



TELECONFERENCE BOARD MEETING NOTICE AND AGENDA

The Speech-Language Pathology & Audiology & Hearing Aid Dispensers Board (Board) will hold a Board Meeting via WebEx Events

Tuesday, June 30, 2020, beginning at 10:00 a.m.

NOTE: Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-29-20, dated March 17, 2020, neither Board member locations nor a public meeting location are provided. Public participation may be through teleconferencing as provided above. If you have trouble getting on the WebEx event to listen or participate, please call 916-263-2666.

Important Notice to the Public:

The Board will hold this public meeting via WebEx Events. Instructions to connect to this meeting can be found at the end of this agenda. To participate in the WebEx Events meeting, please log on to this website the day of the meeting:

<https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=eea77589c56ce2beee2973dd31c1167d9>.

Due to potential technical difficulties, please consider submitting written comments by June 26, 2020, to speechandhearing@dca.ca.gov for consideration.

Board Members

Dee Parker, Speech-Language Pathologist, Board Chair
Marcia Raggio, Dispensing Audiologist, Vice Chair
Karen Chang, Public Member
Christy Cooper, Dispensing Audiologist
Holly Kaiser, Speech-Language Pathologist
Amnon Shalev, Hearing Aid Dispenser
Debbie Snow, Public Member

Full Board Meeting

1. Call to Order / Roll Call / Establishment of Quorum
2. Public Comment for Items not on the Agenda
The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125, 11125.7(a)).

3. Update on DCA Waiver Requests Submitted by the Board related to the COVID-19 State of Emergency
 - a. Waivers Approved by DCA
 - i. Modification of Continuing Education Requirements for All Licensees (DCA-20-01)
 - ii. Modification of Reactivation Requirements for Speech-Language Pathologists (DCA-20-02)
 - iii. Modification of the Direct Monitoring Requirements for Required Professional Experience (RPE) Licenses and the Direct Supervision Requirements for Speech-Language Pathology Assistant (SLPA) Licenses (DCA-20-11)
 - iv. Modification of the Limitations on Renewing of Hearing Aid Dispenser (HAD) Temporary Licenses and HAD Trainee Licenses (DCA-20-16)
 - b. Waivers Denied by DCA
 - i. Modification of the 12-Month Fulltime Professional Experience Requirement for Licensure as an Audiologist
 - c. Waivers Pending Review by DCA
 - i. Modification of Limitations and Requirements for Extension of RPE Licenses
 - ii. Modification of Application Abandonment Requirements for HAD Applications Due to Failure to Pass Examinations
 - d. Identification of Additional Waivers Needed During COVID-19 State of Emergency
4. Discussion of New Practice Related Issues and Changes in the Professions Due to COVID-19
5. Executive Officer's Report
 - a. Administration Update
 - b. Budget Report
 - c. Licensing Report
 - d. Practical Examination Report
 - e. Enforcement Report
6. Discussion and Possible Action regarding Regulations as a result of AB 2138 Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction (As Stated in Title 16, California Code of Regulations (CCR) sections 1399.132, 1399.133, 1399.134, 1399.156.1, 1399.156.2, and 1399.156.3)
 - a. Adoption of Responses to Comments Received During 45-day Public Comment Period
 - b. Order of Adoption
7. Discussion and Possible Action Regarding Audiology Licensing Requirements (As Stated in Business and Professions Code Sections 2532.2 and 2532.25 and Title 16, CCR section 1399.152.2)
8. Update on Impacts of the Centers for Medicare and Medicaid Services' (CMS) Merit-based Incentive Payment System (MIPS) Design on Audiologists
9. Update Regarding Reinstatement of Medi-Cal Optional Benefits and Hearing Aid Coverage
10. Legislative Report: Update, Review, and Possible Action on Proposed Legislation:
 - a. Board-Specific Legislation
 - AB 2520 (Chiu) Access to medical records
 - AB 2648 (Holden) Speech language pathologists
 - b. DCA-Wide Legislation
 - AB 613 (Low) Professions and vocations: regulatory fees
 - AB 1263 (Low) Contracts: consumer services: consumer complaints
 - AB 1616 (Low) Department of Consumer Affairs: boards: expunged convictions

- AB 2028 (Aguiar-Curry) State agencies: meetings
- AB 2113 (Low) Refugees, asylees, and immigrants: professional licensing
- AB 2549 (Salas) Department of Consumer Affairs: temporary licenses
- AB 3045 (Gray) Department of Consumer Affairs: boards: veterans: military spouses: licenses
- SB 878 (Jones) Department of Consumer Affairs Licensing: applications: wait times
- SB 1168 (Morrell) State agencies: licensing services

11. Legislative Items for Future Meeting

(The Board May Discuss Other Items of Legislation in Sufficient Detail to Determine Whether Such Items Should be on a Future Board Meeting Agenda and/or Whether to Hold a Special Meeting of the Board to Discuss Such Items Pursuant to Government Code Section 11125.4)

12. Future Agenda Items and Potential Dates for Standalone Committee Meetings

13. Future Agenda Items and Potential Dates for Board Meetings

Closed Session

14. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session to Deliberate on Disciplinary Matters, Including Proposed Decisions, Stipulated Decisions, Defaults, Petitions for Reductions in Penalty.

15. Adjournment

Agendas and materials can be found on the Board's website at www.speechandhearing.ca.gov.

Action may be taken on any item on the Agenda. The time and order of agenda items are subject to change at the discretion of the Board Chair and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public. In the event a quorum of the board is unable to attend the meeting, or the board is unable to maintain a quorum once the meeting is called to order, the members present may, at the Chair's discretion, continue to discuss items from the agenda and make recommendations to the full board at a future meeting. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

The meeting facility is accessible to persons with a disability. Any person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting the Board office at (916) 263-2666 or making a written request to Cherise Burns, Assistant Executive Officer, 2005 Evergreen Street, Suite 2100, Sacramento, California 95815. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.



MEMORANDUM

DATE	June 30, 2020
TO	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Cherise Burns, Assistant Executive Officer
SUBJECT	Agenda Item 3: Update on DCA Waiver Requests Submitted by the Board related to the COVID-19 State of Emergency

Background

Pursuant to the Governor's Executive Order [N-39-20](#), during the State of Emergency, the director of the Department of Consumer Affairs (DCA) may waive any statutory or regulatory requirements with respect to a professional license issued pursuant to Division 2 of the Business and Professions Code. In addition, pursuant to Executive Order [N-40-20](#), the director of DCA may waive any statutory or regulatory requirements with respect to continuing education for licenses issued pursuant to Division 3 of the Business and Professions Code.

After the issuance of the Governor's Executive Orders, Board staff worked quickly to identify waivers necessary for applicants and licensees and developed and submitted waiver request proposals for review and consideration by the DCA Director. Note, waiver requests submitted by the Board may differ from the final waiver language approved by DCA.

Below is an update on the waivers submitted by the Board.

a. Waivers Approved by DCA

- i. **Modification of Continuing Education Requirements for All Licensees (DCA-20-01)** – Approved March 31, 2020. This waived CE or examination requirements for renewal for 6 months from the date of the order (September 30, 2020) and applied only to Active licensees that expire between March 31, 2020 and June 30, 2020.

- ii. **Modification of Reactivation Requirements for Speech-Language Pathologists (DCA-20-02)** – Approved March 31, 2020. This waived the continuing education (CE) and fees associated with reactivation for Speech-Language Pathologists who have been in a Retired, Inactive, or Cancelled status for no longer than five (5) years.
- iii. **Modification of the Direct Monitoring Requirements for Required Professional Experience (RPE) Licenses and the Direct Supervision Requirements for Speech-Language Pathology Assistant (SLPA) Licenses (DCA-20-11)** – Approved May 6, 2020. This waived the in-person supervision requirements for Required Professional Experience (RPEs) and Speech-Language Pathology Assistants (SLPAs) for 60 days (through July 4, 2020). The Board has resubmitted its waiver request so that the waiver can continue to be extended throughout the duration of the State of Emergency.
- iv. **Modification of the Limitations on Renewing of Hearing Aid Dispenser (HAD) Temporary Licenses and HAD Trainee Licenses (DCA-20-16)** – Approved May 29, 2020. This waived the statutory limitations on renewing Hearing Aid Dispenser (HAD) Temporary Licenses and the limitation on the number of times a HAD Trainee license can be renewed. Specifically, this waiver removes the limitation that HAD Temporary Licenses cannot be renewed in Business and Professions Code (BPC) section 2538.27(b) and removes the limitation that HAD 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 HAD Temporary Licenses and HAD Trainee Licenses by six (6) months for eligible licensees. This waiver only applies to HAD Temporary Licenses that expire between March 31, 2020 through September 30, 2020 and HAD Trainee Licenses that have been renewed twice and expire between March 31, 2020 through September 30, 2020.

b. Waivers Denied by DCA

- i. **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 Business and Professions Code Section 2532.25). This waiver was denied on May 12, 2020 for the following reason, “The Department does not believe that waiving pre-licensure requirements, such as experience or competency exams, at this time is in the best interests of consumer protection.”

c. Waivers Pending Review by DCA

- i. Modification of Limitations and Requirements for Extension of RPE Licenses** – This waiver would waive the requirement in Title 16 California Code of Regulations (CCR) section 1399.111 that HAD applications (Trainee, Temporary, and Examination Only) be abandoned for failure to pass the HAD licensure examinations within one year from approval of eligibility for the HAD written examination and one year from the passage of the HAD written examination for the HAD practical examination.
- ii. Modification of Application Abandonment Requirements for HAD Applications Due to Failure to Pass Examinations** – This waiver would waive the prohibition against reissuing a Required Professional Experience Temporary License (RPE) for more than one year in subdivision (a), the requirement that an RPE extension application be submitted to the Board 60 days prior to the RPE's expiration date in (b), and to waive the application and \$35 fee required for the reissuance of the RPE license in subdivisions (b) and (d) of Title 16 CCR section 1399.153.10.

The Board can submit additional DCA waiver requests if Board Members feel there are other professional licensing requirements (examination, education, experience, and training) and requirements governing the practice and permissible activities of licensees in statute or regulation that are necessary to obtain and maintain licensure for the purposes of facilitating the continued care of individuals affected by the COVID-19 pandemic.

Action Requested

Discuss whether there are any other DCA waivers needed regarding professional licensing requirements and requirements governing the practice and permissible activities of licensees. If a need for additional waivers is identified, direct staff to develop and submit the identified waiver requests on the Board's behalf.



MEMORANDUM

DATE	June 30, 2020
TO	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Marcia Raggio, Vice-Chair
SUBJECT	Agenda Item 4: Discussion of New Practice Related Issues and Changes in the Professions Due to COVID-19

Background

The COVID-19 pandemic has significantly changed how licensees practice, what services they can provide and under what conditions, and what services will be covered by a client's private or public insurance plan.

For this agenda item, Dr. Raggio will provide Board Members and the public with an update on information regarding COVID-19 related practices and telehealth from Dr. Roy Schultzenkel, Medical Director, Medical Operations and Policy Branch, Integrated Systems of Care Division, of the California Department of Health Care Services.

An early announcement from the California Department of Public Health had listed all of the health professionals that were considered part of the essential workforce. Dr. Schultzenkel was able to confirm that Audiologists, while not listed, were considered part of this workforce, and could practice, as long as they took all of the recommended COVID-related precautions.

In addition, Dr. Schultzenkel was able to confirm that particular, telehealth-related CPT codes would be billable if Audiology services were offered via a telephone call if the call is related to a recent office visit (G-codes), or if the phone call meets the standards of essentially providing the same service as a face-to-face visit (95 modifier, place of service 02). He also noted that Audiologists are considered to be "other qualified health care professionals" per the California DHCS. Thus, Audiologists can be paid to report, evaluate, and provide management services for Medi-Cal patients as long as they use the correct category of service for their provider numbers.

After this update, other Board Members and the public can identify other COVID-19 related practice issues or changes. This will be an opportunity to keep the Board and Board staff aware of changes in the field that may require further action in the future.

Action Requested

To the extent that any of these COVID-19 related practice issues and changes may require future action, the Board may want to refer these issues to the relevant Board practice committee to discuss at their next committee meeting.

Hand Carry Item

Agenda Item 5:
Executive Officer's Report



MEMORANDUM

DATE	June 30, 2020
TO	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Karen Halbo, Attorney III, Legal Affairs Division, Department of Consumer Affairs Cherise Burns, Board Assistant Executive Officer
SUBJECT	Agenda Item 6 – Discussion and Possible Action regarding Regulations as a result of AB 2138 Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction

Background

At its April 11, 2019 meeting, the Board approved regulatory language to implement AB 2138 (Chiu, Chapter 995, Statutes of 2018). Key provisions of that bill, which becomes effective on July 1, 2020, are as follows:

1. Only permits a board to deny a license on grounds that an applicant has been convicted of a crime or has been subject to formal discipline if either of these are met (Business and Professions Code (BPC) Section 480(a)):
 - a. The conviction was within 7 years of the date of the application and is substantially related to the qualifications, functions, or duties of the profession. The 7-year limit does not apply to convictions for a serious felony (defined in Penal Code Section 1192.7), or for those who must register as a sex offender as described in Penal Code Section 290(d)(2) or (3).
 - b. The applicant has been subject to formal discipline by a licensing board within the past 7 years for professional misconduct that would have been cause for disciplinary action by the Board and is substantially related to the profession. Note: the prior disciplinary action cannot be used to deny if it was based on a dismissed or expunged conviction.
2. Prohibits a board from requiring that an applicant for licensure disclose information about his or her criminal history. However, a board is permitted to request it for the purpose of determining substantial relationship or evidence of rehabilitation. In such a case, the applicant must be informed that the disclosure is voluntary and failure to disclose will not be a factor in a board's decision to grant or deny an application (BPC Section 480(f)(2)).
3. Requires each board to develop criteria to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession.

These criteria are required to be considered when considering the denial, suspension, or revocation of a license. By law, boards are required to adopt regulations that include all of the following criteria (BPC, § 481):

- a) The nature and gravity of the offense.
 - b) The number of years elapsed since the date of the offense.
 - c) The nature and duties of the profession in which the applicant seeks licensure or is licensed.
4. Prohibits a board from denying a license based on a conviction without considering evidence of rehabilitation (BPC Section 481).
 5. Requires each board to develop criteria to evaluate rehabilitation when considering denying, suspending, or revoking a license. A showing of rehabilitation shall be considered if the applicant or licensee has been completed their criminal sentence without a violation of parole or probation, or if the board finds its criteria for rehabilitation has been met (BPC Section 482).

To successfully adopt, amend or repeal a regulation, the Board is required to meet the following standards in the Administrative Procedure Act (APA): (1) necessity, (2) authority, (3) clarity, (4) consistency, (5) reference, and (6) nonduplication (Government Code section 11349.1).

On March 6, 2020, the Board noticed the regulation proposal and gave the public forty-five (45) days to provide public comment ending on April 20, 2020. No public hearing was requested or conducted. A public comment was received on April 20, 2020 (see **Attachment A**).

Summary of Comments Received and Proposed Board Responses

Faride Perez-Aucar of Root and Rebound Reentry Advocates and Vinuta Naik of Community Legal Services of East Palo Alto, submitted a letter commenting on the Board's implementation of Assembly Bill 2138, dated April 20, 2020 (**Attachment A**). Perez-Aucar and Naik submitted all comments below on behalf of their respective organizations and A New Way of Life Reentry Project, Center for Employment Opportunities, Center for Living and Learning, Legal Aid at Work, Legal Services for Prisoners with Children, All of Us or None, Los Angeles Regional Reentry Project, National Association of Social Workers, California Chapter, REDF, The Record Clearance Project, San Jose State University, and Rubicon Programs.

Below is a summary of each comment and a recommended response. The responses were prepared in consultation with, and based upon, direction given by the Board's Executive Officer.

1. Initial Comment: General Statement/ Purpose of the Letter

Summary: The letter states that the organizations supporting the letter believe the proposal should go further in order to fully implement the intention and spirit of the AB 2138 text. They believe there is a lack of clarity in the licensure process for individuals who have been impacted by the criminal justice system that leads many of them to give up. They believe the proposed regulations leave gaps and fail to implement BPC Sections 480, 481, 482, and 493 and fall short of the intent of the bill to combat

discrimination against people with records who have demonstrated rehabilitation and are seeking a professional career.

Proposed Response: The Board rejects this comment. The purpose of the proposed regulations is to clarify substantial relationship criteria and criteria for rehabilitation, as required by BPC Section 481. In particular, consistent with the requirements enacted by AB 2138, these regulations would adopt all of the following criteria, which would assist the Board with a balanced approach to evaluating an applicant's eligibility for licensure:

1. The nature and gravity of the offense.
2. The number of years elapsed since the date of the offense.
3. The nature and duties of the profession in which the applicant seeks licensure or is licensed.

Further, clarifying how to determine whether a crime is substantially related and clarifying the factors that will be considered when evaluating rehabilitation should assist applicants and licensees with demonstrating their rehabilitation.

2. Comment #1

Summary: The letter says the proposed regulations should include the 7-year washout period for consideration of convictions or discipline which are not considered serious felonies under the Penal Code Section 1192.7. (BPC Section 480(a))

Proposed Response: The Board rejects this comment. The seven-year period during which a board can deny a license for a conviction or formal discipline is fully described in BPC section 480(a)(1). As this is already included in statute, adding this provision is duplicative of BPC section 480 and therefore it is not necessary to repeat it in the regulations.

3. Comment #2

Summary: The letter asks that proposed regulations should provide that a person with a criminal history shall not be denied a license if the applicant has obtained a Certificate of Rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41 or 1263.42, or an arrest which led to an infraction/citation or a disposition other than conviction, or juvenile adjudication. (BPC Section 480(b–d))

Proposed Response: The Board rejects this comment. BPC section 480(c) already clearly states that a license may not be denied based on a conviction, or its underlying acts, if it has been dismissed or expunged pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42. In addition, BPC section 480(b) prohibits license denial if the applicant has obtained a certificate of rehabilitation, was granted clemency or a pardon, or has made a showing of rehabilitation per BPC section 482. BPC section 480(d) prohibits license denial based on arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. As noted above, BPC section 480(b–d) explicitly prohibit denial of a license in those specific circumstances. Since these provisions are already specifically covered in statute, adding them again in regulation would be duplicative. Therefore, it is not necessary to repeat them in regulations.

4. Comment #3

Summary: The letter states that the regulations fail to include that the Board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. (BPC Section 480(f)(2))

Proposed Response: The Board rejects this comment. Business and Professions Code Section 480(f)(2) already covers this in detail. It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

5. Comment #4

Summary: The letter states that the regulations fail to include that the Board must notify the applicant in writing if the applicant is denied or disqualified from licensure. The letter states the Board must have procedures in place for the applicant to challenge a decision or to request re-consideration, and that the applicant has a right to appeal the Board's decision and the process of requesting a complete conviction history. (BPC Section 480(f)(3))

Proposed Response: The Board rejects this comment. Business and Professions Code Sections 480(f)(3), and 485 through 487, and the California Administrative Procedure Act commencing at Government Code Sections 11500 already contains these requirements, including requirements for providing the legal and factual basis for the denial, service of the denial on the applicant, and notice to the applicant regarding the opportunity to request a hearing to challenge the decision. It would therefore be duplicative of these statutes and not necessary to repeat this in the regulations.

6. Comment #5

Summary: The letter states that the intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. The letter states that merely looking to law enforcement will not adequately show how an applicant would do on the job. The letter further says rehabilitation can and does take many forms that extend beyond mere law enforcement supervision. The letter recommends that the Board provide examples of evidence of mitigating circumstances and rehabilitation efforts to better define rehabilitation and to assist both the Board and licensing applicants.

Proposed Response: The Board rejects this comment. Business and Professions Code Section 482 requires boards to develop criteria to evaluate rehabilitation and to consider whether an applicant or licensee has made a showing of rehabilitation if either the criminal sentence has been completed without violation of probation or parole, or if the board otherwise finds the applicant rehabilitated.

Therefore, sections 1399.133, 1399.134, 1399.156.2, and 1399.156.3 of the proposal would provide two-step rehabilitation guidance for the Board in complying with this law:

- First, the Board must determine if the completion of the criminal sentence with no violations constitutes rehabilitation. Consistent with the direction in AB 2138, to consider rehabilitation if an applicant completes the criminal sentence at issue without a violation of parole or probation, specific criteria are being added to

sections 1399.133, 1399.134, 1399.156.2, and 1399.156.3 to help the Board determine whether sentence completion demonstrates rehabilitation. Criteria the Board is proposing include length of the parole or probation, whether it was shortened or lengthened and the reasons, and any modifications to the parole or probation that may have been made. This represents the first step and includes probation or parole reports, because these are an indication of how well compliance was achieved. However, if the Board does not find rehabilitation based solely on sentence completion, there is still a second step that must be considered. An applicant can show rehabilitation as proposed in subdivision (b) of the regulations.

- The second step, if rehabilitation is not demonstrated solely based on the sentence completion, is that the Board must consider certain other criteria to evaluate rehabilitation. This includes nature and severity of the crime, time elapsed since the crime, evidence of any subsequent crimes or conduct, compliance with probation or parole, and evidence of rehabilitation submitted by the applicant or licensee. A general category permitting submission of any rehabilitation evidence allows an applicant to demonstrate volunteer or charity work, furthered education, successful employment, or any other activities that they choose to submit to be considered by the Board. The Board can and already does give serious consideration to these factors when considering whether an applicant or licensee is rehabilitated.

There are many possible ways of showing rehabilitation, and many unique scenarios of mitigating circumstances. Attempting to specifically list some but not others may be limiting or misleading to the applicant and to the staff of the Board. In addition, the circumstances of each enforcement case are unique and what is sufficient evidence of rehabilitation for one case may not suffice for another or may not be relevant for all types of crimes (e.g., attendance at Alcoholics Anonymous is a common demonstration of rehabilitation for alcohol-related crimes but is not a good example of rehabilitation for a crime where alcohol was not involved).

The Board believes that the proposed regulations adequately address the rehabilitation issues while allowing the applicant the flexibility to provide evidence that specifically addresses their rehabilitative efforts relative to a crime or misconduct on a case-by-case basis.

7. Comment #6

Summary: The letter states that the regulations fail to mention requirements to obtain statistical information on the number of applicants with a criminal record who apply and receive notice of denial or disqualification of licensure, provided evidence of mitigation or rehabilitation, and the final disposition of the application, and demographic information. (BPC Section 480(g)(1-2))

Proposed Response: The Board rejects this comment. These requirements are already stated in statute (BPC Section 480(g)(1-2)). It would therefore be duplicative of the statute and not necessary to repeat this in the regulations.

Proposed Changes to Board Approved Language

Many DCA boards/bureaus have similar language in their regulatory proposals to address AB 2138. The Veterinary Medical Board's AB 2138 regulation package was the first package to go to the Office of Administrative Law (OAL) for final review. However, upon review of the Veterinary Medical Board's package, OAL advised that board that it would require several text changes in order for the package to go through. OAL advised them that while several of the required changes are likely non-substantive, but some may be considered substantive (which would mean they would need to go back to their board for approval, and then to a 15-day public comment period). The Veterinary Medical Board ended up withdrawing their AB 2138 regulations from OAL and taking text changes negotiated between DCA Legal and OAL back to their board for consideration.

In light of this, Board staff proposes that the Board consider making these changes to our regulatory proposal now to decrease the potential for delays at the end of the regulatory approval process. These changes are in double underline or double strike-through in **Attachment B**, and substantive changes have been highlighted in yellow and non-substantive changes highlighted in grey.

Action Requested

Review the proposed responses and consider whether to accept or reject the comments. After review, the Board may consider any of the following actions:

- **Option 1** (If Board Members agree with the proposed responses):
Direct staff to reject the proposed comments, provide the responses to the comments as indicated in the meeting materials and use when completing the regulatory process as authorized by motion at the Board's April 11, 2019, meeting.
- **Option 2** (If the members have any edits to the proposed responses or wish to accept any comments or make any text changes):
Direct staff to accept specific comments and make edits to the proposed regulatory text as identified, but otherwise reject the comments as set forth in the meeting materials.

Additionally, review the proposed regulatory changes in Attachment B, and consider whether to approve these changes. Be advised that:

- In the Substantial Relationship regulation for both Division 13.3 and 13.4, the amended sections 1399.132 and 1399.156.1, Sections 2533 and 2533.2 of the Code which are added come from the SLPAHAD governing laws, in Article 4. Denial, Suspension and Revocation, are entitled: "Section 2533. Grounds for action" and "2533.1. What constitutes conviction." OAL required for clarity that the Veterinary Medical Board add at this spot in their identical regulation specific citations to Veterinary Medical Board statutes under which they would review an applicant or licensee's criminal conviction. These two statutes are SLPAHAD's equivalent statutes.
- The phrase "Article 4 of Chapter 5.3 of Division 2 of the Code" simply refers to the entire article in the Code that addresses Denial, Suspension and Revocation (of a license). OAL required the addition of similar citation for clarity in the Veterinary Medical Board regulations so that applicants and licensees are aware the Board can use those grounds to deny a license and so the phrase is added into amended sections 1399.133, 1399.134, 1399.156.2, and 1399.156.3

If approved, direct staff to take all steps necessary to complete the rulemaking process, including sending out the modified text with these changes for an additional 15-day comment period. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulation, and finish the regulatory process to adopt the proposed regulation as described in the modified text notice.

Attachments:

Attachment A – April 20, 2020 Public Comment from Faride Perez-Aucar and Vinuta Naik et al.

Attachment B – Proposed Edits to the Board Approved Language



April 20, 2020

Via Email

California Department of Consumer Affairs
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
ATTN: Cherise Burns, Assistant Executive Officer
2005 Evergreen Street, Suite 2100
Sacramento, CA 95815
Facsimile: (916) 263-2668
Email: SpeechandHearingRegulations@dca.ca.gov

RE: Comments in Response to Dept. of Consumer Affairs, California Board of Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board Concerning the Implementation of AB 2138, Proposal to Amend Sections 1399.132, 1399.133, 1399.134, 1399.156.1, 1399.156.2, and 1399.156.3 of Article 6 of Division 13.3 of Title 16, of the California Code of Regulations (CCR).

Dear Cherise Burns:

Thank you for the opportunity to submit comments to the Department of Consumer Affairs ("DCA"), Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board regarding proposed regulations to implement AB 2138.

Assembly Bill 2138 was authored by Assemblymembers David Chiu and Evan Low to help formerly incarcerated people have a fair chance at obtaining occupational licensure. AB 2138 was sponsored by the Anti-Recidivism Coalition, East Bay Community Law Center, Legal Services for Prisoners with Children, Root & Rebound and supported by a coalition of over 50 organizations. Thanks to the passage of AB 2138 in 2018, the roughly 1 in 3 or 8 million Californians with arrest or conviction records will face fewer barriers to employment and will help to fill the much needed occupational employment gaps in the State.

Formerly incarcerated workers strive to obtain permanent, stable, and living wage jobs, however around 30% of jobs require licensure, clearance, or oversight by a governing body. This oversight, while intended to protect public safety, disproportionately impacts people of color, low-income, and indigent communities of people. These communities have been disproportionately impacted by over-policing and over-criminalization resulting in contacts with law enforcement that bar these applicants from later obtaining the licensure they require to pursue employment under DCA's regulation. Moreover, applicants have been deterred by the lengthy process, lack of clarity, and obstacles to obtaining licensure – problems that AB 2138 seeks to rectify to offer a fair chance to all people.

The undersigned organizations commend the Board for its action to implement AB 2138 and thereby reduce discrimination against people of color in California, who are disproportionately denied job opportunities because of occupational licensing-related conviction background checks. We support amendments to Sections 1399.132, 1399.133, 1399.134, 1399.156.1, 1399.156.2, and 1399.156.3 of Article 6 of Division 13.3 of Title 16, of the California Code of Regulations to reflect the passage of Assembly Bill 2138, Chiu, but believe the proposed amendments should be clarified and go further in order to fully implement the intention and spirit of the AB 2138 text.

The proposed regulations leave some gaps in the regulatory scheme under the changes to CA Business and Professions Code sections 480, 481, 482, and 493 as modified by AB 2138. These proposed regulations fail to meet and implement CA B&P Code sections 480, 481, 482, and 493 and are not, as currently written, valid. The proposed regulations also fall short of the intent of the bill, which includes combating discrimination against people with records that have demonstrated rehabilitation and seek to establish themselves professionally. Specifically, the proposed regulations do not comply with AB 2138 as follows:

- Sections 1399.132 and 1399.156.1 list certain convictions and define them as substantially related regardless of the time that has passed or the nature and gravity of the offense in contravention of AB 2138 Business and Professions Code section 481. AB 2138 allows the Board discretion to determine which crimes are substantially related on an individual basis. Moreover, these sections fail to note that criminal history that resulted in the applicant obtaining a Certificate of Rehabilitation, pardon, dismissal per

Penal Code section 1203.4 et seq., or an arrest that resulted in a disposition other than a conviction shall not be denied a license. See Business and Professions Code section 480(b)-(d).

- Sections 1399.133, 1399.134, 1399.156.2, and 1399.156.3, as written, rely too heavily on law enforcement's reports and determination of the applicant's progress. Rehabilitation can and does take many forms that the current language does not fully embrace. Please see number 5 below for examples of rehabilitation to expand the proposed regulations.

Further, we urge the Board to incorporate the full extent of AB 2138 by including the following provisions:

1. The proposed regulations should include the 7 year washout period for consideration of convictions or discipline which are not statutorily considered serious felonies under the Cal. Penal Code. 1192.7. See Cal Business and Professions Code section 480(a).
2. The proposed regulations should provide that a person with a criminal history shall not be denied a license if the applicant has obtained a Certificate of Rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.42, or an arrest which led to an infraction/citation or a disposition other than a conviction, or juvenile adjudication. See Cal Business and Professions Code section 480(b)-(d).
3. The proposed regulations fail to include that the board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. See Cal Business and Professions Code section 480(f)(2).
4. The proposed regulations fails to include that the board shall notify the applicant in writing if the applicant is denied or disqualified from licensure. The Board must provide procedures describing the process for the applicant to challenge the decision or to request re-consideration, that the applicant has a right to appeal the board's decision, and the process of requesting a complete conviction history. See Cal Business and Professions Code section 480(f)(3).
5. The intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. Merely looking to law enforcement will not adequately show how an applicant would do on the job. Rather, rehabilitation can and does take many forms that extend beyond mere law enforcement supervision. To better define rehabilitation, we recommend that the board provide examples of evidence of mitigating circumstances and rehabilitation efforts to assist both the Board and licensing applicants.

For instance, the Board should consider adding the following rehabilitation criteria:

- Volunteer service;
 - Successful employment in a related field;
 - A history of work experience in an employment social enterprise;
 - Unpaid work in the community;
 - Furthered education;
 - Abstinence from controlled substances and/or alcohol;
 - Stability of family life, fulfillment of parental and familial responsibilities;
 - New and different social and business relationships from those which existed at the time of the underlying charges at issue;
 - Change in attitude of the applicant as evidenced by:
 - Personal testimony,
 - Evidence of rehabilitation submitted by the applicant,
 - Evidence from family, friends, and/or other persons familiar with the applicant's previous behavior patterns and subsequent attitude and behavioral changes, and;
 - Other markers of rehabilitation.
6. The proposed regulations fail to include any mention of requirements to obtain statistical information on the number of applicants with a criminal record who apply and receive notice of denial/disqualification of licensure, provided evidence of mitigation or rehabilitation, the final disposition of the application, and demographic information. See Cal Business and Professions Code section 480(g).

Adequate implementation of the changes to California Business and Professions Code sections 480, 481, 482, and 493 will go a long way toward restoring hope and opportunity for the nearly 1 in 3 or 8 million Californians who have an arrest or conviction record. Thank you for your consideration.

If you have any questions regarding the content of these comments, please contact Faride Perez-Aucar (Root and Rebound) or Vinuta Naik (Community Legal Services in East Palo Alto).

Sincerely,

/s/ Faride Perez-Aucar

Faride Perez-Aucar
510-279-4662
fperez@rootandrebound.org

/s/ Vinuta Naik

Vinuta Naik
650-326-6440
vnaik@clsepa.org

Organizations:

A New Way of Life Reentry Project
Center for Employment Opportunities
Center for Living and Learning
Community Legal Services in East Palo Alto
East Bay Community Law Center
Legal Aid at Work
Legal Services for Prisoners with Children, All of Us or None
Los Angeles Regional Reentry Project
National Association of Social Workers, California Chapter
REDF
The Record Clearance Project, San Jose State University
Root and Rebound
Rubicon Programs

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.3. Speech-Language Pathology and Audiology and
Hearing Aid Dispensers Board

Proposed amendments to the regulatory language are shown in underline for new text and ~~strike through~~ for deleted text

Amend Section 1399.132 to read as follows:

§ 1399.132. Substantial Relationship Criteria.

(a) For the purpose of denial, suspension, or revocation of a ~~hearing aid dispenser's~~ license pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the ~~Business and Professions Code,~~ or Section 2533 and 2533.1 of the Code, a crime, professional misconduct, or act shall be considered substantially related to the qualifications, functions, and duties of a hearing aid dispenser if to a substantial degree it evidences present or potential unfitness of a ~~hearing aid dispenser licensee~~ to perform the functions authorized by his the license in a manner consistent with the public health, safety, or welfare. ~~Such crimes or acts shall include, but not be limited to those involving the following:~~

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider the following criteria:

(1) The nature and gravity of the offense;

(2) The number of years elapsed since the date of the offense; and

(3) The nature and duties of a licensee.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

(a) (1) Any violation or attempt to violate of the provisions of Sections 650, 651, 651.3 and 655.2 of the Code.

(b) (2) Any violation or attempt to violate of the provisions of Chapter 7.5, Division 2 of the ~~Business and Professions Code.~~

(3) Conviction or act involving fiscal or commercial dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information.

(4) Conviction or act involving grand theft or embezzlement.

(5) Conviction or act involving child abuse.

(6) Conviction or act regarding elder abuse.

(7) A conviction requiring a person to register as a sex offender pursuant to Section 290 of the Penal Code.

(8) Conviction or act involving lewd conduct or sexual impropriety.

(9) Conviction or act involving assault, battery, or other violence.

(10) Conviction or act involving the use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public.

Note: Authority cited: Sections 493 and 2531.06, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, 2533, and 2533.1, Business and Professions Code.

Amend Section 1399.133 to read as follows:

§ 1399.133. Criteria for Rehabilitation – Denials and Reinstatements.

(a) When considering the denial of a license or a temporary license under Section 480 of the ~~Business and Professions~~ Code, ~~or the reinstatement of a license, on the ground that the applicant has been~~ was convicted of a crime, or when considering the reinstatement of a license, the Board shall consider whether the applicant made a showing of rehabilitation and is presently fit for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria: ~~the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for licensing, shall consider the following criteria:~~

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

~~(b) If subdivision (a) is inapplicable~~ If the applicant has not completed the criminal sentence at issue without a violation of probation, or the Board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the denial is based on professional misconduct, or the denial is based on one or more of the grounds specified in Article 4, Chapter 5.3, Division 2 of the Code, the Board shall apply the following criteria in evaluating an applicant's rehabilitation. The Board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the Board finds that the applicant is rehabilitated:

- (1) The nature and severity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s), professional misconduct, or crimes(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the ~~Business and Professions~~ Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) The criteria in subdivision (a)(1)-(5), as applicable.
- ~~(5)~~ (6) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482 and 2531.06, Business and Professions Code. Reference: Sections 475, 480, 481, 482, 488, 490, 493, 2533, and 2533.1, Business and Professions Code.

Amend Section 1399.134 to read as follows:

§ 1399.134. Criteria for Rehabilitation - Suspensions and Revocations.

(a) When considering the suspension or revocation of a license or a temporary license on the grounds that the licensee has been convicted of a crime, the Board shall consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria: the Board, in evaluating the rehabilitation of such person and his present eligibility for a license or temporary license, will consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) ~~If subdivision (a) is inapplicable~~ If the applicant has not completed the criminal sentence at issue without a violation of probation, or the Board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the suspension or revocation is based on a disciplinary action as described in Section 141 of the Code, or the suspension or revocation is based on one or more of the grounds specified in Article 4 of Chapter 5.3 of Division 2 of the Code, the Board shall apply the following criteria in evaluating a licensee's rehabilitation. The Board shall find that the licensee made a showing of rehabilitation and is presently fit for a license if, after considering the following criteria, the Board finds that the licensee is rehabilitated:

- (1) The Nature and severity of the act(s), ~~disciplinary action(s)~~ or offense(s) crime(s).
- (2) The Total criminal record.
- (3) ~~Extent of~~ The time that has elapsed since commission of the act(s), ~~disciplinary actions(s)~~ or offense(s) crime(s).
- (4) Whether the licensee has complied with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) The criteria in subdivision (a)(1)-(5), as applicable.
- (6) If applicable, evidence of expungement dismissal proceedings pursuant to Section 1203.4 of the Penal Code.
- (7) Evidence, if any, of rehabilitation submitted by the licensee.

Note: Authority cited: Sections 482 and 2531.06, Business and Professions Code. Reference: Sections 141, 475, 480, 482, 488, 490, 493, 2533, and 2533.1, Business and Professions Code.

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 13.4. Speech-Language Pathology and Audiology and
Hearing Aid Dispensers Board

Proposed amendments to the regulatory language are shown in underline for new text and ~~strike through~~ for deleted text

Amend Section 1399.156.1 to read as follows:

§ 1399.156.1. Substantial Relationship Criteria.

(a) For the purposes of denial, suspension, or revocation of a license or registration pursuant to Section 141 or Division 1.5 (commencing with Section 475) of the ~~Business and Professions Code~~, or Sections 2533 and 2533.1 of the Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions, or duties of a person holding a license under the Act if to a substantial degree it evidences present or potential unfitness of a person holding a license to perform the function authorized by ~~his or her~~ the license or registration in a manner consistent with the public health, safety, or welfare. ~~Such crimes or acts shall include but not be limited to those involving the following:~~

(b) In making the substantial relationship determination required under subdivision (a) for a crime, the Board shall consider the following criteria:

- (1) The nature and gravity of the offense;
- (2) The number of years elapsed since the date of the offense; and
- (3) The nature and duties of a licensee.

(c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:

- (a) (1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of the Act.
- (b) (2) Conviction of a crime involving fiscal or commercial dishonesty, fraud, deceit, or corruption related to money, items, documents, or personal information.
- (3) Conviction or act involving grand theft or embezzlement.
- (4) Conviction or act involving child abuse.
- (5) Conviction or act regarding elder abuse.
- (6) A conviction requiring a person to register as a sex offender pursuant to Section 290 of the Penal Code.
- (7) Conviction or act involving lewd conduct or sexual impropriety.
- (8) Conviction or act involving assault, battery, or other violence.
- (9) Conviction or act involving the use of drugs or alcohol to an extent or in a manner dangerous to the individual or the public.

Note: Authority cited: Sections 481, 493, and 2531.95, Business and Professions Code.
 Reference: Sections 141, 480, 481, 490, 493, 2533, and 2533.1, Business and Professions Code.

Amend Section 1399.156.2 to read as follows:

§ 1399.156.2. Rehabilitation Criteria for Denials and Reinstatements.

(a) When considering the denial of a license or registration under Section 480 of the Business and Professions Code, or a petition for reinstatement under Section 11522 of the Government Code, ~~on the ground that the applicant has been was convicted convicted of a crime, or when considering a petition for reinstatement under Section 11522 of the Government Code, the Board shall consider whether the applicant made a showing of rehabilitation and is presently fit for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:~~ the Board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license, will consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) ~~If subdivision (a) is inapplicable~~ If the applicant has not completed the criminal sentence at issue without a violation of probation, or the Board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the denial is based on professional misconduct, or the denial is based on one or more of the grounds specified in Article 4, Chapter 5.3, Division 2 of the Code, the Board shall apply the following criteria in evaluating an applicant's rehabilitation. The Board shall find that the applicant made a showing of rehabilitation ~~and is presently eligible for a license~~ if, after considering the following criteria, the Board finds that the applicant is rehabilitated:

- (a) (1) The nature and severity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.
- (b) (2) Evidence of any act(s) or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
- (c) (3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subdivision (1) or (2).
- (d) (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) The criteria in subdivision (a)(1)-(5), as applicable.
- (e) (6) Evidence, if any, of rehabilitation submitted by the applicant.

Note: Authority cited: Sections 482 and 2531.95, Business and Professions Code. Reference: Sections 475, 480, 481, 482, 488, 490, 493, 2533, and 2533.1, Business and Professions Code.

Amend Section 1399.156.3 to read as follows:

§ 1399.156.3. Rehabilitation Criteria for Suspensions or Revocations.

(a) When considering the suspension or revocation of a license on the grounds that a person holding a license or registration under the Act has been convicted of a crime, the Board shall consider whether the licensee made a showing of rehabilitation and is presently fit for a license, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria: the Board, in evaluating the rehabilitation of such person and his or her eligibility for a license will consider the following criteria:

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) ~~If subdivision (a) is inapplicable~~ If the applicant has not completed the criminal sentence at issue without a violation of probation, or the Board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the suspension or revocation is based on a disciplinary action as described in Section 141 of the Code, or the suspension or revocation is based on one or more of the grounds specified in Article 4 of Chapter 5.3 of Division 2 of the Code, the Board shall apply the following criteria in evaluating a licensee's rehabilitation. The Board shall find that the licensee made a showing of rehabilitation and is presently fit for a license if, after considering the following criteria, the Board finds that the licensee is rehabilitated:

- (a) (1) The Nature and severity of the act(s), disciplinary actions(s), or ~~offense(s)~~ crime(s).
- (b) (2) ~~The~~ Total criminal record.
- (c) (3) The time that has elapsed since commission of the act(s), disciplinary actions(s), or ~~offense(s)~~ crime(s).
- (d) (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
- (5) The criteria in subdivision (a)(1)-(5), as applicable.
- (e) (6) If applicable, evidence of ~~expungement~~ dismissal proceedings pursuant to Section 1203.4 of the Penal Code.
- (f) (7) Evidence, if any, of rehabilitation submitted by licensee, certificate or permit holder.

Note: Authority cited: Sections 482 and 2531.95, Business and Professions Code. Reference: Sections 141, 475, 480, 482, 488, 490, 493, 2533, and 2533.1, Business and Professions Code.



MEMORANDUM

DATE	June 30, 2020
TO	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Marcia Raggio, Vice Chair
SUBJECT	Agenda Item 7: Discussion and Possible Action Regarding Audiology Licensing Requirements

Background

Currently, Business and Professions Code 2532.25(b) requires the submission of evidence of no less than 12 months of satisfactorily completed supervised professional full-time experience or its part-time equivalent obtained under the supervision of a licensed audiologist....” This experience shall be completed under the direction of a board-approved audiology doctoral program. The required professional experience shall follow completion of the didactic and clinical rotation requirements of the audiology doctoral program. Applicants should submit evidence of the satisfactory completion of supervised clinical practice with individuals representative of a wide spectrum of ages and audiological disorders.

The California State University and private AuD programs typically require that their enrollees earn approximately 1850 clinical clock hours due to the typical nationwide adoption of this hourly requirement, clearly exceeding the requirement of 1399.152.2(c) of 300 clock hours. Currently, due to the B & P Code 2532.2(b) requirement, all programs require a 12-month 3rd or 4th year Required Professional Experience (RPE), even if the 1850 clinical clock hour requirement has already been met prior to 12 months. This situation, along with requiring that all clock hours be achieved following the completion of the AuD program, causes a significant financial and temporal hardship for students who complete their clock hour requirement at 10.5 months, or for those who have difficulty achieving 1850 hours in a 12 month period only within their RPE (due to either Federal Visa restrictions of 11 months for gaining experience or the CSU Executive Order requiring the completion of the program in 11 semesters).

For current hearing and balance healthcare training these statutory and regulatory requirements can create insufficient clinical training, as well as restrictive aspects for program completion, both creating hardships for audiology doctoral students and programs, while not supporting adequate consumer protection for audiology and balance services.

The Council on Academic Accreditation (CAA via ASHA) states: “The doctoral program in audiology must meet the following requirements...Include a minimum of 12 months’ full time equivalent of supervised clinical experience. These include short-term rotations and longer-term externships and should be distributed throughout the program of study.” Thus, CAA

does not require a specific 12-month externship. Further, CAA does not require all clock hours be direct patient contact, i.e. "Any effort that would be part of a full-time audiologist's typical work assignment counts toward the requirement. The program is expected to use reasonable judgment when counting non-patient contact hours." Both CAA and ACAE (via AAA) state that they do not recommend a required number of months or clock hours of training, but rather recommend that all programs provide their students with a program that meets all accreditation requirements.

At the Board's February 20-21, 2020 Meeting, the Audiology Practice Committee discussed revising and revamping the number of clinical clock hours and the 12-month full-time professional experience requirements for licensure as an audiologist. At that time the Board discussed how the current requirements are no longer appropriate and need to be updated to consider the shift in educational requirements from a master's degree in Audiology to a Doctoral degree in Audiology (AuD). Since that meeting, the Board has done additional outreach to stakeholders regarding potential revisions to audiology licensure requirements. Additionally, the COVID-19 pandemic has had significant negative impacts on many audiology students' ability to successfully complete the 12-month professional experience requirement for licensure during their graduate program.

Some issues for the Board's consideration include:

- Audiology students, in all California programs, are provided with clinical experiences/rotations throughout their programs. Students participate in a number of types of clinics with a variety of patient populations and varying pathologies regarding both hearing and balance. Students in these pre-graduation clinics receive 100 percent supervision by licensed audiologists. Should the requirement that all RPE experiences, and thus all clock hours achieved in these supervised, pre-graduation clinics and during the 3rd or 4th year RPE, be counted toward an 1850 clinical clock hour requirement to allow for program and student flexibility?
- Should the 12-month RPE requirement be eliminated or modified to include the hours allotted to pre-graduation supervised, clinical experiences? Should the length of the RPE have a range, i.e. 9-12 months?
- What types of clinical clock hours can be counted, i.e. direct patient contact hours, shift hours, audiology simulation hours?
- Should the need for an RPE provisional license be eliminated?
- What considerations need to be taken into account for out-of-state AuD programs that only require 1600 hours?
- What considerations need to be taken into account for students on Federal Visa's that limit them to only accruing 11 months of experience without violating the terms of their Visa?

Proposed Statutory and Regulatory Revisions from the SLPAHADB 2/21/20 Meeting

Business and Professions Code Section 2532.25

(a) An applicant seeking licensure as an audiologist shall possess a doctorate in audiology earned from an educational institution approved by the board. The board may, in its discretion, accept qualifications it deems to be equivalent to a doctoral degree in audiology. The board shall not, however, accept as equivalent qualifications graduation from a master's program that the applicant was enrolled in on or after January 1, 2008.

(b) In addition to meeting the qualifications specified in subdivision (a), an applicant

seeking licensure as an audiologist shall do all of the following:

- (1) Submit evidence of the satisfactory completion of supervised clinical practice with individuals representative of a wide spectrum of ages and audiological disorders. The board shall establish by regulation the required number of clock hours of supervised clinical practice necessary for the applicant. The clinical practice shall be under the direction of an educational institution approved by the board.
- (2) Submit evidence of no less than **1800 hours**~~12 months~~ of satisfactorily completed supervised professional ~~full-time~~ experience ~~or its part-time equivalent~~ obtained under the supervision of a licensed audiologist or an audiologist having qualifications deemed equivalent by the board. This experience shall be completed under the direction of a board-approved audiology doctoral program. The required professional experience shall follow completion of the didactic and clinical rotation requirements of the audiology doctoral program.
- (3) Pass an examination or examinations approved by the board. The board shall determine the subject matter and scope of the examination or examinations and may waive an examination upon evidence that the applicant has successfully completed an examination approved by the board. Written examinations may be supplemented by oral examinations as the board shall determine. An applicant who fails an examination may be reexamined at a subsequent examination upon payment of the reexamination fee required by this chapter.
- (c) This section shall apply to applicants who graduate from an approved educational institution on and after January 1, 2008.

Title 16, California Code of Regulations section 1399.152.2

- (a) Supervised clinical experience within the meaning of Section 2532.2, subdivision (c) of the Code shall be in the area for which licensure is sought. Speech-language pathology clinical experience shall be under the supervision of a licensed speech-language pathologist or a speech-language pathologist having qualifications deemed equivalent by the Board. Audiology clinical experience shall be under the supervision of a licensed audiologist or an audiologist having qualifications deemed equivalent by the Board. "Qualifications deemed equivalent by the Board" includes a supervisor who holds the legal authorization to practice in the field for which licensure is sought in the state where the experience is being obtained, if the supervised clinical experience is obtained in a setting which is exempt from the licensure requirements of the Act or out of state.
- (b) Two hundred seventy-five (275) clock hours of clinical experience shall be required for licensure as a speech-language pathologist or audiologist for applicants who completed their graduate program on or before December 31, 1992.
- (c) **(1) Three hundred (300) clock hours of clinical experience in three (3) different clinical settings shall be required for licensure as a speech-language pathologist ~~or audiologist~~ for applicants who completed their graduate program after December 31, 1992, or an audiologist for applicants who completed their graduate program prior to December 31, 2007.**
- (2) A minimum of eighteen hundred (1800) clock hours of clinical experience shall be required for licensure as an audiologist for applicants who completed their doctoral program after December 31, 2007. These clinical clock hours shall be obtained during the 3^d or 4th year externship. Additional clinical practicum hours earned during the course of the applicants qualifying degree program shall not be included in the calculation of the 1800 clock hours of clinical experience.**
- (d) Twenty-five (25) hours of the required clinical experience may be in the field other than that for which the applicant is seeking licensure (speech-language pathology for an

audiologist or audiology for a speech-language pathologist) if such clinical experience is under a supervisor who is qualified in the minor field as provided in subsection (a).

Action Requested

Discuss the “issues for the Board’s consideration”, as presented on page 2. After discussing these considerations, direct the Audiology Practice Committee to meet before the Fall Board Meeting to use the Board’s chosen considerations to determine the best recommended solution and associated statutory and regulatory revisions needed to implement that solution. The Audiology Practice Committee should bring their recommended solution and proposed language to the Fall Board Meeting for Board consideration and action.



MEMORANDUM

DATE	June 30, 2020
TO	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Marci Raggio, Vice Chair
SUBJECT	Agenda Item 8: Update on Impacts of the Centers for Medicare and Medicaid Services' (CMS) Merit-based Incentive Payment System (MIPS) Design on Audiologists

Background

The Board has recently received questions regarding the Centers for Medicare and Medicaid Services' (CMS) Merit-based Incentive Payment System's (MIPS's) requirements regarding an audiologist's participation in the program. This agenda item provides information on the program and an update on their requirements.

MIPS is one of two tracks under the Quality Payment Program (QPP), which moves Medicare Part B providers to a performance-based payment system. MIPS streamlines three historical Medicare programs — the Physician Quality Reporting System (PQRS), the Value-based Payment Modifier (VM) Program and the Medicare Electronic Health Record (EHR) Incentive Program into a single payment program. All Medicare Part B providers who meet the definition of a MIPS ELIGIBLE CLINICIAN should plan to participate in MIPS in 2017 or they will be subject to a negative 4% payment adjustment on Medicare Part B reimbursements in 2019. One unique aspect of MIPS is that eligible clinicians have the option to participate as either an individual or as part of a group.

MIPS is a performance-based payment system composed of four categories that provide clinicians the flexibility to choose the activities and measures that are most meaningful to their practice. An eligible clinician's performance in each of the four weighted performance categories is combined to create the MIPS Composite Performance Score, also known as the MIPS Final Score, which is used to determine Medicare Part B payment adjustments in future years.

The four performance categories included in MIPS are:

- **QUALITY** - The Quality category of MIPS replaces the Physician Quality Reporting System (PQRS) and requires eligible clinicians to report data to CMS for quality measures related to patient outcomes, appropriate use of medical resources, patient safety, efficiency, patient experience and care coordination. In 2017, the Quality category will make up 60% of an eligible clinician or group's MIPS Final Score.

- **ADVANCING CARE INFORMATION** - The Advancing Care Information (ACI) category of MIPS replaces the Medicare EHR Incentive Program (Meaningful Use). This category will reflect how well clinicians use EHR technology, with a special focus on objectives related to interoperability and information exchange. In 2017, the ACI category will make up 25% of an eligible clinician or group's MIPS Final Score.
- **IMPROVEMENT ACTIVITIES** - The Improvement Activities category of MIPS is intended to encourage eligible clinicians to participate in activities that improve clinical practice in areas such as shared decision-making, patient safety, coordinating care, and increasing access. In 2017, the Improvement Activities category will make up 15% of an eligible clinician or group's MIPS Final Score.
- **COST** - The Cost category of MIPS (also known as Resource Use) replaces the CMS Value-based Payment Modifier program and evaluates eligible clinicians on measures related to resource utilization, calculated using Medicare claims. In 2017, the Cost category will be weighted at 0%, which means it will not be incorporated into the MIPS Final Score this year. CMS has said that this category's weight will increase in future MIPS performance periods.

Requirements For Participation In MIPS:

You must participate in MIPS (unless otherwise exempt) if, in both 12-month segments, you: Bill more than \$90,000 for Part B covered professional services, and see more than 200 Part B patients, and; Provide more than 200 covered professional services to Part B patients. Eligible participants need only report on a total of six measures.

Low-Volume Threshold:

The low volume threshold includes 3 aspects of covered professional services:

1. Allowed charges
2. Number of Medicare patients who receive services
3. Number of services provided

MIPS Eligible Clinician Types:

You are eligible to report for MIPS if you are a MIPS eligible clinician type (and also meet all the other requirements in the next section). If you're not one of these clinician types, you're exempt from reporting.

- | | |
|---|---|
| <ul style="list-style-type: none"> • Physicians (including doctors of medicine, osteopathy, dental surgery, dental medicine, podiatric medicine, and optometry) • Osteopathic practitioners • Chiropractors • Physician assistants • Nurse practitioners • Clinical nurse specialists | <ul style="list-style-type: none"> • Certified registered nurse anesthetists • Physical therapists • Occupational therapists • Clinical psychologists • Qualified speech-language pathologists • Qualified audiologists • Registered dietitians or nutrition professionals |
|---|---|

Specifications For Each MIPS Measure For Audiology

- https://qpp.cms.gov/docs/QPP_quality_measure_specifications/CQM-Measures/2020_Measure_130_MIPSCQM.pdf
- https://qpp.cms.gov/docs/QPP_quality_measure_specifications/Claims-Registry-Measures/2019_Measure_134_MedicarePartBClaims.pdf (note 2020 not posted yet)
- https://qpp.cms.gov/docs/QPP_quality_measure_specifications/CQM-Measures/2020_Measure_154_MIPSCQM.pdf
- https://qpp.cms.gov/docs/QPP_quality_measure_specifications/CQM-Measures/2020_Measure_155_MIPSCQM.pdf
- https://qpp.cms.gov/docs/QPP_quality_measure_specifications/Claims-Registry-Measures/2020_Measure_181_MedicarePartBClaims.pdf
- https://qpp.cms.gov/docs/QPP_quality_measure_specifications/Claims-Registry-Measures/2020_Measure_182_MedicarePartBClaims.pdf
- https://qpp.cms.gov/docs/QPP_quality_measure_specifications/Claims-Registry-Measures/2020_Measure_226_MedicarePartBClaims.pdf
- https://qpp.cms.gov/docs/QPP_quality_measure_specifications/CQM-Measures/2020_Measure_261_MIPSCQM.pdf

Information on the Screening Activities Required by MIPS

According to the American Academy of Audiology Coding and Reimbursement Committee (2020), audiologists are encouraged to participate in only those activities that fall within the audiologist's scope of practice. However, for those activities for which audiologists are not trained, alternative activities can be undertaken that would allow for appropriate participation in the MIPS program, e.g. interviews, questionnaires. The goal of the MIPS measures, as noted above, is to ensure that patient's undergo screening measures that would lead to appropriate referrals for diagnosis and treatment. If a measure is outside an audiologist's scope of practice, all pertinent information learned from an individual patient is documented, in a given health care area, followed by the appropriate referral.

Action Requested

Discuss the information provided and consider referring this issue to the Audiology Practice Committee for further discussion and potential action.



MEMORANDUM

DATE	June 30, 2020
TO	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Marci Raggio, Vice Chair
SUBJECT	Agenda Item 9: Update Regarding Reinstatement of Medi-Cal Optional Benefits and Hearing Aid Coverage

Background

This agenda item will be a verbal update from Nick Brokaw of Sacramento Advocates regarding the current status of the reinstatement of Medi-Cal Optional Benefits and Pediatric Hearing Aid Coverage as they relate to the California Enacted Budget (6-22-20).

Action Requested

No action is required. This item is for informational purposes only.



MEMORANDUM

DATE	June 30, 2020
TO	Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
FROM	Cherise Burns, Assistant Executive Officer
SUBJECT	Agenda Item 10: Legislative Report

Legislative Calendar Highlights

- June 26, 2020 – Last day for bills each house to pass bills introduced in that house
- July 31, 2020 – Last day for policy committees to hear and report fiscal bills
- August 7, 2020 – Last day for policy committees to meet and report bills
- August 14, 2020 – Last day for fiscal committees to meet and report bills
- August 21, 2020 – Last day to amend bills on the Floor
- August 31, 2020 – Last day for each house to pass bills
- September 30, 2020 – Last day for Governor to sign or veto bills

a) Board-Specific Legislation

- **AB 2520 (Chiu) Access to medical records**
Location: Senate Rules Committee
Status: Waiting for assignment to policy committee
Board Position: Watch
Bill Summary: Current law requires a health care provider to provide a patient or the patient's representative with all or any part of the patient's medical records that the patient has a right to inspect, subject to the payment of clerical costs incurred in locating and making the records available, following a written request from the patient. Current law requires the health care provider to provide one copy of the relevant portion of the patient's record at no charge if the patient or patient's representative presents proof to the provider that the records are needed to support an appeal regarding eligibility for a public benefit program. This bill would add speech-language pathologists, audiologists, physician assistants, and nurse practitioners to the definition of a health care provider for the purposes of this requirement. This bill would also require a health care provider to provide an employee of a nonprofit legal services entity representing the patient a copy of the medical records at no charge under those conditions.
Staff Recommendation: **SUPPORT**, Board staff recommend supporting AB 2520 as providing patients access to their own medical records enhances consumer protection.

- **AB 2648 (Holden) Speech language pathologists**

Location: Dead

Status: Failed Deadline pursuant to Rule 61(b)(5).

Board Position: Watch

Bill Summary: The Speech-Language Pathologists and Audiologists and Hearing Aid Dispensers Licensure Act defines the practice of speech-language pathology to include the application of instrumental procedures for specified purposes relating to the development and disorders of speech, voice, language, or swallowing. Current law specifies that instrumental procedures are the use of rigid and flexible endoscopes to observe specified areas of the throat for specified purposes, including collecting data. Current law prohibits the construction of the provisions on the application of instrumental procedures as a diagnosis and imposes a requirement that any abnormalities be referred to a physician and surgeon. This bill would add to the above-specified provisions on instrumental procedures a statement that the passage of those instruments without the presence of a physician and surgeon is subject to the existing prohibition on construing those provisions as a diagnosis and the requirement to refer abnormalities to a physician and surgeon. This bill would delete the provisions requiring direct authorization from an otolaryngologist and the supervision of a physician and surgeon, and would instead authorize a speech-language pathologist to pass a flexible fiber optic transnasal endoscopic instrument only upon the orders of a licensed physician and surgeon, which would allow a speech-language pathologist to perform fiber optic transnasal endoscopic procedures at a location based on the patient's medical needs. The bill would prohibit a speech-language pathologist from performing flexible fiber optic transnasal endoscopic procedures on patients who have contraindications to the procedure.

b) DCA-Wide Legislation

- **AB 613 (Low) Professions and vocations: regulatory fees**

Location: Senate Business, Professions and Economic Development Committee

Status: Failed Deadline pursuant to Rule 61(a)(10).

Board Position: Support

Bill Summary: This bill would authorize all DCA boards to increase licensing fees once every four years based on the California Consumer Price Index for the preceding four years.

- **AB 1263 (Low) Contracts: consumer services: consumer complaints**

Location: Senate Rules Committee

Status: Waiting for assignment to a policy committee

Board Position: Watch

Bill Summary: This bill would prohibit a licensee from contracting for a consumer service that limits a consumer's right to file a complaint with the licensing board or participate in an investigation into the licensee by the licensing board. A violation of this provision would constitute unprofessional conduct and be subject to discipline by the Board.

- **AB 1616 (Low) Department of Consumer Affairs: boards: expunged convictions**
Location: Senate Rules Committee
Status: Waiting for assignment to policy committee
Board Position: Watch
Bill Summary: This bill would require boards that post information on their website about a revoked license due to a criminal conviction to update or remove information about the revoked license within six months of the board receiving an expungement order related to the conviction. The person seeking the change must pay a fee, determined by DCA, that does not exceed the reasonable cost of administering this provision.
- **AB 2028 (Aguiar-Curry) State agencies: meetings**
Location: Senate Rules Committee
Status: Waiting for assignment to policy committee
Board Position: Watch
Bill Summary: The Bagley-Keene Open Meeting Act requires that all meetings of a state body, be open and public, and the state body to provide notice of its meeting, including specified information and a specific agenda of the meeting, to any person who requests that notice in writing and to make that notice available on the internet at least 10 days in advance of the meeting. This bill would, except for closed sessions, require that all writings or materials provided for the noticed meeting to a member of the state body by staff of a state agency, board, or commission, or another member of the state body, that are in connection with a matter subject to discussion or consideration at the meeting must be posted to the internet when they are distributed to state body members or at least 48 hours in advance of the meeting (whichever is earlier), otherwise the state body could not discuss the materials.
Staff Recommendation: **OPPOSE**, Board staff recommend opposing AB 2028. While this bill has a carve-out to allow legislative materials to be brought as a hand carry, this bill could result in the Board being unable to discuss and take action on agenda items if the materials cannot be provided to the public when they are distributed to Board Members or 48 hours prior to the meeting (whichever is earlier). The Board strives to get all materials posted to the Internet prior to the meeting. Occasionally, Board materials require last minute updates and changes. It is also not uncommon as part of a Board discussion for members of the public to request additional information that is retrieved and presented at the Board meeting. Additionally, the Board does not currently have the ability to update its own website and must use DCA's Internet Team to post meeting materials to our website, requiring a good amount of lead time for processing. This bill would prohibit providing and discussing updated materials to Board Members and therefore limit Board discussion.
- **AB 2113 (Low) Refugees, asylees, and immigrants: professional licensing**
Location: Senate Rules Committee
Status: Waiting for assignment to a policy committee
Board Position: Watch
Bill Summary: Would require a board within the Department of Consumer Affairs to expedite, and authorize it to assist, the initial licensure process for an applicant who supplies satisfactory evidence to the board that they are a refugee, have been granted political asylum, or have a special immigrant visa. The bill would authorize a board to adopt regulations necessary to administer these provisions.

- **AB 2549 (Salas) Department of Consumer Affairs: temporary licenses**
Location: Senate Rules Committee
Status: Waiting for assignment to a policy committee
Board Position: Watch
Bill Summary: Current law requires a board within the Department of Consumer Affairs to issue, after appropriate investigation, certain types of temporary licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and the applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States. The bill would require a board to issue a temporary license within 30 days of receiving the required documentation. This bill would also expand the requirement to issue temporary licenses to include licenses issued by the Veterinary Medical Board, the Dental Board of California, the Dental Hygiene Board of California, the California State Board of Pharmacy, the State Board of Barbering and Cosmetology, the Board of Psychology, the California Board of Occupational Therapy, the Physical Therapy Board of California, and the California Board of Accountancy.
- **AB 3045 (Gray) Department of Consumer Affairs: boards: veterans: military spouses: licenses**
Location: Senate Rules Committee
Status: Waiting for assignment to a policy committee
Board Position: Watch
Bill Summary: Current law requires a board within the Department of Consumer Affairs to issue, after appropriate investigation, certain types of temporary licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders and the applicant holds a current, active, and unrestricted license that confers upon the applicant the authority to practice, in another state, district, or territory of the United States. This bill would require boards not subject to the temporary licensing provisions described above to issue licenses to an applicant if the applicant meets specified requirements, including that the applicant supplies evidence satisfactory to the board that the applicant is an honorably discharged veteran of the Armed Forces of the United States or is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States.
- **SB 878 (Jones) Department of Consumer Affairs Licensing: applications: wait times**
Location: Senate Floor
Status: Read second time. Ordered to third reading.
Board Position: Watch
Bill Summary: This bill, beginning July 1, 2021, would require each board within the Department of Consumer Affairs that issues licenses, on at least a quarterly basis, to prominently display on its internet website either the current average timeframes for processing initial and renewal license applications or the combined current average timeframe for processing both initial and renewal license applications.

- **SB 1168 (Morrell) State agencies: licensing services**

Location: Dead

Status: Failed Deadline pursuant to Rule 61(b)(8).

Board Position: Watch

Bill Summary: This bill would require a state agency that issues any business license to establish a process for a person or business that is experiencing economic hardship as a result of an emergency caused by a virus to submit an application for deferral of fees required by the agency to obtain a license, renew or activate a license, or replace a physical license for display.

Action Requested

Review and discuss staff's recommendations for positions on AB 2520 (Chiu) and AB 2028 (Aguiar-Curry). If staff's recommendation is accepted, make a motion to adopt the recommended position for each bill separately.

Attachments:

Attachment A: AB 2520 (Chiu) Bill Text

Attachment B: AB 2028 (Aguiar-Curry) Bill Text

AB 2520 - (A) Amends the Law

SECTION 1.

Section 123105 of the Health and Safety Code is amended to read:

123105.

As used in this chapter:

(a) "Health care provider" means any of the following:

- (1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.
- (2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.
- (3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.
- (4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.
- (5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.
- (6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.
- (7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.
- (8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.
- (9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.
- (10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
- (11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.
- (12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.
- (13) An occupational therapist licensed pursuant to Chapter 5.6 (commencing with Section 2570).
- (14) A professional clinical counselor licensed pursuant to Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.
- (15) A speech-language pathologist or audiologist licensed pursuant to Chapter 5.3 (commencing with Section 2530) of Division 2 of the Business and Professions Code.*
- (16) A physician assistant licensed pursuant to Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code.*
- (17) A nurse practitioner licensed pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.*

(b) "Mental health records" means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. "Mental health records" includes, but is not limited to, all alcohol and drug abuse records.

(c) "Patient" means a patient or former patient of a health care provider.

(d) "Patient records" means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. "Patient records" includes only records pertaining to the patient requesting the records or whose representative requests the records. "Patient records" does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. "Patient records" does not include information contained in aggregate form, such as indices, registers, or logs.

(e) "Patient's representative," "patient's personal representative," or "representative" means any of the following:

- (1) A parent or guardian of a minor who is a patient.
- (2) The guardian or conservator of the person of an adult patient.

- (3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill ~~his or her duties as~~ *the duties* set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.
- (4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.
- (f) "Alcohol and drug abuse records" means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 2.

Section 123110 of the Health and Safety Code is amended to read:

123110.

- (a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient's personal representative shall be entitled to inspect patient records upon presenting to the health care provider a request for those records and upon payment of reasonable costs, as specified in subdivision (k). However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the request. The inspection shall be conducted by the patient or patient's personal representative requesting the inspection, who may be accompanied by one other person of ~~his or her~~ *their* choosing.
- (b) (1) Additionally, any patient or patient's personal representative shall be entitled to a paper or electronic copy of all or any portion of the patient records that ~~he or she has~~ *they have* a right to inspect, upon presenting a request to the health care provider specifying the records to be copied, together with a fee to defray the costs of producing the copy or summary, as specified in subdivision (k). The health care provider shall ensure that the copies are transmitted within 15 days after receiving the request.
- (2) The health care provider shall provide the patient or patient's personal representative with a copy of the record in the form and format requested if it is readily producible in the requested form and format, or, if not, in a readable paper copy form or other form and format as agreed to by the health care provider and the patient or patient's personal representative. If the requested patient records are maintained electronically and if the patient or patient's personal representative requests an electronic copy of those records, the health care provider shall provide them in the electronic form and format requested if they are readily producible in that form and format, or, if not, in a readable electronic form and format as agreed to by the health care provider and the patient or patient's personal representative.
- (c) Copies of X-rays or tracings derived from electrocardiography, electroencephalography, or electromyography need not be provided to the patient or patient's personal representative under this section, if the original X-rays or tracings are transmitted to another health care provider upon written request of the patient or patient's personal representative and within 15 days after receipt of the request. The request shall specify the name and address of the health care provider to whom the records are to be delivered. All reasonable costs, not exceeding actual costs, incurred by a health care provider in providing copies pursuant to this subdivision may be charged to the patient or representative requesting the copies.
- (d) (1) Notwithstanding any provision of this section, and except as provided in Sections 123115 and 123120, a patient, ~~former~~ *employee of a nonprofit legal services entity representing the* patient, or the personal representative of a ~~patient or former~~ patient, is entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider a written request, and proof that the records or supporting forms are needed to support a claim or appeal regarding eligibility for a public benefit ~~program. These programs shall be the~~ *program, a petition for U nonimmigrant status under the Victims of Trafficking and Violence Protection Act, or a self-petition for lawful permanent residency under the Violence Against Women Act. A public benefit program includes the* Medi-Cal program, the In-Home Supportive Services Program, the California Work Opportunity and Responsibility to Kids (CalWORKs) program, ~~social security disability insurance~~ *Social Security Disability Insurance* benefits, Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits, federal veterans service-connected compensation and nonservice connected pension disability benefits, ~~and CalFresh.~~ *CalFresh, the Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants, and a government-funded housing subsidy or tenant-based housing assistance program.*

(2) Although a patient shall not be limited to a single request, the ~~patient-~~ *patient, employee of a nonprofit legal services entity representing the patient,* or patient's personal representative shall be entitled to no more than one copy of any relevant portion of ~~his or her-~~ *their* record free of charge.

(3) This subdivision shall not apply to any patient who is represented by a private attorney who is paying for the costs related to the patient's claim or appeal, pending the outcome of that claim or appeal. For purposes of this subdivision, "private attorney" means any attorney not employed by a nonprofit legal services entity.

~~(e) If the patient's appeal regarding eligibility for a public benefit program specified in subdivision (d) is successful, the hospital or other health care provider may bill the patient, at the rates specified in subdivisions (b) and (c), for the copies of the medical records previously provided free of charge.~~

~~(f)~~ *(e)* If a ~~patient or his or her-~~ *patient, employee of a nonprofit legal services entity representing the patient, or the patient's* personal representative requests a record pursuant to subdivision (d), the health care provider shall ensure that the copies are transmitted within 30 days after receiving the written request.

~~(g)~~ *(f)* This section shall not be construed to preclude a health care provider from requiring reasonable verification of identity prior to permitting inspection or copying of patient records, provided this requirement is not used oppressively or discriminatorily to frustrate or delay compliance with this section. ~~Nothing in this chapter shall be deemed to-~~ *This section does not* supersede any rights that a patient or personal representative might otherwise have or exercise under Section 1158 of the Evidence Code or any other provision of law. ~~Nothing in this chapter shall-~~ *This chapter does not* require a health care provider to retain records longer than required by applicable statutes or administrative regulations.

~~(h)~~ *(g)* *(1)* This chapter shall not be construed to render a health care provider liable for the quality of ~~his or her-~~ *their* records or the copies provided in excess of existing law and regulations with respect to the quality of medical records. A health care provider shall not be liable to the patient or any other person for any consequences that result from disclosure of patient records as required by this chapter. A health care provider shall not discriminate against classes or categories of providers in the transmittal of X-rays or other patient records, or copies of these X-rays or records, to other providers as authorized by this section.

(2) Every health care provider shall adopt policies and establish procedures for the uniform transmittal of X-rays and other patient records that effectively prevent the discrimination described in this subdivision. A health care provider may establish reasonable conditions, including a reasonable deposit fee, to ensure the return of original X-rays transmitted to another health care provider, provided the conditions do not discriminate on the basis of, or in a manner related to, the license of the provider to which the X-rays are transmitted.

~~(i)~~ *(h)* Any health care provider described in paragraphs (4) to (10), inclusive, of subdivision (a) of Section 123105 who willfully violates this chapter is guilty of unprofessional conduct. Any health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 123105 that willfully violates this chapter is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100). The state agency, board, or commission that issued the health care provider's professional or institutional license shall consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license or certificate.

~~(j)~~ *(i)* This section prohibits a health care provider from withholding patient records or summaries of patient records because of an unpaid bill for health care services. Any health care provider who willfully withholds patient records or summaries of patient records because of an unpaid bill for health care services is subject to the sanctions specified in subdivision ~~(i)-~~ *(h)*.

~~(k)~~ *(j)* (1) Except as provided in subdivision (d), a health care provider may impose a reasonable, cost-based fee for providing a paper or electronic copy or summary of patient records, provided the fee includes only the cost of the following:

(A) Labor for copying the patient records requested by the patient or patient's personal representative, whether in paper or electronic form.

(B) Supplies for creating the paper copy or electronic media if the patient or patient's personal representative requests that the electronic copy be provided on portable media.

(C) Postage, if the patient or patient's personal representative has requested the copy, or the summary or explanation, be mailed.

(D) Preparing an explanation or summary of the patient record, if agreed to by the patient or patient's personal representative.

(2) The fee from a health care provider shall not exceed twenty-five cents (\$0.25) per page for paper copies or fifty cents (\$0.50) per page for records that are copied from microfilm.

SEC. 3.

Section 123114 is added to the Health and Safety Code, to read:

123114.

- (a) A health care provider shall not charge a fee to a patient for filling out forms or providing information responsive to forms that support a claim or appeal regarding eligibility for a public benefit program.*
- (b) A health care provider shall provide information responsive to those portions of the form for which the health care provider has the information necessary to provide a medical opinion. If the health care provider does not have the information necessary to provide a medical opinion, the health care provider may inform the patient if an examination is necessary to obtain the information.*
- (c) If a health care provider conducts an examination pursuant to subdivision (b), the health care provider shall provide information responsive to those portions of the form for which the health care provider has a medical opinion.*
- (d) A health care provider may substitute a similar form or record that contains the information responsive to the form if the public benefit program allows for other methods of providing the information requested.*
- (e) For the purposes of this section, a public benefit program includes the Medi-Cal program, the In-Home Supportive Services Program, the California Work Opportunity and Responsibility to Kids (CalWORKs) program, Social Security Disability Insurance benefits, Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits, federal veterans service-connected compensation and nonservice connected pension disability benefits, discharge of a federal student loan based on total and permanent disability, CalFresh, the Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants, and a government-funded housing subsidy or tenant-based housing assistance program.*
- (f) Notwithstanding any other law, a health care provider may honor a request to disclose a patient record or complete a public benefit form that contains the written or electronic signature of the patient or the patient's personal representative.*

SEC. 4.

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

AB 2028 - (A) Amends the Law

SECTION 1.

The Legislature finds and declares the following:

- (a) The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) (hereafter "Bagley-Keene") was intended to implement Section 3 of Article I of the California Constitution, which states in part, "The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*
- (b) Bagley-Keene was written to protect public meetings and public notice and to ensure the transparency of actions taken by state agencies, boards, and commissions.*
- (c) Californians have the right to participate in state body deliberations. This includes the public's ability to comment on all agenda items discussed at a meeting of the state body, regardless of whether an item has been discussed previously in a committee of the state body.*
- (d) The purpose of public notice is so that state bodies give the public adequate time for review of the substance of a state body meeting and for comment.*
- (e) Public notice must also include any writings or materials provided by a state body's staff or by a member of the state body to other members of the state body for a noticed meeting of the body held at least 10 days prior to the meeting.*
- (f) Bagley-Keene affirms these rights by stating in Section 11120 of the Government Code, "The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."*

SEC. 2.

Section 11125 of the Government Code is amended to read:

11125.

- (a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the ~~Internet~~ internet website at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the ~~Internet site~~ internet website where notices required by this article are made available.*
- (b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.*
- (c) (1) Except as otherwise provided in paragraph (4), any notice provided pursuant to subdivision (a) shall include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body, that are in connection with a matter subject to discussion or consideration at the meeting.*
- (2) The writings or materials described in paragraph (1) shall be made available on the internet website, and to any person who requests the writings or materials in writing, on the same day as the dissemination of the writings and materials to members of the state body, or at least 48 hours in advance of the meeting, whichever is earlier.*
- (3) A state body may distribute or discuss writings or materials described in paragraph (1) at a meeting of the state body only if it has complied with this subdivision.*
- (4) This subdivision does not apply to writings or materials prepared for a matter to be discussed in a closed session of the state body.*

(5) If the writings or materials described in paragraph (1) on an agenda for discussion at a meeting of the state body are related to legislation that is before the Legislature in a current legislative session, a state body is entitled to post online, and shall provide upon request, additional materials related to that active legislation with additional time-sensitive information as it becomes available after the deadlines in this subdivision. The state body shall make clear what date the new or changed writings or materials are posted and, when applicable, what changes have been made in materials already posted.

(6) This subdivision does not authorize state bodies to remove any of the writings or materials described in paragraph (1) from the internet website.

~~(c)~~ (d) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

~~(d)~~ (e) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

~~(e)~~ (f) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

~~(f)~~ (g) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

SEC. 3.

Section 11125.7 of the Government Code is amended to read:

11125.7.

(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. ~~This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body.~~ Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) (1) Notwithstanding subdivision (b), when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the state body.

(2) Paragraph (1) shall not apply if the state body utilizes simultaneous translation equipment in a manner that allows the state body to hear the translated public testimony simultaneously.

(d) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(e) This section is not applicable to ~~closed sessions held pursuant to Section 11126.~~ *any of the following:*

(1) Closed sessions held pursuant to Section 11126.

~~(f) (2) This section is not applicable to decisions-~~ *Decisions* regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

~~(g) (3) This section is not applicable to hearings-~~ *Hearings* conducted by the California Victim Compensation Board pursuant to Sections 13963 and 13963.1.

~~(h) (4) This section is not applicable to agenda-~~ *Agenda* items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.