

BACKGROUND PAPER FOR The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

**Joint Sunset Review Oversight Hearing, March 10, 2022
Senate Committee on Business, Professions, and Economic Development
and Assembly Committee on Business and Professions**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

BRIEF OVERVIEW OF THE THE SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD

History and Function of the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

The Hearing Aid Dispensers Examining Committee (HADEC) was established under the jurisdiction of the Medical Board of California (MBC) in 1970 (AB 532, Zenovich, Chapter 1514, Statutes of 1970). In 1988, legislation (SB 2250, Rosenthal, Chapter 1162, Statutes of 1988) transferred the enforcement program from MBC to HADEC. SB 1592 (Rosenthal, Chapter 441, Statutes of 1996) authorized HADEC to adopt, amend, or repeal regulations related to the practice of fitting or selling hearing aid devices.

The Speech Pathology and Audiology Examining Committee (SPAEC) was established in 1972 under the jurisdiction of the MBC (SB 796, Whetmore, Chapter 1355, Statutes of 1972). SB 1346 (Business and Professions Committee, Chapter 758, Statutes of 1997) renamed SPAEC to Speech-Language Pathology and Audiology Board (SLPAB).

In 1998, Both HADEC and SLPAB were reviewed by the Joint Legislative Sunset Review Committee (Joint Committee). The Joint Committee considered merging the two entities but did not ultimately do so. Two bills were introduced in 1998 which would have extended the regulation of Hearing Aid Dispensers: the first proposal, SB 1982 (Greene), would have combined the SLPAB with HADEC, and the second, AB 2658 (Wright), would have extended the sunset date of HADEC. Neither bill passed both houses, resulting in the sunset of both HADEC and SLPAB, the duties of which fell to the Department of Consumer Affairs (DCA). After being inoperative for six-months, SLPAB was ultimately extended by AB 124 (Ackerman), Chapter 436, Statutes of 1999. In 1999, AB 545 (Pacheco), Chapter 440, Statutes of 1999, established a 7-member Hearing Aid Dispensers Advisory Commission under the hearing aid dispenser program, and AB 2697 (Cardoza), Chapter 277, Statutes of 2000, created the Hearing Aid Dispensers Bureau (Bureau) and reconstituted the Advisory Commission as a committee under the Bureau.

AB 1535 (Jones), Chapter 309, Statutes of 2009, created the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (SLPAHADB or Board) by combining the regulatory programs of the SLPAB and the Bureau.

The Board exists to protect the public by licensing and regulating Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers who provide speech and hearing services to Californians. The Board sets licensing standards, examination requirements, enforces standards of conduct, investigates complaints against licensed and unlicensed practitioners, and takes disciplinary action when appropriate.

The Board licenses and regulates more than 35,000 licensees including 19,167 active Speech-Language Pathologists, 1,747 active Audiologists, and 1,154 active Hearing Aid Dispensers, among a total of 11 separate professions. Each profession has its own scope of practice, entry-level requirements, and professional settings, with some overlap in treated pathologies and rehabilitation.

- Speech-Language Pathologist – provide assessment and therapy for individuals who have speech, language, swallowing, and voice disorders.
- Audiologist – identify hearing, auditory system, and balance disorders, and provide rehabilitative services, including hearing aids and other assistive listening devices.
- Dispensing Audiologists – perform the duties of an Audiologist as described above and authorized to sell hearing aids.
- Speech-Language Pathology Assistant – paraprofessionals who complete formal education and training and serve under the direction of a licensed Speech-Language Pathologist.
- Required Professional Experience (RPE) Temporary License – speech-language pathology and audiology applicants completing RPE to qualify for full licensure, practicing under the supervision of a licensed practitioner.
- Speech-Language Pathology Aide – support personnel approved to work directly under the supervision of a Speech-Language Pathologist. No requirement for formal education and training, but on-the-job training must be provided.
- Audiology Aide – support personnel approved to work under the supervision of a licensed Audiologist. No requirement for formal education and training, but on-the-job training must be provided.
- Speech-Language Pathology or Audiology Temporary License – Speech-Language Pathologist or Audiologist, licensed in another state, who qualifies for a six-month license while seeking permanent licensure.
- Hearing Aid Dispenser – fit and sell hearing aids, take ear mold impressions, post fitting procedures, and directly observe the ear and test hearing in connection with the fitting and selling hearing aids.
- Hearing Aid Dispenser Temporary License – Hearing Aid Dispenser, licensed in another state, who qualifies for a 12 month temporary license while seeking permanent licensure.

- Branch License – licenses issued to Hearing Aid Dispensers authorizing the dispenser to work at additional branch locations.

The Board’s mandates are to protect the public by licensing and regulating Speech-Language Pathologists, Audiologists, and Hearing Aid Dispensers who provide speech and hearing services to California consumers; to set entry-level licensing standards, which includes examination requirements that measure the licensees’ professional knowledge and clinical abilities that are consistent with the demands of the current delivery systems; and, to enforce standards of professional conduct by investigating applicant backgrounds, investigating complaints against licensed and unlicensed practitioners, and taking disciplinary action whenever appropriate.

The current SLPAHADB mission statement, as stated in its 2021-2024 Strategic Plan, is as follows:

We protect the people of California by promoting standards and enforcing the laws and regulations that ensure the qualifications and competence of providers of speech-language pathology, audiology, and hearing aid dispensing services.

Board Membership and Committees

To balance the professional expertise and public input on the Board, the governance structure of the Board consists of two Speech-Language Pathologists; two Audiologists, one of whom must be a Dispensing Audiologist; two Hearing Aid Dispensers; and three public members, one of which who must be a licensed, Board-certified physician and surgeon in otolaryngology. Each of these members (except two public members) are appointed by the Governor. One public member is appointed by the Senate Rules Committee and one by the Speaker of the Assembly.

The current board members are listed below:

Board Member Roster					
Member Name	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)
Marcia Raggio (Chair), DAU Marcia Raggio, PhD is a Professor of Audiology at San Francisco State University. She earned her BA and MS degrees from the Communicative Disorders Program at San Francisco State University where she currently serves as the Acting Chairperson. She earned her doctorate in auditory neuroscience from the University of California, San Francisco. Marcia previously served as Chair and Board Member of the Speech-Language Pathology and Audiology licensing board of California for five years. She has been active in the California and American Academies of Audiology, and presently serves as the AuD program development consultant for the CSU Chancellor's Office. Marcia collaborated	12/17/12	11/14/19	1/1/23	Governor	Professional

Board Member Roster					
Member Name	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)
for 18 years with scientists at UCSF on NIH supported cochlear implant studies. She has published numerous research articles, and has given many presentations at state, national and international venues.					
Deborah “Debbie” Snow Deborah (Debbie) Snow was appointed by Darrell Steinberg, Chairman of the Senate Rules Committee as a public member to the Speech-Language, Pathology, Audiology and Hearing Aid Dispenser Board in November 2013. Ms. Snow received her Bachelor of Arts from California Baptist University in Riverside, CA, majoring in both English and Behavioral Science. Debbie is currently employed as a library assistant at University of California, Riverside and has spent her career working at various libraries. Debbie has been involved in consumer advocacy for several years and has frequently attended public meetings at California State boards. She has authored articles regarding consumer protection issues facing healing arts boards. Ms. Snow is a member of both California Women Lead and the Humane Society. She also volunteers at TRAX Equestrian Center, an organization established to enhance the lives of children with neurological disabilities by providing therapeutic horseback riding activities. Debbie is married and has one daughter.	11/30/13	12/6/17	11/30/21	Senate	Public
Karen Chang Karen Chang is a native Californian. Active in her community, she was past-President of the Taiwanese American Citizens League, a board member for Plaza De La Raza Child Development Services, and currently serves on the Citizens Technical Advisory Council for the Puente Hills Habitat Preservation Authority. Karen graduated from New York University Stern School of Business and received her Master's degree in Public Policy at the University of Southern California. She has worked for Congresswoman Hilda Solis and State Controller John Chiang. Karen is a public member of the Speech-Language	12/6/17	N/A	11/30/21	Assembly	Public

Board Member Roster					
Member Name	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)
Pathology and Audiology and Hearing Aid Dispenser Board. Karen was appointed by Speaker Anthony Rendon.					
<p>Tod Borges, HAD Tod Borges is a licensed hearing aid dispenser that has been serving the community since 1998. Working in a variety of different areas in the hearing aid industry, he began his career in the Bay Area as a hearing aid dispenser for Miracle Ear, then transitioned to American Hearing Aid Associates where he worked with both audiologists and hearing aid dispensers as a practice management consultant. He has been an owner of a hearing aid business and currently works as a hearing aid dispenser for HearingLife Hearing Aid Centers in Lodi, California. Tod has assisted as a subject matter expert for the State as a practical exam proctor for many years. It has been his pleasure working with everyone in the extended hearing healthcare community and he looks forward to continuing that positive relationship with the Board. Tod was appointed by Governor Newsom.</p>	12/4/19	N/A	1/1/23	Governor	Professional
<p>Holly Kaiser (Vice Chair), SLP Holly Kaiser, M.A., CCC-SLP, is a licensed Speech-Language Pathologist and was appointed to the Board by Governor Gavin Newsom on May 14, 2020. Holly has specialized in school-based therapy, consultation, and administrative services for over four decades. She is from Battle Creek, Michigan and received her Bachelor of Arts in Audiology and Speech Sciences from Michigan State University and her master's degree with honors in Speech-Language Pathology from Central Michigan University. Until her recent retirement, Holly was an owner and Chief Operating Officer for Creative Strategies for Special Education, a consulting firm for schools and businesses that work with schools nationwide. In 1999, Holly co-founded Progressus Therapy, a national company that provides early intervention and school-based speech-language, occupational, and physical therapy</p>	5/14/20	N/A	1/1/24	Governor	Professional

Board Member Roster					
Member Name	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)
<p>services. She also founded a Bay Area company, Holly Kaiser Therapy Services in Northern CA, that offered a variety of special education services from 1981-2000. She currently serves as a Director at Large on the California Speech-Language-Hearing Association (CSHA) Board of Directors. Her previous position for CSHA was as the State Education Advocacy Leader representing the state of California to the American Speech-Language Hearing Association. CSHA awarded Holly as a Fellow of the Association in 2015 and with Honors of the Association in 2018.</p>					
<p>Gilda Dominguez, SLP Gilda Dominguez M.S., CCC-SLP, CSSGB, is a licensed Speech-Language Pathologist. Gilda is a native Californian. Gilda earned a Bachelor of Arts degree with a major in Speech and Hearing Sciences from the University of California, Santa Barbara and a Master of Sciences degree in Communicative Disorders from California State University, Northridge. Her clinical experience includes evaluation and treatment of communication disorders and dysphagia across the age span (pediatrics through geriatrics). She has worked in a variety of settings such as the hospital, outpatient clinic, skilled nursing facility and home health settings. Gilda is currently working at Emanate Health, in Southern California, as a Corporate Director and is employed as a Surveyor at CARF International. In her leadership role at Emanate Health, she oversees the Speech Pathology, Acute Rehabilitation, Home Health, Hospice and Palliative Care Departments. Gilda is a member of the American Speech Hearing Association. Gilda has served on the California Speech, Language and Hearing Association (CSHA) as the Director Elect and Director of District 7. CSHA awarded Gilda with an Outstanding Service Award in 2015 and an Outstanding Leadership Award for District 7 in 2020. Gilda has hosted and has been a speaker at CSHA events. Gilda is a Certified Six Sigma</p>	5/10/21	N/A	1/1/25	Governor	Professional

Board Member Roster					
Member Name	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)
Greenbelt earning her certification through the Joint Commission and Emanate Health. In 2017, Emanate Health presented Gilda with the Robust Process Improvement Lean Six Sigma Leadership of the Year Award for her exemplary leadership and commitment in transforming their culture to one of high reliability. She is currently training as a Six Sigma Black Belt. Gilda was appointed to the Board by Governor Gavin Newsom in May of 2021.					
Amy White, DAU Amy E. White, Au.D. of Sloughhouse, is a licensed Audiologist and was appointed to the Board by Governor Gavin Newsom on December 20, 2021. Dr. White has been Service Chief for Audiology and Speech-Language Pathology for the Veterans Health Administration, Northern California Region since 2021 and has been Chief Executive Officer and Audiologist at Elk Grove Hearing Care since 2015. She served as a Clinic Co-Coordinator and Instructor at California State University, Sacramento and as Clinic Director at the University of the Pacific's Hearing and Balance Center. She has been an Audiologist in California since 2008. Dr. White earned a Doctor of Audiology degree from Utah State University. She is a member of the California Academy of Audiology, American Academy of Audiology and the American Speech-Language Hearing Association.	12/20/21	N/A	1/1/24	Governor	Professional
Tulio Valdez, Otolaryngologist Dr. Tulio A. Valdez is a licensed Otolaryngologist and public member that was appointed to the Board by Governor Gavin Newsom on December 20, 2021. Dr. Valdez is a surgeon scientist born and raised in Colombia with a subspecialty interest in Pediatric Otolaryngology. He attended medical school at Universidad Javeriana in Bogota Colombia before undertaking his residency in Otolaryngology, Head and Neck Surgery at Tufts University in Boston. He completed his Pediatric Otolaryngology Fellowship at Texas Children's Hospital (2007), Houston and	12/20/21	N/A	1/1/24	Governor	Public

Board Member Roster					
Member Name	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)
obtained his Master's in Clinical and Translational Research at the University of Connecticut. Clinically, Dr. Valdez is the surgical director of the pediatric sleep program. He has a special interest in the management of sinus disease in cystic fibrosis. Dr. Valdez has co-authored one textbook and numerous book chapters and scientific manuscripts. Dr. Valdez continues his clinical research in these areas, particularly with a focus on aerodigestive disorders. Scientifically, Dr. Valdez has developed various imaging methods to diagnose otitis media and cholesteatoma a middle ear condition that can lead to hearing loss. He was part of the Laser Biomedical Research Center at Massachusetts Institute of Technology. His research includes novel imaging modalities to better diagnose ear infections one of the most common pediatric problems. His research has now expanded to include better intraoperative imaging modalities in pediatric patients to improve surgical outcomes without the need for radiation exposure. Dr. Valdez believes in the multi-disciplinary collaborations to tackle medical problems and has co-invented various medical devices and surgical simulation models.					
Vacant, Hearing Aid Dispenser				Governor	Professional

The Board has one statutorily mandated committee, the Hearing Aid Dispensing Committee (BPC Section 2531.05). This committee must include both licensed Audiologist board members, both licensed Hearing Aid Dispenser board members, one public member, and the licensed Otolaryngologist board member. The committee is tasked with reviewing and researching the practice of fitting or selling hearing aids and advises the board about this practice based on that review and research. It provides policy and regulatory guidance with respect to Hearing Aid Dispenser practices and recommends scope of practice amendments for consideration.

The Board has two additional standing committees that address issues and changes in the respective practices of speech-language pathology and audiology. The members of these committees are appointed by the Board Chair. The structure of these committees is at the Board Chair's discretion. Currently, the Audiology Practice Committee and Speech-Language Pathology Practice Committee address changes in practice patterns and recommend position statements and scope of practice amendments for consideration.

The Board has recently identified and established three ad hoc committees consisting of two members

for the purpose of working with staff to research and gather information on Board issues. When the Board requires additional information from the public, it invites interested parties to either a Board or committee meeting to provide the needed input and information. In light of the Board's limited resources, these informal meetings are a cost-efficient means of gathering information for discussion by the full Board which enhances the process of the Board's public meetings and addresses the needs of the profession and consumers in California.

The Enforcement Committee reviews and recommends proposed revisions to the laws, regulations, and policies related to the Board's enforcement activities. The Legislative Committee reviews and recommends proposed positions on legislation impacting the Board, its licensees, and the Board's Practice Act. The Sunset Review Committee develops the Board's Sunset Report to the Legislature.

The Board has not experienced a lack of a quorum within the past four years; however, in 2021 the Audiology Practice Committee and the Hearing Aid Dispensing Committee have experienced a lack of quorum due to three vacancies on the Board. This issue is further discussed in Issue # 2 below.

The Board is a voting member of the National Council of State Boards of Examiners in Speech-Language Pathology and Audiology, which is a national professional organization for state licensing Boards to network and discuss practice issues. Topics include licensing and examination changes, enforcement trends and consumer protection issues, expansion of scopes of practice, and general health care evolution.

Fiscal, Fund and Fee Analysis

As a regulatory board within the DCA, the Board is entirely funded through regulatory fees and license renewal fees and does not receive funds from California's General Fund (GF).

The Board's fund condition is included below:

**Speech-Language Pathology, Audiology, and Hearing Aid Disp
(Dollars in Thousands) Fund Condition based on FM06**

	Actual 2020-21	CY 2021-22	BY 2022-23	BY+1 2023-24
BEGINNING BALANCE	\$ 1,853	\$ 1,545	\$ 976	\$ 1,289
Prior Year Adjustment	\$ -35	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,818	\$ 1,545	\$ 976	\$ 1,289
REVENUES, TRANSFERS AND OTHER ADJUSTMENTS				
Revenues				
4129200 - Other regulatory fees	\$ 37	\$ 39	\$ 36	\$ 36
4129400 - Other regulatory licenses and permits	\$ 361	\$ 472	\$ 529	\$ 529
4127400 - Renewal fees	\$ 1,766	\$ 2,092	\$ 2,289	\$ 2,289
4121200 - Delinquent fees	\$ 29	\$ 29	\$ 27	\$ 27
4171400 - Canceled Warrants Revenue	\$ 5	\$ 3	\$ 8	\$ 8
4163000 - Income from surplus money investments	\$ 10	\$ 3	\$ 6	\$ 7
Totals, Revenues	\$ 2,208	\$ 2,638	\$ 2,895	\$ 2,896
General Fund Transfers and Other Adjustments				
TOTALS, REVENUES, TRANSFERS AND OTHER ADJUSTMENTS	\$ 2,208	\$ 2,638	\$ 2,895	\$ 2,896
TOTAL RESOURCES	\$ 4,026	\$ 4,183	\$ 3,871	\$ 4,185
EXPENDITURES AND EXPENDITURE ADJUSTMENTS				
Expenditures:				
1111 Program Expenditures (State Operations)	\$ 2,304	\$ 3,011	\$ 2,400	\$ 2,472
9892 Supplemental Pension Payments (State Operations)	\$ 38	\$ 38	\$ 38	\$ 38
9900 Statewide Pro Rata	\$ 139	\$ 158	\$ 144	\$ 144
TOTALS, EXPENDITURES AND EXPENDITURE ADJUSTMENTS	\$ 2,481	\$ 3,207	\$ 2,582	\$ 2,654
FUND BALANCE				
Reserve for economic uncertainties	\$ 1,545	\$ 976	\$ 1,289	\$ 1,531
Months in Reserve	5.8	4.5	5.8	6.9

Speech-Language Pathologists, Speech-Language Pathology Assistants, Audiologists (non-dispensing), and CDP Providers' licenses all renew biennially, expiring on the last day of the licensees' birth month. All Hearing Aid Dispensers' and Dispensing Audiologists' licenses renew annually.

The fees established for Hearing Aid Dispensers are set in statute and are currently at the maximum level.

In 2015, DCA Budget Office recommended a fee increase to address a structural imbalance within the Board's budget. The Board subsequently approved a proposal to increase licensing fees for specified license types through a regulatory fee increase. The Board was able to finalize the regulatory fee increase with the Office of Administrative Law (OAL) for Audiologists, Speech-Language Pathologists, Speech-Language Pathology Assistants, and Speech-Language Pathology or Audiology Aides on June 29, 2021, with an implementation date of November 1, 2021 for the specified fee increases. With this regulatory fee increase, most license types are at their statutory maximum level.

Fee Schedule and Revenue								(list revenue dollars in thousands)
Fee	Current Fee Amount	Statutory Limit	FY 2017/18 Revenue	FY 2018/19 Revenue	FY 2019/20 Revenue	FY 2020/21 Revenue	% of Total Revenue	
Other Regulatory Fee								
License Certification Letter (7700)	\$10	\$25	9	7	8	9	0.41%	
Duplicate License (7700)	\$25	\$25	11	11	11	9	0.41%	
Citation & Fine (7700)	Various	\$5,000	8	10	12	8	0.36%	
License Certification Letter (6700)	\$15	\$15	1	1	1	2	0.09%	
Duplicate License (6700)	\$25	\$25	26	11	5	1	0.05%	
Citation & Fine (6700)	Various	\$2,500	10	0	15	8	0.36%	
Licenses & Permits								
CPD Provider App	\$200	\$200	4	5	2	3	0.14%	
SLP App	\$60	\$150	97	96	103	126	5.71%	
SLPA App	\$50	\$150	29	31	31	28	1.27%	
AU App	\$60	\$150	5	4	5	7	0.32%	
Aide Registration	\$10	\$30	1	1	1	1	0.05%	
HAD App	\$75	\$75	17	8	12	13	0.59%	
HAD Initial License	\$280	\$280	57	66	38	21	0.95%	
DAU License	\$280	\$280	2	0	1	3	0.14%	
Written Exam*	\$225	\$225	100	80	57	46	2.08%	
Practical Exam*	\$500	\$500	124	102	71	72	3.26%	
HAD Temporary License	\$100	\$100	1	0	1	1	0.05%	
Branch License	\$25	\$25	5	6	6	7	0.32%	
HAD Trainee License	\$100	\$100	17	17	12	10	0.45%	
CE Provider	\$50	\$50	25	15	28	27	1.22%	
Over/Short Fees	Not Applicable	Not Applicable	1	1	1	2	0.09%	
Refunds	Not Applicable	Not Applicable	2	2	1	4	0.18%	
Renewal Fees								
Biennial SLP	\$110	\$150	833	856	899	955	43.25%	
Biennial AU	\$110	\$150	26	23	27	26	1.18%	
Biennial CPD	\$200	\$200	15	13	14	12	0.54%	
Biennial SLPA	\$75	\$150	103	112	118	134	6.07%	
HAD Trainee*	\$100	\$100	16	18	16	13	0.59%	
Annual HAD	\$280	\$280	285	287	299	304	13.77%	
Annual Branch	\$25	\$25	14	17	16	16	0.72%	
Annual DAU	\$280	\$280	299	332	328	298	13.50%	
Delinquent Fees								
SLP Delinquent Renewal	\$25	\$25	14	15	18	18	0.82%	
AU Delinquent Renewal	\$25	\$25	0	0	1	1	0.05%	
SLPA Delinquent Renewal	\$25	\$25	3	3	3	5	0.23%	
HAD Delinquent Renewal	\$25	\$25	3	3	3	3	0.14%	
DAU Delinquent Renewal	\$25	\$25	1	1	1	1	0.05%	

Fee Schedule and Revenue								(list revenue dollars in thousands)
Fee	Current Fee Amount	Statutory Limit	FY 2017/18 Revenue	FY 2018/19 Revenue	FY 2019/20 Revenue	FY 2020/21 Revenue	% of Total Revenue	
Branch Delinquent Renewal	\$25	\$25	1	1	1	2	0.09%	
Income from Surplus Money Investments	Not Applicable	Not Applicable	31	59	48	9	0.41%	
Revenue Cancelled Warrants	Not Applicable	Not Applicable	1	4	2	3	0.14%	
Dishonored Check Fee	\$25	Cost to DCA	1	1	1	0	0.00%	
*HAD Examination Fees are established by resolution of the Board. The fees listed in this table have been in effect since February 1, 2011.								
Legend								
AU = Audiologist		HAD = Hearing Aid Dispenser		7700 =				
AU/CPD/DAU/SLP/SLPA								
CPD = Continuing Professional Development		SLP = Speech-Language Pathologist		6700 = HAD/ HAD Trainee/				
DAU = Dispensing Audiologist		SLPA = Speech-Language Pathology Assistant		HAD Temporary				

The Board operates on an annual budget of \$2.45 million, with approximately 36 percent of its budget devoted to enforcement, 21 percent to DCA pro rata, 18 percent to licensing, 17 percent to administration, and 8 percent to examinations

Expenditures by Program Component									(list dollars in thousands)
	FY 2017/18		FY 2018/19		FY 2019/20		FY 2020/21		
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	
Enforcement	\$310	\$298	\$294	\$198	\$391	\$265	\$381	\$497	
Examination	\$122	\$100	\$116	\$42	\$155	\$32	\$150	\$49	
Licensing	\$294	\$103	\$278	\$44	\$371	\$70	\$360	\$88	
Administration *	\$186	\$31	\$309	\$33	\$381	\$53	\$344	\$61	
DCA Pro Rata	\$0	\$453	\$0	\$673	\$0	\$661	\$0	\$520	
Diversion (if applicable)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
TOTALS	\$912	\$985	\$997	\$990	\$1,298	\$1,081	\$1,235	\$1,215	
*Administration includes costs for executive staff, Board, administrative support, and fiscal services.									

The DCA provides centralized administrative services to all boards, committees, commission and bureaus which are funded through a pro rata calculation that appears to be based on the number of authorized staff positions for an entity rather than actual number of employees. The Board paid DCA \$520,000 in Pro Rata for FY 2020/21, an average of 21 percent of its expenditures compared to the 14 percent average reported during the prior sunset review. Pro Rata is further discussed in Issue #5 below.

During the past four budget years, the Board's reserve level has ranged from 12.1 months to its current level of 5.8 months. The Board has projected that in Budget Year 2022-23, the Board will have a fund balance of \$1.3 million or 5.8 months in reserve.

There is no reserve level mandated by statute for the Board; however, the DCA Budget Office has historically recommended that smaller programs maintain a contingency fund slightly above the standard three to six months of reserve, which is typically recommended for agencies with moderate to larger budgets. Maintaining an adequate reserve of at least six months provides for a reasonable

contingency fund so that the Board has the fiscal resources to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs.

Currently, the Board, in coordination with DCA's Organizational Improvement Office and Office of Information Services, is undertaking a Business Modernization Project to move to new data systems that will provide access for licensees and applicants to apply for licensure online and complete online transactions. In 2020, the Board received budgetary authority to proceed with the project and an analyst position to address the increased workload during the development and transition to the system. The Board has now completed Stages 1 (Business Analysis) and 2 (Alternative Analysis) of the California Department of Technology's Project Approval Lifecycle (PAL). The Board has begun Stage 3 (Solution Development) of the process and will continue to complete the last two required PAL Stages in 2021. During the Fiscal Years 2021-22 and 2022-23, the Board will be expending significant funds to transition to a new system. The Board states that in future years, this level of expenditure will decrease significantly to ongoing maintenance costs.

Due to the growing licensee population in most licensing categories, the Board's expenditures have steadily increased during the past four budget years. While the Board maintained a healthy fund condition for the past four years, the Board did have a structural imbalance within its budget and implemented a regulatory fee increase to prevent the structural imbalance from having a detrimental impact on the Board's Fund. The most recent projections do not project fund insolvency in the near future. The Board is working with DCA's Budget Office to closely monitor its revenue and expenditures.

Staffing Levels

The Executive Officer is appointed by the Board. Paul Sanchez has served as executive officer since 2014. The Board reports that it is significantly understaffed, as the office is funded for only 12.6 positions yet is responsible for the oversight of over 35,000 licensees. This responsibility includes all aspects of licensing, examinations, enforcement, development of regulations, CE provider approval and licensee continuing education (CE) audits. With such a small number of staff, the loss of even one member can have a deleterious impact on the Board's ability to handle current workload demands. Currently, the Board states it is only able to handle its current workload demands by utilizing significant overtime, but advises that given recent fund condition projections, coupled with additional revenue stemming from the recent fee increases, requests for additional spending and hiring are underway.

Licensing

The Board currently issues approximately 3,591 new licenses and renews approximately 13,038 licenses each year.

Overall, the Board reports increases in the application processing timeframes due to a number of factors. The Board cites an increase in the number of applications received as contributing to increased timeframes, as well as the large amount of incomplete applications the Board receives. According to the Board, there has been an average increase of 43 percent of incomplete applications from 2017-18 to 2020-21. The high level of incomplete applications creates additional workload for staff, including the need for additional communications with applicants regarding the deficiencies in their application, additional documentation processing once documents are received, and additional

review before final processing of each application. This incomplete workload takes staff longer to process applications even though the total number of applications may not have increased dramatically in 2020-21 due to COVID-19 delaying applicants' ability to complete their educational or fieldwork/professional experience requirements. The Board's Business Modernization Project is expected to significantly reduce the number of incomplete applications the Board receives as the system will be designed to require almost all required documentation to be uploaded along with the application at the time of submission. Additionally, the Board provides application checklists that detail all required documentation for the issuance of a license with each group application package. The Board's Executive Officer and staff also meet with academic faculty and students to educate future applicants about the Board's requirements.

Licensee Population					
License Type	License Status	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Aide	Active	142	130	120	94
	Out of State	0	0	0	0
	Out of Country	0	0	0	0
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	N/A	N/A	N/A	N/A
	Delinquent*****	74	115	155	195
	Other	120	131	144	158
Audiologist	Active *	1,667	1,710	1,740	1,747
	Out of State *	171	188	200	206*****
	Out of Country *	5	5	5	6*****
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive *	127	131	129	129
	Delinquent *	284	294	315	316
	Other *	907	948	986	1,067
Audiologist Temporary	Active	0	1	2	0
	Out of State	0	1	2	****
	Out of Country	0	0	0	****
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	N/A	N/A	N/A	N/A
	Delinquent	0	3	5	8
	Other**	2	2	2	2
Continuing Professional Development Provider	Active	175	177	163	157
	Out of State	28	29	24	24*****
	Out of Country	1	1	1	1*****
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	0	0	0	0
	Delinquent	2	1	2	3
	Other	194	208	225	244
Hearing Aid Dispenser	Active	1,107	1,166	1,174	1,154
	Out of State	56	56	57	53*****
	Out of Country	0	0	0	0*****
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A

Licensee Population					
License Type	License Status	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
	Inactive	37	35	0	32
	Delinquent	155	173	500	213
	Other	1,715	1,795	1,945	1,909
Hearing Aid Dispenser Trainee	Active	154	152	134	151
	Out of State	6	1	2	3****
	Out of Country	0	0	0	0****
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	1	1	1	1
	Delinquent	49	57	92	94
	Other**	941	1,076	1,169	1,245
Hearing Aid Dispenser Temporary License	Active	18	15	20	29
	Out of State	5	7	8	21****
	Out of Country	0	0	0	0****
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	N/A	N/A	N/A	N/A
	Delinquent	10	16	19	18
	Other**	99	113	117	120
Hearing Aid Dispenser Branch License	Active	813	907	896	828
	Out of State	N/A	N/A	N/A	N/A
	Out of Country	N/A	N/A	N/A	N/A
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	N/A	N/A	N/A	N/A
	Delinquent	503	448	500	610
	Other	1,352	1,674	1,944	2,150
Required Professional Experience	Active	886	915	1,058	1,147
	Out of State	122	116	129	147****
	Out of Country	0	0	5	2****
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	N/A	N/A	N/A	N/A
	Delinquent	507	472	492	519
	Other**	1,894	2,876	3,773	4,688
Speech-Language Pathologist	Active	16,449	17,310	18,160	19,167
	Out of State	2,326	2,487	2,748	3,410****
	Out of Country	38	34	38	44****
	Retired <i>if applicable</i>	N/A	N/A	N/A	N/A
	Inactive	991	1,043	1,038	1,001
	Delinquent	2,528	2,879	3,090	3,064
	Other	6,774	7,073	7,440	8,063

The Board requires primary source documentation for all educational transcripts, clinical experience records, license verifications from other states, national examination scores, and professional certifications. The Board does not receive primary source verification of CE completion through the DCA Cloud.

Applicants for licensure as a Speech-Language Pathologist or Audiologist must also complete an externship or RPE. This experience is completed under a temporary license which enables the individual to work under limited supervision. The externship is recorded on the Board's RPE Verification form which is completed by an approved licensed supervisor. The RPE supervisor is responsible for certifying the completion of the requisite hours of experience, as well as determining whether the RPE Temporary Licensee is competent to practice independently.

Applicants are required to declare, under penalty of perjury, whether they have ever been denied a professional license or had license privileges suspended, revoked or disciplined or if they have ever voluntarily surrendered a professional license in California or any other state. If an applicant reports such an act, the Board requires the applicant to provide a written explanation, documentation relating to the conviction or disciplinary action, and rehabilitative efforts or changes made to prevent future occurrences. The Board reports that it has not denied any licenses over the past four years based on the applicant's failure to disclose criminal history information on the application.

Prior to licensure, all applicants are required to submit fingerprints to the Department of Justice and to the Federal Bureau of Investigation. The National Practitioner Data Bank (NPDB) is the national databank for reporting discipline on healthcare professionals. Information contained in the databank is provided by state regulatory agencies and other entities that are required to report disciplinary information. The Board reports disciplinary actions taken against its licensees to NPDB. However, not all entities consistently comply with the reporting requirement. Therefore, the information may be either non-existent or out of date. The Board or the applicant is required to pay a fee for each query prior to receiving a response. Currently, the Board does not query the NPDB prior to issuing or renewing a license because of the fiscal impact.

The Board verifies an out-of-state applicant's licensure status through other state regulatory Boards. This verification process also provides any disciplinary history, if it exists. For verification of in-state licensure status the Board can check for prior disciplinary actions through the Commission on Teacher Credentialing and the Consumer Affairs System. At each renewal, all licensees and registrants are required to report to the Board any conviction or disciplinary action taken against their license or registration during the last renewal cycle. The Board also receives subsequent conviction information on its licensees from the California Department of Justice via email notification. Once notified of the conviction or disciplinary action, the Board requests all relevant documentation to determine if any action by the Board is necessary.

The Board accepts two national examinations, the Praxis Examination for both speech-language pathology and audiology, both administered by the Educational Testing Service (ETS). While the Board is not directly involved with the development, scoring, and administration of the examination, the Board does conduct periodic audits through examination validation studies. These studies review the content and rigor of each examination to ensure that the scope of the examination and passing scores reflect the minimum standards of practice and entry-level requirements for licensure in California. The last audit conducted by the Board, with the facilitation of the Department's Office of Professional Examination Services, was completed in 2017 for the audiology examination, and 2016 for the speech-language pathology examination.

The American Speech-Language-Hearing Association commissions the ETS to conduct job analysis studies which are linked to the examination validation process. The Board reviews the ETS studies during its examination validation, and audit process, to determine whether the current professional expectations and job standards for speech-language pathology and audiology are congruent to those in

California.

BPC Section 2532.2 and California Code of Regulations (CCR) Section 1399.152.1 includes an equivalency pathway for foreign-trained applicants. The regulations require that in lieu of a master's degree from an accredited university, an applicant may submit evidence of completion of at least 30 semester units acceptable toward a master's degree while registered in a degree program in speech-language pathology or audiology. The foreign-trained applicant must have their educational transcripts evaluated by an approved transcript evaluation service. The service provides the Board with a report of the courses taken and the academic units and clinical hours earned. The report also provides a conversion of the foreign grading scale and credit system into the U.S. grading scale, and an equivalency of the degree conferred at the international institution to that which would be earned in the U.S.

Once the Board receives an application and the transcript evaluation report, the transcripts and the evaluation report are sent to a Board-appointed expert reviewer to determine that equivalent educational and experience qualifications are met. The applicant must also take and pass the required national examination and complete the RPE to be eligible for a permanent license.

The Board has the authority to approve the professional training programs awarding graduate or doctorate degrees in speech-language pathology or audiology; however, it does not exercise such authority as the Board does not have the expertise or staff resources to serve as an accrediting body for professional training programs. Instead, the Board recognizes the accreditation of two professional accrediting organizations, the Council of Academic Accreditation, which is a subsidiary of American Speech-Language-Hearing Association and accredits both speech-language pathology and audiology programs, and the relatively new accrediting body, the Accreditation Commission for Audiology Education which accredits professional doctoral programs in audiology.

The Board independently reviews speech-language pathology assistant training programs. These programs are Associate of Arts or Science programs. Individuals with an undergraduate degree in Communication Disorders and Sciences may qualify for Speech-Language Pathology Assistant registration; however, the undergraduate program does not require independent review and approval by the Board. CCR Sections 1399.170.4-1399.170.10 provide for the institutional and program requirements that must be met in order for the program to be awarded Board approval. The Board utilizes the services of subject matter experts to review applications and supporting documentation for Speech-Language Pathology Assistant programs and make recommendations to Board staff regarding program approval.

The Board has approved seven Speech-Language Pathology Assistant programs which are offered at community colleges and can be found throughout the State. These programs must be accredited by the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges. The Speech-Language Pathology Assistant programs may be reviewed or audited at any time; however, the Board only conducts subsequent site reviews for an approved school if there are concerns raised regarding the administration of the Speech-Language Pathology Assistant program. If a program fails to comply with the requirements for approval as set forth in CCR Sections 1399.170.4 - 1399.170.10, the Board can remove its approval of a Speech-Language Pathology Assistant program.

CE and CPD

Licenses are required to complete CE and CPD prior to licensure renewal, as specified below:

- *Speech-Language Pathologists, Audiologists, Dispensing Audiologists, & Speech-Language Pathology Assistants.* Licensed Speech-Language Pathologists and non-dispensing Audiologists are required to complete 24 hours of CPD/CE from a Board-approved provider during their preceding two-year license renewal cycle. Dispensing Audiologists are required to obtain 12 hours for each renewal with at least 50 percent of the CPD/CE in hearing aid related course work and the other 50 percent in courses directly relevant to the practice of audiology. Additionally, Speech-Language Pathologists and Audiologists that supervise RPE Temporary License holders and Speech-Language Pathology Assistants must initially obtain six (6) hours of CPD related to supervision prior to commencing supervision and also must obtain three (3) hours of CPD related to supervision every four (4) years for required professional development supervisors and every two (2) years for Speech-Language Pathology Assistant supervisors.

Speech-Language Pathology Assistants are also required to complete CPD/CE every two years; however, the 12 hours required of Speech-Language Pathology Assistants do not have to be obtained by Board-approved providers. Instead, the Speech-Language Pathology Assistant supervisor serves as a professional development coordinator for the Speech-Language Pathology Assistant and assists the paraprofessional in developing a plan to complete the required hours through attendance at state or regional conferences, workshops or formal in-service presentations.

CPD/CE requirements allow for a specified number of self-study courses, related coursework which may include more general medical or educational course offerings, and indirect client care courses which cover legal or ethical issues, managed care issues, consultation, etc.

- *Hearing Aid Dispensers.* Hearing aid dispensers are required to complete at least 12 hours of CE annually. At a minimum, nine (9) hours of CE must be related to direct patient care in the practice of dispensing and fitting hearing aids, while the remaining three hours may be in courses related to the discipline of hearing aid dispensing, ethics, office management, or managed care issues.

CE providers must have their courses approved by the Board. Board staff reviews the content of each course, along with the instructor's qualifications, and issues approval. If Board staff is unfamiliar with the subject area, an outside expert may be consulted.

In 2016, the Board promulgated a regulatory amendment that increased the CE requirement for Hearing Aid Dispensers from nine (9) to 12 hours annually and eliminated the 12-month grace period which allowed licensees an additional year to make-up deficiencies in CE.

Certification of completion of the required CPD/CE is documented on the license renewal form, which includes a statement of compliance that must be signed by the licensee. Subsequent random audits are performed by the Board wherein actual course completion documents are requested of the licensees to verify the statements of compliance.

The Board states that its goal is to conduct random audit of five percent of its licensees annually to ensure compliance with CE requirements for license renewal. Due to staffing and resource issues, the Board last conducted a CE audit of all licensees in 2018. The next planned audit was scheduled to be completed in 2020; however, due to COVID-19 pandemic and DCA Waivers of all CE requirements for licensees, the Board did not pursue the CE audit in 2020 and plans to resume CE audits in 2022.

Licensees, as a condition of renewal, must certify that they have met the CE requirements specified in regulation for their license type. Certification of completion of the required CPD/CE is documented on the license renewal form, which includes a statement of compliance that must be signed by the licensee. Failure by the licensee to produce the requested documentation can result in the Board issuing a citation and fine against the licensee. During a CE audit, the Board notifies licensees of their selection and request course completion documents for the renewal cycle being audited. The course completion documents are reviewed by Board staff to determine compliance with the CE requirements in terms of total number of hours obtained, approved provider status, and whether the course content is applicable to the profession.

Board staff reviews and approves applications for both CPD providers and CE courses. Board staff review applications for compliance with the respective regulations for CPD provider applications and CE course content requirements. Subject matter experts may be utilized if the course content is unfamiliar to staff or requires expert review by a licensed professional in order to determine the practice relevance of the course.

Enforcement

The Board's enforcement program is charged with investigating complaints, issuing penalties and warnings and overseeing the administrative prosecution of licensees and unlicensed personnel violating the Board's Practice Act. The Board reports that, due to increases in the number of licensees, it experienced an uptick in enforcement workload, specifically an average increase of 66 percent in complaints and increased numbers of reports like licensee arrest and convictions. The Board states that during that same timeframe, the Board's enforcement analysts have been able to maintain a high investigation closure rate, averaging approximately 239 per year, and have been able to reduce their investigation timeframes by 45 percent. This was achievable due to lower levels of staff attrition within the enforcement unit and improved investigations training for enforcement analysts.

The Board prioritizes cases as urgent, high, or routine in accordance with DCA's Complaint Prioritization and Referral Guidelines. Each case is reviewed and expedited according to the alleged violations. The Board advises that it takes immediate action to involve the DCA's Division of Investigations and/or the Office of the Attorney General when a complaint alleges any activity in which the probability of public harm is imminent.

The Board receives reports of licensee conduct through various sources stemming from mandatory reporting requirements outlined in BPC Code Section 800 which, among other notifications, ensures the Board is aware of situations involving professional negligence or incompetence based on professional liability insurer action and settlements; arbitration awards and; court judgments.

In 2010, DCA implemented the Consumer Protection Enforcement Initiative to better monitor and streamline enforcement of all healing arts boards. The DCA also established performance measures for each board of 12-18 months to complete customer complaints. According to the Board's Enforcement Performance Measure data, the Board consistently meets the targets for complaint intake and probation initial contact and violations but does not meet the performance targets for complaint investigation or formal discipline timeframes. The Board advises that while it has not been able to meet the performance targets for complaint investigation, the majority of investigations are closed within the performance target of 90 days, but due to the complexity of some complaints, additional investigative time is necessary.

The Board refers cases to the Office of the Attorney General for disciplinary action and notes that it considers many factors when settling cases. Settlements are based on the Board's Disciplinary

Guidelines and recommendations by the Office of the Attorney General. The Board considers the seriousness of the violations pled in the accusation, consumer harm, rehabilitation factors, and licensee complaint history when considering a settlement. In addition, the Board considers the costs and length of an administrative hearing versus the benefit of reaching a settlement and the likely outcome. The Board reports that it has worked to decrease timeframes for formal discipline by staying in communication with the Office of the Attorney General about cases, engaging in early settlement negotiations when appropriate, and by limiting the amount of time given to a respondent during settlement negotiations. The Board notes that often delays in meeting targets are due to factors outside of the Board's control like Office of the Attorney General case processing and delays at the Office of Administrative Hearings.

The Board is authorized to issue citations which may contain an order of abatement and an order to pay an administrative fine. The Board issues citations for minor infractions like those related to advertising, failure to renew a license prior to the expiration, failure to keep updated records with the Board, failure to appropriately register support personnel or trainees prior to employing the personnel to provide services, CE compliance issues, or other instances that do not appear to directly impact patients and the public.

The Board seeks monetary restitution for consumers in cases regarding hearing aid returns and refunds, pursuant to the provisions of the Song-Beverly Consumer Warranty Act. If initial attempts at restitution by the Board are unsuccessful, the Board will order the Hearing Aid Dispenser to pay restitution in full to the consumer by means of an administrative order, stipulated settlement or in less egregious cases, through citation and fine. Payment to the consumer must be made within a specified period of time, typically not more than 30 days, and is tracked by the Board. Additionally, the Board can order restitution in cases involving Medi-Cal fraud, insurance fraud or in cases where a patient or client paid for services that were not provided.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Board was last reviewed by the Legislature through sunset review in 2016-2017. During the previous sunset review, six issues were raised. In January 2022, the Board submitted its required sunset report to the Senate Committee on Business, Professions, and Economic Development and Assembly Committee on Business and Professions (Committees). In this report, the Board described actions it has taken since its prior review to address the recommendations made. The following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made. For those which were not addressed and which may still be of concern to the Committees, they are addressed and more fully discussed under "Current Sunset Review Issues."

- **New leadership staff.** In January of 2020, the Board hired a new Assistant Executive Officer. During the transition to a new Assistant Executive Officer, Board leadership focused on retaining institutional knowledge, transferring responsibilities, and understanding of the Board's workload and process improvements underway.
- **A new strategic plan was adopted.** In November of 2020, the Board adopted its Strategic Plan for 2021-2024. The plan was developed through the Board's collaboration with its stakeholders and strongly emphasizes consumer protection around five goal areas with objectives focused on improving services to consumers and licensees, increasing outreach to stakeholders, and

enhancing the Board's enforcement program. Through interviews and surveys of its stakeholders, the Board identified challenges and opportunities in moving forward to build a foundation for the protection of, service to, and excellence in care of consumers with speech, language, and hearing impairments.

- **The Board has a new office.** In April 2021, the Board relocated its office to a new location which allows the Board to conduct Hearing Aid Dispenser practical examinations within its suite, provides necessary file and storage space, and provides adequate space for social distancing during a public health crisis.
- **Occupational analyses were completed.** BPC Section 139 and DCA policy require that California state licensing boards conduct regular occupational analyses of the professions as a fundamental part of each licensure program. In addition, BPC Section 139 and DCA policy also requires a review of any national examination program used by a California licensing board as part of its licensure program. The Board conducted an occupational analysis for Audiologists in 2017 and an occupational analysis for Hearing Aid Dispensers in 2020.
- **The Board's fund condition is more stable.** The Board advises that it does not predict insolvency in its fund in the future because of recent fee increases, and is continuing to work with DCA to monitor its budget. According to the Board, Business Modernization Project costs have been significantly reduced, which has resulted in a less drastic impact on the Board's Fund Condition in the near term. The Board now estimates that its Fund Condition shows 5.8 months in reserve in 2022-23 and 6.9 months in reserve in 2023-24. Fee increases also took effect, providing the Board additional revenue stability.
- **The Board took the lead to protect consumers who purchase locked hearing aids.** The Committees asked the Board what steps are necessary to protect consumers from harm stemming from locking procedures on hearing aids. Locking hearing aids creates a potential consumer protection issue since these can limit or restrict where hearing aid users can seek hearing aid programming and care. The Board sponsored legislation AB 435 (Mullin, Chapter 266, Statutes of 2021) to require Hearing Aid Dispensers and Dispensing Audiologists that sell hearing aids with locked software to provide consumers a written disclosure that about limitations regarding adjustments to their hearing aid and other related services caused by the locked software.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the Board and other areas of concern that should be considered, along with background information for each issue. There are also recommendations Committee staff have made regarding particular issues or problem areas SLPAHADB needs to address. SLPAHADB and other interested parties have been provided with this Background Paper and SLPAHADB will respond to the issues presented and the recommendations of staff.

BOARD ADMINISTRATION ISSUES

ISSUE #1: (BOARD COMPOSITION.) Does the Board's composition need to be updated to include additional members of the public?

Background: In 2010, the Federal Trade Commission (FTC) brought an administrative complaint against the North Carolina State Board of Dental Examiners (BDE) for exclusion of non-dentists from the practice of teeth whitening. The FTC alleged that the BDE's decision was an uncompetitive and unfair method of competition under the FTC Act. This opened the BDE to lawsuits and substantial damages from affected parties.

The BDE was composed of 6 licensed, practicing dentists and 2 public members. The practice of teeth whitening was not addressed in the statutes comprising the Dental Practice Act. Instead of initiating a rulemaking effort to clarify the appropriate practice of teeth whitening, the BDE sent cease-and-desist letters to non-dentists in the state offering teeth whitening services. The BDE argued that the FTC's complaint was invalid because the BDE was acting as an agent of North Carolina, and according to state-action immunity, one cannot sue the state acting in its sovereign capacity for anticompetitive conduct. A federal appeals court sided with the FTC, and the BDE appealed to the United States Supreme Court (Court).

In February 2015, the Court agreed with the FTC and determined that the BDE was not acting as a state agent and could be sued for its actions. The Court ruled, "Because a controlling number of the Board's decision-makers are active participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met."

The Court was not specific about what may constitute "active participants" or "active supervision." However, the Court did say that "active supervision" requires "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy," and that "the supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it."

In October 2015, the FTC released a staff guidance, *Active Supervision of State Regulatory Boards Controlled by Market Participants*, in order to better explain when active supervision of a state regulatory board would be required in order for a board to invoke the state action defense. The guidance also aimed to highlight what factors are relevant when determining if the active supervision requirement has been satisfied. The FTC states that active supervision includes the ability of a state supervisor to review the substance of the anticompetitive decision and have the power to veto or modify a decision. The state supervisor may not be an active market participant. In addition, the FTC

states that active supervision must precede the implementation of the alleged anticompetitive restraint.

The FTC states that the guidance addresses only the active supervision requirement of the state action defense, and antitrust analysis is fact-specific and context-dependent. This means that although a state action defense might not be applicable in a certain case, this does not mean that the conduct of a regulatory board necessarily violates federal antitrust laws.

On October 22, 2015, the Committees held a joint informational hearing to explore the implications of the Court decision on the DCA's professional regulatory boards and consider recommendations.

In response to the Court's decision, State Senator Jerry Hill requested an opinion from the Office of Attorney General Kamala Harris (AG). The AG released the following:

“North Carolina Dental has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond.

“Whatever the chosen response may be, the state can be assured that North Carolina Dental's 'active state supervision' requirement is satisfied when a non-market-participant state official has and exercises the power to substantively review a board's action and determines whether the action effectuates the state's regulatory policies.”

Boards like SLPAHADB are semiautonomous bodies whose members are appointed by the Governor. Although most of the non-healing arts boards have statutory authority for a public majority allotment in their makeup, most healing arts and non-healing arts boards are comprised of a majority of members representing the profession.

North Carolina State Board of Dental Examiners v. FTC placed limitations on the immunity of regulatory boards controlled by active market participants. This is because individuals who are directly affected by their own rulemaking may not be able to detect their biases, potentially placing their benefit over those of the public. As the Supreme Court stated, “Dual allegiances are not always apparent to an actor.”

Although the boards are tied to the state through various structural and statutory oversights, it is presently unclear whether current laws and practices are sufficient to ensure that the boards are state actors and, thus, immune from legal action. Changing SLPAHADB's composition to increase the number of public members may provide certain benefits such as: limiting the potential for Board action to be viewed as providing marketplace advantages to licensees, particularly in the hearing aid dispensing arena in light of recent federal action to make devices more accessible; decreasing SLPAHADB's risk of exposure to lawsuits and; orient the Board towards a more public, patient, and client centric program.

Staff Recommendation: The Committees should discuss whether a proposal to alter the Board's composition may be beneficial to the Board, patients, clients, and the public.

ISSUE #2: (HEARING AID DISPENSING COMMITTEE.) Should the size of the Hearing Aid Dispensing Committee be reduced?

Background: The Hearing Aid Dispensing Committee is the Board’s only statutorily required committee and must include the Board’s two Audiologist board members, two Hearing Aid Dispenser board members, the Otolaryngologist public member, and one of the Board’s two other public members. The Governor is responsible for appointing each of the Board members except for two public members, one of whom is appointed by the Senate Rules Committee and the other by the Speaker of the Assembly. The Hearing Aid Dispensing Committee has not had a quorum of members since January 1, 2021 due to the Dispensing Audiologist, one Hearing Aid Dispenser, and the Otolaryngologist positions being vacant. The Board asserts that the lack of a quorum requires the Board to address issues that would otherwise be under the Hearing Aid Dispensing Committee’s purview.

For comparison, the Speech-Language Pathology and Audiology committees each have three and four members, respectively. The Board recommends reducing the size of the Hearing Aid Dispensing Committee to four members, specifically by eliminating one Audiologist position and allowing for another public member to serve on the Hearing Aid Dispensing Committee if the Otolaryngologist position is vacant.

Staff Recommendation: *The Board should explain to the Committees the difficulty filling the current vacancies and provide more information about what the Hearing Aid Dispensing Committee does. Moreover, the Committees should work with the Board to determinate the universe of options to address this issue.*

ISSUE #3: (LICENSEE CONTACT INFORMATION.) Should the Board be authorized to require licensees to share and keep current their e-mail address with the Board?

Background: Under existing law, the Board has no authority to require licensees to provide an email address to facilitate communication with the Board. The Board asserts that email is critically important for information to be shared quickly, efficiently, and inexpensively. The Board notes that it relied heavily on email during the COVID-19 pandemic to provide licensees with updates regarding the Board’s office closure and waivers to various rules and regulations.

It is a stated goal in the Board’s Strategic Plan for 2021-2024 to receive the statutory authority to collect email addresses to better communicate with licensees. It does not propose requiring licensees to create an email account for the purposes of providing an email address to the Board.

Staff Recommendation: *The Board should explain to the Committees how it communicates with licensees who do not have an e-mail address on file and consider whether an opt-out would be appropriate for those licensees who prefer an alternative method of the communication.*

ISSUE #4: (REGULATIONS.) What is the current timeframe for Board regulatory packages to be approved and finalized?

Background: Promulgating regulations is at the heart of the Board’s work to implement the law and establish a framework for consumer protection. According to the OAL, a “regulation” is any rule, regulation, order or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make

specific the law enforced or administered by it. When adopting regulations, every department, division, office, officer, bureau, board or commission in the executive branch of the California state government must follow the rulemaking procedures in the Administrative Procedure Act (APA) (Government Code section 11340 et seq.) and regulations adopted by OAL, unless expressly exempted by statute from some or all of these requirements. The APA requirements are designed to provide the public with a meaningful opportunity to participate in the adoption of regulations or rules that have the force of law by California state agencies and to ensure the creation of an adequate record for the OAL and judicial review.

The rulemaking process does provide some discretion to agencies. While each agency must comply with timeframe requirements and must produce the same uniform documents supporting rulemaking efforts to submit to OAL, there are not the same standards for how regulation packages are determined, written, and produced.

Prior to 2016, boards and bureaus like the Board that are organized within DCA filed rulemaking packages directly with OAL. Boards and bureaus were not required to submit rulemaking packages to DCA or the overseeing agency for review and approval prior to submission for publication in the Notice Register. OAL reported that this process was unusual within state government: most programs must submit regulations packages to their respective agency for approval. As a result, in September 2016, the Secretary of the Business, Consumer Services and Housing Agency (BCSH) changed the procedures: boards and bureaus were now required to submit rulemaking packages to the DCA and BCSH for review prior to filing with OAL. BCSH stated that the reason for the decision was an increase in the number of regulations disapproved by OAL for failing to meet their statutory requirements.

According to a 2019 DCA report to the Legislature, Internal Review of Regulation Procedures, “the resulting enhanced scrutiny from Agency and DCA’s Legal Affairs Division successfully reduced the number of disapproved regulation packages, with the number of disapprovals falling from nine in 2016 to only one in 2018.” The report also found that “while disapproval rates plummeted, a consequence was lengthened timelines to adopt regulations. Several boards and bureaus raised objections to the lengthened review time and reported difficulty obtaining timely updates about regulation packages under review.” The “pre-review” process required regulations to go through DCA’s entire review process prior to the package being submitted for public comment. DCA established a formal Regulations Unit to “minimize the length of time it currently takes to review regulatory packages; allow board and bureau attorneys to focus on the increased workload of non-regulatory work; respond to the demand of regulation packages under review and the increase of regulation packages from AB 2138 (Chiu and Low; Chapter 995, Statutes of 2018); avoid the habitual carry-over of regulation packages; and, enhance the level of regulation training provided to boards and bureaus to improve the quality of regulations and create efficiencies by having better quality packages submitted for review.”

It would be helpful for the Committees to have a better understanding of the status of necessary Board regulations, the timeframe for regulations to be processed and complete and what efficiencies the Board has realized since the creation of the Regulations Unit.

Staff Recommendation: *The Board should provide the Committees with an update on pending regulations and the current timeframes for regulatory packages. In addition, the Board should inform the Committees of any achieved efficiencies in promulgating regulations in recent years.*

BOARD BUDGET ISSUES

ISSUE #5: (COST PRESSURES BEYOND THE BOARD’S CONTROL AND IMPACTS TO THE FUND) The Board pays over 20 percent of its revenue to pro rata costs charged for various services. Recent increases to the Attorney General’s client billing rate for hours spent representing the Board in disciplinary matters may result in cost pressures for the Board’s fund. What options does the Board have when cost pressures beyond its control impact revenue and expenses?

Background: The DCA is almost entirely funded by a portion of the licensing fees paid by California’s state-regulated professionals in the form of “pro rata.” Pro rata funds DCA’s two divisions, the Consumer and Client Services Division (CCSD) and the Division of Investigations (DOI). CCSD is the primary focus of this issue and contains the Administrative and Information Services Division (the Executive Office, Legislation, Budgets, Human Resources, Business Services Office, Fiscal Operations, Office of Information Services, Equal Employment Office, Legal, Internal Audits, and SOLID training services), the Communications Division (Public Affairs, Publications Design and Editing, and Digital Print Services), and the Division of Program and Policy Review (Policy Review Committee, Office of Professional Examination Services, and Consumer Information Center).

Pro rata is apportioned primarily based on the number of authorized staff at each board, rather than based on the amount of DCA’s services programs use. DCA does charge boards based on actual use for some services, such as the Office of Information Services, the Consumer Information Center, the Office of Professional Examination Services, and DOI. Based on DCA’s own figures, actual pro rata costs for every board have increased of an average of over 100 percent since FY 2012-2013.

The Board pays pro rata from its fund, the majority of revenue for which comes from licensing and renewal fees. It would be helpful for the Committees to understand what services it receives for the high pro rata costs it pays DCA.

In July of 2019, the California Department of Justice announced that it was utilizing language included in the Governor’s Budget authorizing it to increase the amount it billed to client agencies for legal services. The change was substantial: the attorney rate increased by nearly 30% from \$170 to \$220, the paralegal rate increased over 70% from \$120 to \$205, and the analyst rate increased 97% from \$99 to \$195. While justification was provided for why an adjustment to the rates was needed, the rate hike occurred almost immediately and without meaningful notice to client agencies. For special funded entities such as the Committee, unexpected cost pressures can quickly prove problematic. It would be helpful to understand whether the Board has had any fiscal challenges resulting from the increase in the Attorney General’s billing rate.

The Board does not have dedicated information technology staff and utilizes DCA Web and SharePoint Services staff to post and update content on the Board’s website. The Board pays DCA Pro Rata that covers the Board’s shared costs for these services.

Staff Recommendation: *DCA and the Board should explain to the Committees what services the Board receives for the pro rata costs it pays DCA. Furthermore, the Committees may wish to inquire about the Board’s ability to update its website as needed.*

BOARD LICENSING ISSUES

ISSUE #6: (SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY AIDES) Should renewal and CE requirements for Speech-Language Pathology and Audiology Aides be enacted?

Background: Speech-Language Pathology and Audiology Aides are permitted to assist licensed Speech-Language Pathologists and Audiologists under direct supervision or under an alternative plan of supervision. As a permitted designation, Speech-Language Pathology and Audiology Aides have no formal education requirements, standards for discipline, or CE requirements. In FY 20-21, there were only 28 registered Speech Language-Pathology Aides operating in California. In contrast, in FY 20-21, there were 4,146 Speech-Language Pathology Assistants, a licensed position that fills many of the same roles of care and has annual renewal requirements.

In 2016, the Board sought to eliminate the Speech-Language Pathology Aide designation, but the Committees chose not to pursue the Board's recommendation given the impact it would have on current Speech-Language Pathology Aides. The Board remains concerned that the lack of renewal or CE requirements for this designation jeopardizes consumer protection. The Board proposes to establish renewal and CE requirements for Speech-Language Pathology and Audiology Aides.

Staff Recommendation: *The Board should provide more information to the Committees about harm that has occurred, consumer complaints, and any enforcement actions taken by the Board. The Committees may wish to consider the potential impacts of imposing renewal or CE requirements, including benefit to consumers, costs to Speech-Language Pathology Aides, and enforcement by the Board.*

ISSUE #7: (AUDIOLOGY LICENSING REQUIREMENTS) Should the audiology licensing requirements be updated to reflect current educational and professional experience standards?

Background: Current law requires applicants for licensure as an Audiologist to satisfactorily complete 12 months of full-time professional experience, or the part-time equivalent, following the didactic and clinical rotation requirements of their doctoral program. CCR require students to complete a minimum of 300 clinical hours, although California State University system and private audiology doctoral programs generally require students to complete about 1,850 clinical and professional experience hours.

The Board asserts that the requirement to complete 12 months of professional experience, or the part-time equivalent, following the didactic and clinical rotation requirements impedes licensure for international students who are unable to complete the 12-month professional education requirement due to visa limitations; applicants who completed their doctoral education in another state where 12 months of professional experience are not required; students who accrue 12 months' worth of hours in fewer than 12 months; and students who are unable to complete 1,850 hours in 12 months.

The Board proposes allowing hours accumulated in clinical rotations or experiences to count towards the 12-month professional experience requirement. This change would make California aligned with national standards.

Staff Recommendation: *The Committees may wish to gain information from program directors about current program requirements for clinical training and professional experience. Moreover, the Committees should consider whether program completion or completion of a minimum number*

of hours of clinical training or professional development could provide greater flexibility to aspiring Audiologists while maintaining the same level of rigorous education and training.

ISSUE #8: (RECIPROCALITY) Should the Board grant reciprocity for licensure to applicants who hold the national Certificate of Clinical Competence in audiology (CCC-A) issued by the American Speech-Language-Hearing Association, or the American Board of Audiology certification issued by the American Academy of Audiology?

Background: Prior to 2009, the Board was authorized to grant licensure as an Audiologist to applicants who had earned a national CCC-A from the American Speech-Language-Hearing Association. However, when the licensing requirements for Audiologists were amended in 2009 to require a doctoral degree, reciprocity was limited those individuals who earned a CCC-A on or before December 31, 2007.

The American Academy of Audiology similarly issues the American Board of Audiology certification, although the Board does not have the authority to accept the certification in lieu of the state's specified licensing requirements. Both certifications have specific education and training requirements for certification and require audiologists to participate in CPD and ethics training to maintain the certification.

The Board proposes to extend reciprocity to Audiologists who hold a CCC-A that was issued on or after January 1, 2008 and to Audiologists who hold the American Board of Audiology certification from the American Academy of Audiology.

Staff Recommendation: *The Board should provide additional information the Committees about the comparability of the CCC-A issued by the American Speech-Language-Hearing Association and the American Board of Audiology certification issued by the American Academy of Audiology to the state's current licensing requirements for Audiologists.*

ISSUE #9: (HEARING AID DISPENSER REGULATION MODERNIZATION) Should regulations and licensure requirements related to hearing aids and Hearing Aid Dispensers be updated to reflect the evolving marketplace?

Background: Hearing Aid Dispensers do not have any formal education requirements but must pass a written and practical exam for licensure in California. Hearing Aid Dispensers may fit and sell hearing aids, take ear mold impressions, perform postfitting procedures, directly observe the ear, and test hearing for the purpose of fitting and selling hearing aids. Hearing Aid Dispensers licensed by another state may qualify for a temporary license in California for 12 months while seeking permanent licensure, and a Hearing Aid Dispenser Trainee License allows an applicant to work under the supervision of a licensed Hearing Aid Dispenser for up to 18 months.

Hearing Aid Dispensers must complete a minimum of 12 hours of approved CE annually. Nine (9) hours must be related to patient care while the other three (3) may be related to the practice of hearing aid dispensing, ethics, office management, or managed care issues. The Board has not completed an audit of CPD providers or licensees since 2018.

Hearing aids are available for purchase online, often advertised as one-size fits all or capable of being

remotely modified for the buyer. The Federal Drug Administration (FDA) regulates hearing aid devices and does not restrict the sale of hearing aids online. Moreover, states are prohibited from imposing more restrictive regulations, unless granted a federal exemption. The Board requested an exemption from the FDA on May 30, 2012, and has not received a response.

Nonetheless, California has been regulating the sale of mail order hearing aids. California law requires the consumer's ear canal to be examined by a licensed physician, Audiologist, or a Hearing Aid Dispenser, and a medical referral in some cases. The Board maintains that these requirements protect consumer safety and should not be eliminated.

On October 20, 2021, the FDA issued a proposed rule to establish a new category of OTC hearing aids for adults with mild to moderate hearing loss. OTC hearing aids would be subject to specific manufacturing and labeling requirements to protect user safety but could be sold directly to consumers in person and online without the need for a medical exam or fitting. Hearing aids for adults with severe hearing loss and minors would be considered prescription devices subject to additional regulation. The proposed rule would continue to prohibit states from enacting more stringent requirements on the sale of OTC hearing aids.

Staff Recommendation: *The Board should provide the Committees with information about potential impacts stemming from the federal proposed rule on the licensure of Hearing Aid Dispensers and the sale of hearing aids in California. The Committees may wish to further study the evolution of the marketplace for hearing aids in California and collect more information about national occupational licensing trends.*

ISSUE #10: (CE) Should the state's CE requirements for licensees be revised?

Background: Each profession licensed by the Board is required to complete CDP or CE requirements. Licensed Speech-Language Pathologists and Audiologists must complete 24 hours of CDP/CE every two-year license period. Dispensing Audiologists must obtain 12 hours of CDP/CE each renewal period, with six hours related to hearing aids and six hours related to audiology. Speech-Language Pathologists and Audiologists who will be responsible for supervising temporary license holders and assistants must take an additional six (6) hours of CPD related to supervision beforehand and complete three (3) hours of CPD every four (4) years for professional development supervisors and every two (2) years for Speech-Language Pathology Assistant supervisors. Speech-Language Pathology Assistants are also required to complete 12 hours of CDP/CE every two (2) years, achievable by attending conferences, workshops, formal presentations, self-study courses, related courses, none of which are required to be approved by the Board. Hearing Aid Dispensers must complete a minimum of 12 hours of approved CE annually. Nine (9) hours must be related to patient care while the other three (3) may be related to the practice of hearing aid dispensing, ethics, office management, or managed care issues.

Licensees must certify on their license renewal form that they have completed the required CPD/CE. Although the Board's goal is to annually audit five (5) percent of licensees, staff and resource shortages have prevented the Board from conducting an audit of all licensees since 2018. The COVID-19 pandemic delayed a scheduled audit in 2020, though the Board plans to resume CE audits this year.

If audited, licensees must provide documentation demonstrating completion of the CDP/CE requirements. To date, the Board and the DCA have not utilized CE document submission via the DCA

Cloud. The Board has stated that is has been focused on priorities identified in their Business Modernization Project, including online application submission and application status tracking, but will be focusing on technological solutions to enhance the Board’s CE audit capacity in the future.

Failure to meet the CDP/CE requirements may result in a citation and fine. The 2018 audit revealed that roughly 78 percent compliance rate among licensees. 17 percent of licensees were initially out of compliance and ultimately two (2) percent were cited and fined for failing to come into compliance.

The Board is also responsible for approving CDP providers and CE courses. Although the Board’s goal is to conduct random audits of five (5) percent of CDP/CE providers, the Board has not conducted an audit since 2018 due to staff shortages and the impact of COVID-19 on CPD/CE completion.

Staff Recommendation: *The Board should provide more information about its staff and resource shortages and licensees’ compliance with CDP/CE requirements. Moreover, the Committees may wish to evaluate the merit of CDP/CE and consider alternative strategies to ensure competency of licensees.*

BOARD ENFORCEMENT ISSUES

ISSUE #11: (ENFORCEMENT) Should the Board be given explicit authorization to discipline licensees who offer or receive kickbacks in exchange for patient referrals?

Background: Existing law prohibits licensees from offering or receiving kickbacks in exchange for patient referrals, but the Board is not expressly permitted to enforce violations of this kind. The Board has indicated that is cannot effectively prosecute these violations unless the licensee is criminally convicted for the same offense. As such, the Board stipulated that the Office of the Attorney General encouraged the Board to seek statutory authorization to enforce these violations. The Board notes that third party administrators who work with insurance companies to direct patients/clients to licensed Audiologists and Hearing Aid Dispensers are creating incentives for unlawful referrals. Currently, the Board has approximately 26 cases of alleged unlawful referrals pending investigation.

Staff Recommendation: *The Board should advise the Committees on how many licensees violate this prohibition and whether another entity is responsible for enforcement.*

ISSUE #12: (DISCIPLINE GOALS AND TIMEFRAMES) Is the Board meeting the performance targets of its enforcement program?

Background: DCA has established a number of performance measures such as the number of complaints/convictions received, the average number of days from complaint receipt to the date the complaint was assigned to an investigator, the average number of days from complaint receipt to closure of the investigation process for cases not transmitted to the Attorney General, and the average number of days to complete the entire enforcement process for cases transmitted to the Attorney General for formal discipline.

The Board regularly does not meet the performance targets for complaint investigation or formal discipline timeframes. The Board notes that most of investigations are resolved within the 90-day performance target, but some require more time due to the complexity of the complaints.

Although the Board does not operate according to specific statutes of limitation, the Office of the Attorney General does, consistent with the statutes of limitation it follows for many other hearing arts boards. However, the Board notes that it has not been limited in taking enforcement actions against licensees due to statutes of limitation.

The Board reports that its enforcement workload has increased with the growth of its licensee population. While the number of complaints and licensee arrest/convictions declined during the COVID-19 pandemic, complaints and licensee arrests/convictions have increased 66 percent on average over the last five (5) years. Nonetheless, the Board reports that there has been little change in the number of disciplinary actions the Board has taken since its last Sunset Review. The Board notes that there is no direct correlation between the number of complaints received and the disciplinary actions taken by the Board in a particular year. Disciplinary action is taken based on the nature and specific evidence in each case, therefore in some years there could be more complaints that result in discipline due to the nature and evidence of the specific complaint than other years. The types of complaints that the Board received prior to and during the COVID-19 pandemic have not changed. The most common complaints the Board receives are refund/warranty issues, false or misleading advertising, unprofessional conduct, criminal charges/convictions, and unlicensed activities. Some significant differences the Board has seen are the decline in arrests and convictions of Board licensees during the pandemic as well as a general decline in complaints due to consumers accessing fewer services, which the Board attributes to worksite closures and social distancing measures during the pandemic.

The Board is authorized to issue citations which may include an order of abatement and/or an order to pay a fine. Citations are issued in response of minor violations of related laws and regulations that do not warrant formal discipline

In 2006, the former SLPAB increased the maximum allowable fine for Speech-Language Pathology and Audiology from \$2,500 to \$5,000. The maximum allowable fine for Hearing Aid Dispensers has not been increased.

Staff Recommendation: *The Committees may wish to gather more information from the Board and the Office of the Attorney General about the investigative process and the Board's citation, cost recovery, and restitution practices.*

TECHNICAL CHANGES

ISSUE #13: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE ACT AND BOARD OPERATIONS.) There are amendments to the Act that are technical in nature but may improve Board operations and the enforcement of the Act.

Background: There are instances in the Act where technical clarifications may improve Board operations and application of the statutes governing SLPAHADB's work.

Staff Recommendation: *The Committees may wish to amend the Act to include technical clarifications.*

COVID-19

ISSUE #14: (IMPACTS OF THE COVID-19 PANDEMIC.) Since March 2020, there have been a number of waivers issued through executive orders that impact Board operations, licensees, providers, and patients throughout the state. Do any of these waivers warrant an extension or statutory changes? How has the Speech-Language, Audiology, and Hearing Aid Dispensers Board addressed issues resulting from the pandemic and how does the Board aim to continue to address these issues as the pandemic endures?

Background: In response to the COVID-19 pandemic, a number of actions were taken by the Governor, including the issuance of numerous executive orders in order to address the immediate crisis. For example, on March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the Director of DCA to waive any statutory or regulatory professional licensing relating to healing arts during the duration of the COVID-19 pandemic – including rules relating to examination, education, experience, and training.

Some of the waivers impact Board work and licenses. For example, [Executive Order N-40-20](#) permits the Director of DCA to waive any statutory or regulatory requirements with respect to CE for a number of healing arts licensees. The Board noted in its 2021 Sunset Review Report that it worked with DCA on the following approved waivers:

- **Modification of the Direct Monitoring Requirements for RPE Licenses and the Direct Supervision Requirements for Speech-Language Pathology Assistant Licenses (DCA-22-214)** – Originally approved May 6, 2020 and extended on July 1, August 27, October 22, and December 15 of 2020, and February 26, April 30, July 1, August 31 of 2021, and October 31, 2021. This waived the in-person supervision requirements for RPE License holders and Speech-Language Pathology Assistants through March 31, 2022.
- **Modification of License Reactivation or Restoration Requirements (DCA-22-212)** – Approved on January 11, 2022, this waives CE requirements for reactivation of a license and any fees associated with reactivation of a license (including any renewal, delinquency, penalties, late fees, or any other statutory or regulatory fees) for Speech-Language Pathologists through April 1, 2022.
- **Modification of the Limitations on Renewing of Hearing Aid Dispenser Temporary Licenses and Hearing Aid Dispenser Trainee Licenses (DCA-21-188)** – Originally approved May 29, 2020 and extended on September 17, and December 15 of 2020, and February 26, April 30, July 1, and August 31 of 2021. This waived the statutory limitations on renewing Hearing Aid Dispenser Temporary Licenses and the limitation on the number of times a Hearing Aid Dispenser Trainee License can be renewed. Specifically, this waiver removes the limitation that Hearing Aid Dispenser Temporary Licenses cannot be renewed in BPC section 2538.27(b) and removes the limitation that Hearing Aid Dispenser Trainee Licenses cannot be renewed more than twice in BPC section 2538.28(c). DCA-20-16 authorizes the Board to extend the expiration date of Hearing Aid Dispenser Temporary Licenses and Hearing Aid Dispenser Trainee Licenses by six (6) months for eligible licensees. This waiver only applies to Hearing Aid Dispenser Temporary Licenses that expire between March 31, 2020, through October 31, 2021, and Hearing Aid Dispenser Trainee Licenses that have been renewed twice and expire between October 31, 2020, through October 31, 2021.

- **Modification of Limitations and Requirements for Extension of RPE Licenses (DCA-21-171)** – Originally approved July 17, 2020, and extended on September 17, and December 15 of 2020, and on February 26, April 30, July 1, and August 31 of 2021. This waived the limitation that an RPE License cannot be reissued for more than 12 months in Title 16 CCR Section 1399.153.10(a) and waives the associated fee. The waiver also removes the limitation that a Speech-Language Pathology or Audiology RPE License cannot be reissued or extended due to the licensee's inability to take and pass the licensing examinations in 16 CCR section 1399.153.10(a). The waiver authorizes the Board to extend an already reissued RPE License for an additional six (6) months without paying the \$35 application fee and to approve an RPE License reissuance for the purposes of taking and passing the respective licensing examinations in Speech-Language Pathology and Audiology. The 6-month extension and fee waiver allowed by this waiver for an already reissued RPE License only applies to RPEs who have a reissued RPE License that would expire between March 31, 2020 and October 31, 2021. The allowance for RPE Licenses to be reissued due to the RPE License holder's inability to take and pass the licensing examinations applies to all RPE License holders who have not already had their RPE License reissued before October 31, 2021.

Two (2) of the Board's waiver request were denied, a summary of each is provided below.

- **Modification of the 12-Month Fulltime Professional Experience Requirement for Licensure as an Audiologist** – This waiver would have waived the requirement that Audiology applicants submit evidence of no less than 12 months of supervised professional full-time experience for licensure (as stated in BPC Section 2532.25). This waiver was denied on May 12, 2020 as the Department did not believe that waiving pre-licensure requirements, such as experience or competency exams, at this time is in the best interests of consumer protection.
- **Modification of Board CE Requirements to Remove Self-Study Restrictions** – This waiver would have waived the limitations on self-study CE and CPD for the purposes of renewal in Title 16 CCR Sections 1399.140 and 1399.160. This would allow licensees to accrue all CE and CPD through self-study during the COVID-19 pandemic. This waiver was denied on December 30, 2020 as the DCA had provided waivers of CE requirements for licensees of the Board and believed it would be unreasonable to allow licensees to complete all CE requirements via self-study as this would weaken consumer protections by not requiring some training be provided by a type of classroom or lecture type training that is verified.

COVID-19 led to a strong interest in developing frameworks for telehealth and telesupervision. On September 27, 2021, Governor Newsom issued a news release to announce the signing of Executive Order N-16-21 to extend telehealth services expansion. The Board stipulates that Speech-Language Pathology Assistants and RPE Licensees that have been trained to use telehealth technology and receive the appropriate direct telesupervision can provide telehealth. All tasks performed still need to meet the same standard of care as in-person therapy.

Due to COVID-19 and any future State of Emergencies, the Board believes it is necessary to require all licensees to provide the Board with a current email address in order to communicate urgent information in a quick, efficient, and cost-effective manner. The Board should discuss how it will implement this collection of all licensee email addresses.

Despite COVID-19 limitations and challenges, the Board was able to conduct Hearing Aid Dispenser practical examinations. After having to cancel most of its 2020 practical examinations due to COVID-19, examinations resumed in October 2020 with robust safety and sanitation precautions. Board staff

used larger examination rooms and utilized sanitation measures as required by State health and safety guidelines. The Board should discuss future plans for these procedures.

The Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board reports that during the COVID-19 pandemic, the Board implemented rotational teleworking policies for staff. At the beginning of the COVID-19 pandemic, the paper-based application and complaint processes and older computer equipment presented unique teleworking difficulties. These difficulties included coordination efforts amongst staff and delayed updates to applicants and consumers when paper applications or complaint materials were not immediately available to staff. In 2021, the Board utilized funds available to it to outfit all staff members with laptops and Microsoft Teams in an effort to ameliorate some of these issues.

Overall, as COVID-19 still has a sizeable infection rate in California and infection rates may increase with new variants in the future, the Board should discuss plans to adapt throughout the ongoing pandemic.

Staff Recommendation: *The Board should update the Committees on the impact to licensees and patients stemming from the pandemic and potential challenges for practitioners. The Board should discuss any statutory changes that are warranted as a result of the pandemic.*

CONTINUED REGULATION OF HEATH CARE PROFESSIONALS BY THE RESPIRATORY CARE BOARD OF CALIFORNIA

ISSUE # 15: (CONTINUED REGULATION BY SPEECH LANGUAGE PATHOLOGY AND AUDIOLOGY AND HEARING AID DISPENSERS BOARD.) **Should the licensing and regulation of various professionals be continued and be regulated by the current Board membership?**

Background: Patients, clients, and the public are best protected by strong regulatory boards with oversight of licensed professions. The Board has shown a strong commitment toward efficiency and effectiveness, responding to practice and operational issues in a proactive, forward-thinking manner.

Staff Recommendation: *The licensing and regulation of various health professionals by the Speech Language Pathology and Audiology and Hearing Aid Dispensers Board should be continued, to be reviewed again on a future date to be determined.*