

**SUNSET EVALUATION REPORT**  
**SPEECH PATHOLOGISTS AND AUDIOLOGISTS**  
Chapter 468E, Hawaii Revised Statutes

**A Report to the Governor and the Legislature of the State of Hawaii**

**Submitted by the**  
**Legislative Auditor of the State of Hawaii**

Report No. 81-5  
February 1981



## FOREWORD

Under the "sunset law," licensing boards and commissions and regulated programs are terminated at specified times unless they are reestablished by the Legislature. Nationally, the first sunset law was passed in 1976. Within three years, 30 more states had enacted similar legislation. The rapid spread of sunset legislation reflects increasing public concern with what it sees as unwarranted government interference in everyday activities.

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, terminated 38 occupational licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of speech pathologists and audiologists under Chapter 468E, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate speech pathologists and audiologists to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed.

Our approach to the evaluation of the regulation of speech pathologists and audiologists is described in Chapter 1 of this report under "Framework for Evaluation." That framework will also serve as the framework for conducting subsequent evaluations. We used the policies enunciated by the Legislature in the Sunset Law to develop our framework for evaluation. The first and basic test we applied was whether there existed an identifiable potential danger to public health, safety, or welfare arising from the conduct of the occupation or profession being regulated. Then the other criteria for evaluation were applied.

We acknowledge the cooperation and assistance extended to our staff by the Department of Regulatory Agencies and other officials contacted during the course of our examination.

Clinton T. Tanimura  
Legislative Auditor  
State of Hawaii

February 1981



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## Chapter 1

### INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 state licensing boards and commissions over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

#### Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 468E.

#### Scope of the Evaluation

This report examines the history of the statute on licensing of speech pathologists and audiologists and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

#### Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework developed for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendation.

## Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing boards. Unless reestablished, the boards disappear or "sunset" at a prescribed moment in time.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires that each occupational licensing program be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies, as amended in 1980, are:

1. The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.

2. Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted.

3. Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the services.

4. Evidence of abuses by providers of the services shall be accorded great weight in determining whether government regulation is desirable.

5. Professional and vocational regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Professional and vocational regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare arising from the operation or conduct of the occupation or profession.
2. The public that is likely to be harmed is the consuming public.
3. The potential harm is not one against which the public can reasonably be expected to protect itself.
4. There is a reasonable relationship between licensing and protection of the public from potential harm.
5. Licensing is superior to other optional ways of restricting the profession or vocation to protect the public from the potential harm.
6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is intended to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Under particular fact situations and statutory enactments, courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.<sup>1</sup> In Hawaii, the State Supreme Court in 1935 ruled that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession.<sup>2</sup> The court held that mere interest in

1. See discussion in 51 *American Jurisprudence*, 2d., "Licenses and Permits", Sec. 14.

2. *Terr. v. Fritz Kraft*, 33 Haw. 397.

maintaining honesty in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

**The public.** The Sunset Law states that for the exercise of the State's licensing powers to be justified, not only must there be some potential harm to public health, safety, or welfare, but also the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of the services rendered by the regulated occupation or profession. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services rendered by the regulated occupation or profession. Consumers are not restricted to those who purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion set forth here may be met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to his employer, but his workmanship ultimately affects the consumer who brings a car in to his employer for repairs or who rents a car from his employer. If all other criteria set forth in the framework are met, the potential danger of poor workmanship to the consuming public *may* qualify an auto mechanic licensing statute for reenactment or continuance.

**Consumer disadvantage.** The consuming public does not require the protection afforded by the exercise of the State's licensing powers if the potential harm is one from which the consumers can reasonably be expected adequately to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the provider of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of consumer characteristic which may cause the consumer to be at a disadvantage. Highly technical and complex nature of the occupation is an illustration of occupational character that may result in the consumer being at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to enable them to make judgments about the relative competencies of doctors and lawyers and about the quality of services provided them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

**Relationship between licensing and protection.** Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirement must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

**Alternatives.** Depending on the harm to be protected against, licensing may not be the most suitable form of protection for the consumers. Rather than licensing, the prohibition of certain business practices, governmental inspection, or the inclusion of the occupation within some other existing business regulatory statute may be preferable, appropriate, or more effective in providing protection to the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

**Benefit-costs.** Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained from such exercise of power. The term, "costs," in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" includes opportunity costs or all real resources used up by the licensing program; it includes indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.



## Chapter 2

### BACKGROUND

Hawaii is one of 31 states regulating speech pathologists and audiologists. Chapter 468E, Hawaii Revised Statutes, enacted in 1974, makes it unlawful for any person to engage in the practice of speech pathology or audiology without a license issued by the Board of Speech Pathology and Audiology.

The practice of speech pathology is statutorily defined as “the application of principles, methods, and procedures of measurement, prediction, evaluation, testing, counseling, consultation, and instruction related to the development and disorders of speech and related language and hearing disorders.” The practice of audiology is defined as “the application of principles, methods, and procedures of measurement, prediction, evaluation, testing, counseling, consultation, and instruction related to the development and disorders of hearing and related language and speech for the purpose of modifying hearing function and related language and speech disorders.”

#### Occupational Characteristics

There are nearly 200 speech pathologists and audiologists in Hawaii. Of that number, approximately 150 (or 75 percent) are employed by the state and federal governments, and about 50 (or 25 percent) work for private hospitals, clinics, other private agencies and physicians or are in private practice. Only those speech pathologists and audiologists who work for the private sector are subject to regulation. The statute specifically exempts those who are employed by government.

Employment requirements differ between the state and federal governments and the private sector. Third-party payors, such as health insurance plans, also have standards for determining the reimbursement eligibility of practitioners.

Certification by American Speech and Hearing Association (ASHA).<sup>1</sup> The basic standard used as a measure of professional standing of speech pathologists and audiologists is certification by ASHA, the national association for speech-language pathologists,

1. ASHA recently changed its name to American Speech–Language and Hearing Association (ASLHA).

audiologists, and other professionals concerned with communication disorders. ASHA's certification requirements are: (1) a master's degree (or equivalent coursework) from an accredited college or university with specified hours of coursework in certain subjects, (2) 300 hours of supervised clinical experience, (3) nine months of full-time professional experience, termed the "Clinical Fellowship Year," and (4) successful completion of a national examination in either speech pathology or audiology prepared by the Educational Testing Service. Completion of these requirements entitles the person to receive the Certificate of Clinical Competence.

**Employment requirements: *State employment.*** The Department of Health (DOH), the Department of Education (DOE), and the University of Hawaii employ 141 or 70 percent of the speech pathologists and audiologists. Forty-nine of them are licensed although they are not required to hold licenses. The minimum entry level requirement set by the Department of Personnel Services for DOH and DOE is a bachelor's degree with major emphasis in speech and hearing and including a clinical practicum in each specialty.

DOH has 18 speech pathologists and six audiologists. Seventeen are certified by ASHA and licensed, three are certified but not licensed, and three are in their Clinical Fellowship Year. DOE has 109 positions for speech and hearing therapists. Twenty-seven are licensed. There are eight speech pathologists and audiologists at the University of Hawaii. All are certified but only five are licensed.

***Federal government.*** Federal establishments in Hawaii employ a number of speech pathologists and audiologists, some of whom are licensed. The minimum qualification standard for these positions is a master's degree in speech pathology or audiology, including 18 semester hours in the appropriate specialty area, and approved clinical practice.

***Private employment.*** Almost all of the hospitals, clinics, and private agencies employing speech pathologists and audiologists in Hawaii require ASHA's Certificate of Clinical Competence or eligibility for certification.

**Requirements of third parties.** Patients of private practitioners and organizations may be assisted by third-party payments. The policies of various health insurance plans governing eligible payments to speech pathologists and audiologists are similar. The Hawaii Medical Service Association requires that the speech pathologist or audiologist be certified by ASHA. Medicare and Medicaid require that the speech pathologist or audiologist be certified by ASHA, be eligible for the certificate issued by ASHA, or be in the process of completing the Clinical Fellowship Year. Medicare also requires that the practitioner be licensed, if a state license is required.

## Regulation of Speech Pathologists and Audiologists

The movement for licensing of speech pathologists and audiologists began in the late 1960's, when state associations lobbied for licensure laws. The first state licensing law was passed in Florida in 1969. The push for licensing was largely related to a desire for enhancement of professional status.<sup>2</sup> For example, private practitioners who had been experiencing difficulties in obtaining third-party reimbursements believed that licensing would give legal status to their qualifications and practices and help them to gain eligibility for insurance payments.

### Regulation in Hawaii

Hawaii enacted its licensing law in 1974 "to insure that the highest quality of speech pathology and audiology services are available to the people of the State."<sup>3</sup> The main provisions of Chapter 468E and the rules and regulations adopted by the Board of Speech Pathology and Audiology are discussed below.

**Board and authority.** A seven-member board is appointed by the Governor to carry out the regulatory provisions of Chapter 468E. Membership must include two speech pathologists, two audiologists, and three public members, one of whom must be licensed to practice medicine in Hawaii and must hold a certificate of qualification from the American Board of Otorhinolaryngology.<sup>4</sup>

The board is authorized to administer, coordinate, and enforce the provisions of Chapter 468E; adopt rules and regulations relating to professional conduct, including those establishing ethical standards of practice; issue and renew licenses to those meeting the requirements; deny, suspend, or revoke licenses or impose probationary conditions; prescribe procedures for the written examination; establish standards for performance on the examination; maintain a permanent record of examination scores; prescribe and publish licensing fees; and keep records of the board's proceedings.

2. John P. Nicholais, "Policy Development and Strategy in the Licensure of Speech Pathologists and Audiologists," *The American Journal of Occupational Therapy*, 30, No. 1, January 1976, p. 22.

3. House of Representatives Standing Committee Report No. 581-74 on H.B. No. 2900-74.

4. Otorhinolaryngology (also otolaryngology) is the branch of medicine dealing with the ear, nose, and throat.

License requirements. The requirements for a license are that the applicant must: (1) be of good moral character; (2) possess at least a master's degree or its equivalent<sup>5</sup> in the area of speech pathology or audiology from an institution recognized by the board; (3) submit evidence of eligibility for meeting ASHA's requirements for the Certificate of Clinical Competence; and (4) pass a written examination approved by the board.

All applications for license must be accompanied by a recent photograph, a tuberculin clearance report dated not more than six months prior to the date of application, proof of ASHA's certification or evidence of eligibility for certification, and a \$35 fee. The board may request additional verification of an applicant's qualifications or require a personal interview.

The board may waive the examination<sup>6</sup> and grant a license to any applicant who presents proof of licensure in another state which maintains professional standards equivalent to those in Hawaii. In such a case, the applicant must submit a copy of the license law and rules and regulations on speech pathology and audiology of the endorsing state. The endorsing state must submit a statement that the applicant holds a current license from that state and meets the minimum ASHA requirements, and that there is nothing derogatory on file concerning the applicant's professional competency.

Persons and practices not covered by Chapter 468E. The chapter excludes certain persons and practices from the licensing requirement. The excluded persons include, among others, speech pathologists and audiologists employed by a local, state, or federal government agency; persons pursuing a course of study at a college or university leading to a degree in speech pathology or audiology; persons completing a clinical program for ASHA's certificate; and certain nonresident, nonlicensed practitioners working temporarily in the State in cooperation with a licensed speech pathologist or audiologist.

Unprofessional conduct. The board may refuse to issue or renew a license, or may suspend or revoke a license where the applicant or licensee has been guilty of unprofessional conduct, defined as obtaining a license by fraud or misrepresentation, violating any regulation adopted by the board, violating any provision of Chapter 468E, and being guilty of unprofessional conduct as defined in the board's rules and Code of Ethics.

5. "Equivalent" is defined in the rules and regulations to mean a bachelor's degree from an accredited institution and evidence of at least 42 graduate semester hours acceptable toward a master's degree.

6. The waiver of the examination is of no practical consequence since (as we discuss in Chapter 3) the board conducts no examination.

Rules of the board further define unprofessional conduct to mean committing a dishonest or fraudulent act in the practice of speech pathology or audiology, diagnosing or treating individuals for speech and hearing disorders by mail or telephone except under certain circumstances; incompetence or negligence in practice which endangers the health, welfare, or safety of the public; and the habitual use of drugs or alcoholic beverages which impairs the licensee's work performance.

Some of the responsibilities of the licensees to their patients include not guaranteeing the results of any procedure, not revealing confidential information to unauthorized persons, and not accepting persons for treatment where benefit cannot reasonably be expected.



## Chapter 3

### EVALUATION OF THE REGULATION OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

This chapter contains our evaluation of the regulation of speech pathologists and audiologists under Chapter 468E, Hawaii Revised Statutes, including evaluation of the need for regulation, regulatory operations, and our recommendations.

#### Summary of Findings

Our findings are as follows:

1. The practice of speech pathology and audiology poses little harm to public health, safety, or welfare. There is no evidence of actual harm to the public, and existing controls within the private sector minimize the possibility of potential harm to the public.
2. The licensing requirements imposed under Chapter 468E are unnecessary. They merely duplicate the requirements for certification by the American Speech and Hearing Association (ASHA).
3. The Board of Speech Pathology and Audiology conducts no examinations and does not otherwise perform a meaningful function.
4. It is inconsistent for the State to regulate speech pathologists and audiologists in the private sector while exempting from regulation and applying lesser standards to its own personnel.
5. The administration of the regulatory program by the board and the staff of the Department of Regulatory Agencies (DRA) has been weak.

#### Potential Harm to Consumers

Speech pathologists identify, evaluate, and treat communication disorders. Services of a speech pathologist include the use of a variety of articulation and vocabulary tests to assess the extent of speech impairments, and the training of individuals to produce proper sounds, to develop proper control of the vocal and respiratory systems, to increase

fluent speech and generally to achieve more normal communication. Treatment techniques include verbal drills with repetition of words or sounds or with lowered or raised pitch; breathing, blowing, and sucking exercises; memory drills; and directed reading.

The audiologist performs diagnostic tests with various types of audiometers to detect hearing impairments and help determine the cause and extent of hearing loss. If the use of a hearing aid is indicated, the audiologist may recommend the hearing aid model and amplification settings and assist patients in adjusting to the hearing aid, if necessary. Responsibility for the actual diagnosis and prescription for treatment is that of the physician. State law requires that a medical authorization be obtained from a physician before a hearing aid can be purchased.

Speech pathologists claim that improper therapy could cause psychological damage to the patient, physical damage to the vocal cords, and delays in a child's development of certain communication abilities. In the case of audiology, an inaccurate assessment of hearing loss could result in the wrong hearing aid for the customer.

No documented evidence of harm. Despite claims of potential harm, there is no documented evidence of injuries that have resulted from services performed by those licensed to practice speech pathology and audiology. No evidence of consumer injury was offered during the 1974 legislative hearings on the bill which created Chapter 468E. There also have been no consumer complaints filed with the board since the enactment of the chapter.<sup>1</sup>

Not only is there no evidence of injuries resulting from those *licensed* to practice speech pathology and audiology, but there is also no evidence of injuries resulting from government speech pathologists and audiologists who are *not* required to be licensed. As stated in Chapter 2 of this report, about 150 (or 75 percent) of the nearly 200 speech pathologists and audiologists are employed by the state and federal governments.

Existing controls in the private sector. Certain conditions related to the practice of speech pathology and audiology in the private sector already provide assurance of public protection. Employers and health insurance programs can and do set their

1. The only complaint was one filed with the Office of Consumer Protection by a speech pathologist against an unlicensed person concerning an advertisement placed in the newspaper by that person.

own qualification standards, and speech pathologists and audiologists generally work in conjunction with physicians.

*Employment requirements.* ASHA's Certificate of Clinical Competence is the primary condition for employment. Nearly all private sector employers, e.g., hospitals and clinics, require the certificate.

*Third-party reimbursements.* Health insurance plans covering speech pathology and audiology services also require ASHA's certificate or its equivalent. The Hawaii Medical Service Association requires the certificate. Medicaid and Medicare require that the practitioner be certified by ASHA, meet the requirements for the certification, or be in the process of completing the supervised experience for the certificate. Medicaid also requires a physician's referral.

*Referral by physicians.* Speech pathologists and audiologists generally work with physicians or other health care providers, either directly or indirectly. Speech pathologists and audiologists employed by hospitals or clinics usually work with physicians in rehabilitation teams of social workers, psychologists, occupational therapists, and physical therapists. Persons in independent private practice obtain about 95 percent of their clients through physician referrals and are clearly dependent on these referrals. A reasonable assumption is that physicians refer their patients to those persons who are known by the physicians to be trained and competent.

*Conclusion regarding the need for regulation.* There has been no documented evidence of consumer injury resulting from the practice of speech pathology and audiology. This includes the practice of those in the private sector who are required to be licensed as well as those employed by the state and federal governments who are not subject to the licensing requirements. There has been no consumer complaints filed with the Board of Speech Pathology and Audiology since the enactment of Chapter 468E in 1974. Existing employment practices and other controls in the private sector provide sufficient assurance of public protection.

We thus conclude that the practice of speech pathology and audiology poses little potential harm to public health, safety, or welfare, and that continued regulation is not justified.

## Form and Extent of Regulation If Chapter 468E Is Continued

If the Legislature finds a need to continue regulating speech pathologists and audiologists, we suggest that Chapter 468E be modified. First, the licensing requirements should be deleted. Anyone wishing to practice speech pathology or audiology should only be required to register with DRA by presenting evidence of meeting the requirements of ASHA's Certificate of Clinical Competence in the respective fields of practice. Second, a board is not necessary and should thus be deleted. Finally, but not necessarily as part of the modification of Chapter 468E, the Legislature should review the inconsistency of exempting from regulation and applying lesser standards to speech pathologists and audiologists employed by government.

Licensing requirements and the board. Chapter 468E requires that applicants for license be of good moral character, possess a master's degree or its equivalent, submit evidence of eligibility for meeting ASHA's requirements for certification, and pass a written examination approved by the board. The licensing requirements set forth in Chapter 468E and the rules and regulations adopted by the Board of Speech Pathology and Audiology are nearly identical to the certification requirements established by ASHA. The reason for this is that the basic condition to be met by applicants under the statute is "meeting the requirements of ASHA for certification." The board itself conducts no examinations. The examinations relied upon is ASHA's National Examination in Speech Pathology and the National Examination in Audiology administered by the Educational Testing Service. Thus, the licensing requirements of Chapter 468E only duplicate the certification requirements of ASHA.

The facts reveal that substantially all of the applicants for license already possess an ASHA certificate. As such, the application and licensing process is a mere formality of completing an application form and submitting a copy of the ASHA certificate, personal photograph, and tuberculin clearance report.

The board's basic function, then, has been merely to receive and validate the documents submitted by the applicants. It appears that this type of work can be handled by the DRA staff and does not require involvement by a board. Instead of subjecting applicants to the licensing requirements, Chapter 468E could require persons who wish to practice speech pathology or audiology to register with DRA and submit evidence of meeting the certification requirements of ASHA.

Government employees excluded from regulation. Speech pathologists and audiologists who are employed by government are specifically excluded from regulation under Chapter 468E. These government employees represent nearly 75 percent of the total number of speech pathologists and audiologists practicing in Hawaii.

The exclusion of government employees appears to have been based on the fact that government has its own standards of employment. The State's minimum entry level requirement for its employees is a bachelor's degree in speech and hearing, with course work which includes a clinical practicum. This standard is lower than the requirements applicable to practitioners in the private sector.

If the fields of speech pathology and audiology warrant regulation, we question the inconsistency of applying one set of standards for those in private employment or private practice and another set of standards for public employment. Since the purpose of regulation is to ensure competence and thus protect the public from the harm that can be caused by unqualified persons, it should not make any difference whether the person providing the services is working for government or is in private industry. This is a matter which the Legislature should consider if it decides to continue regulating practitioners in the private sector.

#### Administration of the Law

The board and the DRA staff have been deficient in administering the licensing program. They have been unduly slow in processing applications and issuing licenses. Certain requirements imposed on applicants are inconsistent with official rules and regulations, and the published rules have not been amended to reflect changes in the statute.

Slow in issuing licenses. It has taken the board and the DRA staff an inordinate length of time to process applications and issue licenses. Of the 20 licenses issued since the beginning of 1979, 13 took three months or longer from the time of application to board approval. This was largely due to infrequent board meetings. The DRA staff added to the delay. It took three months or longer after board approval to issue 13 licenses. Considering that an application consists of a tuberculin clearance report, photograph, and a copy of the Certificate of Clinical Competence, verification of the applicant's qualifications is simple and should not require lengthy delays in the issuing of licenses.

**Invalid requirements and actions.** The DRA licensing staff has required the submission of documents which are not legally required, and the rules and regulations have not been amended to incorporate changes made to the licensing law. In some cases these actions have unfairly delayed the processing of applications.

**Copy of master's degree.** According to the rules and regulations, applicants with the Certificate of Clinical Competence are only required to submit a copy of the certificate. There is no requirement for a copy of the master's degree to accompany the certificate. The application form, however, states that a copy of the master's degree must be submitted. Several applications are being or were being held up by the licensing clerk at the time of our review because the applicants did not submit a copy of the master's degrees.

**ASHA membership.** A requirement in the rules and regulations that applicants who are holders of the Certificate of Clinical Competence show proof of current ASHA membership was eliminated in 1978. One applicant who is certified by ASHA applied for a license in April 1980. He was notified by DRA in June that he needed to show evidence of current ASHA membership. The DRA licensing staff was not aware of the change in the rules.

**Distribution of inaccurate rules and regulations.** The copy of rules and regulations given to applicants is inaccurate. Several changes are not reflected in the current rules and regulations. One of the original requirements for license, U.S. citizenship, was deleted in 1978 (Act 21, SLH 1978), and licenses must be renewed every odd-numbered year instead of every year (Act 118, SLH 1975). These changes are not in the rules and regulations given to prospective applicants.

### **Recommendations**

*We recommend as follows:*

1. *Chapter 468E, Hawaii Revised Statutes, be allowed to expire as scheduled on December 31, 1981.*

2. *If the Legislature should decide to reenact Chapter 468E, it consider the following:*

a. *Abolish the Board of Licensing of Speech Pathologists and Audiologists, and require anyone who wishes to practice speech pathology or audiology to register with the Department of Regulatory Agencies by presenting evidence of eligibility for meeting*

*the requirements of the American Speech—Language and Hearing Association for the Certificate of Clinical Competence.*

*b. Determine whether the inconsistent treatment of speech pathologists and audiologists employed by government is justifiable.*

*3. If the Board of Speech Pathologists and Audiologists is continued, the board do the following:*

*a. Process applications more expeditiously and monitor the staff's efficiency in processing applications.*

*b. Direct the staff to observe the rules and regulations regarding the documents that are required to be submitted with an application.*

*c. Amend the rules and regulations to conform to changes made in the statute.*



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APPENDIX

AFFECTED AGENCIES

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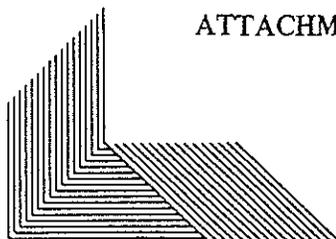
## AGENCY RESPONSE

The two principal agencies affected by this Sunset Evaluation Report are the Board of Speech Pathology and Audiology and the Department of Regulatory Agencies. On February 2, 1981, we transmitted this report to the affected agencies and invited them to respond to the recommendations in the report. A copy of the transmittal letter to the board is included as Attachment 1 of this appendix. The board's response is included as Attachment 2. The Department of Regulatory Agencies did not submit any written comments.

The Board of Speech Pathology and Audiology, in its response, disagrees with our finding that the practice of speech pathology and audiology poses little potential harm to the public and our recommendation that Chapter 468E, Hawaii Revised Statutes, be allowed to expire. With regard to speech pathologists and audiologists employed by government, a group currently excluded from regulation, we recommended that if Chapter 468E is reenacted, the Legislature should determine whether government employees should continue to be treated differently from practitioners in the private sector. The board, in its response, states that government-employed speech pathologists and audiologists should be included under the regulatory provisions of Chapter 468E.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR  
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CLINTON T. TANIMURA  
AUDITOR  
RALPH W. KONDO  
DEPUTY AUDITOR

COPY

February 2, 1981

Ms. Caroline Canubida, Chairperson  
Board of Speech Pathology and Audiology  
Department of Regulatory Agencies  
State of Hawaii  
Honolulu, Hawaii

Dear Ms. Canubida:

Enclosed are seven copies of our *Sunset Evaluation Report – Speech Pathologists and Audiologists*. We invite your response to the recommendations contained in the report. The Acting Director of the Department of Regulatory Agencies has also been furnished copies of the report and has been invited to respond to the recommendations.

The report has been submitted on this date to the Governor, the Director of Finance, and the State Legislature. Should you decide to respond to the recommendations, we ask for your cooperation in doing so by February 12, 1981. We will then transmit to the Legislature copies of any response received.

Thank you for your assistance and cooperation.

Sincerely,

Clinton T. Tanimura  
Legislative Auditor

Enclosures

ATTACHMENT 2

February 12, 1981

Mr. Clinton Tanimura  
Legislative Auditor  
The Office of the Auditor  
State of Hawaii  
465 S. King St., Rm. 500  
Honolulu, Hawaii 96813

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STATE OF HAWAII

Dear Mr. Tanimura:

The Board of Speech Pathology and Audiology appreciates the opportunity to respond to the Sunset Evaluation Report of February 2, 1981. We recognize that the review task was a difficult one; especially because speech pathology and audiology as a profession is relatively new when compared to other allied professions.

The Board is concerned, however, by the findings and recommendations of the Evaluation Report and feels that clarification is necessary.

Potential Harm to Consumers

The Board does not agree that the practice of speech pathology and audiology poses little harm to the public. Unqualified practitioners can do harm by useless costly treatment where medical intervention should have been obtained. Incompetent practitioners have been known to recommend hearing aids for persons who could have been helped by medical intervention instead.

The descriptions for speech pathologists and audiologists in the Evaluation Report are very general and do not cover the realm of services that they provide nor the complexity of the disorders they diagnose and treat. The speech pathologist plays an important role in differential diagnosis and often is instrumental in decisions regarding rehabilitative needs, medical intervention, and educational or vocational placement. The audiologist assists the physician in determining the site of lesion and need for medical or surgical intervention.

The treatment techniques of blowing, sucking and breathing mentioned on page 14 imply that they are done routinely with all types of disorders. Treatment methods vary depending on the nature and severity of the disorder, the age of the individual and prognosis. Individualized treatment plans are necessary and are altered according to the progression or regression of the disorder.

Medical authorization before purchase of a hearing aid is merely to insure that there is no medical contraindication for the hearing aid and does not mean that the audiologist works only under a physician's authorization.

A. No Documented Evidence of Harm

The absence of consumer complaints has no bearing on the quality of services being provided by speech pathologists and audiologists. It is possible that complaints have been made to the employing agency rather than to the Board; as in the government sector where licensure is not required. Individual Board members have received numerous verbal complaints since enactment of the chapter. However, the complainants have been reluctant to submit formal written complaints even when advised to do so. This has prevented the Board and Consumer Protection from taking any action. Lack of public awareness of the licensing law and the existence of the licensing Board and lack of a complaint form may be other deterrents to formal complaints being made.

B. Existing Controls in the Private Sector

Speech pathologists and audiologists do not generally work in conjunction with physicians. They may work on physician's referrals or they may use the physician to rule out medical contraindications, but they work independently and not under

physician's prescription. Speech pathologists employed in a public school setting are not required to work in conjunction with physicians as their purpose is mainly educationally oriented.

While it is true that nearly all hospitals and clinics may require ASHA's Certificate of Clinical Competence, other private sector employers such as United Cerebral Palsy, Head Start, Easter Seals Society, etc. may not be aware of the need for the certificate.

The Board is pleased that health insurance plans covering speech pathology and audiology services require ASHA's Certificate or its equivalent. However, the Board is concerned about the qualifications of the individual who determines for Medicaid and Medicare that a practitioner is certified by ASHA, meets the requirements for certification or is in the process of completing the Clinical Fellowship Year. The statement that Medicaid requires a physician's referral has no bearing on the competency of the practitioner. Since physicians may not have easy access to a list of certified or licensed speech pathologists and audiologists, it is not necessarily true that physicians refer their patients to those persons who are trained and competent.

#### Form and Extent of Regulation If Chapter 468E is Continued

The Board does not agree that the licensing requirements should be deleted. However, the Board does agree that the Chapter should be reviewed regarding the exclusion of government employees and consideration be given to applying the licensing requirement to all government employed speech pathologists and audiologists.

The Board has been criticized for not administering any examinations. Applicants are given the option to take an examination but have opted to take ASHA's National examination in fulfillment of their requirements for ASHA certification. This enables the individual to meet the requirements of certification by ASHA and licensure. Use of an examination other than the ASHA National examination would increase licensing costs and Board and DRA staff time unnecessarily.

#### Administration of the Law

The Board recognizes that there were several meetings where a quorum was not present for conducting of business. Nevertheless, the Board did fulfill the requirement of Chapter 468E which requires only two meetings a year. Requests to change meeting schedules to accommodate those Board members who were unable to attend meetings during working hours were denied by the Executive Secretary of the Board.

The Board was not aware of the DRA staff's invalid requirements and actions and was not aware of its role in directing or monitoring the staff's efficiency. The Board has never been requested to review license renewals although this is a function of the Board. The Board needs to be fully aware of its functions and powers in order to be effective.

#### Recommendations:

The Board of Speech Pathology and Audiology recommends:

1. The Hawaii Revised Statute Chapter 468E not be allowed to expire.
2. The Board of Speech Pathology and Audiology be retained and that a licensing process, rather than a registration process, be required.
3. If re-enacted, that Chapter 468E be revised to include all government employed speech pathologists and audiologists.
4. The Board's powers and functions be clearly delineated and enforced.

For the following reasons:

1. Licensure will legally define for the public who is qualified to practice as a speech pathologist or audiologist.

2. Licensure will define the minimum qualifications necessary for providing services to the public.
3. Qualified judgments are necessary to determine who is eligible for meeting the requirements for certification.
4. ASHA certification is voluntary.
5. Speech pathologists and audiologists operate independently without physician's prescription.

The communicatively handicapped citizens of Hawaii are our concern. We hope the Legislature will consider these citizens before making any decision to accept or reject the Sunset Evaluation Report.

Very truly yours,

Board of Speech Pathology and Audiology

*Carolyn U. Canubida*  
CAROLYN CANUBIDA  
Chairperson

CC:nra

cc: Dept. of Regulatory Agencies  
Dennis Sekine  
Gaile Sykes  
Vickie Peiler  
Susumu Awaya  
Gladys Park  
Gene Doo, M.D.