



FULL BOARD MEETING MINUTES

May 26-27, 2010

Department of Consumer Affairs
2005 Evergreen Street
"Hearing Room"
Sacramento, CA

Board Members Present

Lisa O'Connor, M.A., Chairperson
Alison Grimes, Au.D., Vice Chairperson
Sandra Danz, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Carol Murphy, M.A.
Rodney Diaz, M.D.
Robert Green, Au.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Don Chang, Legal Counsel
Kathi Burns, Staff
Cynthia Alameda, Staff
Yvonne Crawford, Staff
Debbie Newcomer, Staff
Lori Pinson, Staff

Board Members Absent

Monty Martin, M.A.

Guests Present

Tricia Hunter, Hearing Health Care Providers California
Cindy Peffers, Hearing Health Care Providers California
Jody Winzelberg, Director of Rehabilitative Services Lucile Packard Children's Hospital at Stanford
Marcia Raggio, California Academy of Audiology
Rebecca Binge, University of California, San Francisco
Robert Powell, California Speech-Language-Hearing Association
Kimberly Kirchmeyer, Deputy Director of Board Relations, Department of Consumer Affairs
Erica Kano, Assistant to the Deputy Director, Department of Consumer Affairs
Bob Holmgren, Office of Professions Exam Services, Department of Consumer Affairs

I. Call to Order

Chairperson O'Connor called the meeting to order at 4:05 p.m.

II. Introductions

Those in attendance introduced themselves.

III. Approval of Meeting Minutes for March 24-25, 2010 Hearing Aid Dispensers Committee Meeting, Audiology Practice Committee Meeting & Full Board Meeting Minutes

The Board discussed minor grammatical edits to the practice committee and full board meeting minutes.

M/S/C: Grimes/Manning

The Board voted to approve the meeting minutes as amended.

IV. Review of the Medi-Cal Optional Benefit Exclusions for Audiology, Speech-Language Pathology, and Hearing Aid Services

Ms. Del Mugnaio informed the Board that the 2010/2011 Budget Trailer Bill includes provisions for the Medi-Cal Optional Benefits and increases the amount of reimbursement for hearing aids to \$1,510 per fiscal year to persons authorized to dispense hearing aids. She stated that this was an unexpected increase, as it was reported by the Department of Health Care Services (DHCS) last fiscal year that there was discussion regarding eliminating the hearing aid benefit altogether for fiscal year 2010/2011.

Ms. Del Mugnaio distributed a copy of DHCS's response to the Board's questions regarding Medi-Cal benefit reductions, but explained that the response did not address all of the concerns raised by licensed providers; therefore, further written inquiry will be made. Additionally, Ms. Del Mugnaio requested that a Medi-Cal representative attend this Board meeting; however, Medi-Cal indicated that a representative was not available to attend the May meeting. Ms. Del Mugnaio will continue to extend the invitation until a representative becomes available.

V. Executive Officer's Report

Ms. Del Mugnaio referenced the written Executive Officer's Report distributed to the Board members and reviewed each discussion item with the Board as follows:

A. Budget Update

Ms. Del Mugnaio reviewed the expenditures of both the Speech-Language Pathology and Audiology and Hearing Aid Dispensers' budgets as of Month 9, ending on March 31, 2010. She explained the expenditure trends and projected reversions. Ms. Del Mugnaio reported on the Governor's mandatory 5% Personal Services savings which will require the Board to achieve a 5% salary savings for each budget. She stated that the Board will be able to meet the mandatory savings through staff retirement and benefit savings.

B. Proposed Regulations

- 1. Clean-up Package –Continuing Professional Development Amendments Related to Supervision Requirements and Board Approved Institution Regulations (California code of Regulations Sections – 1399.152(e), 1399.153.3 & 1399.160.4)**

Ms. Del Mugnaio reported that the regulation package was approved by the Office of Administrative Law on April 27, 2010, and filed with the Secretary of State. She stated that the regulations take effect May 27, 2010, and the final regulation language, along with updated FAQs, have been posted on the Board's website.

- 2. License renewal Requirements –Retroactive Fingerprinting – (Adopt California code of Regulations Section- 1399.157.3)**

Ms. Del Mugnaio stated that the Board adopted the proposed language, as included in the meeting packets at the March 24-25, 2010 meeting, and that staff has developed the necessary supporting

documentation for filing the proposed amendments and the Notice. She indicated that the proposal should be filed with the Office of Administrative law within the next several weeks.

3. Consider Regulatory Proposal Regarding Audiologists' Role in Cochlear Implant Fitting and Mapping (California Code of Regulations Section 1399.150.2-Definitions)

Ms. Del Mugnaio stated that the Board adopted the proposed language, as included in the meeting packets at the March 24-25, 2010 meeting. She indicated that staff has developed the necessary supporting documentation for filing the proposed amendments and that the proposal should be filed with the Office of Administrative Law within the next several weeks.

C. University of California Davis Medical Center Teleaudiology Service Project

Ms. Del Mugnaio reported that Anne Simon, an audiologist from University California Davis (UCD) Medical Center, notified her in late April regarding a proposed project of the UCD Telemedicine and ENT/Audiology departments where the UCD is developing teleaudiology services with private grant funding. Ms. Del Mugnaio stated that Ms. Simon explained the services that will be provided through telemedicine as diagnostic electrophysiologic hearing evaluations for infants in northern CA who did not pass the newborn hearing screening. The evaluations may include ABR, OAE, ASSR, otoscopy, and immittance. Ms. Del Mugnaio stated that the teleaudiology plan will include Ms. Simon operating the equipment at the UCD site while the patient will be with his/her parent at an established site in northern CA, accompanied by a site technician who is responsible for prepping the patient for the evaluation. Ms. Del Mugnaio indicated that she asked Ms. Simon to provide the Board a status update regarding the success of the project in terms of the number of patients being served and the benefits to the mode of service delivery.

D. 2010 Conference Reports

Ms. Del Mugnaio reported on her participation or future participation at the following conferences:

- Attended the American Academy of Audiology State Leaders Workshop on April 14, 2010 in San Diego and presented information on the Board's role in the legislative process. Jody Winzelberg, who also presented during the session, discussed the professional association's role in initiating legislation impacting the audiology profession. Several constituents from other state boards and associations attended the session, and the dialogue was informative.
- Attended the Hearing Health Care Providers Conference on May 15, 2010 in Anaheim and served on a panel with Tricia Hunter and Deane Manning and presented information regarding the merger of the Board with the Hearing Aid Dispensers Bureau, where a status update on proposed changes to the continuing education for the Dispensing Audiologist was discussed. Ms. Del Mugnaio provided an overview of several long-standing professional issues related to hearing aid dispensing, including Song-Beverly Amendments, Establishment Registration, entry-level training standards for hearing aid dispensers, and establishing a training manual for supervision of hearing aid trainees.
- Future conference attendance is planned for the California Academy of Audiology Conference Oct. 1, 2010 in San Francisco, to provide an update on the Board merger and current regulatory and legislative action.

E. Miscellaneous Operational Updates- Staff Relocation

Ms. Del Mugnaio reported the following:

- The staff previously employed by the Hearing Aid Dispensers Bureau relocated to the Board Office on May 6, 2010.
- All hearing aid dispensers' in-coming mail is now being received daily, as opposed to monthly.
- There is a one-time fingerprint requirement for Dispensing Audiologists.
- The Board has in-house cashiering capabilities, which will expedite cashiering functions for the hearing aid dispensers' renewals and applications.
- All complaint, enforcement, and probation handling occurs within the Board and is handled directly by Board staff.

**VI. Update from Board member Lisa O'Connor
Report from the California Speech-Language-Hearing Association State Conference-
April 15-18, 2010 Monterey**

Chairperson O'Connor reported that she attended the California Speech-Language-Hearing Association Conference in April in Monterey and indicated that the session was extremely educational for the conference participants. She stated that she presented information on the Board merger and discussed the Board's position on pending legislative issues. Chairperson O'Connor stated that the participants discussed scope of practice issues facing the various boards.

The Board re-ordered the agenda to take up the closed session deliberations.

X. Closed Session (pursuant to Government Code Section 11126 Subsection (c)(3)-Proposed Decisions/Stipulations/Other APA Enforcement Actions – To Deliberate Petition for Early Termination of Probation and Other Disciplinary Matters

The Board convened into closed session at 4:42 p.m. to deliberate on proposed stipulations/decisions and a Petition for Early Termination of Probation.

The Board reconvened into open session at 5:15 p.m.

Chairperson O'Connor adjourned the meeting on May 26, 2010 at 5:25 p.m.

VII. Call to Order

Chairperson O'Connor called the continuation of the full Board meeting to order at 9:05 a.m.

VIII. Introductions

Those in attendance introduced themselves.

IX. Hearing on Petition for Early Termination of Probation- Kellie Henkel, SP 15547

A hearing on the matter of the Petition for Early Termination of Probation of Kellie Henkel was held.

The Board convened into closed session at 10:10 a.m. to deliberate on the Petition for Early Termination of Probation for Kellie Henkel, SP 15547

The Board reconvened into open session at 11:15 a.m.

X. Practice Committee Reports

A. Hearing Aid Dispensers Committee Report and Recommendations for Proposed Regulatory Amendments Continuing Professional Development Provisions, and Modifications to the Song Beverly Consumer Warranty Act

Ms. Del Mugnaio provided an overview of the matters discussed at the Hearing Aid Dispensers Committee Meeting and outlined the recommendations of the Committee before the Board (included under the Hearing Aid Dispensers Committee Meeting Minutes).

M/S.C: Murphy/Danz

The Board voted to approve the changes to the CE Proposal as follows:

Increase hearing aid dispensers continuing education (CE) hours to 12 hours annually, of which three hours may be earned in related courses and an additional three hours may be from self-study courses; exclude courses related to personal finances, business matters, marketing and sales, increased profitability and office operations that are not for the benefit of the consumer; specify time frames for approval of CE applications within 30 days as opposed to 45 days; and change “where content focus is on equipment, devices, or other products of a particular publisher, company, or corporation” to reflect just “corporation or company.”

M/S/C Manning/Danz

The Board voted to direct Mr. Green and Mr. Manning to prepare proposed language related to a return and refund policy for hearing aids to replace Song-Beverly provisions. The language is to be provided to the Board’s Legal Counsel and reported upon at the July 26 meeting.

M/S/C: Grimes/Green

The Board voted to accept the report and recommendations from the Hearing Aid Dispensers Committee

B. Audiology Practice Committee Report and Recommendations for Proposed Regulatory Amendments Regarding Audiology Aides, Renewal Fees, and Continuing Professional Development Provisions

Ms. Grimes provided an overview of the issues discussed at the Audiology Practice Committee meeting and outlined the recommendations of the Committee before the Board (included under the Audiology Practice Committee Meeting Minutes).

M/S/C: Grimes/Green

The Board voted to approve the proposed regulatory amendments regarding the license renewal fee and annual renewal cycle and the continuing professional development requirements for audiologists authorized to dispense hearing aids

M/S/C: Diaz/Danz

The Board voted to accept the report recommendations of the Audiology Practice Committee.

XI. Discussion Regarding English Language Competency as a Prerequisite to Licensure and Report from Carol Murphy on Experience Participating in the Standard Setting Meeting for the Test of English for International Communication (TOEIC) Examination

Ms. Murphy provided background on the Board's efforts to establish entry-level licensing standards and evaluation processes for internationally trained applicants. She reported that one of the avenues the Board has been researching is establishing an English language competency prerequisite to licensure for internationally trained applicants. Ms. Murphy shared her experience participating in the standard setting meeting for the TOEIC exam.

The Board discussed the standard-setting process and the manner within which passing scores are established. There was concern expressed that the identified passing scores for the TOEIC may not be set high enough to identify the appropriate English language competency for entry-level speech-language pathologists.

Ms. Murphy indicated that there is not a federal passing score established for the speaking and writing portions of the TOEIC and that the recent standard setting study conducted by ETS should result in an identified federal passing score.

Discussion ensued, and the Board requested that a representative from the Educational Testing Service attend the July 26, 2010 Board meeting to provide further information regarding the examination.

XII. Proposed Legislation/Regulation Amendments

A. Omnibus Submission - Amendments to AB 1535/ Amendments to Business and Professions Code Section 3365.5 – Conditions for Referral for Dispensing Licensees

Ms. Del Mugnaio informed the Board that the omnibus provisions would be amended into Senate Bill 1489, which will include both the amendments to the merger provisions and the conditions for referral for dispensing licensees, as discussed at the March 24-25, 2010 Board meeting.

Discussion ensued and it was decided that the Board address the issue of cerumen removal by an audiologist at a future board meeting.

B. Consumer Protection Enforcement Initiative (CPEI) – Consideration of regulatory amendments for disciplinary matters and to define additional bases of unprofessional conduct (provisions formerly contained in Senate Bill 1111)

Ms. Del Mugnaio explained that SB 1111 did not pass out of the Policy Committee Hearing in April; however, the Department has identified several provisions of the bill that can be implemented via regulation. Ms. Del Mugnaio explained the provisions regarding unprofessional conduct violations, and the Board agreed to move forward with a regulatory hearing.

M/S/C Grimes/Green

The Board voted that, after legal review, the language be noticed and a regulatory hearing be held.

Kimberly Kirchmeyer updated the Board on the status of CPEI. She explained that the Budget Change Proposal (BCP), authorizing the hiring of additional personnel and IT improvements, passed out of the Assembly; however, it moved through the Senate with a reduction of resources from 138 positions to 70. Therefore, the BCP will move to a Conference Committee, and the Department is hopeful that all 138 positions will be restored throughout the Department's boards and bureaus.

C. Assembly Bill 2072 – Mendoza. Hearing Screenings; Resources and Services

Ms. Del Mugnaio explained that this bill would require audiologists or other related professionals to provide written or electronic information on specified communication options for children with a diagnosed hearing loss to parents of a newborn or infant who failed a newborn hearing screening. The bill requires that such information be provided at the follow-up appointment with an audiologist and by a local provider for the Early Start Program upon initial contact with the parents of a newborn or infant newly diagnosed with a hearing loss. It would also specify that neither the state nor an Early Start Program provider shall incur the cost of implementing this bill. Ms. Del Mugnaio stated that the bill has been referred to the Committee on Health and is scheduled for hearing on June 16, 2010.

Ms. Winzelberg explained that the California Academy of Audiology has been working with the sponsor of the bill and the author's office on technical amendments, one of which would be an amendment that would alleviate audiologists or the other providers from assuming the cost of mass producing the resource materials. She stated that the California Medical Association expressed concern with the language of AB 2072, specifically related to the requirement that such resource materials be provided by "other related professionals," as there is no definition as to which professionals would be impacted by the mandate.

The Board discussed concerns surrounding the type and consistency of the resources materials that would be provided to families of hearing impaired children and the professional experts who would be responsible for developing the materials.

M/S/C: Danz/Grimes

The Board voted that a letter of support for AB 2072 be forwarded to the author's office with suggestions regarding the content, uniformity, and timing of dissemination of the materials to be provided to parents of infants diagnosed with a hearing loss.

D. Senate Bill 1172 Negrete-McLeod – Regulation Boards/Diversion Programs – Review Revised Disciplinary Guidelines Regarding Substance-Abusing Healing Arts Licensees and Related Amendments

Ms. Del Mugnaio presented the revised disciplinary guidelines that include the Uniform Standards of Substance Abuse and asked that the members review the language carefully and provide any changes or suggestions to Board staff. Ms. Del Mugnaio will bring the improved language to the Board for adoption at its next meeting.

M/S/C: Grimes/Green

The Board took a support position on SB 1172 (Negrete-McLeod).

E. Legislation of Interest to the Board

Senate Bill 1282 (Steinberg) – Applied Behavior Analysis Services

Ms. Del Mugnaio reported that Senator Steinberg's office is submitting amendments to the bill to pare down the provisions so that the language will recognize the qualifying standards for behavioral analysts as a profession with state and national certification, not licensure. She stated that the intent of the bill is to raise the public's awareness of the state/national professional standards and to provide for title protection for individuals who are certified as behavioral analysts. The provisions would deem those who represent themselves as behavioral analysts without the appropriate certification to be engaging in unfair business practices.

Chairperson O'Connor expressed concern regarding SB 1282, as she has encountered many instances where behavioral analysts are being employed by regional centers to provide assessment and intervention services in communication or language disorders. She is concerned that legislative recognition may lead to confusion in terms of the professional responsibility of speech-language pathologists and behavioral analysts. Chairperson O'Connor commented that the education and training of behavioral analysts does not prepare an individual to serve the complex needs of a child with speech and language disorders.

Ms. Del Mugnaio was asked to watch the progress of this bill and to schedule a conference call with the Board in order to consider taking a position on the bill should the provisions evolve into a scope of practice provision and/or state regulatory measure where behavioral analysts would be a licensed professional practice in the state.

AJR 34- Over-the-Counter Hearing Aid Sales

Ms. Del Mugnaio reported that the resolution urges the federal government to authorize the sale of over-the-counter hearing aids.

There has been no activity on this bill since the last Board meeting.

AJR 31 Special Education Funding

Ms. Del Mugnaio stated that AJR 31 addresses the need for the federal government to generate and allocate sufficient funds to special education and encourages the Federal Government to enact HR 1102 or other special education funding bills pending before Congress in order to fully fund special education.

The Board took a support position on this bill at the last Board meeting. It is currently moving through the Legislative process with full support.

XIII. Discussion Regarding the Licensing Examination Validation Process and Applicable Mandates – Bob Holmgren, Manager, Office of Professional Examination Services, Department of Consumer Affairs

Bob Holmgren from the Office of Professions Exam Services (OPES) gave a brief explanation of the Examination Validation Study conducted in 2007 for the Hearing Aid Dispensers Bureau on both the written and practical hearing aid dispensers examinations. He also provided information about the written and practical examination workshops and the examination administrative processes.

The Board inquired about the possibility of employing subject matter experts (SMEs) to observe the practical examination in progress, in terms of observing the administration and scoring of the examination.

Mr. Holmgren stated that security is a very high priority for all aspects of the examination process, from workshops to the examination administration and execution, and that Ms. Del Mugnaio could authorize experts who are not currently involved with the examination process to observe the practical examination after signing pertinent confidentiality agreements.

Ms. Del Mugnaio stated that it may be beneficial for the SMEs to consult with the examiners to determine how the specific decisions are made regarding the scoring of an examination participant. Mr. Holmgren stated that each examiner's decision is independent and should not be compromised by another expert's opinions or judgments.

Ms. Newcomer, Board Staff, stated that the examiners do not know if the candidate passes or fails a particular station, as the decision is not made by the examiners, but by way of a cumulative score of the entire examination.

The examiner orientation/training was briefly discussed and an explanation of how the examiners score each candidate and the copious notes the examiners keep in order to justify the scoring of a particular candidate.

Mr. Holmgren thought that monitoring by OPES and SMEs could possibly help with the exam process. It was decided that no more than 3 or 4 SMEs would be needed.

The Board inquired about the number of times a validation process had been performed by OPES on the practical examination. Mr. Holmgren stated that, while it had not been done very often over the past several years, the consistency of the scoring of the examiners was very high, and that this rate of consistency is one measure of examination validation.

Ms. Del Mugnaio suggested that the San Diego Exam on October 23, 2010 be observed, if possible, and stated that she will work with Mr. Holmgren to make arrangements for the observation by the SMEs, which will be comprised of both hearing aid dispensers and audiologists.

Public member Tricia Hunter stated that the conversation regarding the Hearing Aid Dispensers examinations and the issues regarding examination relevance should have been held in the Hearing Aid Dispensers Committee as the agenda item as noticed was not specific to the Hearing Aid Dispensers written or practical examinations.

XIV. Licensing / Enforcement/Examination Statistical Data

The Board reviewed and discussed the statistics provided regarding licensing, enforcement, and examination activity.

XV. Public Comment on Items Not on the Agenda/Future Agenda Items

Ms. Grimes commented on the new requirement that Medical Doctors (MDs) must now post information regarding the entity which licenses MDs and how to contact the licensing board. She asked what prompted the new requirement.

Chairperson O'Connor discussed the practicality of using telepractice techniques to provide supervision to assistants in rural areas via e-supervision, where the supervision is provided via telecast. She requested that Ms. Del Mugnaio review the Speech-Language Pathology Assistant regulations to determine if such supervision may be deemed direct supervision.

Ms. Del Mugnaio stated that California State University San Marcos is now accredited through the Council on Academic Accreditation and will begin enrolling students in the Masters Speech-Language Pathology Program in September 2010. There is no undergraduate component to this program.

Ms. Del Mugnaio announced that future agenda items shall include items identified throughout the meeting: new issues of licensed audiologists and hearing aid dispensers' participation in discount hearing service programs and issues with Business and Professions Code section 650 regarding prohibited referrals; and, entry-level licensing standards for 4th year audiology doctoral students completing the required professional experience.

**XVI. Announcements – Schedule Future 2010 Board Meetings – July 26, 2010
Sacramento – Board Member Training Forum July 27, 2010 Sacramento, October
21-22, 2010 San Diego**

Ms. Del Mugnaio announced that the next Board meeting scheduled for July 26, 2010 in Sacramento, is a one day meeting held in conjunction with several other Department of Consumer Affairs boards. The following meeting will be held in San Diego on October 21-22, 2010.

The Board chose a tentative subsequent meeting date of January 27-28, 2011 in San Francisco.

XVII. Adjournment

Chairperson O'Connor adjourned the meeting at 3:22 p.m.