

Practicing – Telehealth Technology

IN CALIFORNIA:

Telehealth is viewed as mode of delivery of health care services, not a separate form of practice. There are no legal prohibitions to using technology in the practice of speech-language pathology, audiology, or hearing aid dispensing, as long as the practice is done by a California licensed practitioner. Telehealth is not a telephone conversation, e-mail/instant messaging conversation, or fax; it typically involves the application of videoconferencing or store and forward technology to provide or support health care delivery.

The **standard of care** is the same whether the patient is seen in-person, through telehealth or other methods of electronically enabled health care. Practitioners need not reside in California, as long as they have a valid, current California license.

The **laws** govern the practice of speech-language pathology, audiology, and hearing aid dispensing, and no matter how communication is performed, the standards are no more or less. **Practitioners using Telehealth technologies to provide care to patients located in California must be licensed in California and must provide appropriate services and/or treatment to the patient.**

CALIFORNIA LICENSED SPEECH-LANGUAGE PATHOLOGISTS, AUDIOLOGISTS, AND HEARING AID DISPENSERS PRACTICING MEDICINE IN OTHER STATES:

Licensees intending to practice via telemedicine technology to treat patients outside of California should check with other state licensing boards. Most states require practitioners to be licensed, and some have enacted limitations to telemedicine practice or require or offer a special registration.

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.



HEARING AID DISPENSERS PRACTICE COMMITTEE MEETING MINUTES

May 19, 2011
Hilton San Diego Mission Valley
901 Camino del Rio South
San Diego, CA 92108
(916) 263-2666

Committee Members Present

Deane Manning, Chair, Hearing Aid Dispenser
Robert Green, Au.D.
Sandra Danz, Hearing Aid Dispenser
Alison Grimes, Au.D.
Rodney Diaz, M.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Diane Dobbs, Legal Counsel
Breanne Humphreys, Staff
Michelle Mason, Staff

Board Members Present

Monty Martin, M.A.

Board Members Absent

Lisa O'Connor, M.A.
Carol Murphy, M.A.

Guests Present

Cynthia Peffers, Hearing Health Care Providers CA
Gail Hubbard, Newport Audiology
Jacque Georgeson, San Diego State University/ California Academy of Audiology
Bob McKinney, California Academy of Audiology

I. Call To Order

Deane Manning called the meeting to order at 1:15 p.m.

II. Introductions

Those in attendance introduced themselves.

III. Status of 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 and voted on at the January 26, 2011 Committee meeting and full board meeting. She stated that the Committee recommended to approve the proposed amendments as presented by staff; however, the

recommendations were subsequently revisited by the Board, and further amendments were recommended to strike language in Section 1399.140(d) authorizing a one-year grace period for a licensed hearing aid dispenser to complete the requisite Continuing Education (CE) in the following renewal period. Ms. Del Mugnaio stated that there was some confusion on the part of some of the Committee/Board members as to whether the provision was an exemption for extenuating circumstances surrounding health issues, military service, or other relocation issues, or merely a grace-period. She explained that subsection (d) was not an exemption or “waiver,” and that Section 1399.144 did provide for a Board-approved waiver for verified health, military service, or a substantiated undue hardship.

Ms. Del Mugnaio also requested that the Committee review the proposed definition of self-study as provided for in Section 1399.140 (a)(2).

Ms. Del Mugnaio stated that she recently received inquiries from members of the profession regarding CE courses that may not be specifically within the scope of practice of hearing aid dispensers but are related topics that provide information that assists the hearing aid dispenser in providing a higher-quality of service to consumers, e.g., pediatric amplification, tympanometry, acoustic neuroma. She referenced the proposed definition of “related” course content in Section 1399.140.1.

Ms. Grimes inquired whether the proposed maximum of three (3) hours in self-study must be in directly relevant course work or whether it could include indirect or related hours.

Ms. Del Mugnaio responded that the maximum of three (3) hours may be in any course content areas.

M/S/C: Grimes/Green

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

IV. Status of Legislative Proposal Regarding the Song-Beverly Consumer Warranty Act (California Civil Code Section 1793.02) – Review of Background Document of Consideration of Future Regulatory Action

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 feedback on the working document.

The Committee reviewed the document and suggested the following amendments to the draft regulatory document:

- 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.
- A provision mandating that the consumer should receive their entitled refund within thirty (30) days from the date the consumer returns the hearing aid to the provider.
- Notification to the consumer by the hearing aid dispenser, *via both telephone and mail contact* that a repaired hearing aid device is ready to be retrieved by the consumer.
- Clarification of “tolled” status, which occurs only when the hearing aid is returned to the hearing aid dispenser and/or manufacturer for repair and is not in the possession of the consumer. “Tolled” status does not include an office visit where an adjustment to the device is made by the hearing aid dispenser.

Ms. Del Mugnaio stated that the Board was not able to secure an author for the legislative proposal, as the amendments are not deemed omnibus in nature. She stated that the Hearing Health Care Providers CA has agreed to seek an author for the proposal, with support from the Board and the California Academy of Audiology.

V. Hearing Aid Dispensers Examination Program – 2011 Occupational Analysis

Ms. Del Mugnaio referenced the announcement and application documents included in the meeting packets, which are currently posted on the Board’s website, requesting interested subject matter experts apply to the Board to serve as experts for the Board’s occupational analysis (OA) project.

Ms. Del Mugnaio stated that the Board will be accepting applications until there are at least 35-40 individuals approved to serve as subject matter experts for the Board.

Ms. Danz inquired whether the Board could offer some incentive for licensees to participate in the OA process by awarding CE to licensees who complete the on-line “knowledge, skills, and abilities” survey.

Ms. Del Mugnaio stated that there may be an avenue for the Board to approve a maximum of two (2) hours of CE as indirect client care activity to licensees who complete the on-line survey.

The Committee adjourned at 2:20 p.m.



HEARING AID DISPENSERS PRACTICE COMMITTEE MEETING MINUTES

May 19, 2011

Hilton San Diego Mission Valley
901 Camino del Rio South
San Diego, CA 92108
(916) 263-2666

Committee Members Present

Deane Manning, Chair, Hearing Aid Dispenser
Robert Green, Au.D.
Sandra Danz, Hearing Aid Dispenser
Alison Grimes, Au.D.
Rodney Diaz, M.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Diane Dobbs, Legal Counsel
Breanne Humphreys, Staff
Michelle Mason, Staff

Board Members Present

Monty Martin, M.A.

Board Members Absent

Lisa O'Connor, M.A.
Carol Murphy, M.A.

Guests Present

Cynthia Peffers, Hearing Health Care Providers CA
Gail Hubbard, Newport Audiology
Jacque Georgeson, San Diego State University/ California Academy of Audiology
Bob McKinney, California Academy of Audiology

I. Call To Order

Deane Manning called the meeting to order at 1:15 p.m.

II. Introductions

Those in attendance introduced themselves.

III. Status of 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 and voted on at the January 26, 2011 Committee meeting and full board meeting. She stated that the Committee recommended to approve the proposed amendments as presented by staff; however, the

recommendations were subsequently revisited by the Board, and further amendments were recommended to strike language in Section 1399.140(d) authorizing a one-year grace period for a licensed hearing aid dispenser to complete the requisite Continuing Education (CE) in the following renewal period. Ms. Del Mugnaio stated that there was some confusion on the part of some of the Committee/Board members as to whether the provision was an exemption for extenuating circumstances surrounding health issues, military service, or other relocation issues, or merely a grace-period. She explained that subsection (d) was not an exemption or “waiver,” and that Section 1399.144 did provide for a Board-approved waiver for verified health, military service, or a substantiated undue hardship.

Ms. Del Mugnaio also requested that the Committee review the proposed definition of self-study as provided for in Section 1399.140 (a)(2).

Ms. Del Mugnaio stated that she recently received inquiries from members of the profession regarding CE courses that may not be specifically within the scope of practice of hearing aid dispensers but are related topics that provide information that assists the hearing aid dispenser in providing a higher-quality of service to consumers, e.g., pediatric amplification, tympanometry, acoustic neuroma. She referenced the proposed definition of “related” course content in Section 1399.140.1.

Ms. Grimes inquired whether the proposed maximum of three (3) hours in self-study must be in directly relevant course work or whether it could include indirect or related hours.

Ms. Del Mugnaio responded that the maximum of three (3) hours may be in any course content areas.

M/S/C: Grimes/Green

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

IV. Status of Legislative Proposal Regarding the Song-Beverly Consumer Warranty Act (California Civil Code Section 1793.02) – Review of Background Document of Consideration of Future Regulatory Action

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The Committee reviewed the document and suggested the following amendments to the draft regulatory document:

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- A provision mandating that the consumer should receive their entitled refund within thirty (30) days from the date the consumer returns the hearing aid to the provider.
- Notification to the consumer by the hearing aid dispenser, *via both telephone and mail contact* that a repaired hearing aid device is ready to be retrieved by the consumer.
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Ms. Del Mugnaio stated that the Board was not able to secure an author for the legislative proposal, as the amendments are not deemed omnibus in nature. She stated that the Hearing Health Care Providers CA has agreed to seek an author for the proposal, with support from the Board and the California Academy of Audiology.

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Ms. Del Mugnaio referenced the announcement and application documents included in the meeting packets, which are currently posted on the Board’s website, requesting interested subject matter experts apply to the Board to serve as experts for the Board’s occupational analysis (OA) project.

Ms. Del Mugnaio stated that the Board will be accepting applications until there are at least 35-40 individuals approved to serve as subject matter experts for the Board.

Ms. Danz inquired whether the Board could offer some incentive for licensees to participate in the OA process by awarding CE to licensees who complete the on-line “knowledge, skills, and abilities” survey.

Ms. Del Mugnaio stated that there may be an avenue for the Board to approve a maximum of two (2) hours of CE as indirect client care activity to licensees who complete the on-line survey.

The Committee adjourned at 2:20 p.m.



May 20, 2011

Hilton San Diego Mission Valley
901 Camino del Rio South
San Diego, CA 92108
(916) 263-2666

Board Members Present

Alison Grimes, Au.D., Vice Chairperson
Sandra Danz, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Robert Green, Au.D.
Rodney Diaz, M.D.
Monty Martin, M.A.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Diane Dobbs, Legal Counsel
Breanne Humphreys, Staff
Michelle Mason, Staff

Guests Present

Cindy Kanemoto, DCA
Cynthia Peffers, HHP CA
Debbie Riley, SLP
Tricia Hunter, HHP CA
Meredith Nunally
Mary Agnes Matyszewski, Administrative Law Judge
Lori J. Forcucci, Deputy Attorney General

Board Members Absent

Lisa O'Connor, M.A., Chairperson
Carol Murphy, M.A.

I. Call to Order

Vice Chairperson Grimes called the meeting to order at 9:10 a.m.

II. Introductions

Those in attendance introduced themselves.

III. Approval of Meeting Minutes January 26-27, 2011 Hearing Aid Dispensers Committee, Speech-Language Pathology Committee, & Full Board Meeting Minutes

The Board discussed minor edits to the meeting minutes of the January 26-27, 2011 Hearing Aid Dispensers Committee, Speech-Language Pathology Committee, and full Board meeting minutes.

M/S/C: Manning/Grimes

The Board voted to approve the meeting minutes as amended.

IV. Hearing on Petition for Reinstatement of Revoked/Surrendered License - NUNALLY, MEREDITH SP 12617

The Board heard the Petition Hearing for the Reinstatement of the Surrendered License of Ms. Meredith Nunally.

Board convened in closed session.

**V. Closed Session (pursuant to Government Code Subsections 11126 (a)(1) (c)(3))
Proposed Decisions/Stipulations / Other APA Enforcement Actions**

A. To Deliberate on Petition for Reinstatement

The Board adjourned the full board meeting and went into closed session at 10:45 a.m. to deliberate the decision of the Petition Hearing.

VI. Executive Officer's Report

A. Budget Update

Ms. Del Mugnaio reviewed the expenditures reports with the Board for both the Speech-Language Pathology and Audiology budget and the Hearing Aid Dispensers' budget as of Month 9, ending on March 31, 2011. She explained the expenditure trends and projected reversions.

B. Status of Proposed Regulations

1. 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 the Board had approved the language at a previous meeting and delegated to staff to file the Notice of Proposed Action. She stated that the regulatory notice will be filed in June 2011.

2. Speech-Language Pathology Assistant - Supervision and Field Work Experience Requirements (California Code of Regulations 1399.170, 1399.170.6, 1399.170.10, 1399.170.11 & 1399.170.15)

Ms. Del Mugnaio referenced the proposed regulations regarding speech-language pathology assistant supervision and fieldwork requirements, as included in the meeting packets, and stated that the proposal was reviewed by the Speech-Language Pathology Practice Committee at the January 26, 2011 meeting. Ms. Del Mugnaio stated that, based on comments and feedback from interested parties regarding current speech-language pathology assistant training program provisions, she is proposing the Board consider amending Section 1399.170.4(b)(1) to require that the speech-language pathology assistant training program director must hold a valid license in speech-language pathology or equivalent credentials. Ms. Del Mugnaio stated that the current provisions do not require the training program director to possess specific credentials or licensure in the field of speech-language pathology. She reported that a few programs have employed program directors who possess credentials in a health discipline other than speech-language pathology, and that the lack of a program director's specific knowledge and experience in the field has presented problems in terms of developing appropriate curriculum, coordinating clinical experiences, advising students, and providing direction to program instructors.

Ms. Del Mugnaio requested that the Board consider the additional proposed amendment.

The Board discussed the amendment and decided to table the matter until the July Board meeting, as the professional speech-language pathology Board members were not present to discuss the proposed changes.

C. Executive Orders - Hiring Freeze / Travel Restrictions / Staff Recruitment / Personnel Issues

Ms. Del Mugnaio reported on the status of the state's on-going hiring freeze and opportunity for limited recruiting within the Department of Consumer Affairs.

Ms. Del Mugnaio also reviewed Governor Brown's Executive Order restricting state personnel from incurring travel expenses for any non-essential or non-mission critical travel. She reported that Board meetings where critical policy and program issues are being discussed are deemed mission critical; however, agencies are being encouraged to conduct business in their local vicinities to reduce travel and facility costs.

Ms. Del Mugnaio announced the recruitment of the new Program Manager, Breanne Humphreys, and the Non-Sworn Special Investigator, Michelle Mason.

Ms. Humphreys and Ms. Mason addressed the Board and provided a summary of their respective employment experience.

VII. Chairperson's Report- Report on the Department of Consumer Affairs Director's Conference Call and Information Regarding Continued Competency

Vice Chairperson Grimes presented the report in Chairperson O'Connor's absence and referenced the written report prepared by Chairperson O'Connor regarding continued competency.

Vice Chairperson Grimes stated that the Board will be discussing continued competency models that may be adopted for speech-language pathology, audiology, and hearing aid dispensing at the July Board meeting, and may have guest speakers from the Citizen Advocacy Center attend the meeting to inform the Board on existing continued competency program models.

VIII. Practice Committee Reports

A. Hearing Aid Dispensers Committee Report Regarding the Status of the Proposed Continuing Education Regulation Changes, and the Legislative Proposal to Amend the Song-Beverly Consumer Warranty Act.

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 regarding the continuing education regulation proposal (included under the Hearing Aid Dispensers Committee Meeting Minutes).

M/S/C: Danz/Grimes

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.

B. Audiology Practice Committee Report and Recommendations Regarding Proposed Regulatory Amendments for Dispensing Audiologists' Renewal Fees and Continuing Professional Development, and Status of the Discussion Regarding the Pediatric Audiology Specialty Examination

Ms. Grimes provided an overview of the issues discussed at the Audiology Practice Committee meeting and outlined the recommendations of the Committee before the Board regarding the proposed regulations for the Dispensing Audiologists' renewal fees and continuing professional development provisions (included under the Audiology Practice Committee Meeting Minutes).

M/S/C: Green/Danz

The Board voted to adopt the recommendation of the Committee and approve the filing of the notice of proposed action regulatory package (California Code of Regulations Sections -1399.157, 1399.160.3-1399.160.6)

IX. Department of Consumer Affairs Director's Report – Updates from the Administration, New Policy Directives

Ms. Cindy Kanemoto provided the Department's Director's Report on behalf of Director Brian Stiger, and outlined the following projects and administrative updates:

Hiring Freeze

- On Tuesday, February 15, 2011, Governor Brown issued an Executive Order for a Statewide Hiring Freeze. The Order prohibits the hiring of employees or entering into personal services contracts to compensate for the effects of the hiring restrictions.
- The Order did provide an exemption process for positions that are essential to carry out certain responsibilities, including "core functions of departments' statutory missions."
- The Department of Finance also released a Budget Letter, which identified the process for submitting freeze exemption requests. These exemptions require a justification as to how the request meets the criteria related to the Board's statutory mission and also the consequences if the positions are not filled.
- The Department will continue to work with the Boards to submit exemption requests to include justifications based upon this new Order. These exemptions will be reviewed by the Department, State and Consumer Services Agency, Department of Finance, and then the Governor's Office.
- To date, the Department has had success in seeking exemptions.

Travel Restriction Executive Order

- On April 26, 2011, the Governor issued an Executive Order issuing restrictions on travel.
- No travel is permitted unless it meets the definition for "mission critical" under the executive order.

- The Department will work with the Boards to implement this order and ensure that the Boards and Bureaus are able to continue with their mission-critical travel and comply with the Order regarding all other travel.

Consumer Protection Enforcement Initiative

- The Department posted the third set of performance measures to the Department's Website.
- The measures show how long it takes from the receipt of a complaint until disciplinary action is taken, which is very helpful to the Board in reviewing their enforcement program.

SB1441

- The Department encourages this Board to move forward with regulations to implement the Senate Bill 1441 Uniform Standards.
- The implementation of SB1441 was an item that was brought up during Sunset Legislative Review Hearings.

BREEZE

- The BreEZe project has achieved another major milestone with the receipt of final proposals in March.
- The proposals were evaluated for their technical and administrative merit as well as how well they met the DCA's business needs.
- The cost of the final project is higher than anticipated. DCA is researching options for reducing the costs and is in negotiations with the vendor.
- Between April and August, the project will be securing the final contract approvals from Department of General Services and the Legislature. The contractor is anticipated to start August 2011.

EO Evaluation/Study

- The Department is working on developing a new Executive Officer Evaluation form. A working group made up of board members and an EO is developing the form criteria, and the new form is expected to be released by mid June.
- The Department had received several requests from boards asking to increase the salary for an Executive Officer. These requests have to be approved by the Department of Personnel Administration and the Governor's Office. The Department wanted to ensure that all board's EO salaries were reviewed to determine if the positions were at the appropriate salary and, therefore, the Department has contracted with a consultant to review all EO salaries and record any changes made in the last 10 years (e.g., increased staff, scopes of responsibility, etc.) in order to recommend an appropriate salary scale. The final report is expected to be released in August.

Posting information/Web casting

The Department strongly encourages the Board to post materials online for convenience to the public and as a cost-savings measure.

X. Legislation

A. Senate Bill 933 - Runner - Merger of the Speech-Language Pathologist and Audiologist/Hearing Aid Dispensers Practice Act(s)

Ms. Del Mugnaio reported that Senator Runner is carrying the bill to merge the 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.

Ms. Del Mugnaio stated that there is no opposition to the merits of the bill on record; however, Tim Riker of the California Association of the Deaf, Sacramento Chapter, did raise some concerns regarding the governance of the Board and its overall mandates of consumer protection. Ms. Del Mugnaio stated that she communicated with Mr. Riker via email and invited him to attend a public Board meeting and observe the Board's policy making forums. She also invited Mr. Riker to address his concerns before the Board or directly with the Legislature.

Ms. Del Mugnaio reported that the bill has passed out of the Senate and is now in the Assembly Policy Committee.

B. Assembly Bill 675 - Hagman – Continuing Education

Ms. Del Mugnaio stated that AB 675, as proposed, would restrict boards from approving continuing education or continuing competency that advances or promotes labor organizing on behalf of a union, or that advances or promotes statutory or regulatory changes and political advocacy, and would restrict providers of courses from advertising that the course meets the continuing education requirements for license renewal. The bill 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.

Ms. Del Mugnaio reported that the bill was unsuccessful in passing out of the policy committee hearings.

C. Senate Bill 544 - Price- Professions and Vocations: Regulatory Boards

Ms. Del Mugnaio stated that SB 544 is a reinvention of the Senate Bill 1111 that was crafted to provide enforcement program improvements for the boards and bureaus within the Department. She stated that many of the provisions included in SB 544 have been proposed in the Board's CPEI regulatory proposal.

Ms. Hunter stated that the Nursing Association has concerns with the provisions of the bill and is continuing to work with the Senate Business and Professions Committee on further amendments. She stated that SB 544 is now a two-year bill, and will be reconsidered in the 2012 legislative session.

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

Ms. Hunter indicated that HHP is currently seeking an author and vehicle for the proposal to amend the Song-Beverly Consumer Warranty Act as related to right of return provisions for hearing aids.

E. Other Legislation of Interest to the Board

Ms. Del Mugnaio presented information regarding Senate Bill 541 regarding the requirement for boards/bureaus to enter into contracts with expert consultants for

enforcement, examination, and licensing consultant services. SB 541 would enable boards and bureaus to utilize expert consultants under a simplified and expedited contract process. Ms. Del Mugnaio reported that boards currently utilize expert consultants and pay the consultants through an invoice process. In November 2010, the Department issued a memo requiring that all boards and bureaus enter into formal consulting services contracts with each expert consultant, as mandated by state law. The process to execute formal contracts for each consultant would create enormous backlogs for both the Department and the boards, and prevent the boards from securing expert services for enforcement and examinations in a timely manner.

Ms. Del Mugnaio suggested the Board consider supporting the measure.

M/S/C: Grimes/Manning

The Board voted to support SB 541 and delegated to Ms. Del Mugnaio the task of forwarding the appropriate support letter.

XI. 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.

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

No further public comments were presented.

**XIII. Announcements- Future 2011 Board Meetings- July 14-15, 2011 Sacramento/ October 20-21, San Francisco
Next Scheduled Board Meeting July 14-15, 2011 in Sacramento**

The Board confirmed the dates of the July 2011 and October 2011 board meetings, as noticed.

XIV. Adjournment

Vice Chairperson Grimes adjourned the meeting at 2:40 p.m.

Speech-Language Pathology and Audiology Board - 0376
BUDGET REPORT
FY 2010-11 EXPENDITURE PROJECTION

May 31, 2011

OBJECT DESCRIPTION	FY 2009-10		FY 2010-11				
	ACTUAL	PRIOR YEAR	BUDGET	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
	EXPENDITURES	EXPENDITURES	STONE	EXPENDITURES	SPENT	TO YEAR END	BALANCE
	(MONTH 13)	5/31/2010	2010-11	5/31/2011			
PERSONNEL SERVICES							
Salary & Wages (Staff)	165,128	209,563	183,835	166,178	90%	173,869	9,966
Statutory Exempt (EO)	69,295	4,750	81,732	69,888	86%	76,385	5,347
Temp Help Reg (Seasonals)	18,928	16,615	14,007	11,911	85%	13,569	438
Temp Help (Exam Proctors)			0			0	0
Board Member Per Diem	0	0	5,854	0	0%	0	5,854
Committee Members (DEC)	1,200	1,200	0	3,000		3,600	(3,600)
Overtime			0	1,261		1,261	(1,261)
Staff Benefits	93,656	87,558	107,671	110,748	103%	120,393	(12,722)
Salary Savings	0	0	(23,293)	0	0%	0	(23,293)
TOTALS, PERSONNEL SVC	348,207	319,686	369,806	362,986	98%	389,077	(19,271)
OPERATING EXPENSE AND EQUIPMENT							
General Expense	8,167	5,857	23,136	6,226	27%	7,400	15,736
Fingerprint Reports	5,559	4,080	19,439	5,304	27%	7,000	12,439
Minor Equipment	114	114	9,000		0%	0	9,000
Printing	7,254	5,986	10,964	1,546	14%	1,800	9,164
Communication	9,501	3,366	6,374	3,652	57%	5,000	1,374
Postage	15,150	14,674	2,096	5,665	270%	6,700	(4,604)
Insurance			0				0
Travel In State	11,858	9,838	13,118	4,905	37%	9,000	4,118
Travel, Out-of-State	0	0	0				0
Training	288	147	4,813	0	0%	288	4,525
Facilities Operations	59,297	58,401	64,576	60,877	94%	64,576	0
Utilities			0				0
C & P Services - Interdept.	0	0	2,753	0	0%	0	2,753
C & P Services - External			0			0	0
DEPARTMENTAL SERVICES:							
Departmental Pro Rata	61,860	63,459	71,264	61,700	87%	71,264	0
Admin/Exec	41,795	38,379	42,768	39,204	92%	42,768	0
Interagency Services	0	0	0	0			0
IA w/ OER			0				0
DOI-ProRata Internal	1,569	1,551	1,655	1,517	92%	1,655	0
Public Affairs Office	1,921	3,553	3,361	3,081	92%	3,361	0
CCED	2,040	1,870	2,044	1,872	92%	2,044	0
INTERAGENCY SERVICES:							
Consolidated Data Center	588	1,000	5,460	2,000	37%	5,460	0
DP Maintenance & Supply	10	10	3,806	0	0%	10	3,796
Central Admin Svc-ProRata	34,942	34,942	27,014	27,014	100%	27,014	0
EXAM EXPENSES:							
Exam Supplies			0				0
Exam Freight			0				0
Exam Site Rental			0				0
C/P Svcs-External Expert Administrative			0				0
C/P Svcs-External Expert Examiners			0				0
C/P Svcs-External Subject Matter	500			10,864		10,864	(10,864)
ENFORCEMENT:							
Attorney General	41,465	41,465	48,572	34,500	71%	38,000	10,572
Office Admin. Hearings	3,088	1,246	5,112	2,385	47%	3,400	1,712
Court Reporters	700						0
Evidence/Witness Fees	12,210	9,500	6,428	2,338	36%	5,000	1,428
DOI - Investigations			34,933	32,022	92%	34,933	0
Major Equipment			0				0
Other - Clothing & Pers Supp				145		145	0
Special Items of Expense							0
Other (Vehicle Operations)			0				0
TOTALS, OE&E	319,876	299,438	408,686	306,817	75%	347,682	61,149
TOTAL EXPENSE	668,083	619,124	778,492	669,803	173%	736,759	41,878
Sched. Reimb. - Fingerprints	(6,426)	(5,151)	(22,000)	(6,762)	31%	(6,000)	(16,000)
Sched. Reimb. - Other	(6,675)	(5,490)	(2,000)	(7,180)	359%	(7,000)	5,000
Distributed			(35,000)		0%		
Unsched. Reimb. - Other	(1,414)	(1,150)		(6,916)		(6,000)	6,000
NET APPROPRIATION	653,568	607,333	719,492	648,945	90%	717,759	36,878
SURPLUS/(DEFICIT):							5.1%

**HEARING AID DISPENSERS BOARD - 0208
BUDGET REPORT
FY 2010-11 EXPENDITURE PROJECTION**

May 31, 2011

OBJECT DESCRIPTION	FY 2009-10		FY 2010-11				
	ACTUAL	PRIOR YEAR	BUDGET	CURRENT YEAR	PERCENT	PROJECTIONS	UNENCUMBERED
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	(MONTH 13)	5/31/2010	2010-11	5/31/2011			
PERSONNEL SERVICES							
Salary & Wages (Staff)	170,036	155,621	210,945	153,617	73%	184,268	26,677
Statutory Exempt (EO)			0			0	0
Temp Help Reg (Seasonals)	1,375	1,375	12,333	0	0%	2,935	9,398
Temp Help (Exam Proctors)	1,242	1,007		1,187		1,400	(1,400)
Board Member Per Diem							0
Committee Members (DEC)	700	700	5,822	0	0%	700	5,122
Overtime	1,677	831		1,769		2,123	(2,123)
Staff Benefits	65,140	63,618	80,345	56,488	70%	61,041	19,304
Salary Savings	0	0	(18,736)	0	0%	0	(18,736)
TOTALS, PERSONNEL SVC	240,170	223,152	290,709	213,061	73%	252,467	38,242
OPERATING EXPENSE AND EQUIPMENT							
General Expense	8,505	4,875	18,242	2,270	12%	2,900	15,342
Fingerprint Reports	542	389	9,000	51	1%	542	8,458
Minor Equipment	19,784	19,784	3,000		0%	3,000	0
Printing	1,893	1,277	12,429	899	7%	1,079	11,350
Communication	3,008	2,464	8,433	1,212	14%	3,008	5,425
Postage	7,503	5,525	12,429	12,968	104%	15,500	(3,071)
Insurance			0			0	0
Travel In State	8,997	6,388	23,120	2,015	9%	5,000	18,120
Travel, Out-of-State			0			0	0
Training	0	0	3,489	0	0%	0	3,489
Facilities Operations	48,220	45,469	47,549	47,185	99%	47,185	364
Utilities			0			0	0
C & P Services - Interdept.	0	0	35,137	0	0%	35,137	0
C & P Services - External			0			0	0
DEPARTMENTAL SERVICES:							
Departmental Pro Rata	38,932	38,159	36,403	32,713	90%	36,403	0
Admin/Exec	55,319	50,798	44,357	40,659	92%	44,357	0
Interagency Services	0	0	96	0	0%	96	0
IA w/ OER	32,178	32,210	99,351	32,210	32%	99,351	0
DOI-ProRata Internal	1,257	1,243	974	892	92%	974	0
Public Affairs Office	1,532	2,838	1,994	1,827	92%	1,994	0
CCED	54,302	53,020	78,553	71,687	91%	78,553	0
INTERAGENCY SERVICES:							
Consolidated Data Center	504	1,000	2,555	6,000	235%	7,000	(4,445)
DP Maintenance & Supply		0	13,146	0	0%	0	13,146
Central Admin Svc-ProRata	22,692	22,692	25,837	25,837	100%	25,837	0
EXAM EXPENSES:							
Exam Supplies			0			0	0
Exam Freight			0			0	0
Exam Rent-State Owned	1,539	1,539				1,539	
Exam Rent-Non State	0	0	7,663	0	0%	0	7,663
C/P Svcs-External Expert Administrative	15,250	15,250	25,542	15,250	60%	18,300	7,242
C/P Svcs-External Expert Examiners	0	0	37,913	0	0%	0	37,913
C/P Svcs-External Subject Matter	38,885	33,871		23,495		38,000	(38,000)
ENFORCEMENT:							
Attorney General	39,318	25,641	41,995	17,670	42%	21,204	20,791
Office Admin. Hearings	4,087	4,087	16,637	0	0%	4,087	12,550
Court Reporters	1,000					1,000	(1,000)
Evidence/Witness Fees	560	560	1,277	93	7%	560	717
DOI - Investigations	146,512	147,235	190,858	174,953	92%	190,858	0
Major Equipment			5,000	0	0%	5,000	0
Special Items of Expense							0
Other (Vehicle Operations)			15,000	0	0%	5,000	10,000
TOTALS, OE&E	552,319	516,314	817,979	509,886	62%	693,464	126,054
TOTAL EXPENSE	792,489	739,466	1,108,688	722,947	136%	945,931	164,296
Sched. Reimb. - Fingerprints	(392)	(408)	(9,000)	(118)	1%	(6,500)	(2,500)
Sched. Reimb. - Other	(3,100)	(2,855)	0	(235)			0
Unsched. Reimb. - Other				(6,494)			0
NET APPROPRIATION	788,997	736,203	1,099,688	716,100	65%	939,431	161,796
SURPLUS/(DEFICIT):							14.7%

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 [August 8, 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.

**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 - 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 August 8, 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.

On March 1, 2011 the Board filed the proposed regulations as an emergency filing. The emergency regulations were approved by the Office of Administrative Law effective March 1, 2011 and shall expire as of August 29, 2011.

The emergency regulations included the following changes:

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.

The following changes are being proposed as part of the Notice filing:

Section 1399.160.: Adds clarification to the definition of a self-study course to provide that a self-study course does not include an interactive course offered through electronic media where participants may interact with the instructor or other course participants during the learning experience.

Section 1399.160.3: Adds clarifying language to reflect the limits on the number and type of hearing aid dispenser courses a non-dispensing audiologist may accrue during a single license renewal period. Amendments to this Section also establish the CPD requirements for a licensee who holds both a dispensing audiology license and a speech-language pathology license, as the CPD criteria for a dually licensed individual was not provided for in the emergency filing.

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.

The proposal also specifies the CPD requirements for a DAU who also holds a speech-language pathology license and is a dually licensed practitioner. The provisions would require the dually licensed practitioner to accrue eight (8) hours of CPD for the DAU annual license and sixteen (16) hours of CPD for the biennial speech-language pathology license with relevant limitations on self-study and related course work for each license as reflected in other relevant CPD regulations.

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.

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

INITIAL STATEMENT OF REASONS

Hearing Date: No public hearing has been scheduled.

Subject Matter of Proposed Regulations: Dispensing Audiologist Renewal Fees/Continuing Professional Development

Sections Affected: Title 16, Division 13.4, Sections 1399.157; 1399.160.3; 1399.160.6

Introduction

On January 1, 2010, pursuant to AB 1535, (Jones, Chapter 309, Statutes of 2009) the Hearing Aid Dispensers Bureau, established in 1972, and the Speech-Language Pathology and Audiology Board, established in 1974, merged to form one regulatory body, the Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board. Both the former entities set licensing standards and enforced the laws governing the practices of the specified professions, speech-language pathology and audiology, and hearing aid dispensers, respectively. The primary priority of both entities as well as the newly formed Speech-Language Pathology, Audiology & Hearing Aid Dispensers Board (Board) is the protection of the public.

On February 23, 2011, the Board filed emergency regulations with the Office of Administrative Law to implement the following provisions. The emergency regulations were approved and became effective March 1, 2011, and shall remain in effect until August 30, 2011, or until a subsequent regulatory filing is approved.

Additional amendments are being sought from the adopted emergency language in order to clarify existing continuing professional development requirements.

Specific Purpose of Each Amendment:

1. Amend Section 1399.157

The proposed amendment establishes the application fee for individuals applying for a dispensing audiology license and the annual renewal cycle and authorized

renewal fee for dispensing audiologists in order to appropriately fund the regulation of licensed audiologists who sell hearing aids.

Factual Basis/Rationale

In order to implement the provisions of the merger legislation, AB 1535, the Board must amend its licensing provisions to reflect the newly established application and renewal requirements for licensed dispensing audiologists (DAUs). Business and Professions Code Section 2534.2 established an application fee for individuals applying for a DAU license not to exceed \$280 and a license renewal fee to not exceed \$280.

Currently, individuals applying for a hearing aid dispensers' license pay a \$75 application and a \$280 initial license fee. Once licensed, a hearing aid dispenser is required to pay a license renewal fee of \$280. Prior to the enactment of AB 1535, individuals who applied for an audiology license and a hearing aid dispensers license, were required to pay (1) a \$60 audiology application and initial license fee (\$35 application fee for the Temporary Required Professional Experience (RPE) License + \$25 initial license fee) and (2) \$355 total fee for a hearing aid dispenser application and initial license fee (\$75 + \$280, respectively).

Audiologists holding both licenses, were also required to pay two (2) separate renewal fees: \$280 annually for the hearing aid dispensers license, and \$110 biennial for the audiology license. The new statutory provisions regarding the DAU fees, established a new \$280 application fee for the DAU license, which replaced the existing \$25 initial license fee for the separate audiology license and eliminated the remaining fees for the separate hearing aid dispensers license. DAUs will still be required to pay the \$35 application fee for the Temporary RPE License (CCR Section 1399.153.2(b)), which authorizes applicants to obtain the professional experience required for entry-level licensure.

Further, the statutory provisions of AB 1535 regarding the established \$280 license renewal fee for DAUs, did not specify the license renewal cycle. License renewal cycles typically are established by regulation. Existing California Code of Regulations Section 1399.157 provides for a biennial renewal cycle for licensed speech-language pathologists and audiologists. The proposed amendments would specify the new application and renewal fees for DAUs and provide for an annual renewal cycle for DAUs in order to provide a sufficient revenue source from dispensing practitioners to be deposited into the Hearing Aid Dispensers Account. The provisions of AB 1535 (Section 55) mandates that the Board establish fees for DAUs that are sufficient to support the Board in its regulation of licensed audiologists who sell hearing aids and hearing aid dispensers and that such fees are fairly appropriated.

2. Amend Section 1399.160 (Changes are being proposed since the adoption of the emergency filing)

The proposed amendment clarifies the definition of self-study and removes antiquated references to specific modes of course delivery.

Factual Basis/Rationale

Many continuing professional development (CPD) providers are opting to offer courses through electronic media as “interactive” or “live” courses since the mode of delivery is more convenient for licensees and eliminates travel expenses and extended time away from work. Interactive or live courses have always been approved by the Board as “classroom” hours and were not considered self-study, however, many licensees have been confused about whether courses offered via electronic means are subject to the self-study hour limits. The amendment should clarify the Board’s policy on such course offerings.

2. Amend Section 1399.160.3 (Additional changes are being proposed since the adoption of the emergency filing)

The proposed amendments mandate a specified number of (CPD) hours in hearing aid related coursework that must be obtained by a dispensing audiologist as a condition of license renewal.

Factual Basis/Rationale

Business and Professions Code Section 2539.1, effective January 1, 2010, provides an avenue for a licensed audiologist, whose audiology and hearing aid dispensers’ licenses were in good standing as of January 1, 2010, and who had taken and passed the requisite hearing aid dispensers examinations, to be eligible to dispense hearing aids under the audiology license. The provisions of Section 2539.1 specify that licensed audiologists, who are eligible to continue selling hearing aids under the audiology license, shall be subject to the provisions of the Speech-Language Pathology and Audiology Licensure Act (hereinafter “Act”). The Act requires licensed audiologists to complete a specified number of hours in CPD as relevant to the scope of practice of audiology, which includes the fitting of hearing aids. Pursuant to the changes enacted under Assembly Bill 1535, the fitting and selling of hearing aids is now within the scope of practice of DAUs and, as such, must be appropriately reflected in the CPD requirements.

The proposed amendments would establish CPD requirements specifically for DAUs . Business and Professions Code Section 2532.6 established CPD requirements for licensed speech-language pathologists and audiologists and included the authority for the Board to approve CPD providers and courses, as necessary. The implementing CPD regulations were adopted in 1999, and since

then, licensed speech-language pathologists and audiologists have been required to complete twenty-four (24) hours of CPD course work from a Board-approved provider every two (2) years, coinciding with the biennial license renewal cycles. 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 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.

Some practitioners hold both speech-language pathology licenses and audiology or DAU licenses, and are deemed dually licensed. The Board has made special CPD provisions for such licensees as included in subsection (d). The proposed changes would specify the number of CPD hours a dually licensed speech-language pathologist and DAU licensee must accumulate to meet license renewal requirements. Since the DAU is an annual license, the Board has made an initial determination that eight (8) hours of CPD should be required for the DAU license with a maximum of one (1) hour that may be obtained through self-study and one (1) hour from related or indirect client care courses. The speech-language pathology license is on a biennial renewal cycle and consistent with the provisions in subsection (d), the Board would require the licensee to obtain sixteen (16) hours of CPD in speech-language pathology with a maximum of two and one-half (2.5) hours that may be obtained in self-study and another two and one-half (2.5) hours from related or indirect client care courses.

The proposed language reflects the intended benefit of mandatory continued professional growth in that the DAU would be required to stay current and abreast of new information and practice trends in the respective fields of audiology and hearing aid dispensing, which do have significant overlap, and are also distinct in their professional scope and patient responsibility.

Since mandatory CPD exists as an additional layer of public protection as it ensures licensees are exposed to current and relevant practice information in order to provide quality patient/client care, the proposed language clearly qualifies the requisite fifty percent (50%) of the CPD hours required of DAUs in hearing aid related coursework and restricts courses of a particular manufacturer/provider where the content of the course focuses on the marketing of a particular device, or equipment. Courses aimed at marketing products do not reflect the spirit of CPD for licensees as such courses are not independent of

commercial influence and the focus of such courses serve as a financial benefit to the course provider as opposed to an educational learning experience about relevant practice information. The proposed amendments also stipulate that the remaining fifty percent (50%) of the requisite CPD hours be obtained from audiology coursework specifically where the content does not solely focus on aspects of hearing aid dispensing.

3. Amend Section 1399.160.6

The proposal establishes procedures for the Board to review and approve courses related to the dispensing of hearing aids as offered by Board-approved providers in order to confirm that such courses meet the established requirements as appropriate CPD for DAUs license renewal. The proposed amendments set forth the information and documentation that must be submitted to the Board for each course offered.

As stated earlier, the scope of practice of audiology and hearing aid dispensing are interdependent in several ways, and as such, many courses offering practice-relevant information may overlap both professions. For this reason, the Board determined that independent course review of all hearing aid related coursework is necessary in order to ensure that the courses offered by Board-approved providers meet the intent of the proposed CPD requirements. The proposed amendments to Section 1399.160.6 establishes the course review procedures.

4. Sections 1399.160.4, 1399.160.5, 1399.160.7 are not being modified, however, the sections are provided below to assist one in understanding the proposed changes in context.

Factual Basis/Rationale

For ease in following the changes made in the sections above (1 and 2), the sections in this section have been provided to assist one in understanding the proposed changes in context.

Underlying Data:

- November 4, 2009 Audiology Practice Committee Meeting Minutes
- March 24-25, 2010 Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board Meeting and Audiology Practice Committee Meeting Minutes
- May 26-27, 2010 Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board Meeting and Audiology Practice Committee Meeting Minutes

- July 26, 2010 Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board Meeting Minutes
- November 29, 2010 Speech-Language Pathology & Audiology & Hearing Aid Dispensers Telephonic Board Meeting Minutes
- May 19-20, 2011 Draft Audiology Practice Committee Meeting Minutes

Business Impact:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts or evidence/documents/testimony:

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

There are approximately fifty (50) approved hearing aid dispenser continuing education providers approved by the Board and approximately two hundred (150-200) 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.
- Renewal fee required of CE Providers that offer both hearing aid dispenser courses and audiology courses

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

Specific Technologies or Equipment:

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

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the board 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.

Another alternative would be to not pursue the regulatory changes; however, not pursuing these changes would fail to enforce the appropriate CPD experiences for dispensing audiologists and would jeopardize the necessary funding source to the Board's funds by not collecting the statutorily mandated dispensing audiologists application and renewal fees.

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

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

Article 8. Miscellaneous

- Single underline reflects language adopted as emergency regulations, effective March 1, 2011
- Double underline reflects changes to the text made following the adoption of the emergency regulations.

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

1399.157. Fees.

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

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

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

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

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

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

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

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

Article 11. Continuing Professional Development

(2) Amend section 1399.160 of Division 13.4 of Title 16 of the California Code of Regulations to read as follows:

1399.160. Definitions

(a) A continuing professional development “course” means a form of systematic learning at least one hour (60 minutes) in length including, but not limited to, academic studies, extension studies, lectures, conferences, seminars, workshops, and self-study courses.

(b) A “self-study course” means a form of systematic learning performed at a licensee’s residence, office, or other private location including, but not limited to, ~~viewing of videotapes, and~~ viewing or listening to recorded courses ~~audiotapes~~, or participating in “self-assessment testing” (open-book tests that are completed by the licensee, submitted to the provider, graded, and returned to the

licensee with correct answers and an explanation of why the answer chosen by the provider was the correct answer). A self-study course does not mean a course taken at an accredited university towards a degree, nor does it include any interactive courses offered via electronic media where the course offering affords participants the opportunity to interact with an instructor and/or other course participants.

(c) A continuing professional development “provider” means an accredited institution of higher learning, a nonprofit education association, a nonprofit professional association, an individual, or other organization that offers continuing professional development courses and meets the requirements contained in this article.

(d) A “renewal period” means the two-year period that spans from a license’s expiration date to the license’s next expiration date.

(e) An “operational plan” means a detailed, written description which contains information that explains how the provider intends to conduct business, advertise its courses, provide educational services, and meet the minimum standards established in this article.

(f) “Professional development” shall have the same meaning and effect as the term “continuing education” when interpreting the provisions in this Article.

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

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

1399.160.3. Continuing Professional Development Requirements.

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

(b) A licensee who holds both a speech-language pathology license and an audiology license that expire in the year 2001, shall accrue at least eight (8) hours of continuing professional development courses as defined in Section 1399.160.4. for each license. A licensee may accrue no more than two (2) hours of continuing professional development courses through self-study courses for each license.

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

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

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

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

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

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

(2) No more than two and one-half (2.5) hours from courses related to the discipline of

speech-language pathology or audiology, as defined in Section 1399.160.4(c)(4) or in indirect client care courses as defined in Section 1399.160.4(c)(3).

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

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

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

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

(f) A licensee who holds both a speech-language pathology license and a dispensing audiology license shall accrue:

(1) At least sixteen (16) hours of continuing professional development courses in speech-language pathology biennially, of which no more than four (4) hours of the continuing professional development may be accrued through the following activities during a single renewal period:

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

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

(2) At least eight (8) hours of continuing professional development courses in dispensing audiology as defined in Section 1399.160.4 and 1399.160.3(e)(3) annually, of which no more than two (2) hours of continuing professional development courses may be accrued through the following activities during a single renewal period:

(A) No more than one (1) hour of self-study activities,

(B) No more than one (1) hour from courses related to the discipline of speech-language pathology as defined in Section 1399.160.4 (c)(4) or in indirect client care courses as defined in Section 1399.160.4 (c)(3).

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

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

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

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

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

1399.160.4. Continuing Professional Development Course Content.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) tort liability;

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

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

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

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

1399.160.5. Hours of Continuing Professional Development.

(a) One hour of instruction is equal to one hour of continuing professional development credit.

(b) One academic quarter unit is equal to ten (10) hours of continuing professional development credit.

(c) One academic semester unit is equal to fifteen (15) hours of continuing professional development credit.

(d) One academic trimester unit is equal to thirteen (13) hours of continuing professional development credit.

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

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

1399.160.6. Continuing Professional Development Course Approval.

(a) A licensee shall only be credited with continuing professional development hours if he or she takes a course from a board-approved provider with a valid, current approval as a provider or from an entity listed in Section 2532.6 (e)(1) of the Code.

(b) Courses related to the dispensing of hearing aids as offered by hearing aid manufacturers or companies for the purposes of continuing professional development shall be reviewed by the Board prior to the offering of the course. The continuing professional development provider must submit such request for course approval to the Board according to the timeline in Section 1399.151.1 (e). Such request shall include:

(1) The name of the sponsoring institution, the Board issued professional development provider number (with the exception of those entities listed in Section 2532.6(e)(1)), the address, telephone number and contact person.

(2) Course title, date(s), location(s), and number of continuing professional development hours offered.

(3) Type and method of educational instruction and learner outcomes to be met.

(4) A course outline, course description, and instructor information and qualifications.

(5) If available, advertisements intended to be used by the provider to advertise the relevant course.

~~(b)~~(c) A licensee or a continuing professional development provider may voluntarily petition Board consideration of any courses offered by an approved provider or an entity listed in Section 2532.6 (e)(1) of the Code. The licensee or continuing professional development provider must submit such request for course approval to the Board according to the timeline in Section 1399.151.1 (e). Such request shall include:

(1) The name of the sponsoring institution, the Board issued professional development provider number (with the exception of those entities listed in Section 2532.6(e)(1)), the address, telephone number and contact person.

(2) Course title, date(s), location(s), and number of continuing professional development hours offered.

(3) Type and method of educational instruction and learner outcomes to be met.

(4) A course outline, course description, and instructor information and qualifications. (5) If available, advertisements intended to be used by the provider to advertise the relevant course.

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

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

1399.160.7.Board-Approved Providers.

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

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

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

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

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

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

**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, 2013, 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 courses. A self-study course does not mean a course taken at an accredited university towards a degree, nor does it include any interactive courses offered via electronic media where the course offering affords participants the opportunity 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.

~~(c) (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) ~~Fraudulently~~ 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.

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.



June 1, 2011

Assembly Member Mary Hayashi, Chair
Assembly Committee on Business, Professions, and Consumer Protection
State Capitol, Room 3013
Sacramento, CA 95814

Re: Senate Bill 933 (Sharon Runner: Speech-Language Pathology, Audiology, & Hearing Aid Dispensers Board; Merger of Functions)

Dear Assembly Member Hayashi:

On behalf of the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board), we request your support of SB 933, as an important technical clean-up bill which serves to consolidate the oversight and administrative provisions of the newly merged Board.

The provisions of SB 933 simply clarify the oversight responsibility of the merged Board which was consolidated under Assembly Bill 1535 (Jones), statutes of 2009. Both the Legislature and Administration supported the provisions of AB 1535 with respect to the merger of the two oversight agencies and the elimination of dual licensure for dispensing audiologists, however, due to last minute amendments regarding the governance structure of the Board, there was not sufficient time within the legislative process to make clarifying changes with regard to consolidating the Practice Acts. As such, existing laws include duplicative and/or obsolete administrative oversight provisions.

SB 933 serves to consolidate all relevant provisions regarding speech-language pathology, audiology, and hearing aid dispensing under Business and Professions Code Chapter 5.3 (Sections 2530 et.seq.). The bill is not intended to change or alter any of the licensing or enforcement provisions governing the professions but instead will provide technical clean-up regarding the governance structure and oversight of the Board.

SB 933 will also consolidate the Hearing Aid Dispensers Account under the Speech-Language Pathology and Audiology Fund and create the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund. The consolidation of funds will enable the Board to provide a solvent funding source for each of its respective programs: enforcement, licensing, and examinations, and will enable the Board to devote the necessary funding to the appropriate program areas while maintaining an adequate accounting of the revenue source.

Thank you for considering this measure on behalf of the Board and the consumers of our state who are the recipients of speech and hearing services.

Respectfully,

Lisa O'Connor, by A.D.M.

LISA O'CONNOR, Chair

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

Alison Grimes, by A.D.M.

ALISON GRIMES, Vice Chair

Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board

cc: Senator Sharon Runner

Members, Assembly Committee on Business, Professions & Consumer Protection

Kimberly Kirchmeyer, Deputy Director Board & Bureau Relations Department of Consumer Affairs

DCA Legislative and Regulatory Review Unit

BILL NUMBER: SB 541 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY JUNE 21, 2011
AMENDED IN SENATE APRIL 13, 2011

INTRODUCED BY Senator Price

FEBRUARY 17, 2011

An act to add Section 40 to the Business and Professions Code, relating to ~~profession~~ professions and vocations, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. ~~Contractors' State License~~
Regulatory boards: expert consultants.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 40 is added to the Business and Professions Code, to read:

40. (a) Subject to the standards described in Section 19130 of the Government Code, any board, as defined in Section 22, the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California may enter into an agreement with an expert consultant to do any of the following:

(1) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.

(2) Assist the board as a subject matter expert in examination

development, examination validation, or occupational analyses.

(3) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.

(b) An executed contract between a board and an expert consultant shall be exempt from the provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(c) Each board shall establish policies and procedures for the selection and use of expert consultants.

(d) Nothing in this section shall be construed to expand the scope of practice of an expert consultant providing services pursuant to this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.

BILL NUMBER: AB 415 AMENDED
BILL TEXT

AMENDED IN SENATE JULY 7, 2011
AMENDED IN ASSEMBLY MAY 27, 2011
AMENDED IN ASSEMBLY MAY 10, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011

INTRODUCED BY Assembly Member Logue
(Principal coauthors: Assembly Members Chesbro, Pan, and V. Manuel Pérez)

FEBRUARY 14, 2011

An act to repeal and add Section 2290.5 of the Business and Professions Code, to repeal and add Section 1374.13 of the Health and Safety Code, to repeal and add Section 10123.85 of the Insurance Code, and to amend Sections 14132.72 and 14132.725 of the Welfare and Institutions Code, relating to telehealth.

LEGISLATIVE COUNSEL'S DIGEST

AB 415, as amended, Logue. Healing arts: telehealth.

(1) Existing law provides for the licensure and regulation of various healing arts professions by various boards within the Department of Consumer Affairs. A violation of specified provisions is a crime. Existing law defines telemedicine, for the purpose of its regulation, to mean the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Existing law requires a health care practitioner, as defined, to ~~obtained~~ obtain verbal and written informed consent from the patient or the patient's legal representative before telemedicine is delivered. Existing law also imposes various requirements with regard to the provision of telemedicine by health care service plans, health insurers, or under the Medi-Cal program, including a prohibition on requiring face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to certain contracts or policies. Existing law provides that health care service plans and health insurers shall not be required to pay for consultations provided by telephone or facsimile machines. Existing law provides that a willful violation of the provisions governing health care service plans is a crime.

This bill would delete the provisions regarding telemedicine as described above, and would instead set forth provisions relating to telehealth, as defined. This bill would require a health care provider, as defined, to, prior to the delivery health care via telehealth, verbally inform the patient that telehealth may be used and obtain verbal consent from the patient. This bill would provide that failure to comply with this provision constitutes unprofessional conduct. This bill would also set forth provisions for the payment of telehealth services by health care service plans and health

insurers. By changing the definition of a crime applicable to health care service plans, the bill would impose a state-mandated local program.

(2) Existing law prohibits a requirement of face-to-face contact between a health care provider and a patient under the Medi-Cal program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the Medi-Cal program to compensate licensed health care providers who provide health care services, that are otherwise covered by the Medi-Cal program, through telemedicine.

This bill would, instead, prohibit a requirement of in-person contact between a health care provider and patient under the Medi-Cal program for any service otherwise covered by the Medi-Cal program when the service is appropriately provided by telehealth, as defined, and would make related changes.

(3) Existing law, until January 1, 2013, and to the extent that federal financial participation is available, authorizes, under the Medi-Cal program, teleophthalmology and teledermatology by store and forward, as defined.

This bill would delete the repeal of the above-described authorization.

(4) 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 no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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 Telehealth Advancement Act of 2011.

SEC. 2. The Legislature finds and declares all of the following:

(a) Lack of primary care providers, specialty providers, and transportation continue to be significant barriers to access to health services in medically underserved rural and urban areas.

(b) Parts of California have difficulty attracting and retaining health professionals, as well as supporting local health facilities to provide a continuum of health care.

(c) Many health care providers in medically underserved areas are isolated from mentors, colleagues, and the information resources necessary to support them personally and professionally.

(d) It is the intent of the Legislature to create a parity of telehealth with other health care delivery modes, to actively promote telehealth as a tool to advance stakeholders' goals regarding health status and health system improvement, and to create opportunities and flexibility for telehealth to be used in new models of care and system improvements.

(e) Telehealth is a mode of delivering health care services and public health utilizing information and communication technologies to enable the diagnosis, consultation, treatment, education, care management, and self-management of patients at a distance from health care providers.

(f) Telehealth is part of a multifaceted approach to address the

problem of inadequate provider distribution and the development of health systems in medically underserved areas by improving communication capabilities and providing convenient access to up-to-date information, consultations, and other forms of support.

(g) The use of information and telecommunication technologies to deliver health services has the potential to reduce costs, improve quality, change the conditions of practice, and improve access to health care, particularly in rural and other medically underserved areas.

(h) Telehealth will assist in maintaining or improving the physical and economic health of medically underserved communities by keeping the source of medical care in the local area, strengthening the health infrastructure, and preserving health care-related jobs.

(i) Consumers of health care will benefit from telehealth in many ways, including expanded access to providers, faster and more convenient treatment, better continuity of care, reduction of lost work time and travel costs, and the ability to remain with support networks.

(j) It is the intent of the Legislature that the fundamental health care provider-patient relationship cannot only be preserved, but can also be augmented and enhanced, through the use of telehealth as a tool to be integrated into practices.

(k) Without the assurance of payment and the resolution of legal and policy barriers, the full potential of telehealth will not be realized.

SEC. 3. Section 2290.5 of the Business and Professions Code is repealed.

SEC. 4. Section 2290.5 is added to the Business and Professions Code, to read:

2290.5. (a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications ~~system or where the asynchronous store and forward transfer occurs.~~ system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

~~(5)~~

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider *at the originating site* shall verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. The verbal consent shall be documented in the patient's medical record.

(c) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(d) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(e) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

SEC. 5. Section 1374.13 of the Health and Safety Code is repealed.

SEC. 6. Section 1374.13 is added to the Health and Safety Code, to read:

1374.13. (a) For the purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the health care provider.

(c) No health care service plan shall require that in-person contact occur between a health care provider and a patient before payment is made for the covered services appropriately provided through ~~telehealth, and every health care service plan shall adopt payment policies consistent with this section to compensate health care providers who provide covered health care services through~~ telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan , *and between the health care service plan and its participating providers or provider groups* .

(d) For the purposes of payment for covered treatment or services provided through telehealth, the health care service plan shall not limit the type of setting where services are provided for the patient or by the health care provider.

(e) The requirements of this subdivision shall also be operative for health care service plan contracts with the department pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.81 (commencing with Section 14089), or Chapter 8 (commencing with Section 14200).

~~with Section 14087.96), or Article 2.91 (commencing with Section 14089) of Chapter 7, or Chapter 8 (commencing with Section 14200) of, Part 3 of Division 9 of the Welfare and Institutions Code.~~

(f) Nothing in this section shall be interpreted to authorize a health care service plan to require the use of telehealth when the health care provider has determined that it is not appropriate.

SEC. 7. Section 10123.85 of the Insurance Code is repealed.

SEC. 8. Section 10123.85 is added to the Insurance Code, to read:

10123.85. (a) For purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the health care provider.

(c) No health insurer shall require that in-person contact occur between a health care provider and a patient before payment is made for the services appropriately provided through telehealth, ~~and every health insurer shall adopt payment policies consistent with this section to compensate health care providers who provide covered health care services through telehealth,~~ subject to the terms and conditions of the contract entered into between the policyholder or contractholder and the insurer , *and between the insurer and its participating providers or provider groups* .

(d) For the purposes of payment for covered treatment or services provided through telehealth, the health insurer shall not limit the type of setting where services are provided for the patient or by the health care provider.

(e) Nothing in this section shall be interpreted to authorize a health insurer to require the use of telehealth when the health care provider has determined that it is not appropriate.

SEC. 9. Section 14132.72 of the Welfare and Institutions Code is amended to read:

14132.72. (a) For purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the provider.

(c) In-person contact between a health care provider and a patient shall not be required under the Medi-Cal program for services appropriately provided through telehealth, subject to reimbursement policies adopted by the department to compensate a licensed health care provider who provides health care services through telehealth that are otherwise reimbursed pursuant to the Medi-Cal program. *Nothing in this section or the Telehealth Advancement Act of 2011 shall be construed to conflict with or supersede the provisions of Section 14091.3 of this code or any other existing state laws or regulations related to reimbursement for services provided by a noncontracted provider.*

(d) The department shall not require a health care provider to document a barrier to an in-person visit for Medi-Cal coverage of services provided via telehealth.

(e) For the purposes of payment for covered treatment or services provided through telehealth, the department shall not limit the type of setting where services are provided for the patient or by the health care provider.

(f) Nothing in this section shall be interpreted to authorize the department to require the use of telehealth when the health care provider has determined that it is not appropriate.

(g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this section by means of all-county letters, provider bulletins, and similar instructions.

SEC. 10. Section 14132.725 of the Welfare and Institutions Code is amended to read:

14132.725. (a) Commencing July 1, 2006, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward. Services appropriately provided through the store and forward process are subject to billing and reimbursement policies developed by the department.

(b) For purposes of this section, "teleophthalmology and teledermatology by store and forward" means an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology or, for teleophthalmology, by an optometrist who is licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, where the physician or optometrist at the distant site reviews the medical information without the patient being present in real time. A patient receiving teleophthalmology or teledermatology by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician or optometrist, and shall receive an interactive communication with the distant specialist physician or optometrist, upon request. If requested, communication with the distant specialist physician or optometrist may occur either at the time of the consultation, or within 30 days of the patient's notification of the results of the consultation. If the reviewing optometrist identifies a disease or condition requiring consultation or referral pursuant to Section 3041 of the Business and Professions Code, that consultation or referral shall be with an ophthalmologist or other appropriate physician and surgeon, as required.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this section by means of all-county letters, provider bulletins, and similar instructions.

(d) On or before January 1, 2008, the department shall report to the Legislature the number and type of services provided, and the payments made related to the application of store and forward telemedicine as provided, under this section as a Medi-Cal benefit.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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 an amount not to exceed \$200 per hearing aid, 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. The refund should be received by the consumer within thirty (30) days from the date of return of the hearing aid to the provider.
- 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. 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 by telephone and by mail 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.

BILL NUMBER: AB 136 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 30, 2011
AMENDED IN SENATE JUNE 14, 2011
AMENDED IN ASSEMBLY APRIL 26, 2011
AMENDED IN ASSEMBLY MARCH 14, 2011

INTRODUCED BY Assembly Member Beall

(Coauthors: Assembly Members Ammiano, Bradford, Buchanan, Carter, Fletcher, Fong, Fuentes, Furutani, Garrick, Roger Hernández, Huffman, Ma, Nestande, Swanson, and Valadao)

JANUARY 12, 2011

An act to amend Section 2881 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 136, as amended, Beall. Telecommunications: universal service: speech disabilities.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to oversee administration of the state's universal service programs, including the deaf and disabled programs. The existing deaf and disabled universal service program, among other things, requires the commission to design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired.

This bill would require the commission to expand the program to include assistance to individuals with speech disabilities, including assistance to purchase speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment. *The bill would require the commission to evaluate options for controlling the program costs of providing speech-generating devices, as part of an existing report to the Legislature.*

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 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to a subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician and surgeon, audiologist, or a

qualified state or federal agency, as determined by the commission, and to a subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification. In addition, a physician assistant may certify the needs of an individual who has been diagnosed by a physician and surgeon as being deaf or hearing impaired to participate in the program after reviewing the medical records or copies of the medical records containing that diagnosis.

(b) The commission shall also design and implement a program to provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision (e), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available reasonable access of all phases of public telephone service to telephone subscribers who are deaf or hearing impaired. In order to make a dual-party relay system that will meet the requirements of individuals who are deaf or hearing impaired available at a reasonable cost, the commission shall initiate an investigation, conduct public hearings to determine the most cost-effective method of providing dual-party relay service to the deaf or hearing impaired when using a telecommunications device, and solicit the advice, counsel, and physical assistance of statewide nonprofit consumer organizations of the deaf, during the development and implementation of the system. The commission shall apply for certification of this program under rules adopted by the Federal Communications Commission pursuant to Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336).

(c) The commission shall also design and implement a program whereby specialized or supplemental telephone communications equipment may be provided to subscribers who are certified to be disabled at no charge additional to the basic exchange rate. The certification, including a statement of visual or medical need for specialized telecommunications equipment, shall be provided by a licensed optometrist, physician and surgeon, or physician assistant, acting within the scope of practice of his or her license, or by a qualified state or federal agency as determined by the commission. The commission shall, in this connection, study the feasibility of, and implement, if determined to be feasible, personal income criteria, in addition to the certification of disability, for determining a subscriber's eligibility under this subdivision.

(d) The commission shall establish a rate recovery mechanism through a surcharge not to exceed one-half of 1 percent uniformly applied to a subscriber's intrastate telephone service, other than one-way radio paging service and universal telephone service, both within a service area and between service areas, to allow providers of the equipment and service specified in subdivisions (a), (b), (c), and (f), to recover costs as they are incurred under this section. The surcharge shall be in effect until January 1, 2014. The commission shall require that the programs implemented under this

section be identified on subscribers' bills, and shall establish a fund and require separate accounting for each of the programs implemented under this section.

(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired that shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office.

(f) (1) The commission shall expand the program created by this section to include assistance to individuals with speech disabilities that impair the individual's access to, and use of, the telephone network. The commission shall ensure that speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment, including infrared telephones, speaker phones, and telephone interface devices, are funded through the program.

(2) The commission shall ensure that only individuals who are both residents of the state and speech impaired as certified by a licensed physician, licensed speech-language pathologist, or qualified state or federal agency are eligible.

(3) The commission shall provide to each eligible applicant the appropriate equipment consistent with the recommendation of a licensed speech-language pathologist.

(4) The commission shall ensure that the equipment provided pursuant to this subdivision is consistent with the economy, efficiency, and quality of equipment that is available for purchase in the state.

(g) The commission may direct a telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.

(h) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 2014, the commission may make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance that is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.

(i) The commission shall prepare and submit to the Legislature, on or before December 31 of each year, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.

(2) If and to the extent not prohibited under Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll-call rates, and, for usage in excess of those basic requirements, at rates that

recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

(j) The report described in subdivision (i) that is due no later than December 31, 2012, shall evaluate options for controlling the program costs of providing speech-generating devices.

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(k) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

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(l) The commission shall structure the programs required by this section so that a charge imposed to promote the goals of universal service reasonably equals the value of the benefits of universal service to contributing entities and their subscribers.

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	57	12	10	8	30	3	4	5	12	1	3	3	7	3	2	3	8
DAU *	946	78	12	8	27	47	6	2	13	21	3	3	3	9	1	1	1	3
SLP	692	734	67	95	94	256	53	54	69	176	45	63	47	155	43	44	60	147
SLP Assistants	290	312	12	39	51	102	41	24	14	79	7	29	36	72	28	14	17	59
RPE'S	566	555	58	61	105	224	81	39	22	142	28	48	34	110	25	19	28	79
SLP Issued	529	513	48	59	101	208	80	37	21	138	27	48	32	107	25	17	18	60
AU Issued	37	42	10	2	4	16	1	2	1	4	1	0	2	3	0	2	17	19
REGISTERED AIDES	63	52	0	5	12	17	4	2	6	12	2	3	4	9	6	3	5	14
SLP Issued	27	24	0	1	5	6	3	1	0	4	0	3	3	6	4	3	1	8
AU Issued	36	28	0	4	7	11	1	1	6	8	2	0	1	3	2	0	4	6
CPD PROVIDERS	14	16	2	1	0	3	5	0	2	7	1	2	1	4	2	0	0	2
HAD **	89	50	0	1	12	13	2	0	12	14	4	0	1	5	0	10	8	18
HAD Trainees	98	77	13	9	7	29	4	4	8	16	6	7	5	18	9	1	4	14
HAD Temporary	15	12	2	0	0	2	1	0	1	2	1	4	0	5	0	1	2	3
APPLICANTS	<i>no count</i>	69	12	5	3	20	13	7	1	21	7	5	7	19	9	0	0	9
HAD Branch Office	192	205	18	15	18	51	1	31	33	65	7	24	16	47	13	6	23	42

* Licenses transferred to DAU license type; does not reflect "new" licenses issued.

** Delay due to waiting to pass exam.

ENFORCEMENT STATISTICS

	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
COMPLAINT ACTIVITY	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
Opened	122	165	72	166	17	53	18	43	19	36	18	34
Closed	99	131	113	172	21	17	31	38	42	34	19	83
Pending	61	88	43	103	80	145	67	150	44	152	43	103

	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
VIOLATION TYPE OF OPENED COMPLAINTS	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
Discipline by Another State/Agency	0	0	1	0	1	0	0	0	0	0	0	0
Incompleteness/Negligence	4	10	6	11	0	2	1	3	2	5	3	1
Unprofessional Conduct	14	123	19	113	2	37	9	30	4	23	4	23
Unlicensed/Unregistered Activity	16	16	7	16	2	4	1	2	0	4	4	6
Criminal Charges/Convictions	33	5	26	18	9	7	5	7	7	1	5	3
Substance Abuse	0	0	1	0	1	0	0	0	0	0	0	0
Fraud	3	6	7	6	1	3	2	0	4	3	0	0
Non-Jurisdictional	1	5	0	0	0	0	0	0	0	0	0	0
Other	51	0	5	2	1	0	0	1	2	0	2	1
TOTAL	122	165	72	166	17	53	18	43	19	36	18	34

* 62 cases were for advertising violations

* 58 cases were for advertising violations

CLOSED COMPLAINT'S PROCESSING TIMES	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
0 - 3 Months	66	84	23	43	6	3	0	7	8	11	9	22
4 - 6 Months	9	8	12	31	6	10	0	6	2	5	4	10
7 - 12 Months	6	1	13	50	0	3	3	9	7	5	3	33
13 - 24 Months	2	1	27	38	6	1	5	15	16	6	0	16
15 - 36 Months	13	3	16	10	3	0	1	1	9	7	3	2

ENFORCEMENT STATISTICS

INVESTIGATION ACTIVITY	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
Opened	15	28	12	19	5	1	1	0	6	7	0	11
Closed	3	34	15	11	9	0	3	6	2	4	1	1
Pending	23	19	8	20	18	13	14	7	10	10	8	20

CLOSED INVESTIGATION'S PROCESSING TIMES	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
0 - 3 Months	0	0	4	0	0	0	2	0	2	0	0	0
4 - 6 Months	1	2	4	2	0	0	4	1	0	0	0	1
7 - 12 Months	0	20	12	2	3	0	8	1	0	1	1	0
13 - 24 Months	0	9	5	6	5	0	0	3	0	3	0	0
15 - 36 Months	2	3	1	1	1	0	0	1	0	0	0	0

COMPLAINT DISPOSITION & CLOSED INVESTIGATIONS	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
No Violation	13	11	21	18	3	2	5	4	8	1	5	11
Information on File	21	14	29	36	1	6	10	3	10	11	8	16
Insufficient Evidence	4	8	5	10	1	3	2	1	2	2	0	4
Subject Educated	9	38	5	42	0	1	0	3	3	12	2	26
Non-Jurisdictional	0	7	0	2	0	0	0	1	0	1	0	0
Compliance Obtained	0	1	1	0	0	0	1	0	0	0	0	0
Referred to Gov't Agency	0	0	0	0	0	0	0	0	0	0	0	0
Other	9	23	17	33	3	3	2	6	10	4	2	20
Citation	34	2	17	5	9	0	8	2	0	1	0	2
Conditional Licenses	1	0	1	0	0	0	0	0	1	0	0	0
Referred tp AG/DA	8	21	16	19	4	0	3	17	8	2	1	0
Mediated	0	6	1	7	0	2	0	1	0	0	1	4
TOTAL	99	131	113	172	21	17	31	38	42	34	19	83

ENFORCEMENT STATISTICS

PROBATION CASES	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
Opened	10	4	31	7	8	3	8	2	8	0	7	2
Tolled	6	0	28	3	7	0	7	1	7	1	7	1
Conditional Licenses	8	0	26	0	7	0	7	0	7	0	5	0
TOTAL	24	4	85	10	22	3	22	3	22	1	19	3

CITATIONS ISSUED	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
	34	2	17	5	12	0	5	3	0	0	0	2

AG CASE ACTIVITY	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
Opened	7	19	17	2	4	0	3	2	8	0	2	0
Closed	7	5	3	2	1	1	1	1	1	0	0	0
Pending	11	7	23	7	11	6	13	7	20	7	22	7

CLOSED AG CASE'S PROCESSING TIMES	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
0 - 1 Years	3	4	1	0	0	0	1	0	0	0	0	0
1 - 2 Years	3	1	1	0	0	0	0	0	1	0	0	0
2 - 3 Years	0	0	1	1	1	1	0	0	0	0	0	0
3 - 4 Years	0	0	0	1	0	0	0	1	0	0	0	0
4+ Years	1	0	0	0	0	0	0	0	0	0	0	0

ADMINISTRATIVE FILINGS	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
Accusations	3	2	6	2	2	2	2	0	2	0	0	0
Statement of Issues	0	0	0	1	0	0	0	0	0	1	0	0
Petition for Penalty Relief	1	0	1	0	0	0	0	0	1	0	0	0
Petition for Psychiatric Evaluation	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	4	2	7	3	2	2	2	0	3	1	0	0

ENFORCEMENT STATISTICS

ADMINISTRATIVE FINAL DECISIONS	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
Revocation	0	0	0	0	0	0	0	0	0	0	0	0
Revocation, Stayed, Prob	3	1	0	1	0	1	0	0	0	0	0	0
Rev, Stayed, Prob, Susp	0	0	0	0	0	0	0	0	0	0	0	0
License Surrender	1	0	2	1	0	0	1	1	1	0	0	0
License Denied	0	2	0	0	0	0	0	0	0	0	0	0
Petition for Penalty Relief Denied	0	0	2	0	1	0	0	0	0	0	1	0
Petition for Penalty Relief Granted	0	0	0	0	0	0	0	0	0	0	0	0
Petition for Penalty Relief Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0
Reprimands/Reprovals	0	0	1	0	1	0	0	0	0	0	0	0
Stipulated Settlement	1	0	0	0	0	0	0	0	0	0	0	0
ISO's Ordered	0	0	0	0	0	0	0	0	0	0	0	0
Declined by AG	2	1	0	0	0	0	0	0	0	0	0	0
Conditional License	0	1	0	0	0	0	0	0	0	0	0	0
TOTAL	7	5	5	2	2	1	1	1	1	0	1	0

DECISIONS - TYPE OF VIOLATION	FY 09/10		FY10/11		QTR 1		QTR 2		QTR 3		QTR 4	
	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD	SP/AU	HAD
Discipline by Another State/Agency	0	0	0	0	0	0	0	0	0	0	0	0
Incompetence/Negligence	4	0	1	0	0	0	0	0	1	0	0	0
Unprofessional Conduct	0	1	0	0	0	0	0	0	0	0	0	0
Unlicensed/Unregisterd Activity	1	0	0	0	0	0	0	0	0	0	0	0
Criminal Charges/Convictions	1	3	1	0	0	0	1	0	0	0	0	0
Fraud	0	1	1	2	1	1	0	1	0	0	0	0
Other	1	0	1	0	1	0	0	0	0	0	0	0
TOTAL	7	5	4	2	2	1	1	1	1	0	0	0

CURRENT LICENSE STATUS

July 1, 2011

AU/DAU	
Valid	1,533
Inactive	126
CPD Hold	24
Cancelled	932
Delinquent	226

HAD	
Valid	932
Inactive	59
Cancelled	3,653
Delinquent	145

SLP	
Valid	11,349
Inactive	1,059
CPD Hold	251
Cancelled	4,984
Delinquent	1,727

HAD TEMP TRAINEES	
Valid	83
Inactive	23
Cancelled	2,977
Delinquent	24

SLP ASSISTANTS	
Valid	1,304
Inactive	61
CPD Hold	37
Cancelled	102
Delinquent	225

HAD TEMPORARY	
Valid	12
Cancelled	117
Delinquent	2

RPE TEMP	
Valid	608
Delinquent	58

HAD BRANCH OFFICE	
Valid	601
Cancelled	3,045
Delinquent	123

REGISTERED AIDES	
Valid	215
Delinquent	51