistant (1996, Spring ASHA 2004).

1399.170.13. Application and Fees.

(a) Each person desiring registration as a speech-language pathology assistant shall file application forms (77A-60 New 10/01 and, if applicable, 77A-61 New 04/01) and any required supporting documentation with the Board as provided in Section 1399.151.1. Upon receipt of the speech-language pathology assistant application, the Board will review the application for registration and notify the applicant of its approval or disapproval.

(b) All applicants shall submit at the time of filing the speech-language pathology assistant application, a non-refundable fee of \$50.00, which includes a non-refundable \$25.00 application fee and a non-refundable \$25.00 registration fee pursuant to Section 2534.2 of the Code.

1399.170.14. Requirements for Renewal.

(a) The renewal fee for registration as a speech-language pathology assistant is \$75.00 every two years pursuant to Section 2534.2 of the Code.

(b) When applying for renewal, a speech-language pathology assistant shall certify in writing, by signing a statement under penalty of perjury that, during the preceding two years, the speech-language pathology assistant has completed twelve (12) hours of continuing professional development through state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication disorders.

1399.170.15. Requirements for the Supervision of the Speech Language Pathology Assistant.

(a) The supervising speech-language pathologist is responsible for designing and implementing a supervisory plan that protects client care and maintains the highest possible standards of quality. The amount and type of supervision required should be consistent with the skills and experience of the speech-language pathology assistant, the needs of the clients, the service setting, the tasks assigned, and the laws and regulations that govern speech-language pathology assistants. Treatment of the client remains the responsibility of the supervisor.

b) Any person supervising a speech-language pathology assistant registered with the Board on or after April 10, 2001, (hereinafter called "supervisor") shall submit, within thirty (30) days of the commencement of such supervision, the "Responsibility Statement for Supervision of a Speech-Language Pathology Assistant" (77S-60, New 12/99), which requires that:

(1) The supervisor shall possess and maintain a current valid California license as a speech-language pathologist as required in Section 2532 of the Code and Section 1399.160.3 of California Code of Regulations or may hold a valid and current professional clear, clear, or life clinical or rehabilitative services credential in language, speech and hearing issued by the California Commission on Teacher Credentialing.

(2) The supervisor shall immediately notify the assistant of any disciplinary action, including revocation, suspension (even if stayed), probation terms, inactive license, or lapse in licensure, that affects the supervisor's ability or right to supervise.

(3) The supervisor shall ensure that the extent, kind and quality of the clinical work performed is consistent with the training and experience of the person being supervised, and shall be accountable for the assigned tasks performed by the speech-language pathology assistant. The supervisor shall review client/patient records, monitor and evaluate assessment and treatment decisions of the speech-language pathology assistant, and monitor and evaluate the ability of the assistant to provide services at the site(s) where he or she will be practicing and to the particular clientele being treated, and ensure compliance with all laws and regulations governing the practice of speech-language pathology.

(4) The supervisor shall complete not less than six (6) hours of continuing professional development in supervision training ~~in the initial two year period from~~ prior to the commencement of supervision, and three (3) hours in supervision training of continuing professional development every two years thereafter. Continuing professional development training obtained by a Board-approved provider that meets the course content listed below, may be applied towards the continuing professional development requirement for licensees set forth in Section 1399.160.3 of the California Code of Regulations. The content of such training shall include, but is not limited to:

(A) Familiarity with supervision literature through reading assignments specified by course instructors; and

(B) Improving knowledge and understanding of the relationship between the speech-language pathologist and the assistant, and the relationship between the speech-language pathologist and the client.

(C) Structuring to maximize supervision, including times and conditions of supervision sessions, problem solving ability, and implementing supervisor interventions within a range of supervisory modalities including live, videotape, audiotape, and case report methods;

(D) Knowledge of contextual variables such as culture, gender, ethnicity, and economic issues; and

(E) The practice of clinical speech-language pathology including the mandated reporting laws and knowledge of ethical and legal issues.

(5) The supervisor shall maintain records of course completion for a period of two years from the speech-language pathology assistant's renewal date.

(6) The supervisor knows and understands the laws and regulations pertaining to supervision of speech-language pathology assistants.

(7) As the professional development advisor, the supervisor shall assist in the development of a plan for the speech-language pathology assistant to complete twelve (12) hours of continuing professional development every two years through state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication disorders.

(8) The supervisor shall communicate to the speech-language pathology assistant the manner in which emergencies will be handled.

(9) Upon written request of the Board, the supervisor shall provide the Board with any documentation which verifies the supervisor's compliance with the requirements set forth in this article.

1399.170.16. Maximum Number of Support Personnel.

A supervisor shall not supervise more than three (3) support personnel, not more than two of which hold the title of speech-language pathology assistant. Support personnel includes speech-language pathology assistants and speech-language pathology aides.

1399.170.17. Multiple Supervision.

If a speech-language pathology assistant has more than one supervisor, each supervisor shall submit a Supervisor Responsibility Statement. Of the multiple supervisors, one shall be designated as the lead supervisor for purposes of assisting the speech-language pathology assistant in his or her compliance with the continuing professional development requirement.

1399.170.18. Notice of Termination.

At the time of termination of supervision, the supervisor shall complete the "Termination of Supervision" form (77S-61 New 12/99). This original signed form shall be submitted to the Board by the supervisor within fourteen (14) days of termination of supervision.

1399.170.19. Discipline of a Speech-Language Pathology Assistant Registration

(a) Every registrant, including a registrant whose registration has expired or been placed in an inactive status, may be disciplined as provided in this article. The proceedings under this article 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, and the Board shall have all the powers granted herein.

(b) The Board may deny an application for a speech-language pathology assistant or take disciplinary action against a speech-language pathology assistant for any of the following:

(1) Unprofessional conduct, which includes, but is not limited to, the following:

(A) Incompetence or gross negligence in performing speech-language pathology assistant functions,

(B) Denial of licensure, voluntary surrender, revocation, suspension, restriction, or any other disciplinary action against a health care professional license, certificate, or registration by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(2) Procuring a license, certificate or registration by fraud, misrepresentation, or mistake.

(3) Making or giving any false statement or information in connection with the application as a speech-language pathology assistant.

(4) Conviction of a misdemeanor or felony substantially related to the qualifications, functions, and duties of a speech-language pathology assistant, in which event a copy of the record of conviction shall be conclusive evidence thereof.

(5) Impersonating another speech-language pathology assistant or licensed health care professional, or permitting or allowing another person to use his or her registration for the purpose of practicing or holding himself or herself out as a speech-language pathology assistant.

(6) Administering to himself or herself any controlled substance or using of dangerous drug specified in Section 4022 of the Code, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for or holding a registration to conduct with safety to the public the practice authorized by the registration or the conviction of a misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof.

(7) Violating or conspiring to violate or aiding or abetting any person to violate the provisions of this article or any regulation adopted by the Board.

(8) Misrepresentation as to the type or status of a registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliation to any person or entity.

(9) Intentionally or recklessly causing physical or emotional harm to any client.

(10) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a speech-language pathology assistant.

(11) Engaging in sexual relations with a client, or if the client is a minor, the client's parent.

(12) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(13) Advertising in a manner that is false, misleading, or deceptive.

(c) The Board may refuse to issue any registration whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 of the Code shall apply to any denial of a registration pursuant to this section.

(d) The Board may place a registration on probation under the following circumstances:

(1) In lieu of, or in addition to, any order of the Board suspending or revoking the license or registration of any registrant.

(2) Upon the issuance of a registration to an individual who has been guilty of unprofessional conduct, but who had otherwise completed all education and training and experience required for registration.

(3) As a condition upon the reissuance or reinstatement of any registration that has been suspended or revoked by the Board.

(e) The cost of probation or monitoring may be ordered to be paid by the registrant or applicant.

(f) The Board, in its discretion, may require any registrant who has been placed on probation, or whose registration has been suspended, to obtain additional professional training including, but not limited to, education, clinical work, or field work.

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

NOTICE IS HEREBY GIVEN that the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board is proposing to take the action described in the Informative Digest. No public hearing has been scheduled on the proposed action. However, any interested person or such person's duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at its office no later than 5:00 p.m. on June 27, 2011, or must be received by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board at the hearing. The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

Business and Professions Code section 2531.02 mandates that protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

This proposal would make specific regulatory changes to enhance the Board's mandate

of consumer protection.

Division 13.3 Hearing Aid Dispensers: Adopts Sections 1399.110, 1399.130, and 1399.130.1 and Amends Section 1399.131

Division 13.4 Speech-Language Pathology and Audiology: Amends Sections 1399.150.3, 1399.151, 1399.155, and 1399.156 and Adopts Section 1399.156.5

Amends Section 1399.150.3

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

Adopts Section 1399.110; Amends Section 1399.151

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

Adopts Sections 1399.130 ,1399.130.1 & 1399.156.5; Amends Sections 1399.131, 1399.155, & 1399.156.

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

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

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

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

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

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

AND

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

Impact on Jobs/New Businesses:

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

The Board does not license businesses or small businesses; rather, it licenses individuals to practice as licensed speech-language pathologists, audiologists and hearing aid dispensers. Licensees may work for businesses and, thus, businesses may be indirectly impacted if an individual licensee is affected by the proposed regulation by, for example, having his or her license revoked or otherwise disciplined pursuant to the proposed regulations. The Board has approximately 17,000 licensees.

Cost Impact on Representative Private Person or Business:

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

To the extent that this proposal potentially increases the penalties for individual

licensees, an economic impact could occur with the fees licensees may pay for attorney services. The fees would vary depending on the complexity, and amount of time an attorney would devote to a case.

Additionally, applicants who would be required to submit to medical or mental evaluations may incur costs for these evaluations, costing on average of \$1,000.

There will be no economic impact on licensees who do not violate the law.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

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

CONSIDERATION OF ALTERNATIVES

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

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board at 2005 Evergreen Street, Suite 2100, Sacramento, California 95815 or on the Board's website: www.speechandhearing.ca.gov.

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

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

below.

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

CONTACT PERSON

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

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

The backup contact person is:

Name: Cynthia Alameda
Address: 2005 Evergreen Street, Suite 2100
Sacramento, CA 95815
Telephone No.: (916) 263-2291 Fax No.: (916) 263-2668
E-Mail Address: Cynthia.alameda@dca.ca.gov

Website Access : Materials regarding this proposal can be found at:
www.speechandhearing.ca.gov.

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled for the proposed action

Subject Matter of Proposed Regulations: Enforcement Program Enhancements

Sections Affected:

Division 13.3 Hearing Aid Dispensers: Adopts Sections 1399.110, 1399.130, and 1399.130.1 and Amends Section 1399.131

Division 13.4 Speech-Language Pathology and Audiology: Amends Sections 1399.150.3, 1399.151, 1399.155, and 1399.156 and Adopts Section 1399.156.5

Introduction

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

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

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

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

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

Business and Professions Code Section 2531.02 mandates that protection of the public shall be the highest priority of the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other

interests sought to be promoted, the protection of the public shall be paramount.

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

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

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

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

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

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

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

Specific Purpose of each adoption, amendment, or repeal:

1. Amends Section 1399.150.3. Delegation of Functions:

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

After an Accusation is filed against a licensee, the respondent has fourteen days to file a Notice of Defense. If the respondent does not file a Notice of Defense, then a Default Decision is granted. If the respondent files a Notice of Defense, the matter then moves to the Office of Administrative Hearings, which schedules a pre-hearing conference and

a formal hearing. A Proposed Stipulated Decision may be developed either at the pre-hearing conference or at the formal hearing. Additionally, the respondent may also elect to voluntarily surrender the license via a Stipulated Settlement.

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

Factual Basis/Rationale

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

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

2. Adopts Sections 1399.110. Applications; Amends Section 1399.151. Applications for License:

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

Factual Basis/Rationale

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

3. Amends Section 1399.131 and 1399.155. Disciplinary Guidelines:

Existing regulations allow that when reaching a decision on a disciplinary action under the Administrative Procedures Act, the Board shall consider the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board's Disciplinary Guidelines.

Deviation from the guidelines and orders, including standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of a particular case warrant such deviation.

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

Factual Basis/Rationale

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

4. Adopts Sections 1399.130.1 and 1399.156.5. Required Actions Against Registered Sex Offenders.

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

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

Factual Basis/Rationale

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

5. Adopts Section 1399.130. Violations and Amends Section 1399.156. Unprofessional conduct.

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

withdraw a complaint the party has filed with the Board.

Factual Basis/Rationale

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

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

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

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

Patient medical records can only be obtained under two circumstances: 1) the patient has given written authorization for release of the records to the Board; and 2) the Board or the Attorney General has sought a court order and the court has issued a subpoena mandating the release of the records. Under both circumstances, penalties would apply if the records are not supplied by those who have both possession and control over the records.

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

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

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

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

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

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

Underlying Data

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

Business Impact

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

The Board does not license businesses or small businesses; rather, it licenses individuals to practice as licensed speech-language pathologists, audiologists and hearing aid dispensers. Licensees may work for businesses and, thus, businesses may be indirectly impacted if an individual licensee is affected by the proposed regulation by, for example, having his or her license revoked or otherwise disciplined pursuant to the proposed regulations. The Board has approximately 17,000 licensees.

Specific Technologies or Equipment

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

Consideration of Alternatives

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

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

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



EXCERPTS FROM THE CALIFORNIA BUSINESS AND PROFESSIONS CODE FOR SPEECH-LANGUAGE PATHOLOGY ASSISTANT

2538. A person seeking approval as a speech-language pathology assistant shall make application to the board for that approval.

2538.1. (a) The board shall adopt regulations, in collaboration with the State Department of Education, the Commission on Teacher Credentialing, and the Advisory Commission on Special Education, that set forth standards and requirements for the adequate supervision of speech-language pathology assistants.

(b) The board shall adopt regulations as reasonably necessary to carry out the purposes of this article, that shall include, but need not be limited to, the following:

(1) Procedures and requirements for application, registration, renewal, suspension, and revocation.

(2) Standards for approval of Associate Degree Speech-Language Pathology Assistant training programs based upon standards and curriculum guidelines established by the National Council on Academic Accreditation in Audiology and Speech-Language Pathology, or the American Speech-Language-Hearing Association, or equivalent formal training programs consisting of two years of technical education, including supervised field placements.

(3) Standards for accreditation of a Speech-Language Pathology Assistant Training program's institution by the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges, or the Senior College Commission of the Western Association of Schools and Colleges, or equivalent accreditation.

(4) The scope of responsibility, duties, and functions of speech-language pathology assistants, that shall include, but not be limited to, all of the following:

(A) Conducting speech-language screening, without interpretation, and using screening protocols developed by the supervising speech-language pathologist.

(B) Providing direct treatment assistance to patients or clients under the supervision of a speech-language pathologist.

(C) Following and implementing documented treatment plans or protocols developed by a supervising speech-language pathologist.

(D) Documenting patient or client progress toward meeting established objectives, and reporting the information to a supervising speech-language pathologist.

(E) Assisting a speech-language pathologist during assessments, including, but not limited to, assisting with formal documentation, preparing materials, and performing clerical duties for a supervising speech-language pathologist.

(F) When competent to do so, as determined by the supervising speech-language pathologist, acting as an interpreter for non-English-speaking patients or clients and their family members.

(G) Scheduling activities and preparing charts, records, graphs, and data.

(H) Performing checks and maintenance of equipment, including, but not limited to, augmentative communication devices.

(I) Assisting with speech-language pathology research projects, in-service training, and family or community education.

The regulations shall provide that speech-language pathology assistants are not authorized to conduct evaluations, interpret data, alter treatment plans, or perform any task without the express knowledge and approval of a supervising speech-language pathologist.

(5) The requirements for the wearing of distinguishing name badges with the title of speech-language pathology assistant.

(6) Minimum continuing professional development requirements for the speech-language pathology assistant, not to exceed 12 hours in a two-year period. The speech-language pathology assistant's supervisor shall act as a professional development advisor. The speech-language pathology assistant's professional growth may be satisfied with successful completion of state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication and related disorders.

(7) Minimum continuing professional development requirements for the supervisor of a speech-language pathology assistant.

(8) The type and amount of direct and indirect supervision required for speech-language pathology assistants.

(9) The maximum number of assistants permitted per supervisor.

(10) A requirement that the supervising speech-language pathologist shall remain responsible and accountable for clinical judgments and decisions and the maintenance of the highest quality and standards of practice when a speech-language pathology assistant is utilized.

2538.3. (a) A person applying for approval as a speech-language pathology assistant shall have graduated from a speech-language pathology assistant associate of arts degree program, or equivalent course of study, approved by the board. A person who has successfully graduated from a board approved bachelor's degree program in speech-language pathology or communication disorders shall be deemed to have satisfied an equivalent course of study.

2538.5. This article shall not be construed to limit the utilization of a speech aide or other personnel employed by a public school working under the direct supervision of a credentialed speech-language pathologist as set forth in subdivision (c) of Section 3051.1 of Title 5 of the California Code of Regulations.

2538.7. (a) No person who is not registered as a speech-language pathology assistant shall utilize the title speech-language pathology assistant or a similar title that includes the words speech or language when combined with the term assistant.

(b) No person who is not registered as a speech-language pathology assistant shall perform the duties or functions of a speech-language pathology assistant, except as provided by this chapter.

TITLE 16 CALIFORNIA CODE OF REGULATIONS SPEECH-LANGUAGE PATHOLOGY ASSISTANT

1399.170. Definitions.

As used in this article:

(a) "Accountability" means being legally responsible and answerable for actions and inaction's of self or others during the performance of a task by the speech-language pathology assistant.

(b) "Client" shall have the same meaning and effect as the term "patient" and "student," when referring to services provided in a school setting, for purposes of interpreting the provisions in this Article.

(c) "Direct supervision" means ~~on-site~~ observation and guidance by the supervising speech-language pathologist provided on-site or via electronic means, while a clinical activity is performed by the speech-language pathology assistant. Direct supervision performed by the supervising speech-language pathologist may include, but is not limited to, the following: observation of a portion of the screening or treatment procedures performed by the speech-language pathology assistant, coaching the speech-language pathology assistant, and modeling for the assistant.

(d) "Immediate supervision" means the supervising speech-language pathologist is physically present during services provided to the client by the speech-language pathology assistant.

(e) "Indirect supervision" means the supervising speech-language pathologist is not at the same facility or in close proximity to the speech-language pathology assistant, but is available to provide supervision by electronic means. Indirect supervision activities performed by the supervising speech-language pathologist may include, but are not limited to, demonstration, record review, review, and evaluation of audio or video-taped sessions, interactive television, and supervisory conferences that may be conducted by telephone or electronic mail.

(f) "Medically fragile" is the term used to describe a client that is acutely ill and in an unstable condition and if treated by a speech-language pathology assistant, immediate supervision by a speech-language pathologist is required.

(g) "Screening" is a pass-fail procedure to identify, without interpretation, clients who may require further assessment following specified screening protocols developed by the supervising speech-language pathologist.

(h) "Supervision" for the purposes of this article, means the provision of direction and evaluation of the tasks assigned to a speech-language pathology assistant. Methods for providing supervision include direct supervision, immediate supervision, and indirect supervision.

(i) "Support personnel" means individuals who, following academic and/or on-the-job training, perform tasks as prescribed, directed, and supervised by a speech-language pathologist. There are different levels of support personnel based on training and scope of responsibilities.

1399.170.1. Responsibilities, Duties, and Functions of a Speech-Language Pathology Assistant

(a) A speech-language pathology assistant shall be limited to the responsibilities, duties, and functions as provided in Section 2538.1 of the Code.

(b) A speech-language pathology assistant shall disclose while working, his or her name and registration status, as granted by the state, on a name tag in at least 18-point type.

1399.170.2. Types of Supervision Required for Duties Performed by a Speech-Language Pathology Assistant

(a) Duties performed by the speech-language pathology assistant that require immediate supervision may include, but are not limited to, any direct client activity involving medically fragile patients. In such instances, the speech-language pathology assistant shall act only under the direction of the supervisor.

(b) Duties performed by the speech-language pathology assistant that require direct supervision may include, but are not limited to, any new screening or treatment activity that the assistant has been trained to perform by the supervisor, but has not yet been performed by the speech-language pathology assistant in direct client care.

(c) Duties performed by the speech-language pathology assistant that require indirect supervision may include, but are not limited to, the following:

(1) Screening or treatment activities where the supervisor has previously given instructions as to how to perform the task, has observed the assistant in the conduct of these activities, and is satisfied that the activities can be competently performed by the speech-language pathology assistant, i.e., repetitive drill exercises, generalization or carryover activities;

(2) Clerical tasks such as record keeping, materials preparation, scheduling, equipment maintenance; and,

(3) Other non-client care activities.

1399.170.3. Activities, Duties, and Functions Outside the Scope of Responsibilities of a Speech-Language Pathology Assistant.

A speech-language pathology assistant may not conduct evaluations, interpret data, alter treatment plans, or perform any task without the express knowledge and approval of a supervising speech-language pathologist. The speech-language pathology assistant may not perform any of the following functions:

(a) Participate in parent conferences, case conferences, or inter-disciplinary team conferences without the supervising speech-language pathologist or another speech-language pathologist being present;

(b) Provide counseling or advice to a client or a client's parent or guardian which is beyond the scope of the client's treatment;

(c) Sign any documents in lieu of the supervising speech-language pathologist, i.e., treatment plans, client reimbursement forms, or formal reports;

(d) Discharge clients from services;

(e) Make referrals for additional services;

(f) Unless required by law, disclose confidential information either orally or in writing to anyone not designated by the supervising speech-language pathologist;

(g) Represent himself or herself as a speech-language pathologist; and,

(h) Perform procedures that require a high level of clinical acumen and technical skill, i.e., vocal tract prosthesis shaping or fitting, vocal tract imaging, and oropharyngeal swallow therapy with bolus material.

1399.170.4. Application for Approval of Speech-Language Pathology Assistant Training Programs.

(a) To be eligible for approval by the Board as a speech-language pathology assistant training program (hereinafter referred to as "program"), the sponsoring institution shall be accredited by the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.

(b) An educational institution seeking approval of a speech-language pathology assistant program shall:

(1) Notify the Board in writing, by submitting a request from the officially designated representative of the sponsoring institution and the speech-language pathology assistant program director, of who must hold valid and clear license in speech-language pathology or equivalent credentials, of its intent to offer a new program.

(2) No later than six (6) months prior to the enrollment of students, submit a formal proposal to the Board demonstrating how the program will meet the requirements of Sections 1399.170.5. through 1399.170.10. The Board, at its sole discretion, may retroactively approve programs that enrolled students prior to the effective date of the regulations.

(c) The Board shall review the request and formal proposal and may thereafter grant or deny approval. The Board may request additional information to evaluate the request for approval and shall notify the program of its decision in writing within sixty (60) days from receipt of all requested documents.

(d) A material misrepresentation by the program of any information required to be submitted to the Board may be grounds for denial of approval or removal of the program from the approved list.

1399.170.5. Approval Requirements for Programs

(a) In order for the program to be approved by the Board or to retain its approval, it shall comply with all requirements set forth in this article.

(b) The letter of approval shall be returned to the Board when the program's approval has been revoked.

1399.170.6. Requirements of the Sponsoring Institution.

(a) Responsibilities of the sponsoring institution and of each field work site shall be clearly established by formal agreement or memorandum of understanding.

(b) The sponsoring institution shall assume primary responsibility for receiving and processing applications for student admissions, curriculum planning, selection of course content, coordination of classroom teaching and supervised field work, appointment of faculty, and granting the completion certificate or degree, or otherwise documenting satisfactory completion of the program.

(c) Student records including admission, enrollment, academic performance directed observation, field work clock hours, and demonstration of field work competencies shall be maintained by the sponsoring institution according to its policies. Grades and credits for courses must be recorded on students' transcripts and shall be maintained by the sponsoring institution. Hours for field work experiences and supervision shall be recorded and documented by supervisory staff.

(d) The program director of the sponsoring institution shall be responsible for ensuring that the scope of responsibilities delegated to students during field work experiences are appropriate to the training received and the clients assigned, and consistent with the American Speech-Language-Hearing Association's Guidelines for the Training, Credentialing, Use, and Supervision of Speech-Language Pathology Assistants (1996, Spring ASHA 2004), incorporated herein by reference, and that all approved criteria for speech-language pathology assistant training has been met.

1399.170.7. Administration and Organization of the Program.

(a) There shall be a written statement of program objectives which serves as a basis for curriculum structure. Such statement shall be nondiscriminatory with respect to race, color, creed, gender, age, or disabling conditions.

(b) The policy and procedures by which the program is administered shall be in writing, shall reflect the objectives of the program, and shall be provided to all applicants. The policy and procedures shall include all of the following:

(1) Completion requirements that are accurately stated and published;

(2) Procedures for processing student and faculty grievances;

(3) Policies and procedures regarding student academic probation, field work suspension, and program dismissal;

(4) Provisions for the health and safety of clients, students, and faculty associated with training activities.

(5) Requirements to become registered by the Board as a speech-language pathology assistant.

(c) The program shall have a written plan for evaluation of the effectiveness and outcomes of the program, including admission and selection procedures, attrition and retention of students, and measurements of student achievements. The results of the evaluation shall be reflected in the curricular changes and other modifications of the program.

(d) The program shall have sufficient resources, including faculty, library, staff and support services, physical space and equipment to achieve the program's objectives.

(e) The student/teacher ratio shall:

(1) Permit the achievement of the stated objectives of the program;

(2) Be compatible with accepted practices of the sponsoring institution;

(3) Ensure student and client safety, and quality training in laboratory and field work experiences by adjustment of faculty/student ratios when required; and

(4) Be consistent with available resources, i.e. faculty, field work sites, materials, and equipment.

1399.170.8. Field Work Experience.

(a) A program shall not utilize agencies and/or community facilities for field work experience without prior program approval by the Board. Each program must submit evidence that it has complied with the requirements of subdivision (b) and (c) of this section.

(b) A program that utilizes agencies and/or community facilities for field work experience shall maintain written objectives for students learning in such facilities, and shall assign students only to facilities that can provide the experience necessary to meet those objectives.

(c) Each such program shall maintain written agreements with such facilities and such agreements shall include the following:

(1) Assurance of the availability and appropriateness of the learning environment in relation to the program's written objectives;

(2) Provision for orientation of faculty and students;

(3) A specification of the responsibilities and authority of the facility's staff as related to the program and to the educational experience of the students;

(4) Assurance that staff is adequate in number and quality to insure safe and continuous health care services to patients;

(5) Provisions for continuing communication between the facility and the program; and

(6) A description of the responsibilities of faculty assigned to the facility utilized by the program.

1399.170.9. Compliance with Site Visits.

(a) The Board may, through its Executive Officer, inspect all programs and their respective field work facilities in this state at such time as the Board shall deem necessary.

(1) The program and/or institution shall fully cooperate with Board representatives during site visits, including but not limited to, providing access to all records which the Board deems necessary or appropriate to determine whether the program meets the standards of this chapter.

(2) The program and/or institution shall facilitate the Board's onsite visit including the inspection of records, inspection of all facilities and equipment, observation of class sessions, or interviews with officers, administrators, faculty, or students.

(b) Written reports of the Executive Officer's visits shall be made to the Board which shall thereupon approve the programs that meet the requirements defined in this Article.

1399.170.10. Required Curriculum.

(a) A program's curriculum shall not be implemented or revised until it has been approved by the Board.

(b) The curriculum shall be designed so that a speech-language pathology assistant who completes the program will have the knowledge and skills necessary to function in accordance with the minimum standards set forth in Section 2538.1(b)(3) of the Business and Professions Code.

(c) The curriculum shall consist of not less than sixty (60) semester units or ninety (90) quarter units, which shall include the following:

(1) Twenty (20) to thirty (30) semester units or thirty (30) to forty-five (45) quarter units in general education requirements, including but not limited to, basic communication skills, knowledge of mathematics, liberal arts, and biological, behavioral and health sciences.

(2) Thirty (30) to forty (40) semester units or forty-five (45) to sixty (60) quarter units in course work that satisfies the competencies curriculum defined in the American Speech-Language-Hearing Association's Guidelines for the Training, Credentialing, Use, and Supervision of Speech-Language Pathology Assistants Appendix-G B-Speech-Language Pathology Assistant Suggested Competencies Sample Course Work and Field Work for the Speech-Language Pathology Assistant (1996, Spring-ASHA 2004) including the following observation and field work experiences:

(A) A minimum of fifteen (15) clock hours of directed observation; and

(B) A minimum of ~~seventy (70)~~ one-hundred (100) clock hours of field work experience.

(d) The course of instruction shall be presented in semester or quarter units under the following formula:

(1) One (1) hour of instruction in theory each week throughout a semester or quarter equals one (1) unit.

(2) Three (3) hours of field work practice each week throughout a semester or quarter equals one (1) unit.

1399.170.11. Qualifications for Registration as a Speech-Language Pathology Assistant.

To be eligible for registration by the Board as a speech-language pathology assistant, the applicant must possess at least one of the following qualifications:

(a) An associate of arts or sciences degree from a speech-language pathology assistant program accredited by the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges, and approved by the Board; or

(b) Evidence of completion of a bachelor's degree program in speech-language pathology or communication disorders from an institution listed in the "Accredited Institutions of Postsecondary Education" handbook issued by the American Council on Education, and completion of the field work experience as required in Section 1399.170.10(c)(2)(B) from a Board-approved program, or completion of a minimum of ~~seventy (70)~~ one-hundred (100) hours of field work experience or clinical experience equivalent to that required in Section 1399.170.10(c)(2)(B) in a bachelor's degree program as recognized in this subsection.

(1) The equivalent field work hours or clinical experience completed in a bachelor's degree program in speech-language pathology or communication disorders shall be evaluated for verification by the current training program director.

(2) In the event that the field work experience or clinical experience completed in the bachelor's degree program is deemed deficient by the authorized representative of a board-approved speech-language pathology assistant training program, the applicant may petition the Board for reconsideration.

(3) In lieu of completion of the ~~seventy (70)~~ one-hundred (100) hours of field work experience or clinical experience in a bachelor's degree program as defined in subsection (b) above, the Board may consider the completion of nine months of full-time work experience performing the duties of a speech-language pathology assistant enumerated in paragraph (4) of subsection (b) of Section 2538.1 of the Business and Professions Code as equivalent to the required clinical training.

(c) Evidence of completion of an equivalent speech-language pathology assistant associate of arts or science degree program, which includes the ~~competencies~~ curriculum in the American Speech-Language-Hearing Association's Guidelines for the Training, Credentialing, Use, and Supervision of Speech-Language Pathology Assistants, Appendix ~~C B- Speech-Language Pathology Assistant Suggested Competencies~~ Sample Course Work and Field Work for the Speech-Language Pathology Assistant (1996, Spring ASHA 2004).

1399.170.13. Application and Fees.

(a) Each person desiring registration as a speech-language pathology assistant shall file application forms (77A-60 New 10/01 and, if applicable, 77A-61 New 04/01) and any required supporting documentation with the Board as provided in Section 1399.151.1. Upon receipt of the speech-language pathology assistant application, the Board will review the application for registration and notify the applicant of its approval or disapproval.

(b) All applicants shall submit at the time of filing the speech-language pathology assistant application, a non-refundable fee of \$50.00, which includes a non-refundable \$25.00 application fee and a non-refundable \$25.00 registration fee pursuant to Section 2534.2 of the Code.

1399.170.14. Requirements for Renewal.

(a) The renewal fee for registration as a speech-language pathology assistant is \$75.00 every two years pursuant to Section 2534.2 of the Code.

(b) When applying for renewal, a speech-language pathology assistant shall certify in writing, by signing a statement under penalty of perjury that, during the preceding two years, the speech-language pathology assistant has completed twelve (12) hours of continuing professional development through state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication disorders.

1399.170.15. Requirements for the Supervision of the Speech Language Pathology Assistant.

(a) The supervising speech-language pathologist is responsible for designing and implementing a supervisory plan that protects client care and maintains the highest possible standards of quality. The amount and type of supervision required should be consistent with the skills and experience of the speech-language pathology assistant, the needs of the clients, the service setting, the tasks assigned, and the laws and regulations that govern speech-language pathology assistants. Treatment of the client remains the responsibility of the supervisor.

b) Any person supervising a speech-language pathology assistant registered with the Board on or after April 10, 2001, (hereinafter called "supervisor") shall submit, within thirty (30) days of the commencement of such supervision, the "Responsibility Statement for Supervision of a Speech-Language Pathology Assistant" (77S-60, New 12/99), which requires that:

(1) The supervisor shall possess and maintain a current valid California license as a speech-language pathologist as required in Section 2532 of the Code and Section 1399.160.3 of California Code of Regulations or may hold a valid and current professional clear, clear, or life clinical or rehabilitative services credential in language, speech and hearing issued by the California Commission on Teacher Credentialing.

(2) The supervisor shall immediately notify the assistant of any disciplinary action, including revocation, suspension (even if stayed), probation terms, inactive license, or lapse in licensure, that affects the supervisor's ability or right to supervise.

(3) The supervisor shall ensure that the extent, kind and quality of the clinical work performed is consistent with the training and experience of the person being supervised, and shall be accountable for the assigned tasks performed by the speech-language pathology assistant. The supervisor shall review client/patient records, monitor and evaluate assessment and treatment decisions of the speech-language pathology assistant, and monitor and evaluate the ability of the assistant to provide services at the site(s) where he or she will be practicing and to the particular clientele being treated, and ensure compliance with all laws and regulations governing the practice of speech-language pathology.

(4) The supervisor shall complete not less than six (6) hours of continuing professional development in supervision training ~~in the initial two year period from~~ prior to the commencement of supervision, and three (3) hours in supervision training of continuing professional development every two years thereafter. Continuing professional development training obtained by a Board-approved provider that meets the course content listed below, may be applied towards the continuing professional development requirement for licensees set forth in Section 1399.160.3 of the California Code of Regulations. The content of such training shall include, but is not limited to:

(A) Familiarity with supervision literature through reading assignments specified by course instructors; and

(B) Improving knowledge and understanding of the relationship between the speech-language pathologist and the assistant, and the relationship between the speech-language pathologist and the client.

(C) Structuring to maximize supervision, including times and conditions of supervision sessions, problem solving ability, and implementing supervisor interventions within a range of supervisory modalities including live, videotape, audiotape, and case report methods;

(D) Knowledge of contextual variables such as culture, gender, ethnicity, and economic issues; and

(E) The practice of clinical speech-language pathology including the mandated reporting laws and knowledge of ethical and legal issues.

(5) The supervisor shall maintain records of course completion for a period of two years from the speech-language pathology assistant's renewal date.

(6) The supervisor knows and understands the laws and regulations pertaining to supervision of speech-language pathology assistants.

(7) As the professional development advisor, the supervisor shall assist in the development of a plan for the speech-language pathology assistant to complete twelve (12) hours of continuing professional development every two years through state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication disorders.

(8) The supervisor shall communicate to the speech-language pathology assistant the manner in which emergencies will be handled.

(9) Upon written request of the Board, the supervisor shall provide the Board with any documentation which verifies the supervisor's compliance with the requirements set forth in this article.

1399.170.16. Maximum Number of Support Personnel.

A supervisor shall not supervise more than three (3) support personnel, not more than two of which hold the title of speech-language pathology assistant. Support personnel includes speech-language pathology assistants and speech-language pathology aides.

1399.170.17. Multiple Supervision.

If a speech-language pathology assistant has more than one supervisor, each supervisor shall submit a Supervisor Responsibility Statement. Of the multiple supervisors, one shall be designated as the lead supervisor for purposes of assisting the speech-language pathology assistant in his or her compliance with the continuing professional development requirement.

1399.170.18. Notice of Termination.

At the time of termination of supervision, the supervisor shall complete the "Termination of Supervision" form (77S-61 New 12/99). This original signed form shall be submitted to the Board by the supervisor within fourteen (14) days of termination of supervision.

1399.170.19. Discipline of a Speech-Language Pathology Assistant Registration

(a) Every registrant, including a registrant whose registration has expired or been placed in an inactive status, may be disciplined as provided in this article. The proceedings under this article 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, and the Board shall have all the powers granted herein.

(b) The Board may deny an application for a speech-language pathology assistant or take disciplinary action against a speech-language pathology assistant for any of the following:

(1) Unprofessional conduct, which includes, but is not limited to, the following:

(A) Incompetence or gross negligence in performing speech-language pathology assistant functions,

(B) Denial of licensure, voluntary surrender, revocation, suspension, restriction, or any other disciplinary action against a health care professional license, certificate, or registration by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

(2) Procuring a license, certificate or registration by fraud, misrepresentation, or mistake.

(3) Making or giving any false statement or information in connection with the application as a speech-language pathology assistant.

(4) Conviction of a misdemeanor or felony substantially related to the qualifications, functions, and duties of a speech-language pathology assistant, in which event a copy of the record of conviction shall be conclusive evidence thereof.

(5) Impersonating another speech-language pathology assistant or licensed health care professional, or permitting or allowing another person to use his or her registration for the purpose of practicing or holding himself or herself out as a speech-language pathology assistant.

(6) Administering to himself or herself any controlled substance or using of dangerous drug specified in Section 4022 of the Code, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for or holding a registration to conduct with safety to the public the practice authorized by the registration or the conviction of a misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof.

(7) Violating or conspiring to violate or aiding or abetting any person to violate the provisions of this article or any regulation adopted by the Board.

(8) Misrepresentation as to the type or status of a registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliation to any person or entity.

(9) Intentionally or recklessly causing physical or emotional harm to any client.

(10) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a speech-language pathology assistant.

(11) Engaging in sexual relations with a client, or if the client is a minor, the client's parent.

(12) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(13) Advertising in a manner that is false, misleading, or deceptive.

(c) The Board may refuse to issue any registration whenever it appears that an applicant may be unable to practice his or her profession safely due to mental illness or chemical dependency. The procedures set forth in Article 12.5 (commencing with Section 820) of Chapter 1 of the Code shall apply to any denial of a registration pursuant to this section.

(d) The Board may place a registration on probation under the following circumstances:

(1) In lieu of, or in addition to, any order of the Board suspending or revoking the license or registration of any registrant.

(2) Upon the issuance of a registration to an individual who has been guilty of unprofessional conduct, but who had otherwise completed all education and training and experience required for registration.

(3) As a condition upon the reissuance or reinstatement of any registration that has been suspended or revoked by the Board.

(e) The cost of probation or monitoring may be ordered to be paid by the registrant or applicant.

(f) The Board, in its discretion, may require any registrant who has been placed on probation, or whose registration has been suspended, to obtain additional professional training including, but not limited to, education, clinical work, or field work.

REPORT FROM THE BOARD CHAIR

May, 2011

LISA CABIALE O'CONNOR

I have continued to participate in the DCA conference calls for Board Chairs. The sole focus of our last call in April was the issue of continuing competency. It was a 90 minute call where speakers with expertise on this topic were invited to present. The speakers were:

David Swankin, CEO of the Citizen Advocacy Center (CAC)

Dr. Martin Crane, former Chair of the Federation of State Medical Boards (FSMB)

They both made the point that continuing competency is really no longer an option, it is something that all boards must consider. They suggested the following:

1. Development of a demonstration project
2. Collaboration with professional associations in the development of the project
3. Offer perks for licensees to participate in the project (e.g. waive CEs for 2 years).

Mr. Swankin noted that CAC would be able to help any board with this process and mentioned that a Becky La Bue (sp?), who I believe serves in administrative capacity at CAC, might come to one of our board meetings. I will check into this with the possibility that she might be able to attend our July meeting.

Questions/Concerns Raised:

1. What does continuing competency have to include?
2. How do we assure the reliability and validity of the assessment developed?
3. How do we get the money to create the assessment tool? Expense and resources are a significant concern for all boards.

Given the above information I believe that our board needs to start a conversation about this topic. I think it might be best to include this as an agenda item for the entire board, and then recommend a course of action.

BILL NUMBER: SB 933 AMENDED
BILL TEXT

Agenda Item: X.A.

AMENDED IN SENATE APRIL 5, 2011

INTRODUCED BY Senator Runner

FEBRUARY 18, 2011

An act to amend Sections 2530, 2530.1, 2531.02, 2531.06, 2533, 2533.3, ~~2533.4~~, 2534, 2539.1, and 2539.14 of, to amend the heading of Article 9 (commencing with Section 2539.1) of, and to add Article 8 (commencing with Section 2538.10) to, Chapter 5.3 of, and to repeal Chapter 7.5 (commencing with Section 3300) of, Division 2 of, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 933, as amended, Runner. Speech-language pathology and audiology: hearing aid dispensers.

Existing law, the Speech-Language Pathologists and Audiologists Licensure Act, provides for the licensure and regulation of speech-language pathologists and audiologists by the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board. Existing law, the Hearing Aid Dispensers Law, also provides for the licensure and regulation of hearing aid dispensers by the board. Existing law establishes the Speech-Language Pathology and Audiology Fund for the purposes of carrying out the provisions of the Speech-Language Pathologists and Audiologists Licensure Act and the Hearing Aid Dispensers Law. Existing law establishes the Hearing Aid Dispensers Account in the fund and requires fees collected pursuant to the Hearing Aid Dispensers Law to be deposited in the account for the purposes of carrying out the provisions of that law and the Speech-Language Pathologists and Audiologists Licensure Act.

This bill would repeal the Hearing Aid Dispensers Law, abolish the Hearing Aid Dispensers Account, rename the Speech-Language Pathologists and Audiologists Licensure Act as the Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act, and revise that act to include the licensing, regulatory, and disciplinary provisions applicable to hearing aid dispensers under the Hearing Aid Dispensers Law. The bill would make various technical changes relative to combining the laws applicable to speech-language pathologists and audiologists and hearing aid dispensers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2530 of the Business and Professions Code is amended to read:

2530. This act may be cited as the "Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act."

SEC. 2. Section 2530.1 of the Business and Professions Code is amended to read:

2530.1. The Legislature finds and declares that the practice of speech-language pathology and audiology and hearing aid dispensing in California affects the public health, safety, and welfare and there is a necessity for those professions to be subject to regulation and control.

SEC. 3. Section 2531.02 of the Business and Professions Code is amended to read:

2531.02. 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.

SEC. 4. Section 2531.06 of the Business and Professions Code is amended to read:

2531.06. (a) The board is vested with the duties, powers, purposes, responsibilities, and jurisdiction over the licensing and regulation of hearing aid dispensers as provided under Article 8 (commencing with Section 2538.10).

(b) In the performance of the duties and the exercise of the powers vested in the board under this chapter, the board may consult with hearing aid dispenser industry representatives.

(c) For the performance of the duties and the exercise of the powers vested in the board under this chapter, the board shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the former Hearing Aid Dispensers Bureau.

(d) All regulations in Division 13.3 (commencing with Section 1399.100) of Title 16 of the California Code of Regulations are continued in existence under the administration of the board.

SEC. 5. Section 2533 of the Business and Professions Code is amended to read:

2533. ~~(a)~~ - 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 if ~~he or she has been guilty of unprofessional conduct.~~

~~Unprofessional conduct shall include, but shall not be limited to, for any of the following:~~

~~(1)~~

(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.

~~(2)~~

(b) Securing a license by fraud or deceit.

~~(3) (A)~~

(c) (1) The use or administering to himself or herself, of any controlled substance; ~~(B)~~ (2) the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in a manner as to be dangerous or injurious to the licensee, to any other person, or to the public, or to the extent that the use impairs the ability of the licensee to practice speech-language pathology or audiology safely; ~~(C)~~ (3) more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section; or ~~(D)~~ (4) any combination of ~~subparagraphs (A), (B), or (C)~~ paragraph (1), (2), or (3) . The record of the conviction shall be conclusive evidence of unprofessional conduct.

~~(4)~~

(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.

~~(5)~~

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

~~(6)~~

(f) Incompetence ~~or~~ , gross negligence ~~in the practice of speech-language pathology or audiology~~ , or repeated negligent acts.

~~(7)~~

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

~~(b) In addition to taking action under subdivision (a), the board may, with regard to hearing aid dispensers, refuse to issue, issue subject to terms and conditions, or revoke a license, or impose conditions of probation upon a licensee, for any of the following:~~

~~(1)~~

(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.

~~(2)~~

(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.

~~(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.

SEC. 6. Section 2533.3 of the Business and Professions Code is amended to read:

2533.3. Except as provided in Section 2538.42, any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1,000), or both.

SEC. 7. Section 2534 of the Business and Professions Code is amended to read:

2534. The board shall report to the Controller at the beginning of each month for the month preceding the amount and source of all revenue received by it pursuant to this chapter and shall pay the entire amount thereof to the Treasurer for deposit in the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund, which fund is hereby created to carry out the purposes of this chapter.

SEC. 8. Article 8 (commencing with Section 2538.10) is added to Chapter 5.3 of Division 2 of the Business and Professions Code, to read:

Article 8. Hearing Aid Dispensers

2538.10. For the purposes of this article, the following definitions shall apply:

(a) "Advertise" and its variants include the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio, or television announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of fitting or selling of hearing aids.

(b) "License" means a hearing aid dispenser's license issued pursuant to this article and includes a temporary license.

(c) "Licensee" means a person holding a license.

(d) "Hearing aid" means any wearable instrument or device designed for, or offered for the purpose of, aiding or compensating for impaired human hearing.

(e) "Fund" means the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.

2538.11. (a) "Practice of fitting or selling hearing aids," as used in this article, means those practices used for the purpose of selection and adaptation of hearing aids, including direct observation of the ear, testing of hearing in connection with the fitting and selling of hearing aids, taking of ear mold impressions, fitting or sale of hearing aids, and any necessary postfitting

counseling.

The practice of fitting or selling hearing aids does not include the act of concluding the transaction by a retail clerk.

When any audiometer or other equipment is used in the practice of fitting or selling hearing aids, it shall be kept properly calibrated and in good working condition, and the calibration of the audiometer or other equipment shall be checked at least annually.

(b) A hearing aid dispenser shall not conduct diagnostic hearing tests when conducting tests in connection with the practice of fitting or selling hearing aids.

(c) Hearing tests conducted pursuant to this article shall include those that are in compliance with the Food and Drug Administration Guidelines for Hearing Aid Devices and those that are specifically covered in the licensing examination prepared and administered by the board.

2538.12. A licensee may conduct hearing screenings at a health fair or similar event by the application of a binary puretone screening at a preset intensity level for the purpose of identifying the need for further hearing or medical evaluation.

Upon the conclusion of each hearing screening, the licensee shall present to the person whose hearing was screened a written statement containing the following provisions:

"Results of a hearing screening are not a medical evaluation of your ear nor a diagnosis of a hearing disorder but are only the identification of the need for further medical or hearing evaluation."

A licensee conducting hearing screenings pursuant to this section shall not make or seek referrals for testing, fitting, or dispensing of hearing aids.

2538.13. In fitting hearing aids, a hearing aid dispenser shall not take facial measurements or fit, adjust, or adapt lenses or spectacle frames, except that a hearing aid dispenser may replace the temple or temples of a person's spectacle frames with a temple or temples incorporating hearing aid components.

2538.14. "Hearing aid dispenser," as used in this article, means a person engaged in the practice of fitting or selling hearing aids to an individual with impaired hearing.

2538.15. "Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers.

2538.16. The board shall keep a record of all prosecutions for violations of this article and of all examinations held for applicants for licenses together with the names and addresses of all persons taking examinations and of their success or failure to pass them.

2538.17. The board may recommend the preparation of and administration of a course of instruction concerned with the fitting and selection of hearing aids. The board may require applicants to first complete the required course of instruction or otherwise satisfy the board that the applicant possesses the necessary background and qualifications to fit or sell hearing aids. If the

board promulgates regulations to implement this section to require a course of instruction concerned with fitting and selling hearing aids, the board shall obtain the advice of persons knowledgeable in the preparation and administration of a course of instruction.

The board may publish and distribute information concerning the examination requirements for obtaining a license to engage in the practice of fitting and selling hearing aids within this state.

2538.18. All holders of licenses to sell or fit hearing aids shall continue their education after receiving the license. The board shall provide by regulation, as a condition to the renewal of a license, that licensees shall submit documentation satisfactory to the board that they have informed themselves of current practices related to the fitting of hearing aids by having pursued courses of study satisfactory to the board or by other means defined as equivalent by the board.

Continuing education courses shall be subject to monitoring to ensure compliance with the regulations adopted by the board pursuant to this section.

2538.19. (a) The board may prosecute any and all persons for any violation of this article.

(b) The board shall hear and decide all matters, including but not limited to, any contested case or any petition for reinstatement or modification of probation, or may assign any of those matters to an administrative law judge in accordance with the Administrative Procedure Act. Except as otherwise provided in this chapter, all hearings 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.

2538.20. It is unlawful for an individual to engage in the practice of fitting or selling hearing aids, or to display a sign or in any other way to advertise or hold himself or herself out as being so engaged without having first obtained a license from the board under the provisions of this article. Nothing in this article shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of fitting or selling, or offering for sale, hearing aids at retail without a license, provided that any and all fitting or selling of hearing aids is conducted by the individuals who are licensed pursuant to the provisions of this article. A person whose license as a hearing aid dispenser has been suspended or revoked shall not be the proprietor of a business that engages in the practice of fitting or selling hearing aids nor shall that person be a partner, shareholder, member, or fiduciary in a partnership, corporation, association, or trust that maintains or operates that business, during the period of the suspension or revocation. This restriction shall not apply to stock ownership in a corporation that is listed on a stock exchange regulated by the Securities and Exchange Commission if the stock is acquired in a transaction conducted through that stock exchange.

2538.21. This article does not apply to a person engaged in the practice of fitting hearing aids if his practice is for a

governmental agency, or private clinic, or is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public, charitable institution or other nonprofit organization, and who does not engage directly or indirectly in the sale or offering for sale of hearing aids.

2538.22. This article does not apply to nor affect any physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 who does not directly or indirectly engage in the sale or offering for sale of hearing aids, nor to any audiologist licensed under this chapter, or to an individual supervised by the audiologist in conducting fitting procedures, and who does not directly or indirectly engage in the sale or offering for sale of hearing aids.

2538.23. (a) Hearing aids may be sold by catalog or direct mail provided that:

(1) The seller is licensed as a hearing aid dispenser in this state.

(2) There is no fitting, selection, or adaptation of the instrument and no advice is given with respect to fitting, selection, or adaptation of the instrument and no advice is given with respect to the taking of an ear impression for an earmold by the seller.

(3) The seller has received a statement which is signed by a physician and surgeon, audiologist, or a hearing aid dispenser, licensed by the State of California which verifies that Section 2538.36 and subdivision (b) of Section 2538.49 have been complied with.

(b) A copy of the statement referred to in paragraph (3) of subdivision (a) shall be retained by the seller for the period provided for in Section 2538.38.

(c) A licensed hearing aid dispenser who sells a hearing aid under this section shall not be required to comply with subdivision (b) of Section 2538.49.

2538.24. Each person desiring to obtain a license to engage in the practice of fitting or selling hearing aids shall make application to the board. The application shall be made upon a form and shall be made in the manner as is provided by the board and shall be accompanied by the fee provided for in Section 2538.57.

2538.25. (a) The board shall prepare, approve, grade, and conduct examinations of applicants for a hearing aid dispenser's license. The board may provide that the preparation and grading of the examination be conducted by a competent person or organization other than the board, provided, however, that the board shall establish the guidelines for the examination and shall approve the actual examination.

(b) Each applicant shall take and pass a written examination and a practical examination compiled at the direction of the board covering the critical tasks involved in the practice of fitting and selling hearing aids and the knowledge, skills, and abilities needed to perform those tasks safely and competently.

2538.26. The board shall issue a license to all applicants who have satisfied this chapter, who are at least 18 years of age, who

possess a high school diploma or its equivalent, who have not committed acts or crimes constituting grounds for denial of licensure under Section 480, and who have paid the fees provided for in Section 2538.57. No license shall be issued to any person other than an individual.

2538.27. (a) An applicant who has fulfilled the requirements of Section 2538.24 and has made application therefor, may have a temporary license issued to him or her upon satisfactory proof to the board that the applicant holds a hearing aid dispenser's license in another state, that the licensee has not been subject to formal disciplinary action by another licensing authority, and that the applicant has been engaged in the fitting and sale of hearing aids for the two years immediately prior to application.

(b) A temporary license issued pursuant to this section shall be valid for one year from date of issuance and is not renewable. A temporary license shall automatically terminate upon issuance of a license prior to expiration of the one-year period.

(c) The holder of a temporary license issued pursuant to this section who fails either license examination shall be subject to and shall comply with the supervision requirements of Section 2538.28 and any regulations adopted pursuant thereto.

2538.28. (a) An applicant who has fulfilled the requirements of Section 2538.24, and has made application therefor, and who proves to the satisfaction of the board that he or she will be supervised and trained by a hearing aid dispenser who is approved by the board may have a temporary license issued to him or her. The temporary license shall entitle the temporary licensee to fit or sell hearing aids as set forth in regulations of the board. The supervising dispenser shall be responsible for any acts or omissions committed by a temporary licensee under his or her supervision that may constitute a violation of this chapter.

(b) The board shall adopt regulations setting forth criteria for its refusal to approve a hearing aid dispenser to supervise a temporary licensee, including procedures to appeal that decision.

(c) A temporary license issued pursuant to this section is effective and valid for six months from date of issue. The board may renew the temporary license for an additional period of six months. Except as provided in subdivision (d), the board shall not issue more than two renewals of a temporary license to any applicant. Notwithstanding subdivision (d), if a temporary licensee who is entitled to renew a temporary license does not renew the temporary license and applies for a new temporary license at a later time, the new temporary license shall only be issued and renewed subject to the limitations set forth in this subdivision.

(d) A new temporary license may be issued pursuant to this section if a temporary license issued pursuant to subdivision (c) has lapsed for a minimum of three years from the expiration or cancellation date of the previous temporary license. The bureau may issue only one new temporary license under this subdivision.

2538.29. A temporary licensee under Section 2538.28 shall take the license examination within the first 10 months after the

temporary license is issued. Failure to take the license examination within that time shall result in expiration of the temporary license, and it shall not be renewed unless the temporary licensee has first taken the licensure examination. The board, however, may in its discretion renew the temporary license if the licensee failed to take the necessary examination due to illness or other hardship.

2538.30. (a) A temporary licensee shall not be the sole proprietor of, manage, or independently operate a business which engages in the fitting or sale of hearing aids.

(b) A temporary licensee shall not advertise or otherwise represent that he or she holds a license as a hearing aid dispenser.

2538.31. Practical examinations shall be held by the board at least twice a year. The time and place of any practical examination shall be fixed by the board at least 45 days prior to the date it is to be held.

2538.32. Every applicant who obtains a passing score determined by the Angoff criterion-referenced method of establishing the point in each examination shall be deemed to have passed that examination. An applicant shall pass the written examination before he or she may take the practical examination. An applicant shall obtain a passing score on both the written and the practical examination in order to be issued a license.

2538.33. (a) Before engaging in the practice of fitting or selling hearing aids, each licensee shall notify the board in writing of the address or addresses where he or she is to engage, or intends to engage, in the practice of fitting or selling hearing aids, and of any changes in his or her place of business within 30 days of engaging in that practice.

(b) If a street address is not the address at which the licensee receives mail, the licensee shall also notify the board in writing of the mailing address for each location where the licensee is to engage, or intends to engage, in the practice of fitting or selling hearing aids, and of any change in the mailing address of his or her place or places of business.

2538.34. (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 state, 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 aids.

2538.35. 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 postfitting 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.

2538.36. (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.

(b) No referral for medical opinion need be made by any licensee in the instance of replacement only of a hearing aid that has been lost or damaged beyond repair within one year of the date of purchase. A copy of the written recommendation shall be retained by the licensee for the period provided for in Section 2538.38. A person receiving the written recommendation who elects to purchase a

hearing aid shall sign a receipt for the same, and the receipt shall be kept with the other papers retained by the licensee for the period provided for in Section 2538.38. Nothing in this section required to be performed by a licensee shall mean that the licensee is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited by the provisions of this code.

2538.37. No hearing aid shall be sold by an individual licensed under this chapter, to a person 16 years of age or younger, unless within the preceding six months a recommendation for a hearing aid has been made by both a board-certified, or a board-eligible physician specializing in otolaryngology, and by a state licensed audiologist. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

2538.38. A licensee shall, upon the consummation of a sale of a hearing aid, keep and maintain records in his or her office or place of business at all times and each record shall be kept and maintained for a seven-year period. All records related to the sale and fitting of hearing aids shall be open to inspection by the bureau or its authorized representatives upon reasonable notice. The records kept shall include:

(a) Results of test techniques as they pertain to fitting of the hearing aid.

(b) A copy of the written receipt required by Section 2538.35 and the written recommendation and receipt required by Section 2538.36 when applicable.

(c) Records of maintenance or calibration of equipment used in the practice of fitting or selling hearing aids.

2538.39. A hearing aid dispenser who is the owner, manager, or franchisee at a location where hearing aids are fit or sold, shall be responsible for the adequacy of the fitting or selling of any hearing aid fit and sold by any licensee or licensees at that location.

2538.40. Upon denial of an application for license, the board shall notify the applicant in writing, stating (1) the reason for the denial and (2) that the applicant has a right to a hearing under Section 2533.2 if he or she makes written request therefor within 60 days after notice of denial. Service of the notice required by this section may be made by certified mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise.

2538.41. Before setting aside the revocation or suspension of any license or modifying the probation of any licensee, the board may require the petitioner to pass the regular examination given for applicants for licenses.

2538.42. Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not less than 10 days nor more than one year, or by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

2538.43. It is unlawful to sell or barter, or offer to sell or

barter, any license issued by the board.

2538.44. It is unlawful to purchase or procure by barter any license issued by the board with intent to use the same as evidence of the holder's qualification to practice the fitting or selling of hearing aids.

2538.45. It is unlawful to alter with fraudulent intent in any material regard a license issued by the board.

2538.46. It is unlawful to use or attempt to use any license issued by the board that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid license.

2538.47. It is unlawful to willfully make any false statement in a material regard in an application for an examination before the board for a license.

2538.48. It is unlawful to engage in the practice of fitting or selling hearing aids in this state without having at the time of so doing a valid, unrevoked and unexpired license or temporary license.

2538.49. It is unlawful for a licensed hearing aid dispenser to fit or sell a hearing aid unless he or she first does all of the following:

(a) Complies with all provisions of state laws and regulations relating to the fitting or selling of hearing aids.

(b) Conducts a direct observation of the purchaser's ear canals.

(c) Informs the purchaser of the address and office hours at which the licensee shall be available for fitting or postfitting adjustments and servicing of the hearing aid or aids sold.

2538.50. It is unlawful to advertise by displaying a sign or otherwise or hold himself out to be a person engaged in the practice of fitting or selling hearing aids without having at the time of so doing a valid, unrevoked license or temporary license.

2538.51. It is unlawful to engage in the practice of fitting or selling hearing aids without the licensee having and maintaining an established business address, routinely open for service to his clients.

2538.52. When tests are conducted by persons licensed under this article in connection with the fitting and selling of hearing aids, the provisions of this article shall apply.

2538.53. (a) A license issued under this article expires at midnight on its assigned renewal date.

(b) To renew an unexpired license, the licensee shall, on or before the date of expiration of the license, apply for renewal on a form provided by the board, accompanied by the prescribed renewal fee.

(c) Temporary license holders shall renew their licenses in accordance with Section 2538.27, and apply for that renewal on a form provided by the board, accompanied by the prescribed renewal fee for temporary licenses.

(d) Each duplicate license issued for a branch office shall expire on the same date as the permanent license of the hearing aid dispenser to whom the duplicate license was issued. These duplicate licenses shall be renewed according to subdivision (b).

2538.54. Except as otherwise provided in this article, an expired

license may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of all accrued and unpaid renewal fees. If the license is renewed after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this article. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 2538.53 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

2538.55. A license which has been suspended is subject to expiration and shall be renewed as provided in this article but such renewal does not entitle the holder of the license, while it remains suspended and until it is reinstated, to engage in the fitting or selling of hearing aids, or in any other activity or conduct in violation of the order or judgment by which the license was suspended. A license which has been revoked is subject to expiration, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition precedent to its reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last regular renewal date before the date on which it is reinstated, plus the delinquency fee, if any, accrued at the time of its revocation.

2538.56. A license that is not renewed within three years after its expiration may not be renewed, restored, reissued, or reinstated thereafter, but the holder of the expired license may apply for and obtain a new license if all of the following apply:

(a) He or she has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

(b) He or she pays all the fees that would be required of him or her if he or she were then applying for a license for the first time.

(c) He or she takes and passes the examination that would be required of him or her if he or she were then applying for a license for the first time, or otherwise establishes to the satisfaction of the board that he or she is qualified to engage in the practice of fitting or selling hearing aids. The board may, by regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a license is issued without an examination under this section.

2538.57. The amount of fees and penalties prescribed by this article shall be those set forth in this section unless a lower fee is fixed by the board:

(a) The fee for applicants applying for the first time for a license is seventy-five dollars (\$75), which shall not be refunded, except to applicants who are found to be ineligible to take an examination for a license. Those applicants are entitled to a refund of fifty dollars (\$50).

(b) The fees for taking or retaking the written and practical examinations shall be amounts fixed by the board, which shall be equal to the actual cost of preparing, grading, analyzing, and administering the examinations.

(c) The initial temporary license fee is one hundred dollars (\$100). The fee for renewal of a temporary license is one hundred dollars (\$100) for each renewal.

(d) The initial permanent license fee is two hundred eighty dollars (\$280). The fee for renewal of a permanent license is not more than two hundred eighty dollars (\$280) for each renewal.

(e) The initial branch office license fee is twenty-five dollars (\$25). The fee for renewal of a branch office license is twenty-five dollars (\$25) for each renewal.

(f) The delinquency fee is twenty-five dollars (\$25).

(g) The fee for issuance of a replacement license is twenty-five dollars (\$25).

(h) The continuing education course approval application fee is fifty dollars (\$50).

(i) The fee for official certification of licensure is fifteen dollars (\$15).

SEC. 9. The heading of Article 9 (commencing with Section 2539.1) of Chapter 5.3 of Division 2 of the Business and Professions Code is amended to read:

Article 9. Dispensing Audiologists

SEC. 10. Section 2539.1 of the Business and Professions Code is amended to read:

2539.1. (a) (1) On and after January 1, 2010, in addition to satisfying the licensure and examination requirements described in Sections 2532 and 2532.2, no licensed audiologist shall sell hearing aids unless he or she completes an application for a dispensing audiology license, pays all applicable fees, and passes an examination, approved by the board, relating to selling hearing aids.

(2) The board shall issue a dispensing audiology license to a licensed audiologist who meets the requirements of paragraph (1).

(b) (1) On and after January 1, 2010, a licensed audiologist with an unexpired license to sell hearing aids pursuant to Article 8 (commencing with Section 2538.10) may continue to sell hearing aids pursuant to that license until that license expires pursuant to Section 2538.53, and upon that expiration the licensee shall be deemed to have satisfied the requirements described in subdivision (a) and may continue to sell hearing aids pursuant to his or her audiology license subject to the provisions of this chapter. Upon the expiration of the audiologist's license to sell hearing aids, the board shall issue him or her a dispensing audiology license pursuant to paragraph (2) of subdivision (a). This paragraph shall not prevent an audiologist who also has a hearing aid dispenser's license from maintaining dual or separate licenses if he or she chooses to do so.

(2) A licensed audiologist whose license to sell hearing aids, issued pursuant to Article 8 (commencing with Section 2538.10), is suspended, surrendered, or revoked shall not be authorized to sell hearing aids pursuant to this subdivision and he or she shall be subject to the requirements described in subdivision (a) as well as the other provisions of this chapter.

(c) A licensed hearing aid dispenser who meets the qualifications for licensure as an audiologist shall be deemed to have satisfied the requirements of paragraph (1) of subdivision (a) for the purposes of obtaining a dispensing audiology license.

(d) For purposes of subdivision (a), the board shall provide the hearing aid dispenser's examination provided by the former Hearing Aid Dispensers Bureau until such time as the next examination validation and occupational analysis is completed by the Department of Consumer Affairs pursuant to Section 139 and a determination is made that a different examination is to be administered.

SEC. 11. Section 2539.14 of the Business and Professions Code is amended to read:

2539.14. The provisions of subdivisions (b) and (c) of Section 2538.11 and the provisions of Section 2538.12 do not apply to a licensed audiologist who satisfies the requirements of Section 2539.1.

SEC. 12. Chapter 7.5 (commencing with Section 3300) of Division 2 of the Business and Professions Code is repealed.

BILL NUMBER: AB 675 AMENDED
BILL TEXT

Agenda Item: X. B.

AMENDED IN ASSEMBLY APRIL 5, 2011

INTRODUCED BY Assembly Member Hagman
(*Coauthors: Assembly Members
Garrick, Gorell, Jeffries, and
Silva*)
(~~Coauthor: Senator
Huff~~ *Coauthors: Senators Harman
and Huff*)

FEBRUARY 17, 2011

An act to add Section 110.6 to the Business and Professions Code,
relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 675, as amended, Hagman. Continuing education.

Existing law provides for the licensure and regulation of professions and vocations by boards within the Department of Consumer Affairs and these boards may require licensees to satisfy continuing education course requirements.

This bill would provide, if applicable, that continuing education *or competency* courses, as specified, that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. The bill would also prohibit, to the extent applicable, an approved provider from representing that such a continuing education *or competency* course is acceptable for meeting requirements for licensure renewal and would require a board, subject to specified procedural requirements, to withdraw its approval of a provider that violates that requirement for no less than 5 years, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 110.6 is added to the Business and Professions Code, to read:

110.6. Notwithstanding any other provision of law, if a board described in Section 101 requires its licensees to satisfy continuing

education *or competency* requirements by pursuing a course of continuing education *or competency* , the following shall apply:

(a) Continuing education *or competency* courses shall contain only content relevant to the particular practice regulated by the board pursuant to its laws and regulations. Continuing education *or competency* courses that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting continuing education *or competency* requirements. For the purposes of this section, "courses" includes institutes, seminars, lectures, conferences, workshops, and any other public events.

(b) (1) To the extent applicable, if an approved provider offers a course described in subdivision (a), the provider shall not represent that the course is acceptable for meeting the continuing education *or competency* requirements. If a provider violates this requirement, the board shall withdraw its approval of the provider, subject to paragraph (2).

(2) If, after the board provides the provider notice and an opportunity to be heard, the board finds that the provider violated the requirement in paragraph (1), the board shall withdraw approval of the provider for no less than five years.

BILL NUMBER: SB 544 AMENDED
BILL TEXT

Agenda Item: X.C

AMENDED IN SENATE APRIL 14, 2011
AMENDED IN SENATE MARCH 21, 2011

INTRODUCED BY Senator Price

FEBRUARY 17, 2011

~~An act to add Section 1623 to the Business and Professions Code, relating to dentistry.~~ *An act to amend Sections 116, 155, 159.5, 726, 802.1, 803, 803.5, 803.6, 822, 2246, 2960.1, 4982.26, and 4992.33 of, and to add Sections 40, 42, 44, 505, 734, 735, 736, 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, 1688.4, 1688.5, 1688.6, 1947.1, 1947.2, 1947.3, 1947.4, 1947.5, 1947.6, 1947.7, 1947.8, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, 2533.10, 2533.11, 2533.12, 2533.13, 2533.14, 2570.38, 2570.39, 2570.40, 2570.41, 2570.42, 2570.43, 2570.44, 2570.45, 2570.46, 2570.47, 2661.8, 2661.9, 2661.10, 2661.11, 2661.12, 2661.13, 2661.14, 2661.15, 2661.16, 2661.17, 2766, 2766.1, 2766.2, 2766.3, 2766.4, 2766.5, 2766.6, 2766.7, 2766.8, 2879.1, 2879.2, 2879.3, 2879.4, 2879.5, 2879.6, 2879.7, 2879.8, 2879.10, 2969.1, 2969.2, 2969.3, 2969.4, 3112, 3112.1, 3112.2, 3112.3, 3112.4, 3112.5, 3112.6, 3112.7, 3112.8, 3112.9, 3405, 3405.1, 3405.2, 3405.3, 3405.4, 3405.5, 3405.6, 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, 3531.5, 3531.6, 3531.7, 3531.8, 3531.9, 3531.10, 3665, 3665.1, 3665.2, 3665.3, 3665.4, 3665.5, 3665.6, 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, 3769.8, 3769.9, 3769.10, 4316, 4316.1, 4316.2, 4316.3, 4316.4, 4316.5, 4316.6, 4375, 4526, 4526.1, 4526.2, 4526.3, 4526.4, 4526.5, 4526.6, 4526.8, 4526.9, 4888, 4888.1, 4888.2, 4888.3, 4888.4, 4888.5, 4888.6, 4888.7, 4964.1, 4964.2, 4964.3, 4964.4, 4964.55, 4964.6, 4964.7, 4964.8, 4964.9, 4964.10, 4990.44, 4990.45, 4990.46, 4990.47, 4990.48, 4990.49, 4990.50, 4990.51, 4990.52, and 4990.53 to, to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of, the Business and Professions Code, and to add section 12529.8 to the Government Code, relating to professions and vocations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 544, as amended, Price. ~~Dental Board of California: collection of fees, fines, and cost recovery.~~

Professions and vocations: regulatory boards.

(1) Existing law provides for the licensure and regulation of profession and vocation licensees by various boards within the Department of Consumer Affairs. Within the department, there are healing arts boards and nonhealing arts boards. The department is under the control of the Director of Consumer Affairs.

This bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

The bill would prohibit a licensee regulated by a board within the department from including certain provisions in an agreement to settle a civil litigation action arising from his or her practice, as specified.

(2) Existing law authorizes the director to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.

This bill would authorize healing arts boards to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to contract for investigative services provided by the Department of Justice. The bill would also establish within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

The bill would require all healing arts boards within the department to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to,

the total number of complaints closed or resolved without discipline, the total number of complaints and reports referred for formal investigation, and the total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

The bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board's investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.

Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

This bill would expand that requirement to a licensee of any healing arts board, as specified, and would further require a report when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state or an agency of the federal government.

Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board's licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a licentiate has committed a crime or is liable for any death or personal injury resulting in a specified judgment. Existing law also requires the clerk of the court to transmit to certain boards specified felony preliminary transcript hearings concerning a defendant licensee.

The bill would instead make those provisions applicable to all healing arts boards. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.

The bill would require a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank prior to, among other things, granting a license to an applicant who is currently residing in another state or granting a petition for reinstatement of a revoked or surrendered license.

This bill would make it a crime to engage in the practice of healing arts without a current and valid license, except as

specified; or to fraudulently buy, sell, or obtain a license to practice healing arts. By creating new crimes, the bill would impose a state-mandated local program.

(3) Under existing law, healing arts licensees are regulated by various healing arts boards within the department. These boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their laws and regulations. Existing law requires or authorizes a board to appoint an executive officer to, among other things, perform duties delegated by the board.

This bill would authorize a healing arts board to delegate to its executive officer, where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense or appear at the hearing, the authority to adopt a proposed default decision. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.

The bill would also provide that the license of a licensee of a healing arts board shall be suspended if the licensee is incarcerated after the conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.

The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a healing arts licensee. The bill would impose requirements on boards with respect to individuals required to register as a sex offender.

This bill would authorize the Attorney General and his or her investigative agents and certain healing arts boards to inquire into any alleged violation of the laws under the boards' jurisdiction and to inspect documents subject to specified procedures. The bill would make the licensees of those healing arts boards or a health care

facility that fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program.

The bill would require the employer of certain health care licensees to report to the appropriate board within a specified timeframe information relating to a health care licensee who is suspended or terminated for cause or who resigns. The bill would require a board to investigate these reports, including the inspection and copying of certain documents relating to that suspension, termination, or resignation.

The bill would require specified healing arts boards, on or after July 1, 2013, to post on their Internet Web sites specified information in their possession, custody, or control regarding their licensees and their license status, prior discipline, and convictions.

The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.

(4) The bill would declare the intent of the Legislature that the Bureau of State Audits conduct a specified review of the Pharmacists Recovery Program by January 1, 2013.

(5) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.

This bill would authorize a healing arts board to utilize the services of the Health Quality Enforcement Section or licensing section. If utilized, the bill would require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.

(6) The bill would delete, revise and recast various provisions of the Physical Therapy Practice Act and would make other conforming changes.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~—Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists by the Dental Board of California. Existing law establishes specified fees for licenses, permits, and certificates issued by the board. Existing law also sets forth specified fines and penalties for violations of the Dental Practice Act.~~

~~—This bill would authorize the board to contract with a collection agency to collect outstanding fees, fines, or cost recovery amounts from persons who owe those moneys to the board, as specified. The bill would require the contract with a collection agency to contain specified safeguards to protect an individual's personal information from unauthorized disclosure and to provide for the liability of the collection agency for the unauthorized use or disclosure of that information.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Consumer Health Protection Enforcement Act.

SEC. 2. (a) The Legislature finds and declares the following:

(1) In recent years, it has been reported that many of the healing arts boards within the Department of Consumer Affairs take, on average, more than three years to investigate and prosecute violations of law, a timeframe that does not adequately protect consumers.

(2) The excessive amount of time that it takes healing arts boards to investigate and prosecute licensed professionals who have violated the law has been caused, in part, by legal and procedural impediments to the enforcement programs.

(3) Both consumers and licensees have an interest in the quick resolution of complaints and disciplinary actions. Consumers need prompt action against licensees who do not comply with professional standards, and licensees have an interest in timely review of consumer complaints to keep the trust of their patients.

(b) It is the intent of the Legislature that the changes made by this act will improve efficiency and increase accountability within

the healing arts boards of the Department of Consumer Affairs, and will remain consistent with the long-held paramount goal of consumer protection.

(c) It is further the intent of the Legislature that the changes made by this act will provide healing arts boards within the Department of Consumer Affairs with the regulatory tools and authorities necessary to reduce the average timeframe for investigating and prosecuting violations of law by healing arts practitioners to between 12 and 18 months.

SEC. 3. Section 40 is added to the Business and Professions Code , to read:

40. (a) Notwithstanding any other provision of law, for purposes of a board investigation, a state agency shall, upon receiving a request in writing from a board for records about a particular licensee, immediately provide to the board all records about a licensee in the custody of the state agency, including, but not limited to, confidential records, medical records, and records related to closed or open investigations.

(b) If a state agency has knowledge that a person it is investigating is licensed by a board, the state agency shall notify the board that it is conducting an investigation against one of its licentiates. The notification of investigation to the board shall include the name, address, and, if known, the professional license type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted for further information about the investigation. The state agency shall cooperate with the board in providing any requested information.

(c) A board shall maintain the confidentiality of any personally identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by federal or state law.

SEC. 4. Section 42 is added to the Business and Professions Code , to read:

42. Notwithstanding any other provision of law, all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a board shall provide records to the board upon request prior to receiving payment from the board for the cost of providing the records. These records include, but are not limited to, confidential records, medical records, and records related to closed or open investigations.

SEC. 5. Section 44 is added to the Business and Professions Code , to read:

44. (a) A licensee of a board shall not include or permit to be included any of the following provisions in an agreement to settle a

civil litigation action filed by a consumer arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

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

(2) A provision that prohibits another party to the dispute from filing a complaint with the board.

(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.

(b) A provision described in subdivision (a) is void as against public policy.

(c) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

(d) If a board complies with Section 2220.7, that board shall not be subject to the requirements of this section.

SEC. 6. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director or his or her designee may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by ~~the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine~~ any of the healing arts boards described in Division 2 (commencing with Section 500) . The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both , for their consideration .

(b) The director shall report to the Chairpersons of the Senate ~~Committee on Business and~~ , Professions ~~Committee~~ and Economic Development and the Assembly ~~Committee on Health~~ ~~Committee~~ annually ~~, commencing March 1, 1995,~~ regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

SEC. 7. Section 155 of the Business and Professions Code is amended to read:

155. (a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary to properly ~~to~~ investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be

required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Investigators used by any healing arts board, as described in Division 2 (commencing with Section 500), shall not be required to be employees of the Division of Investigation and a healing arts board may contract for investigative services provided by the Department of Justice.

~~—(e)~~

(d) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

SEC. 8. Section 159.5 of the Business and Professions Code is amended to read:

159.5. There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division. There is in the division the Health Quality Enforcement Unit. The primary responsibility of the unit is to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards described in Section 720.

~~Except as provided in Section 160, investigators who have the authority of peace officers, 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in subdivision (a) of Section 160. Section 160 of this code and in subdivision (a) (b) of Section 830.3 of the Penal Code, shall be in the division and the personnel shall be appointed by the director.~~

SEC. 9. Section 505 is added to the Business and Professions Code, to read:

505. (a) Each healing arts board shall report annually to the department and the Legislature, not later than October 1 of each year, the following information:

(1) The total number of complaints closed or resolved without

discipline, prior to accusation.

(2) The total number of complaints and reports referred for formal investigation.

(3) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

(4) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.

(5) The total number of final licensee disciplinary actions taken, by category.

(6) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(7) The average time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

(8) The total number of licensees in diversion or on probation for alcohol or drug abuse, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.

(9) The total number of probation violation reports and probation revocation filings, and their dispositions.

(10) The total number of petitions for reinstatement, and their dispositions.

(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the healing arts board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(c) A board that complies with Section 2313 shall not be subject to the requirements of this section.

(d) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall become inoperative on October 1, 2016.

SEC. 10. Section 726 of the Business and Professions Code is amended to read:

726. (a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division ~~and~~ under any initiative act referred to in this division ~~and under Chapter 17 (commencing with Section 9000) of Division 3.~~

(b) For purposes of Division 1.5 (commencing with Section 475), the commission of, and conviction for, any act of sexual abuse,

sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board described in this division.

—This

(c) *This section shall not apply to sexual contact between a ~~physician and surgeon~~ licensee and his or her spouse or person in an equivalent domestic relationship when that ~~physician and surgeon~~ licensee provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.*

SEC. 11. Section 734 is added to the Business and Professions Code , to read:

734. (a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

SEC. 12. Section 735 is added to the Business and Professions Code , to read:

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

SEC. 13. Section 736 is added to the Business and Professions Code , to read:

736. (a) The use or prescribing for or administering to himself or herself of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the

extent that the use impairs the ability of the licensee to practice safely; or conviction of any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or conviction of any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(c) A violation of subdivision (a) is a misdemeanor, and upon conviction shall be punished by a fine of up to ten thousand dollars (\$10,000), or by imprisonment in the county jail of up to six months, or by both that fine and imprisonment.

SEC. 14. Section 737 is added to the Business and Professions Code , to read:

737. It shall be unprofessional conduct for any licensee of a healing arts board to fail to comply with the following:

(a) Furnish information in a timely manner to the healing arts board or the board's investigators or representatives if requested by the board.

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

SEC. 15. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) A ~~physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine shall~~

~~report either~~ *licensee of a healing arts board described in this division shall report any* of the following to the entity that issued his or her license:

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

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

(C) *Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.*

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or ~~information or of the conviction~~ *the charging of a felony, or of the arrest, conviction, or disciplinary action* .

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars (\$5,000) *and shall constitute unprofessional conduct*

SEC. 16. Section 803 of the Business and Professions Code is amended to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from ~~the Board of Behavioral Sciences or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200))~~ *a healing arts board described in this division*, has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars (\$30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the ~~agency~~ *board* that issued the license.

SEC. 17. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the ~~Medical Board of~~

~~California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board,~~
appropriate healing arts board described in this division and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

SEC. 18. Section 803.6 of the Business and Professions Code is amended to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the ~~Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other appropriate allied health board, as applicable,~~
appropriate healing arts board described in this division where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the *appropriate healing arts board*.

SEC. 19. Section 803.7 is added to the Business and Professions Code , to read:

803.7. The Department of Justice shall ensure that subsequent reports and subsequent disposition information authorized to be issued to any board identified in Section 101 are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

SEC. 20. Section 803.8 is added to the Business and Professions Code , to read:

803.8. (a) The office of the Attorney General shall serve, or submit to a healing arts board for service, an accusation within 60 calendar days of receipt from the healing arts board.

(b) The office of the Attorney General shall serve, or submit to a healing arts board for service, a default decision within five days

following the time period allowed for the filing of a notice of defense.

(c) *The office of the Attorney General shall set a hearing date within three days of receiving a notice of defense, unless the healing arts board gives the office of the Attorney General instruction otherwise.*

SEC. 21. *Section 822 of the Business and Professions Code is amended to read:*

822. If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper , *including issuing a limited or restricted license* .

The licensing agency shall not reinstate a revoked or suspended certificate or license *or lift any restrictions or limitations* until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

SEC. 22. *Section 857 is added to the Business and Professions Code , to read:*

857. (a) *Each healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California shall query the federal National Practitioner Data Bank prior to any of the following:*

- (1) *Granting a license to an applicant who is currently residing in another state.*
- (2) *Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state.*
- (3) *Granting a petition for reinstatement of a revoked or surrendered license.*

(b) *Notwithstanding subdivision (a), a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California may query the federal National Practitioner Data Bank prior to issuing any license.*

(c) *A healing arts board shall charge a fee to cover the actual cost to conduct the queries described in this section.*

SEC. 23. Article 16 (commencing with Section 880) is added to Chapter 1 of Division 2 of the Business and Professions Code , to read:

Article 16. Unlicensed Practice

880. (a) (1) It is a public offense, punishable by a fine not to exceed one hundred thousand dollars (\$100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(A) Any person who does not hold a current and valid license to practice a healing art under this division to engage in that practice.

(B) Any person who fraudulently buys, sells, or obtains a license to practice any healing art in this division or to violate any provision of this division.

(2) Subparagraph (A) of paragraph (1) shall not apply to any person who is already being charged with a crime under the specific healing arts licensing provisions for which he or she engaged in unauthorized practice.

(b) Notwithstanding any other provision of law, any person who is licensed under this division, and who supervises the practice of a healing art by any person who does not hold a current and valid license to practice that healing art under this division, is guilty of a public crime, punishable by a fine not to exceed one hundred thousand dollars (\$100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

SEC. 24. Section 1688 is added to the Business and Professions Code , to read:

1688. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

LICENSING WORKLOAD REPORT

LICENSES ISSUED	FY09/10	FY10/11	Jul	Aug	Sep	Q1	Oct	Nov	Dec	Q2	Jan	Feb	Mar	Q3	Apr	May	Jun	Q4
AU	43	52	12	10	8	30	3	4	5	12	1	3	3	7	3			3
DAU *	946	78	12	8	27	47	6	2	13	21	3	3	3	9	1			1
SLP	692	630	67	95	94	256	53	54	69	176	45	63	47	155	43			43
SLP Assistants	290	281	12	39	51	102	41	24	14	79	7	29	36	72	28			28
RPE'S	566	501	58	61	105	224	81	39	22	142	28	48	34	110	25			25
SLP Issued	529	478	48	59	101	208	80	37	21	138	27	48	32	107	25			25
AU Issued	37	23	10	2	4	16	1	2	1	4	1	0	2	3	0			0
REGISTERED AIDES	63	44	0	5	12	17	4	2	6	12	2	3	4	9	6			6
SLP Issued	27	20	0	1	5	6	3	1	0	4	0	3	3	6	4			4
AU Issued	36	24	0	4	7	11	1	1	6	8	2	0	1	3	2			2
CPD PROVIDERS	14	16	2	1	0	3	5	0	2	7	1	2	1	4	2			2
HAD **	89	32	0	1	12	13	2	0	12	14	4	0	1	5	0			0
HAD Trainees	98	72	13	9	7	29	4	4	8	16	6	7	5	18	9			9
HAD Temporary	15	9	2	0	0	2	1	0	1	2	1	4	0	5	0			0
Non Temp/Trainee ***	<i>no count</i>	69	12	5	3	20	13	7	1	21	7	5	7	19	9			9
HAD Branch Office	192	176	18	15	18	51	1	31	33	65	7	24	16	47	13			13

* Licenses transferred to DAU license type; does not reflect "new" licenses issued.

** Delay due to waiting to pass exam.

*** Have no license; have application in to take written and/or practical exam(s).

CURRENT LICENSES as of April 30, 2011

AU / DAU	1,525
Inactive	129
CPD Hold	24
Cancelled	916
Delinquent	245
SLP	11,247
Inactive	243
CPD Hold	1,069
Cancelled	4,909
Delinquent	1,811
SLP Assistants	1,263
AA/AS	423
BA/BS	816
BA/BS Equivalent	50
Inactive	57
CPD Hold	33
Cancelled	102
Delinquent	236
RPE Temp License	608
Delinquent	56
Registered Aides	214
Delinquent	49
HAD	930
Inactive	60
Cancelled	3,630
Delinquent	152
HAD Temp Trainees	98
Inactive	68
Cancelled	2,934
Delinquent	28
HAD Temporary	14
Cancelled	110
Delinquent	4
HAD Branch Office	595
Cancelled	3,028
Delinquent	112

LICENSES ISSUED			
	FY 08/09	FY 09/10	% Change
SPL/AUD	1630	1644	-1%
HEARING	380	254	33%

January 1, 2010 Dispensing Audiologist no longer have to maintain two licenses (HAD and AUD). They now obtain a license for Dispensing Audiologists.

ENFORCEMENT STATISTICS

COMPLAINT ACTIVITY	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
Opened	36	165										
Closed	16	131										
Pending	28	88										

VIOLATION TYPE OF OPENED COMPLAINTS	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
Discipline by Another State/Agency	0	0										
Incompleteness/Negligence	2	10										
Unprofessional Conduct	2	123										
Unlicensed/Unregistered Activity	6	16										
Criminal Charges/Convictions	9	5										
Substance Abuse	0	0										
Fraud	2	6										
Non-Jurisdictional	0	5										
Other	15	0										
TOTAL	36	165	0	0	0	0	0	0	0	0	0	0

* 62 cases / 50% cases were for advertising violations

CLOSED COMPLAINT'S PROCESSING TIMES	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
0 - 3 Months	10	84										
4 - 6 Months	4	8										
7 - 12 Months	1	1										
13 - 24 Months	1	1										
15 - 36 Months	0	3										

ENFORCEMENT STATISTICS

INVESTIGATION ACTIVITY	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
Opened	2	28										
Closed	1	34										
Pending	21	19										

CLOSED INVESTIGATION'S PROCESSING TIMES	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
0 - 3 Months	1	0										
4 - 6 Months	0	2										
7 - 12 Months	0	20										
13 - 24 Months	0	9										
15 - 36 Months	1	3										

COMPLAINT DISPOSITION & CLOSED INVESTIGATIONS	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
No Violation	3	11										
Information on File	6	14										
Insufficient Evidence	2	8										
Subject Educated	1	38										
Non-Jurisdictional	0	7										
Compliance Obtained	0	1										
Referred to Gov't Agency	0	0										
Other	1	23										
Citation	0	2										
Conditional Licenses	0	0										
Referred tp AG/DA	3	21										
Mediated	0	6										
TOTAL	16	131	0	0	0	0	0	0	0	0	0	0

ENFORCEMENT STATISTICS

PROBATION CASES	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
Opened	10	4										
Tolled	6	0										
Conditional Licenses	8	0										
TOTAL	24	4	0	0	0	0	0	0	0	0	0	0

CITATIONS ISSUED	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
	0	2										

AG CASE ACTIVITY	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
Opened	3	19										
Closed	0	5										
Pending	14	7										

CLOSED AG CASE'S PROCESSING TIMES	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
0 - 1 Years	0	4										
1 - 2 Years	0	1										
2 - 3 Years	0	0										
3 - 4 Years	0	0										
4+ Years	0	0										

ADMINISTRATIVE FILINGS	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
Accusations	0	2										
Statement of Issues	0	0										
Petition for Penalty Relief	0	0										
Petition for Psychiatric Evaluation	0	0										
TOTAL	0	2	0	0	0	0	0	0	0	0	0	0

ENFORCEMENT STATISTICS

ADMINISTRATIVE FIINAL DECISIONS	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
Revocation	0	0										
Revocation, Stayed, Prob	0	1										
Rev, Stayed, Prob, Susp	0	0										
License Surrender	0	0										
License Denied	0	2										
Petition for Penalty Relief Denied	0	0										
Petition for Penalty Relief Granted	0	0										
Petition for Penalty Relief Withdrawn	0	0										
Reprimands/Reprovals	0	0										
ISO's Ordered	0	0										
Declined by AG	0	1										
Conditional License	0	1										
TOTAL	0	5	0	0	0	0	0	0	0	0	0	0

DECISIONS - TYPE OF VIOLATION	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SLPA	HAD	SLPA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD	SPLA	HAD
Discipline by Another State/Agency	0	0										
Incompetence/Negligence	0	0										
Unprofessional Conduct	0	1										
Unlicensed/Unregisterd Activity	0	0										
Criminal Charges/Convictions	0	3										
Fraud	0	1										
Other	0	0										
TOTAL	0	5	0	0	0	0	0	0	0	0	0	0

