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Speech-Language Pathology & Audiology
& Hearing Aid Dispensers Board
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**BEFORE THE**
**SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY,**
**AND HEARING AID DISPENSERS BOARD**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

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| In the Matter of the Amended Accusation Against:<br><br>**ADAM JOHN SORTINI**<br><br>1970 E. South Bear Creek<br>Merced, CA 95340<br><br>Speech-Language Pathologist License No. SP 454<br>Audiologist License No. AU 170<br>Hearing Aid Dispenser License No. HA-1137<br><br>Respondent. | Case No. 11 2006 29<br><br>**AMENDED ACCUSATION** |

Complainant alleges:

1. Annemarie Del Mugnaio (Complainant) brings this Amended Accusation solely in her official capacity as the Executive Officer for the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board.

## I.

## LICENSE HISTORY

2. On or about July 1, 1974, the Speech-Language Pathology and Audiology Board issued speech language pathologist license number SP 454 to Adam John Sortini. License

number SP 454 will expire on October 31, 2011, unless renewed. On July 1, 1974, the Speech-Language Pathology and Audiology Board issued audiologist license number AU 170 Adam John Sortini. License number AU 170 will expire on October 31, 2011, unless renewed.

On January 23, 1979, Adam John Sortini was issued hearing aid dispenser license number HA-1137, which will expire on October 31, 2010, unless renewed. Said license, if renewed, will be converted to a dispensing audiologist license.

3. This Amended Accusation is brought before the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

## II.

## RELEVANT STATUTES

4. Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board is governed under the Business and Professions Code section 2530 et. seq. Section 2531.01 of the Business and Professions Code provides as follows:

> **§ 2531.02 Priority to protect the public**
>
> Protection of the public shall be the highest priority for the Speech-Language Pathology and Audiology Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

5. Section 2533 of the Business and Professions Code provides, in pertinent part, the following:

> **§ 2533. Unprofessional conduct**
>
> The board may . . . suspend, revoke, or impose terms and conditions upon the licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct shall include, but shall not be limited to, the following:
>
> > (a) Conviction of a crime-substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist, as the case may be. The record of the conviction shall be conclusive evidence thereof.
> >
> > . . .

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

. . .

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

6. Section 2533.1 of the Business and Professions Code provides as follows:

**§ 2533.1. Conviction; discipline or denial of license**

A plea or verdict of guilty, or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a speech-language pathologist or audiologist is deemed to be a conviction within the meaning of this article. The board may order the licensee be disciplined or denied a license as provided in Section 2533 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

7. Business and Professions Code section 3320.1, states as follows:

**§ 3320.1. Priority to protect the public**

Protection of the public shall be the highest priority for the Hearing Aid Dispensers Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

8. Business and Professions Code section 3401, states as follows:

**§ 3401. Grounds**

The board may deny, issue subject to terms and conditions, suspend, or revoke a license, or impose conditions of probation upon a license, for any of the following causes:

. . .

(d) Conviction of any crime substantially related to the qualifications, functions, or duties of a hearing aid dispenser,

. . .

(g) Fraud or misrepresentation in the fitting or selling of a hearing aid.

. . .

(l) Violation of any provision of this chapter or of any regulation adopted pursuant to this chapter.

(m) Any cause that would be grounds for denial of an application for a license.

9. Business and Professions Code section 3403, states as follows:

**§ 3403. Conviction of crime**

A plea or verdict of guilty or a conviction following a plea of nolo contendere, made to a charge substantially related to the qualifications, functions, and duties of a hearing aid dispenser is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, impose probation conditions on a licensee, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

10. Section 125.3 of the Business and Professions Code provides that the board may request reasonable costs of the investigation and enforcement of the case.

## III.

## GENERAL BACKGROUND

11. At all relevant times herein, Respondent owned Valley Hearing, Speech & Language Center, located at 1747 M. Street, Merced, California. Respondent participated in the Medicare program, which pays claims for covered services submitted on behalf of Medicare beneficiaries.

12. National Heritage Insurance Company (NHIC), serves as a carrier for the Medicare program in California (i.e., NHIC receives, adjudicates, and pays claims submitted to it by health care providers).

13. Circa 1994, based upon a complaint regarding services not rendered, NHIC investigated Respondent's speech-language pathology and audiology business and performed an audit. NHIC found Respondent's billing practices were inappropriate and could violate criminal law. Respondent requested a hearing of NHIC's findings. The hearing officer upheld NHIC's

findings. Due to the audit, Respondent remitted $36,160.75 to Medicare, and was educated in the Medicare guidelines.

14. Medicare does not cover routine screening or hearing testing. Thus, to receive reimbursement from Medicare for diagnostic testing by a qualified audiologist, such services are only covered under "other diagnostic tests" when first ordered by a physician for the purpose of obtaining additional information necessary for the physician's evaluation. Not only must the physician order the audiology services, but the documentation must indicate the audiology testing was in order for the physician to obtain additional necessary information.

15. From January 1998 through January 8, 2003, Respondent made fraudulent claims to Medicare. Respondent regularly visited residential care homes and skilled nursing facilities throughout California, conducting hearing tests without the prior referral of a physician. Thereafter, Respondent submitted claims to Medicare for reimbursement of his testing. In violation of the rules surrounding Medicare reimbursement, Respondent either acquired a physician's referral after he performed the tests, forged the physician's signature, or back dated the documents submitted to Medicare to reflect a referral prior to his testing. The misrepresentations to Medicare also included claiming that he saw patients at his Valley Hearing, Speech & Language Center.

16. As a result of Respondent's false Medicare claims, Medicare paid over $538,899, to Respondent for services not covered by Medicare. Said Medicare payments paid to Respondent based upon his false claims include the following:

| DATE | MEDICARE PAYMENT CHECKS TO RESPONDENT |
|---|---|
| March 20, 2001 | Medicare payment check (#173616772) associated with patient M.C. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| April 3, 2001 | Medicare payment check (#173668760) associated with patient K.H. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| April 4, 2001 | Medicare payment check (#173673233) associated with patient M.D. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |

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| April 18, 2001 | Medicare payment check (#173719851) associated with patient B.F. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| April 30, 2001 | Medicare payment check (#173760384) associated with patient Grace Grant and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| May 21, 2001 | Medicare payment check (#173829193) associated with patient B.J. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| June 4, 2001 | Medicare payment check (#173871992) associated with patient J.C. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| June 13, 2001 | Medicare payment check (#173904989) associated with patient .C. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| June 18, 2001 | Medicare payment check (#173917954) associated with patient L.H. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| June 19, 2001 | Medicare payment check (#173923901) associated with patient K.H. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| June 27, 2001 | Medicare payment check (#173949865) associated with patient E.E. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| August 6, 2001 | Medicare payment check (#174078638) associated with patient M.D. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| August 8, 2001 | Medicare payment check (#174089945) associated with patient G.G. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| August 20, 2001 | Medicare payment check (#174129835) associated with patient B.F. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| September 21, 2001 | Medicare payment check (#174242124) associated with patient U.E. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| October 15, 2001 | Medicare payment check (#174321103) associated with patient H.H. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |
| October 23, 2001 | Medicare payment check (#174350732) associated with patient M.C. and others claims made payable to Valley Hearing Speech, 1747 M. Street, Merced, CA |

17. Due to Respondent's conduct, on March 16, 2006, an indictment was filed against Respondent in the United States District Court for the Eastern District of California, in the case entitled, *United States of America v. Adam John Sortini*, Case No. 06 CR 00100AW, alleging seventeen criminal counts, under 18 U.S.C. § 1341 [mail fraud] and 18 U.S.C. § 1341 § 2 [aiding and abetting].

18. The federal case against Respondent, *United States of America v. Adam John Sortini*, Case No. 06 CR 00100AW, was tried by a jury. On November 4, 2008, the jury entered a guilty verdict as to all seventeen counts. Judgment was entered against Respondent in December 2009.

## IV.

## STATUTORY VIOLATIONS

### FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Dishonest Fraudulent Acts)
[Bus. & Prof. Code § 2533]

19. Paragraphs 11 through 18 are incorporated herein by reference. Respondent has subjected his licenses to discipline under Business and Professions Code section 2533(e) for committing dishonest and fraudulent acts as alleged in paragraphs 8 through 13 above. Respondent submitted the false Medicare claims seeking reimbursement for his work as a licensed speech language pathologist and/or audiologist. Thus, Respondent's fraudulent acts are substantially related to his qualifications, functions, or duties of licensed speech language pathologist, audiologist, and hearing aid dispenser.

### SECOND CAUSE FOR DISCIPLINE

(Committing Acts Endangering the Health, Welfare, and Safety of the Public)
[Bus. & Prof. Code § 2533(g)]

20. Paragraphs 1 through 17 are incorporated herein by reference. Respondent's licenses are subject to discipline for committing acts "that have endangered or are likely to endanger the health, welfare, and safety of the public" under Business and Professions Code section 2533(g). A "violation of any Medi-Cal statute, rule, or regulation, relating to its health care services shall be deemed contrary to public health, safety, welfare and morals" and can subject a licensee to discipline. (*Fort v. Board of Medical Quality Assurance* (1982) 136 Cal.App.3d 12, 16-17.)

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A health care practitioner can have their licensed disciplined for Medi-Cal or other insurance fraud. (*Brown v. State Department of Health* (1978) 86 Cal.App.3d 548.)

21. Respondent submitted the false Medicare claims seeking reimbursement for his work as a licensed speech language pathologist and/or audiologist. Thus, the acts endangering the health, welfare and safety of the public are substantially related to his profession.

**THIRD CAUSE FOR DISCIPLINE**
(Conviction of Crime)
[Bus. & Prof. Code § 3401(d)]

22. Paragraphs 11 through 18 are incorporated herein by reference. Respondent has subjected his licenses to discipline under Business and Professions Code section 3401(d) for conviction of crimes. The convictions against Respondent in the case entitled, *United States of America v. Adam John Sortini*, Case No. 06 CR 00100AW, were from Respondent's illegal conduct submitting false Medicare claims for his Valley Hearing Speech & Language Center, and thus substantially related to the qualifications, functions, and duties of a speech-language pathologist or audiologist.

**FOURTH CAUSE FOR DISCIPLINE**
(Fraud/Misrepresentation)
[Bus. & Prof. Code § 3401(g)]

23. Paragraphs 11 through 18 are incorporated herein by reference. Respondent has subjected his licenses to discipline under Business and Professions Code section 3401(g) for committing fraud and misrepresentation as alleged in paragraphs 11 through 18 above. Respondent submitted the false Medicare claims seeking reimbursement for his work as a licensed speech language pathologist and/or audiologist. Thus, Respondent's fraudulent acts are substantially related to his qualifications, functions, or duties of licensed speech language pathologist, audiologist, and hearing aid dispenser.

**FIFTH CAUSE FOR DISCIPLINE**
(Violation of Chapter)
[Bus. & Prof. Code § 3401(l)(m)]

24. Paragraphs 11 through 18 are incorporated herein by reference. Respondent has subjected his licenses to discipline under Business and Professions Code section 3401 (m). The submission of false Medicare claims would be grounds for denial of application for a license.

Additionally, Respondent has subjected his licenses to discipline under Business and Professions Code section 3401 (l) for violating Business and Professions Code sections 3401(d), (g), and (m).

**V.**

**PRAYER**

**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board issue a decision:

1. Revoking or suspending speech language pathologist license number SP 454 issued to Adam John Sortini.

2. Revoking or suspending audiologist license number AU 170 issued to Adam John Sortini.

3. Revoking or suspending hearing aid dispenser license number HA-1137 issued to Adam John Sortini.

4. Ordering Adam John Sortini to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3.

5. Taking such other and further action as deemed necessary and proper.

DATED: July 19, 2010

ANNEMARIE DEL MUGNAIO
Executive Officer
Speech-Language Pathology, Audiology, and
Hearing Aid Dispensers Board
Department of Consumer Affairs
State of California
*Complainant*

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