

**TITLE 16. Speech-Language Pathology and Audiology
And Hearing Aid Dispensers Board
DEPARTMENT OF CONSUMER AFFAIRS**

FINAL STATEMENT OF REASONS

Hearing Date: March 1, 2024

Subject Matter of Proposed Regulations: Hearing Aid Dispensing Advertising

Sections Affected: Amend section 1399.127 of Article 5 of Division 13.3 of Title 16, California Code of Regulations (CCR).¹

Updated Information

The Initial Statement of Reasons (ISOR) is included in the rulemaking file. The information contained therein is updated as follows:

The 45-day public comment period began on November 17, 2023, and ended on January 3, 2024. The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board (Board) received two (2) written comments from the same commenter during the initial 45-day public comment period:

- Two (2) comments expressed concerns with the proposed regulatory changes and recommended changes to the proposed text. Of those two (2) written comments, one (1) comment included a request for a public hearing in accordance with Government Code section 11346.8.

On March 1, 2024, the Board held a public hearing pursuant to Government Code section 11346.8 and received one (1) comment recommending changes to the proposed text.

During the Board meeting on March 1, 2024, the Board considered comments received during the 45-day comment period and the public hearing on March 1, 2024. The Board modified the proposed regulatory text as follows:

- *Amended section 1399.127(c) to add “unless the following information is provided on an internet website and that internet website address is included in the advertising.”* This change will alleviate any unnecessary burden to advertise through a method with limited space or time such as television or radio. Licensees may have multiple locations available for fitting or post-fitting adjustments or they may have many dispensers at one location which may be too cumbersome to publish on television or radio.

¹ All CCR references are to Title 16 unless otherwise noted

This change will allow them to advertise a website address to be advertised if the website has the required information in subsection (c). This will ensure that consumers have access to the same information that would normally be published on a print advertisement.

- *Amended section 1399.127(c)(2) to read, “the name and license number of all persons licensed to dispense hearing aids at the location advertised” instead of “the license number of the person licensed to dispense hearing aids.”* This is for public safety. A location may have more than one person who is licensed to dispenser hearing aid. Without this change, a consumer may be fitted by a dispenser who is not advertised. This change will ensure consumers are aware of every person licensed to dispense hearing aids at the advertised location. A name will be required as it may be easier for consumers to remember instead of the license number. Consumers can use the name or license number to check that status of a license issued by the Board and learn whether the license is current or subject to discipline, using the Department of Consumer Affairs’ license search database. This is also information the Board collects if the consumer needs to file a complaint against the licensee with the Board.

On March 8, 2024, the Board issued a 15-day notice of availability of the modified text and the comment period ended on March 25, 2024. The Board did not hold a public hearing for this proposed regulatory action nor was one requested from any interested person or their authorized representative.

The Board received two (2) written comments during the 15-day public comment period:

- One (1) comment in support, and
- One (1) comment expressed concerns with the proposed regulatory changes.

During the Board meeting on June 12, 2024, the Board considered the written comments and declined to make changes to the proposed regulatory text (discussed below). At this meeting, the Board also authorized typographical edits to be made specifically updating spacing, underlining, and strikethrough for consistency.

The Board submitted the rulemaking file on August 28, 2024, to the Office of Administrative Law (OAL), and subsequently withdrew it on October 8, 2024, to address discrepancies between different versions of the text and to incorporate modifications to the text. The following proposed modifications were made to the text and noticed for public comment between October 16–31, 2024.

- *Subsection (a) was amended to add the word “for” before the word “the,” add the words “practice of” before the word “fitting, replace the word “and” with the word “or,” remove the words “or services” and “allowed by the license,” replace*

the word “the” with the word “a,” add the words “inappropriate or excessive” after the word “unnecessary,” and replace the word “goods” with the words “hearing aids.”

- The practice of fitting or selling hearing aids is the name of the profession of those who are licensed to dispense hearing aids pursuant to BPC 2538.11. This regulation will cover any advertising involved in the fitting or selling of hearing aids and postfitting counseling.
- The words “inappropriate or excessive” were added after the word “unnecessary” because the Board has authority to restrict “advertising that would promote the inappropriate or excessive use of health services or commodities” pursuant to BPC 651(i). Furthermore, hearing aids must be selected and fitted so that it provides consumers with the ability to achieve a safe, comfortable, and effective hearing experience in their everyday living. Hearing aids that are not appropriate to a consumer pose a risk to their health, safety, and welfare.
- The word “goods” was replaced with the words “hearing aids” because licensees may sell other items that would not fall under the jurisdiction of the Board, such as hearing protectors. Hearing protectors reduce noise level to prevent or delay hearing loss in people. Licensees may sell these as intervention for hearing loss in people with normal hearing.
- *Subsection (b) was amended to add the words “the practice of” before the words “fitting,” replace the word “and” with the word “or,” and remove the words “or other authorized services.” These changes are for the purpose of clarity. The practice of fitting or selling hearing aids is the name of the profession of those who are licensed to dispense hearing aids pursuant to BPC 2538.11. These regulations will cover any advertising involved in the fitting or selling of hearing aids and postfitting counseling.*
- *Subsection (c) was amended to add the words “the practice of” before the words “fitting,” replace the word “and” with the word “or,” and remove the words “or other authorized services.” These changes are made for the same rationale described above in paragraph 2.*
- *Subsection (d) was amended to add the words “the practice of” before the words “fitting,” replace the word “and” with the word “or,” and remove the words “or other authorized services.” These changes are made for the same rationale described above in paragraph 2.*
- *Subsection (d)(7) was amended to add the words “advertised price of the hearing aid. Material facts include” between the words “the” and “standard,” replace the word “device” with the words “hearing aid,” add the words “the*

terms and conditions of the rebate coupon or rebate check” before the words “and discounts,” and replace the word “device” with the words “hearing aid.” The words “all the various material facts” lacked clarity. The changes provide a list of what qualify as “material facts”, including the standard price, any discounts or sales available, and any terms and conditions to qualify for the rebate coupon or rebate check. This is necessary for consumer protection because an informed decision about the benefits of a rebate coupon or rebate check cannot be made if all the important information about a hearing aid’s price is not provided. The Board determined this type of information helps a consumer establish the accuracy of a price because a consumer can determine how much of a price reduction is being offered.

- *Subsection (e) was amended to replace the word “authorized” with the words “hearing aids or,” and add the words “for the fitting of hearing aids” after the word “services.” These changes are for the purpose of clarity. The practice of fitting or selling hearing aids is the name of the profession of those who are licensed to dispense hearing aids pursuant to BPC 2538.11. This regulation will cover any advertising involved in the fitting or selling of hearing aids and postfitting counseling.*
- *Subsection (f) and paragraphs (1), (2), and (3) were amended to re-include text that was inadvertently removed from the proposed text when the proposed text was modified on March 1, 2024. Subsection (f) in the proposed modified text noticed to the public between March 8 – 25, 2024 was inconsistent with Subsection (f) in the proposed text noticed to the public between November 17, 2023, and January 3, 2024. These changes will re-include text that was removed from the proposed text when it was modified on March 1, 2024. The rationale for these changes can be found in the ISOR on pages 4 and 5.*

During the second 15-day public comment period, the Board received two (2) written comments. One (1) comment expressed no opposition to the most recent modifications, and one (1) comment was not related to most recent modifications made to the text.

The Administrative Procedure Act (APA) does not require the Board to respond to written comments in support of this regulatory action during the final rulemaking process. However, the Board is required to review and respond to timely written comments that object or make a recommendation regarding the regulatory action or the procedures followed by the Board in proposing the regulatory action. The Board is also required to respond to any timely written comments received regarding the changes made to the proposed regulatory text if the comments received during the public comment period concern the most recent modifications made to the text.

During the November 1, 2024, Board meeting, the Board ratified the proposed regulatory text. The Board also considered the written comments and declined to

make changes to the proposed regulatory text to accommodate the comments (discussed below).

Following submission of the action to OAL, minor nonsubstantive revisions were made to the regulation text:

- “Licensee” was revised to “person licensed to dispense hearing aids” for consistent phrasing throughout section 1399.127.
- Revisions to cross references were made in subsections (b) and (h).
- Grammatical changes made throughout subsections (b), (c), (d), and (e).
- The reference note was revised to add an additional, relevant citation to the Business and Professions Code.

Determination of Local Mandate

This regulatory action does not impose any mandates on local agencies or school districts.

Small Business Impact

The Board has determined that the proposed regulatory action will not have significant statewide adverse economic impact directly affecting small businesses. This is because advertising is part of business operation, and the type and amount of advertising are determined by business owners.

Anticipated Benefits of this Proposal

The Board anticipates an increase in clarity, transparency, and accountability. Licensees will benefit from clarity and transparency in the requirements regarding advertising. The public will benefit from licensees being held accountable in how they advertise information, especially as it relates to prices.

It will not affect worker safety because the proposed regulatory action is related to advertising and does not concern or impact worker safety.

Consideration of Alternatives

No reasonable alternatives to the regulation which was considered or that has otherwise been identified and brought to the attention of the Board as part of public comments received or at the Board’s meetings (discussed below) would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the adopted regulations, or would

be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Summary of Comments and Board Response (45-Day)

- 1. Summary:** The Board received one (1) comment requesting a public hearing. The comment notes that it appreciates the Board's ongoing commitment to protecting the public and ensuring that advertising by hearing aid dispensers is clear and transparent for consumers; however, one provision would cause undue hardship on licensees to be in compliance. The comment recommends amending Section 1399.127(c) to add, "unless the following information is provided on an internet website and that internet website address is included in the advertising."

Board Response: The Board decided to change the proposed regulatory text to accommodate this comment because it may be too cumbersome to include all the required information on advertisements done through television or radio. The Board believes allowing licensees to advertise a website address if the website has the required information in subsection (c) will alleviate any unnecessary burden to advertise through a method with limited space or time, such as television or radio, while ensuring that consumers have access to the same information that would normally be published on a print advertisement.

The Board held a public hearing as requested pursuant to Government Code section 11346.8 on March 1, 2024, at 11:00 a.m.

- 2. Summary:** The Board received one (1) comment agreeing that all measures should be in place to ensure the public are not misled or deceived by advertising; however, it noted that one provision in this regulatory package would cause undue hardship on licensees to be in compliance. This is because advertisements have very limited space to include all the necessary information and many licensees have multiple locations. The comment expressed concerns that licensees may not be able to advertise if there is not enough space in the advertisement for all the required information. The comment also noted that this would constitute an unlawful restraint of trade by the Board and violates the constitutional first amendment free speech doctrine granted to dispensers and recommends amending Section 1399.127(c) to add, "unless the following information is provided on an internet website and that internet website address is included in the advertising."

Board Response: The Board decided to change the proposed regulatory text to accommodate this comment for the reasons stated in the Board Response 1.

Summary of Comments and Board Response (Public Hearing)

- 3. Summary:** The Board received one (1) comment recommending changes to 1399.127(c) to include a website or QR (quick-response) code that would include

the required information. The comment noted that the required information takes space, which can be costly when advertising through television or other forms of advertising with limited time or space. The comment also noted that this is great for consumers to be able to get more information.

Board Response: The Board decided to change the proposed regulatory text to accommodate the recommendation to allow a website address to be advertised if the website has the required information in subsection (c) for the reasons stated in the Board Response 1.

The Board did not accommodate the recommendation of the QR code because the Board expressed concerns that it would create a barrier for older consumers who may not know what to do with a QR code, or be difficult to access for those without certain technology.

Summary of Comments and Board Response (First 15-Day)

4. Summary: The Board received one (1) comment stating that “hearing aid is not public advertising beyond the profession of speech language pathology and audiology in subject matter to incident populations and reference numbers to case studies and public education of case, non/specific, gender in audiology samples and subjects to case matter in diagnostic evaluation and traditional case record keeping”.

Board Response: The Board decided to not change the proposed regulatory text to accommodate this comment because no recommendation was provided.

Summary of Comments and Board Response (Second 15-Day)

5. Summary: The Board received one (1) comment stating that they did not believe anyone with a hearing aid dispensing license could advertise the fitting and selling of hearing aids without being supervised by an audiologist.

Board Response: The comment was not specifically directed at the proposed modifications made to the text that was noticed to the public on October 16, 2024, so the Board declined to make any amendments to the proposed text based on the comment, pursuant to Government Code section 11346.8(c). Further, a hearing aid dispenser can advertise without the supervision of an audiologist because they are not required to be supervised unless they are a trainee licensed pursuant to BPC 2538.28 or a temporary licensee who fails either license examination (BPC 2538.27(c)).