

**Introduced by Senator Runner**February 18, 2011

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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 introduced, 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:*

1 SECTION 1. Section 2530 of the Business and Professions  
2 Code is amended to read:  
3 2530. This act may be cited as the “Speech-Language  
4 Pathologists and Audiologists *and Hearing Aid Dispensers*  
5 Licensure Act.”  
6 SEC. 2. Section 2530.1 of the Business and Professions Code  
7 is amended to read:  
8 2530.1. The Legislature finds and declares that the practice of  
9 speech-language pathology and audiology *and hearing aid*  
10 *dispensing* in California affects the public health, safety, and  
11 welfare and there is a necessity for those professions to be subject  
12 to regulation and control.  
13 SEC. 3. Section 2531.02 of the Business and Professions Code  
14 is amended to read:  
15 2531.02. Protection of the public shall be the highest priority  
16 for the Speech-Language Pathology and Audiology *and Hearing*  
17 *Aid Dispensers* Board in exercising its licensing, regulatory, and  
18 disciplinary functions. Whenever the protection of the public is  
19 inconsistent with other interests sought to be promoted, the  
20 protection of the public shall be paramount.  
21 SEC. 4. Section 2531.06 of the Business and Professions Code  
22 is amended to read:  
23 2531.06. (a) The board is vested with the duties, powers,  
24 purposes, responsibilities, and jurisdiction over the licensing and  
25 regulation of hearing aid dispensers as provided under the Hearing  
26 Aid Dispenser Licensing Law (~~Chapter 7.5 (commencing with~~  
27 ~~Section 3300)) *Article 8 (commencing with Section 2538.10).*~~

1 (b) *In the performance of the duties and the exercise of the*  
2 *powers vested in the board under this chapter, the board may*  
3 *consult with hearing aid dispenser industry representatives.*

4 (c) *For the performance of the duties and the exercise of the*  
5 *powers vested in the board under this chapter, the board shall*  
6 *have possession and control of all records, papers, offices,*  
7 *equipment, supplies, or other property, real or personal, held for*  
8 *the benefit or use by the former Hearing Aid Dispensers Bureau.*

9 (d) *All regulations in Division 13.3 (commencing with Section*  
10 *1399.100) of Title 16 of the California Code of Regulations are*  
11 *continued in existence under the administration of the board.*

12 SEC. 5. Section 2533 of the Business and Professions Code is  
13 amended to read:

14 2533. (a) The board may refuse to issue, or issue subject to  
15 terms and conditions, a license on the grounds specified in Section  
16 480, or may suspend, revoke, or impose terms and conditions upon  
17 the license of any licensee if he or she has been guilty of  
18 unprofessional conduct. Unprofessional conduct shall include, but  
19 shall not be limited to, the following:

20 (a)

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

26 (b)

27 (2) Securing a license by fraud or deceit.

28 (c) ~~(1)~~

29 (3) (A) The use or administering to himself or herself, of any  
30 controlled substance; ~~(2) (B) the use of any of the dangerous drugs~~  
31 ~~specified in Section 4022, or of alcoholic beverages, to the extent,~~  
32 ~~or in a manner as to be dangerous or injurious to the licensee, to~~  
33 ~~any other person, or to the public, or to the extent that the use~~  
34 ~~impairs the ability of the licensee to practice speech-language~~  
35 ~~pathology or audiology safely; ~~(3) (C) more than one misdemeanor~~~~  
36 ~~or any felony involving the use, consumption, or self-administration~~  
37 ~~of any of the substances referred to in this section; or ~~(4) (D) any~~~~  
38 ~~combination of paragraphs (1), (2), or (3) subparagraphs (A), (B),~~  
39 ~~or (C). The record of the conviction shall be conclusive evidence~~  
40 of unprofessional conduct.

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

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

9 (f)  
 10 (6) Incompetence or gross negligence in the practice of  
 11 speech-language pathology or audiology.

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

15 (b) *In addition to taking action under subdivision (a), the board*  
 16 *may, with regard to hearing aid dispensers, refuse to issue, issue*  
 17 *subject to terms and conditions, or revoke a license, or impose*  
 18 *conditions of probation upon a licensee, for any of the following:*

3401

19 (1) *Use of the term "doctor" or "physician" or "clinic" or*  
 20 *"audiologist," or any derivation thereof, except as authorized by*  
 21 *law.*

22 (2) *The use, or causing the use, of any advertising or*  
 23 *promotional literature in a manner that has the capacity or*  
 24 *tendency to mislead or deceive purchasers or prospective*  
 25 *purchasers.*

26 (3) *Any cause that would be grounds for denial of an application*  
 27 *for a license.*

28 (4) *Violation of Section 1689.6 or 1793.02 of the Civil Code.*

29 SEC. 6. Section 2533.3 of the Business and Professions Code  
 30 is amended to read:

31 2533.3. ~~Any~~ *Except as provided in Section 2538.42, any person*  
 32 *who violates any of the provisions of this chapter shall be guilty*  
 33 *of a misdemeanor punishable by imprisonment in the county jail*  
 34 *not exceeding six months, or by a fine not exceeding one thousand*  
 35 *dollars (\$1,000), or both.*

36 SEC. 7. Section 2534 of the Business and Professions Code is  
 37 amended to read:

38 2534. The board shall report to the Controller at the beginning  
 39 of each month for the month preceding the amount and source of  
 40 all revenue received by it pursuant to this chapter and Chapter 7.5

1. ~~(commencing with Section 3300)~~; and shall pay the entire amount  
2 thereof to the Treasurer for deposit in the Speech-Language  
3 Pathology and Audiology *and Hearing Aid Dispensers* Fund, which  
4 fund is hereby created to carry out the purposes of this chapter ~~and~~  
5 ~~Chapter 7.5 (commencing with Section 3300)~~.

6 SEC. 8. Article 8 (commencing with Section 2538.10) is added  
7 to Chapter 5.3 of Division 2 of the Business and Professions Code,  
8 to read:

9

10 Article 8. Hearing Aid Dispensers

11

12 2538.10. For the purposes of this article, the following  
13 definitions shall apply:

14 (a) "Advertise" and its variants include the use of a newspaper,  
15 magazine, or other publication, book, notice, circular, pamphlet,  
16 letter, handbill, poster, bill, sign, placard, card, label, tag, window  
17 display, store sign, radio, or television announcement, or any other  
18 means or methods now or hereafter employed to bring to the  
19 attention of the public the practice of fitting or selling of hearing  
20 aids.

21 (b) "License" means a hearing aid dispenser's license issued  
22 pursuant to this article and includes a temporary license.

23 (c) "Licensee" means a person holding a license.

24 (d) "Hearing aid" means any wearable instrument or device  
25 designed for, or offered for the purpose of, aiding or compensating  
26 for impaired human hearing.

27 (e) "Fund" means the Speech-Language Pathology and  
28 Audiology and Hearing Aid Dispensers Fund.

29 2538.11. (a) "Practice of fitting or selling hearing aids," as  
30 used in this article, means those practices used for the purpose of  
31 selection and adaptation of hearing aids, including direct  
32 observation of the ear, testing of hearing in connection with the  
33 fitting and selling of hearing aids, taking of ear mold impressions,  
34 fitting or sale of hearing aids, and any necessary postfitting  
35 counseling.

36 The practice of fitting or selling hearing aids does not include  
37 the act of concluding the transaction by a retail clerk.

38 When any audiometer or other equipment is used in the practice  
39 of fitting or selling hearing aids, it shall be kept properly calibrated

1 and in good working condition, and the calibration of the  
2 audiometer or other equipment shall be checked at least annually.

3 (b) A hearing aid dispenser shall not conduct diagnostic hearing  
4 tests when conducting tests in connection with the practice of  
5 fitting or selling hearing aids.

6 (c) Hearing tests conducted pursuant to this article shall include  
7 those that are in compliance with the Food and Drug  
8 Administration Guidelines for Hearing Aid Devices and those that  
9 are specifically covered in the licensing examination prepared and  
10 administered by the board.

11 2538.12. A licensee may conduct hearing screenings at a health  
12 fair or similar event by the application of a binary puretone  
13 screening at a preset intensity level for the purpose of identifying  
14 the need for further hearing or medical evaluation.

15 Upon the conclusion of each hearing screening, the licensee shall  
16 present to the person whose hearing was screened a written  
17 statement containing the following provisions:

18 “Results of a hearing screening are not a medical evaluation of  
19 your ear nor a diagnosis of a hearing disorder but are only the  
20 identification of the need for further medical or hearing evaluation.”

21 A licensee conducting hearing screenings pursuant to this section  
22 shall not make or seek referrals for testing, fitting, or dispensing  
23 of hearing aids.

24 2538.13. In fitting hearing aids, a hearing aid dispenser shall  
25 not take facial measurements or fit, adjust, or adapt lenses or  
26 spectacle frames, except that a hearing aid dispenser may replace  
27 the temple or temples of a person’s spectacle frames with a temple  
28 or temples incorporating hearing aid components.

29 2538.14. “Hearing aid dispenser,” as used in this article, means  
30 a person engaged in the practice of fitting or selling hearing aids  
31 to an individual with impaired hearing.

32 2538.15. “Sell” or “sale” means any transfer of title or of the  
33 right to use by lease, bailment, or any other contract, excluding  
34 wholesale transactions with distributors or dealers.

35 2538.16. The board shall keep a record of all prosecutions for  
36 violations of this article and of all examinations held for applicants  
37 for licenses together with the names and addresses of all persons  
38 taking examinations and of their success or failure to pass them.

39 2538.17. The board may recommend the preparation of and  
40 administration of a course of instruction concerned with the fitting

1 and selection of hearing aids. The board may require applicants  
2 to first complete the required course of instruction or otherwise  
3 satisfy the board that the applicant possesses the necessary  
4 background and qualifications to fit or sell hearing aids. If the  
5 board promulgates regulations to implement this section to require  
6 a course of instruction concerned with fitting and selling hearing  
7 aids, the board shall obtain the advice of persons knowledgeable  
8 in the preparation and administration of a course of instruction.

9 The board may publish and distribute information concerning  
10 the examination requirements for obtaining a license to engage in  
11 the practice of fitting and selling hearing aids within this state.

12 2538.18. All holders of licenses to sell or fit hearing aids shall  
13 continue their education after receiving the license. The board shall  
14 provide by regulation, as a condition to the renewal of a license,  
15 that licensees shall submit documentation satisfactory to the board  
16 that they have informed themselves of current practices related to  
17 the fitting of hearing aids by having pursued courses of study  
18 satisfactory to the board or by other means defined as equivalent  
19 by the board.

20 Continuing education courses shall be subject to monitoring to  
21 ensure compliance with the regulations adopted by the board  
22 pursuant to this section.

23 2538.19. (a) The board may prosecute any and all persons for  
24 any violation of this article.

25 (b) The board shall hear and decide all matters, including but  
26 not limited to, any contested case or any petition for reinstatement  
27 or modification of probation, or may assign any of those matters  
28 to an administrative law judge in accordance with the  
29 Administrative Procedure Act. Except as otherwise provided in  
30 this chapter, all hearings shall be conducted in accordance with  
31 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
32 3 of Title 2 of the Government Code.

33 2538.20. It is unlawful for an individual to engage in the  
34 practice of fitting or selling hearing aids, or to display a sign or in  
35 any other way to advertise or hold himself or herself out as being  
36 so engaged without having first obtained a license from the board  
37 under the provisions of this article. Nothing in this article shall  
38 prohibit a corporation, partnership, trust, association or other like  
39 organization maintaining an established business address from  
40 engaging in the business of fitting or selling, or offering for sale,

1 hearing aids at retail without a license, provided that any and all  
2 fitting or selling of hearing aids is conducted by the individuals  
3 who are licensed pursuant to the provisions of this article. A person  
4 whose license as a hearing aid dispenser has been suspended or  
5 revoked shall not be the proprietor of a business that engages in  
6 the practice of fitting or selling hearing aids nor shall that person  
7 be a partner, shareholder, member, or fiduciary in a partnership,  
8 corporation, association, or trust that maintains or operates that  
9 business, during the period of the suspension or revocation. This  
10 restriction shall not apply to stock ownership in a corporation that  
11 is listed on a stock exchange regulated by the Securities and  
12 Exchange Commission if the stock is acquired in a transaction  
13 conducted through that stock exchange.

14 2538.21. This article does not apply to a person engaged in the  
15 practice of fitting hearing aids if his practice is for a governmental  
16 agency, or private clinic, or is part of the academic curriculum of  
17 an accredited institution of higher education, or part of a program  
18 conducted by a public, charitable institution or other nonprofit  
19 organization, and who does not engage directly or indirectly in the  
20 sale or offering for sale of hearing aids.

21 2538.22. This article does not apply to nor affect any physician  
22 and surgeon licensed under Chapter 5 (commencing with Section  
23 2000) of Division 2 who does not directly or indirectly engage in  
24 the sale or offering for sale of hearing aids, nor to any audiologist  
25 licensed under this chapter, or to an individual supervised by the  
26 audiologist in conducting fitting procedures, and who does not  
27 directly or indirectly engage in the sale or offering for sale of  
28 hearing aids.

29 2538.23. (a) Hearing aids may be sold by catalog or direct  
30 mail provided that:

31 (1) The seller is licensed as a hearing-aid dispenser in this state.

32 (2) There is no fitting, selection, or adaptation of the instrument  
33 and no advice is given with respect to fitting, selection, or  
34 adaptation of the instrument and no advice is given with respect  
35 to the taking of an ear impression for an earmold by the seller.

36 (3) The seller has received a statement which is signed by a  
37 physician and surgeon, audiologist, or a hearing-aid dispenser,  
38 licensed by the State of California which verifies that Section  
39 2538.36 and subdivision (b) of Section 2538.49 have been  
40 complied with.

1 (b) A copy of the statement referred to in paragraph (3) of  
2 subdivision (a) shall be retained by the seller for the period  
3 provided for in Section 2538.38.

4 (c) A licensed hearing-aid dispenser who sells a hearing aid  
5 under this section shall not be required to comply with subdivision  
6 (b) of Section 2538.49.

7 2538.24. Each person desiring to obtain a license to engage in  
8 the practice of fitting or selling hearing aids shall make application  
9 to the board. The application shall be made upon a form and shall  
10 be made in the manner as is provided by the board and shall be  
11 accompanied by the fee provided for in Section 2538.57.

12 2538.25. (a) The board shall prepare, approve, grade, and  
13 conduct examinations of applicants for a hearing aid dispenser's  
14 license. The board may provide that the preparation and grading  
15 of the examination be conducted by a competent person or  
16 organization other than the board, provided, however, that the  
17 board shall establish the guidelines for the examination and shall  
18 approve the actual examination.

19 (b) Each applicant shall take and pass a written examination  
20 and a practical examination compiled at the direction of the board  
21 covering the critical tasks involved in the practice of fitting and  
22 selling hearing aids and the knowledge, skills, and abilities needed  
23 to perform those tasks safely and competently.

24 2538.26. The board shall issue a license to all applicants who  
25 have satisfied this chapter, who are at least 18 years of age, who  
26 possess a high school diploma or its equivalent, who have not  
27 committed acts or crimes constituting grounds for denial of  
28 licensure under Section 480, and who have paid the fees provided  
29 for in Section 2538.57. No license shall be issued to any person  
30 other than an individual.

31 2538.27. (a) An applicant who has fulfilled the requirements  
32 of Section 2538.24 and has made application therefor, may have  
33 a temporary license issued to him or her upon satisfactory proof  
34 to the board that the applicant holds a hearing aid dispenser's  
35 license in another state, that the licensee has not been subject to  
36 formal disciplinary action by another licensing authority, and that  
37 the applicant has been engaged in the fitting and sale of hearing  
38 aids for the two years immediately prior to application.

39 (b) A temporary license issued pursuant to this section shall be  
40 valid for one year from date of issuance and is not renewable. A

1 temporary license shall automatically terminate upon issuance of  
2 a license prior to expiration of the one-year period.

3 (c) The holder of a temporary license issued pursuant to this  
4 section who fails either license examination shall be subject to and  
5 shall comply with the supervision requirements of Section 2538.28  
6 and any regulations adopted pursuant thereto.

7 2538.28. (a) An applicant who has fulfilled the requirements  
8 of Section 2538.24, and has made application therefor, and who  
9 proves to the satisfaction of the board that he or she will be  
10 supervised and trained by a hearing aid dispenser who is approved  
11 by the board may have a temporary license issued to him or her.  
12 The temporary license shall entitle the temporary licensee to fit or  
13 sell hearing aids as set forth in regulations of the board. The  
14 supervising dispenser shall be responsible for any acts or omissions  
15 committed by a temporary licensee under his or her supervision  
16 that may constitute a violation of this chapter.

17 (b) The board shall adopt regulations setting forth criteria for  
18 its refusal to approve a hearing aid dispenser to supervise a  
19 temporary licensee, including procedures to appeal that decision.

20 (c) A temporary license issued pursuant to this section is  
21 effective and valid for six months from date of issue. The board  
22 may renew the temporary license for an additional period of six  
23 months. Except as provided in subdivision (d), the board shall not  
24 issue more than two renewals of a temporary license to any  
25 applicant. Notwithstanding subdivision (d), if a temporary licensee  
26 who is entitled to renew a temporary license does not renew the  
27 temporary license and applies for a new temporary license at a  
28 later time, the new temporary license shall only be issued and  
29 renewed subject to the limitations set forth in this subdivision.

30 (d) A new temporary license may be issued pursuant to this  
31 section if a temporary license issued pursuant to subdivision (c)  
32 has lapsed for a minimum of three years from the expiration or  
33 cancellation date of the previous temporary license. The bureau  
34 may issue only one new temporary license under this subdivision.

35 2538.29. A temporary licensee under Section 2538.28 shall  
36 take the license examination within the first 10 months after the  
37 temporary license is issued. Failure to take the license examination  
38 within that time shall result in expiration of the temporary license,  
39 and it shall not be renewed unless the temporary licensee has first  
40 taken the licensure examination. The board, however, may in its

1 discretion renew the temporary license if the licensee failed to take  
2 the necessary examination due to illness or other hardship.

3 2538.30. (a) A temporary licensee shall not be the sole  
4 proprietor of, manage, or independently operate a business which  
5 engages in the fitting or sale of hearing aids.

6 (b) A temporary licensee shall not advertise or otherwise  
7 represent that he or she holds a license as a hearing aid dispenser.

8 2538.31. Practical examinations shall be held by the board at  
9 least twice a year. The time and place of any practical examination  
10 shall be fixed by the board at least 45 days prior to the date it is to  
11 be held.

12 2538.32. Every applicant who obtains a passing score  
13 determined by the Angoff criterion-referenced method of  
14 establishing the point in each examination shall be deemed to have  
15 passed that examination. An applicant shall pass the written  
16 examination before he or she may take the practical examination.  
17 An applicant shall obtain a passing score on both the written and  
18 the practical examination in order to be issued a license.

19 2538.33. (a) Before engaging in the practice of fitting or selling  
20 hearing aids, each licensee shall notify the board in writing of the  
21 address or addresses where he or she is to engage, or intends to  
22 engage, in the practice of fitting or selling hearing aids, and of any  
23 changes in his or her place of business within 30 days of engaging  
24 in that practice.

25 (b) If a street address is not the address at which the licensee  
26 receives mail, the licensee shall also notify the board in writing of  
27 the mailing address for each location where the licensee is to  
28 engage, or intends to engage, in the practice of fitting or selling  
29 hearing aids, and of any change in the mailing address of his or  
30 her place or places of business.

31 2538.34. (a) Every licensee who engages in the practice of  
32 fitting or selling hearing aids shall have and maintain an established  
33 retail business address to engage in that fitting or selling, routinely  
34 open for service to customers or clients. The address of the  
35 licensee's place of business shall be registered with the bureau as  
36 provided in Section 2538.33.

37 (b) Except as provided in subdivision (c), if a licensee maintains  
38 more than one place of business within this state, he or she shall  
39 apply for and procure a duplicate license for each branch office  
40 maintained. The application shall state the name of the person and

1 the location of the place or places of business for which the  
2 duplicate license is desired.

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

12 2538.35. A licensee shall, upon the consummation of a sale of  
13 a hearing aid, deliver to the purchaser a written receipt, signed by  
14 or on behalf of the licensee, containing all of the following:

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

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

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

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

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

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

32 2538.36. (a) Whenever any of the following conditions are  
33 found to exist either from observations by the licensee or on the  
34 basis of information furnished by the prospective hearing aid user,  
35 a licensee shall, prior to fitting or selling a hearing aid to any  
36 individual, suggest to that individual in writing that his or her best  
37 interests would be served if he or she would consult a licensed  
38 physician specializing in diseases of the ear or if no such licensed  
39 physician is available in the community then to a duly licensed  
40 physician:

- 1 (1) Visible congenital or traumatic deformity of the ear.
- 2 (2) History of, or active drainage from the ear within the
- 3 previous 90 days.
- 4 (3) History of sudden or rapidly progressive hearing loss within
- 5 the previous 90 days.
- 6 (4) Acute or chronic dizziness.
- 7 (5) Unilateral hearing loss of sudden or recent onset within the
- 8 previous 90 days.
- 9 (6) Significant air-bone gap (when generally acceptable
- 10 standards have been established).
- 11 (7) Visible evidence of significant cerumen accumulation or a
- 12 foreign body in the ear canal.
- 13 (8) Pain or discomfort in the ear.
- 14 (b) No referral for medical opinion need be made by any licensee
- 15 in the instance of replacement only of a hearing aid that has been
- 16 lost or damaged beyond repair within one year of the date of
- 17 purchase. A copy of the written recommendation shall be retained
- 18 by the licensee for the period provided for in Section 2538.38. A
- 19 person receiving the written recommendation who elects to
- 20 purchase a hearing aid shall sign a receipt for the same, and the
- 21 receipt shall be kept with the other papers retained by the licensee
- 22 for the period provided for in Section 2538.38. Nothing in this
- 23 section required to be performed by a licensee shall mean that the
- 24 licensee is engaged in the diagnosis of illness or the practice of
- 25 medicine or any other activity prohibited by the provisions of this
- 26 code.
- 27 2538.37. No hearing aid shall be sold by an individual licensed
- 28 under this chapter, to a person 16 years of age or younger, unless
- 29 within the preceding six months a recommendation for a hearing
- 30 aid has been made by both a board-certified, or a board-eligible
- 31 physician specializing in otolaryngology, and by a state licensed
- 32 audiologist. A replacement of an identical hearing aid within one
- 33 year shall be an exception to this requirement.
- 34 2538.38. A licensee shall, upon the consummation of a sale of
- 35 a hearing aid, keep and maintain records in his or her office or
- 36 place of business at all times and each record shall be kept and
- 37 maintained for a seven-year period. All records related to the sale
- 38 and fitting of hearing aids shall be open to inspection by the bureau
- 39 or its authorized representatives upon reasonable notice. The
- 40 records kept shall include:

1 (a) Results of test techniques as they pertain to fitting of the  
2 hearing aid.

3 (b) A copy of the written receipt required by Section 2538.35  
4 and the written recommendation and receipt required by Section  
5 2538.36 when applicable.

6 (c) Records of maintenance or calibration of equipment used in  
7 the practice of fitting or selling hearing aids.

8 2538.39. A hearing aid dispenser who is the owner, manager,  
9 or franchisee at a location where hearing aids are fit or sold, shall  
10 be responsible for the adequacy of the fitting or selling of any  
11 hearing aid fit and sold by any licensee or licensees at that location.

12 2538.40. Upon denial of an application for license, the board  
13 shall notify the applicant in writing, stating (1) the reason for the  
14 denial and (2) that the applicant has a right to a hearing under  
15 Section 2533.2 if he or she makes written request therefor within  
16 60 days after notice of denial. Service of the notice required by  
17 this section may be made by certified mail addressed to the  
18 applicant at the latest address filed by the applicant in writing with  
19 the board in his or her application or otherwise.

20 2538.41. Before setting aside the revocation or suspension of  
21 any license or modifying the probation of any licensee, the board  
22 may require the petitioner to pass the regular examination given  
23 for applicants for licenses.

24 2538.42. Any person who violates any of the provisions of this  
25 article is guilty of a misdemeanor and, upon conviction thereof,  
26 shall be punished by imprisonment in the county jail for not less  
27 than 10 days nor more than one year, or by a fine of not less than  
28 one hundred dollars (\$100) nor more than one thousand dollars  
29 (\$1,000), or by both such fine and imprisonment.

30 2538.43. It is unlawful to sell or barter, or offer to sell or barter,  
31 any license issued by the board.

32 2538.44. It is unlawful to purchase or procure by barter any  
33 license issued by the board with intent to use the same as evidence  
34 of the holder's qualification to practice the fitting or selling of  
35 hearing aids.

36 2538.45. It is unlawful to alter with fraudulent intent in any  
37 material regard a license issued by the board.

38 2538.46. It is unlawful to use or attempt to use any license  
39 issued by the board that has been purchased, fraudulently issued,  
40 counterfeited, or materially altered as a valid license.

1 2538.47. It is unlawful to willfully make any false statement  
2 in a material regard in an application for an examination before  
3 the board for a license.

4 2538.48. It is unlawful to engage in the practice of fitting or  
5 selling hearing aids in this state without having at the time of so  
6 doing a valid, unrevoked and unexpired license or temporary  
7 license.

8 2538.49. It is unlawful for a licensed hearing aid dispenser to  
9 fit or sell a hearing aid unless he or she first does all of the  
10 following:

11 (a) Complies with all provisions of state laws and regulations  
12 relating to the fitting or selling of hearing aids.

13 (b) Conducts a direct observation of the purchaser's ear canals.

14 (c) Informs the purchaser of the address and office hours at  
15 which the licensee shall be available for fitting or postfitting  
16 adjustments and servicing of the hearing aid or aids sold.

17 2538.50. It is unlawful to advertise by displaying a sign or  
18 otherwise or hold himself out to be a person engaged in the practice  
19 of fitting or selling hearing aids without having at the time of so  
20 doing a valid, unrevoked license or temporary license.

21 2538.51. It is unlawful to engage in the practice of fitting or  
22 selling hearing aids without the licensee having and maintaining  
23 an established business address, routinely open for service to his  
24 clients.

25 2538.52. When tests are conducted by persons licensed under  
26 this article in connection with the fitting and selling of hearing  
27 aids, the provisions of this article shall apply.

28 2538.53. (a) A license issued under this article expires at  
29 midnight on its assigned renewal date.

30 (b) To renew an unexpired license, the licensee shall, on or  
31 before the date of expiration of the license, apply for renewal on  
32 a form provided by the board, accompanied by the prescribed  
33 renewal fee.

34 (c) Temporary license holders shall renew their licenses in  
35 accordance with Section 2538.27, and apply for that renewal on a  
36 form provided by the board, accompanied by the prescribed  
37 renewal fee for temporary licenses.

38 (d) Each duplicate license issued for a branch office shall expire  
39 on the same date as the permanent license of the hearing aid

1 dispenser to whom the duplicate license was issued. These  
2 duplicate licenses shall be renewed according to subdivision (b).

3 2538.54. Except as otherwise provided in this article, an expired  
4 license may be renewed at any time within three years after its  
5 expiration on filing of an application for renewal on a form  
6 prescribed by the board, and payment of all accrued and unpaid  
7 renewal fees. If the license is renewed after its expiration the  
8 licensee, as a condition precedent to renewal, shall also pay the  
9 delinquency fee prescribed by this article. Renewal under this  
10 section shall be effective on the date on which the application is  
11 filed, on the date on which the renewal fee is paid, or on the date  
12 on which the delinquency fee, if any, is paid, whichever last occurs.  
13 If so renewed, the license shall continue in effect through the date  
14 provided in Section 2538.53 which next occurs after the effective  
15 date of the renewal, when it shall expire if it is not again renewed.

16 2538.55. A license which has been suspended is subject to  
17 expiration and shall be renewed as provided in this article but such  
18 renewal does not entitle the holder of the license, while it remains  
19 suspended and until it is reinstated, to engage in the fitting or  
20 selling of hearing aids, or in any other activity or conduct in  
21 violation of the order or judgment by which the license was  
22 suspended. A license which has been revoked is subject to  
23 expiration, but it may not be renewed. If it is reinstated after its  
24 expiration, the licensee, as a condition precedent to its  
25 reinstatement, shall pay a reinstatement fee in an amount equal to  
26 the renewal fee in effect on the last regular renewal date before  
27 the date on which it is reinstated, plus the delinquency fee, if any,  
28 accrued at the time of its revocation.

29 2538.56. A license that is not renewed within three years after  
30 its expiration may not be renewed, restored, reissued, or reinstated  
31 thereafter, but the holder of the expired license may apply for and  
32 obtain a new license if all of the following apply:

33 (a) He or she has not committed acts or crimes constituting  
34 grounds for denial of licensure under Section 480.

35 (b) He or she pays all the fees that would be required of him or  
36 her if he or she were then applying for a license for the first time.

37 (c) He or she takes and passes the examination that would be  
38 required of him or her if he or she were then applying for a license  
39 for the first time, or otherwise establishes to the satisfaction of the  
40 board that he or she is qualified to engage in the practice of fitting

1 or selling hearing aids. The board may, by regulation, provide for  
2 the waiver or refund of all or any part of the application fee in  
3 those cases in which a license is issued without an examination  
4 under this section.

5 2538.57. The amount of fees and penalties prescribed by this  
6 article shall be those set forth in this section unless a lower fee is  
7 fixed by the board:

8 (a) The fee for applicants applying for the first time for a license  
9 is seventy-five dollars (\$75), which shall not be refunded, except  
10 to applicants who are found to be ineligible to take an examination  
11 for a license. Those applicants are entitled to a refund of fifty  
12 dollars (\$50).

13 (b) The fees for taking or retaking the written and practical  
14 examinations shall be amounts fixed by the board, which shall be  
15 equal to the actual cost of preparing, grading, analyzing, and  
16 administering the examinations.

17 (c) The initial temporary license fee is one hundred dollars  
18 (\$100). The fee for renewal of a temporary license is one hundred  
19 dollars (\$100) for each renewal.

20 (d) The initial permanent license fee is two hundred eighty  
21 dollars (\$280). The fee for renewal of a permanent license is not  
22 more than two hundred eighty dollars (\$280) for each renewal.

23 (e) The initial branch office license fee is twenty-five dollars  
24 (\$25). The fee for renewal of a branch office license is twenty-five  
25 dollars (\$25) for each renewal.

26 (f) The delinquency fee is twenty-five dollars (\$25).

27 (g) The fee for issuance of a replacement license is twenty-five  
28 dollars (\$25).

29 (h) The continuing education course approval application fee  
30 is fifty dollars (\$50).

31 (i) The fee for official certification of licensure is fifteen dollars  
32 (\$15).

33 SEC. 9. The heading of Article 9 (commencing with Section  
34 2539.1) of Chapter 5.3 of Division 2 of the Business and  
35 Professions Code is amended to read:

36

37 Article 9. ~~Hearing Aids~~ *Dispensing Audiologists*

38

39 SEC. 10. Section 2539.1 of the Business and Professions Code  
40 is amended to read:

1 2539.1. (a) (1) On and after January 1, 2010, in addition to  
2 satisfying the licensure and examination requirements described  
3 in Sections 2532 and 2532.2, no licensed audiologist shall sell  
4 hearing aids unless he or she completes an application for a  
5 dispensing audiology license, pays all applicable fees, and passes  
6 an examination, approved by the board, relating to selling hearing  
7 aids.

8 (2) The board shall issue a dispensing audiology license to a  
9 licensed audiologist who meets the requirements of paragraph (1).

10 (b) (1) On and after January 1, 2010, a licensed audiologist  
11 with an unexpired license to sell hearing aids pursuant to ~~Chapter~~  
12 ~~7.5 (commencing with Section 3300)~~ *Article 8 (commencing with*  
13 *Section 2538.10)* may continue to sell hearing aids pursuant to that  
14 license until that license expires pursuant to ~~Section 3451~~ 2538.53,  
15 and upon that expiration the licensee shall be deemed to have  
16 satisfied the requirements described in subdivision (a) and may  
17 continue to sell hearing aids pursuant to his or her audiology license  
18 subject to the provisions of this chapter. Upon the expiration of  
19 the audiologist's license to sell hearing aids, the board shall issue  
20 him or her a dispensing audiology license pursuant to paragraph  
21 (2) of subdivision (a). This paragraph shall not prevent an  
22 audiologist who also has a hearing aid dispenser's license from  
23 maintaining dual or separate licenses if he or she chooses to do  
24 so.

25 (2) A licensed audiologist whose license to sell hearing aids,  
26 issued pursuant to ~~Chapter 7.5 (commencing with Section 3300)~~  
27 *Article 8 (commencing with Section 2538.10)*, is suspended,  
28 surrendered, or revoked shall not be authorized to sell hearing aids  
29 pursuant to this subdivision and he or she shall be subject to the  
30 requirements described in subdivision (a) as well as the other  
31 provisions of this chapter.

32 (c) A licensed hearing aid dispenser who meets the qualifications  
33 for licensure as an audiologist shall be deemed to have satisfied  
34 the requirements of paragraph (1) of subdivision (a) for the  
35 purposes of obtaining a dispensing audiology license.

36 (d) For purposes of subdivision (a), the board shall provide the  
37 hearing aid dispenser's examination provided by the former  
38 Hearing Aid Dispensers Bureau until such time as the next  
39 examination validation and occupational analysis is completed by  
40 the Department of Consumer Affairs pursuant to Section 139 and

1 a determination is made that a different examination is to be  
2 administered.

3 SEC. 11. Section 2539.14 of the Business and Professions  
4 Code is amended to read:

5 2539.14. The provisions of subdivisions (b) and (c) of Section  
6 ~~3306~~ 2538.11 and the provisions of Section ~~3306.3~~ 2538.12 do  
7 not apply to a licensed audiologist who satisfies the requirements  
8 of Section 2539.1.

9 SEC. 12. Chapter 7.5 (commencing with Section 3300) of  
10 Division 2 of the Business and Professions Code is repealed.

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