



FULL BOARD MEETING MINUTES

May 7, 2009

Department of Consumer Affairs
2005 Evergreen Street
"Hearing Room"
Sacramento, CA
(916) 263-2666

Board Members Present

Lisa O'Connor, M.A., Chairperson
Alison Grimes, Au.D.
Naomi Smith, Au.D.
Robert Hanyak, Au.D.
Carol Murphy, M.A.
Jennifer Hancock, M.A.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Cynthia Alameda, Staff Analyst
Lori Pinson, Staff Analyst
George Ritter, Legal Counsel

Board Members Absent

Paul Donald, M.D.

Guests Present

Dennis Van Vliet, Audiologist
Clay Whirehead
Jack Lynch
Alexandra Feinberg, Speech-Language Pathologist
Jody Winzelberg, California Academy of Audiology
Katherine Demos, Department of Consumer Affairs
Robert Powell, California Speech-Language-Hearing Association

I. Call to Order

Chairperson O'Connor called the meeting to order at 1:20 p.m.

II. Introductions

Those in attendance introduced themselves.

III. Approval of Meeting Minutes for February 13, 2009 Full Board Meeting Minutes

The Board discussed minor grammatical edits to the meeting minutes.

M/S/C: Hanyak/Murphy

The Board voted to approve the February 13, 2009 meeting minutes as amended.

IV. Executive Officer's Report (Annemarie Del Mugnaio)

Ms. Del Mugnaio referenced the written Executive Officer's Report as included in the meeting packets and reviewed each item.

A. Budget Update

Ms. Del Mugnaio referenced the budget expenditure and projection report as of March 30, 2009 for FY 08/09. She stated that there is a considerable reversion (savings) as noted in the projection as the projected reversion takes into account the 10% salary reduction for all staff as a result of the Governor's Executive Order S-16-08 and the mandatory 2 days per month furlough and reflects a much lower expenditure in enforcement than what was originally anticipated. She stated that despite the fact that the Board has 12 cases pending (at various stages) at the Attorney General's Office to date, the billing reports do not reflect the workload hours and expenditures on such cases. She explained that it could be that the prioritization within the Attorney General's Office in terms of balancing workload and focusing on the most egregious cases has delayed some action on SLPAB cases. Ms. Del Mugnaio indicated that the Board is pursuing a budgetary request to provide funding for a "shared" probation monitoring work force that would provide probation monitoring services for the SLPAB, the Board of Podiatric Medicine, and Physician Assistants Committee. The probation team would provide monitoring services for each of the agencies' probationers and would report directly to the respective Board's enforcement coordinators on probationary compliance status. This approach serves the SLPAB well in terms of enabling our Board to focus more attention on probation monitoring without having to fund a new position at the Board. The initial cost to the Board would be approximately \$38,000 and \$34,000 on-going and could be supported without the need for an impending fee increase to licensees.

B. Review/Status and Implementation Issues of 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 stated that the regulation package was been filed with the Office of Administrative Law and the 45 day public comment period closes on July 26, 2009.

2. License Renewal Requirements- Retroactive Fingerprinting – (Adopt California Code of Regulations Section- 1399.157.3)

Ms. Del Mugnaio stated that the retro-active fingerprint language adopted at the February 13, 2009 meeting would have instituted a mandatory re-fingerprinting process as a condition of license renewal for all licensees who were issued their initial license prior to December 31, 1999. She stated that at February meeting, information was presented regarding the impetus for the retroactive fingerprinting which stemmed from negative publicity surrounding licensed health care practitioners, who presumably had never undergone the criminal history clearance at the time of licensure application, and subsequently had a questionable record. It was also explained that the integrity of the Department of Justice (DOJ) records prior to 1999, when Livescan was introduced, was unreliable and as such, it would be prudent to require all licenses licensed after December 1999 to be reprinted. Ms. Del Mugnaio stated that after a further investigation the practical application of such regulations, it appears the implementation would be administratively cumbersome on many fronts: notifying all the licensees in advance, tracking fingerprint submissions, amending renewal form and licensing database information, etc. She stated that a more reasonable and practical yet responsible approach may be to cross-reference DOJ's database with the Board's licensees and determine those licensees (if any) who do not have a clearance on record with DOJ. The Board would then request only those identified individuals be reprinted and provide a reasonable timeframe within which to complete the process (not associated with license renewal). Ms. Del Mugnaio stated that the regulatory language included in the packets would

authorize the Board to require retroactive fingerprinting of said identified licensees and would provide for administrative disciplinary consequences for failure to comply.

The Board discussed the new proposed language and agreed the modified approach would be more practical from an administrative perspective and yet accomplish the public protection intent.

M/S/C: Hanyak/Hancock

The Board approved the regulatory proposal to adopt California Code of Regulations Section 1399.157.3 as proposed.

C. Examination Validation Study (Audiology)– Survey Results – May 7-8, 2009 Workshop Report

Ms. Del Mugnaio stated that the second audiology examination validation workshop is being held on May 7-8, 2009 in Sacramento and will be facilitated by Nancy Linn from the Office of Professional Examination Services. She referenced the demographics and practice analysis survey as included in the meeting packets and stated that the survey was disseminated to all licensed audiologists in the state. The Board received approximately 320 responses (20%) response rate which will be examined and analyzed by seven subject matter experts at the workshop. A final validation report will be prepared by the Office of Professional Examination Services and presented before the Board at the next meeting. Ms. Del Mugnaio commented that the results of the demographics survey may be helpful in other areas of regulation as the Board may be to assess future workforce needs based on the responses to the questions surrounding age, region, practice specialty areas, and professional experience.

D. Update on Board Action Items

1. Status of Communications with the Department of Developmental Services Regarding the Use of Behaviorists in Regional Centers

Ms. Del Mugnaio reported that the Department of Developmental Services (DDS) responded to the Board's letter of concern sent on October 28, 2008 regarding the most recent complaint received by the Board involving the inappropriate use of behaviorists to provide speech and language therapy to children receiving services through Regional Centers and subsequently responded to the Board February 18, 2009. She stated that essentially, the letter from DDS suggests that such "language based treatment" by behaviorists may be an acceptable behavioral intervention and therefore, more of an overlap issue as opposed to a scope of practice violation. DDS suggests the Board communicate their concerns with the National Behavior Analyst Certification Board (BACB) of which the Board has done in the past and received some feedback wherein the BACB offered to provide education to its membership on professional practice parameters.

Vice Chairperson Grimes stated that deaf and hard of hearing children do not receive services through Regional Centers by an early interventionist provider who has specific knowledge and skills in the area of hearing impairment and deafness and thus, are not receiving appropriate services. Chairperson Grimes stated that there have been some cases where parents of these children are requesting Fair Hearings under the Department of Education due to inadequate services through the Regional Centers.

Chairperson O'Connor commented that she's aware of such abuses in terms of unskilled providers within Regional Centers providing communication disorder therapy that is not appropriate or

beneficial to treat the child's identified language or hearing impairment. She stated that the Board needs to encourage parents to elevate their concerns to DDS and to the Department of Education.

2. Update on SLPAB Website

Ms. Del Mugnaio announced the posting of the legal opinion on the AARP/HearUSA provider arrangement and under the "Consumer Link," the new resource document regarding Information for providers under the Early Start Program.

E. Miscellaneous- SLPAB member appointments/ Department of Consumer Affairs 2009/2010 Board/Bureau Summit Plans/ DCA's Take Charge California Campaign/ Governor Schwarzenegger's Allied Health Care Initiative

Ms. Del Mugnaio reported that no new board member appointments or reappointments have been made. However, she indicated that the Governor's Office is aware of the need and is considering potential candidates.

Ms. Del Mugnaio announced the Department of Consumer Affairs Take Charge Campaign and provided copies of the new campaign on the Department's website which includes educating the public on the importance of consumers making smart/informed choices about service providers and understanding the benefit of licensing oversight.

Ms. Del Mugnaio reported that she attended a health care summit on April 15, 2009 at the Department which was attended by all health care boards and their executive offices and board officers. She reported that the topics included workforce development challenges, disparities of care in underserved communities, and impaired health professionals and self care. Ms. Del Mugnaio indicated that she attended the workforce development challenges which focused on current and future shortages and the impact of the current economy. She stated that the information provided by the Office of Statewide Health Planning and Development on employment development and trends in workforce demands for health care practitioners was valuable information. Ms. Del Mugnaio reported that pertinent information was shared amongst the group on recruitment of students to specific health care fields through junior high and high school job fairs and other means to secure grants to off-set training expenses.

Ms. Del Mugnaio provided information on the Governor Schwarzenegger's Allied Health Initiative which is a public-private partnership of resources (\$32 million- over a three year period) dedicated to improving access to California's health care workforce. The funding will be directed toward health care training and employment programs/needs. She referenced information included in the meeting packets and stated that the Board should investigate ways in which such funding may be available for speech-language pathology and audiology training.

V. Update from Board Member Lisa O'Connor

A. Credentialing Reform

Chairperson O'Connor indicated that the Board is awaiting the filing of the proposed regulations by the Commission on Teacher Credentialing to adopt the new proposed Communication Disorders Credential in order for the Board to submit official comments on the regulations with regard to concern in overlap of professional responsibility and related confusion the exists in the proposed scope of responsibility and training standards for the new credential with regard to the treatment of language disorders.

B. National Council of State Boards of Examiners in Speech-Language Pathology and Audiology – Conference 2009- New Orleans, LA September 10-12, 2009

Chairperson O'Connor announced the next schedule conference for the National Council of State Boards of Examiners in Speech-Language Pathology and Audiology (NCSB) and indicated that she as the President-Elect was responsible for planning the conference agenda. She also stated that Ms. Del Mugnaio, who was a newly appointment board member of the NCSB had to resign due to budget restrictions on out-of-state travel for state administrators. Chairperson O'Connor indicated that to her knowledge, Ms. Del Mugnaio was the first executive director to be appointed to the NCSB and expressed her disappointment that Ms. Del Mugnaio was unable to continue her service to the NCSB as she felt her input and presence on the NCSB was vital to the growth of the organization. Chairperson O'Connor reported that Vice Chairperson Grimes has been nominated to serve on the NCSB and that the results of the votes on nominees would be announced at the Corporate meeting of the NCSB at the September conference.

VI. Practice Committee Reports

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

M/S/C: Hanyak/Smith

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

Chairperson O'Connor summarized the discussion from the Speech-Language Pathology Practice Committee Meeting (included under the Speech-Language Pathology Practice Committee Meeting Minutes).

M/S/C: Smith/Hancock

The Board approved the report of the Speech-Language Pathology Practice Committee.

VII. Proposed Legislation

Ms. Del Mugnaio referenced the bill analysis summary as included in the written Executive Officer's report and reviewed each bill with the Board.

A. Senate Bill 389 (Negrete McLeod) Fingerprinting Authority

Ms. Del Mugnaio indicated that the Board is already included in Business and Professions Code Section 144 which requires all applicants to submit fingerprints as a condition of licensure. However, she indicated that she is tracking the bill as it has relevant provisions that may impact the Board's re-fingerprinting regulations.

The following summary was included in written form:

This bill would make that fingerprinting requirement applicable to the Dental Board of California, the Dental Hygiene Committee of California, the Professional Fiduciaries Bureau, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic

Examiners and requires applicants for a license and, as of January 1, 2011, licensees who have not previously submitted fingerprints, or for whom a record of the submission of fingerprints no longer exists, to successfully complete a state and federal level criminal offender record information search, as specified. The bill would require licensees to certify compliance with that requirement and would subject a licensee to disciplinary action for making a false certification. The bill would also require a licensee to, as a condition of renewal of the license, notify the board on the license renewal form if he or she has been convicted, as defined, of a felony or misdemeanor since his or her last renewal, or if this is the licensee's first renewal, since the initial license was issued.

B. Senate Bill 638 (Negrete McLeod) Regulatory Boards/Operations

The following summary was included in written form:

This bill includes several similar provisions as SB 963, 2008, but does not enforce the same operational mandates on the Boards in terms of “ex-parte” communications etc. Specifically, SB 638 revises and the sunset review law to provide that when a board becomes inoperative the board's members are removed, as specified, and a successor board will be appointed with the same rights, duties, and membership parameters as the board it is succeeding. The bill:

- Deletes the requirement that a board be designated as a bureau under DCA if it sunsets.
- Revises the sunset review law to strike out references to the Joint Committee and instead authorize the appropriate standing policy committees of the Legislature to carry out the sunset review functions.
- Terminates the terms of office of each board member and bureau chief within the Department upon an unspecified date, and authorizes successor board members and bureau chiefs to be appointed, as specified.
- Requires all boards and bureaus, with the assistance of DCA, to prepare an analysis and submit a report to the appropriate policy committees of the Legislature no later than 22 months before the board's membership or the bureau chief shall be terminated. The analysis and report shall include, at a minimum, the following: Complaint, investigation and disciplinary action information. Complaint, investigation and disciplinary action timeframes and costs. Average time between final complaint disposition and notice to the complainant. Description of enforcement priorities. Brief description of the fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component. Licensing examination information, including costs, ownership, the last assessment of relevancy and validity, the passage rate for four years and areas examined. Any sponsored legislation and description of its budget change proposals. Assessment of the sufficiency of the licensing fees. Description of improvements over the prior four years of the enforcement, public disclosure, public accessibility, including Web casts of proceedings, and fiscal condition. Provides that if an annual report contains the required information, that annual report may be submitted to the committees and posted on the board's or bureau's Internet Website.
- Further authorizes the appropriate policy committees of the Legislature to carry out certain sunset review processes.

Ms. Del Mugnaio reported that she would continue to track the bill and indicated that to date there were was no opposition on record for SB 638.

C. Assembly Bill 613 (Beall) Medi-Cal Treatment Authorization Requests

Ms. Del Mugnaio stated that AB 613 was amended on May 5, 2009 and mandates changes to the TAR process which is one of the many procedural complaints audiologists who work within the California

Childrens Services system raised during our discussions with the Department of Health Care Services and the Electronic Data Systems.

The following summary was provided in written form:

Under existing law, one of the utilization controls to which services are subject under the Medi-Cal program is the treatment authorization request (TAR) process, which is approval by a department consultant of a specified service in advance of the rendering of that service based upon a determination of medical necessity. Existing law requires the department to pursue means to improve and streamline the TAR process. This bill would require the department, in pursuing means to improve and streamline the TAR process, to do so in specified ways, including performing a cost-benefit analysis for each procedure requiring a TAR and reducing the number of TARs required. Existing law specifies the number of days within which certain TARs are required to be authorized. This bill would reduce the number of days within which these TARs shall be authorized.

Vice Chairperson Grimes inquired about the new excluded optional benefit reduction through Medi-Cal which eliminates many audiological services, but which would still cover a cochlear implant surgery. She expressed her concern regarding the consumer protection issues surrounding authorizing a surgery for hearing impairment, but then not providing authorized services for any pre or post operative audiology care.

Ms. Winzelberg also expressed concerns regarding the confusion over the newly announced reduction in Medi-Cal benefits for audiology services surrounding hearing aid evaluations, ear mold impressions, and other audiology related services.

The Board requested Ms. Del Mugnaio to contact the Department of Health Care Services and inquire about the specific terms and exclusions of the Medi-Cal optional benefits as related to audiology and speech-language pathology services which is scheduled to take effect on July 1, 2009.

D. Legislation of Interest to the Board

Ms. Del Mugnaio presented information on Senate Bill 43 by Senator Alquist regarding collecting data from licensed practitioners on cultural and linguistic competency. She stated that most boards do not currently have a mechanism to collect such data and therefore, the bill would create a fiscal impact for individual boards.

The following summary was provided in written form:

Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Existing law establishes the Task Force on Culturally and Linguistically Competent Physicians and Dentists and assigns the task force various duties, including, among other things, identifying the key cultural elements necessary to meet cultural competency. Existing law authorizes physicians and surgeons, dentists, and dental auxiliaries to report information regarding their cultural background and foreign language proficiency to their respective licensing boards and requires those boards to collect that information, as specified. This bill would authorize the healing arts boards, as defined, to collect information regarding the cultural and linguistic competency of persons licensed, certified, registered, or otherwise subject to regulation by those boards. The bill would require that this information be used *only* for the purpose of meeting the cultural and linguistic concerns of the state's diverse patient population. Existing law requires the Office of Statewide Health Planning and development to establish a health care workforce clearinghouse to serve as the central source of health care workforce and educational data in the state *and requires the office to work with specified*

entities to collect that data. Existing law requires the Director of the Employment Development Department to permit the use of information in his or her possession for specified purposes. This bill would additionally require the director to permit the use of that information in order to enable the Office of Statewide Health Planning and Development to obtain specified data for the health care workforce clearinghouse. *The bill would specify that personally identifiable information obtained by that office for the health care workforce clearinghouse is confidential and not subject to public inspection.*

The Board requested Ms. Del Mugnaio to track the bill.

VIII. Licensing/Enforcement Statistical Data

The Board reviewed the statistical data as provided by staff.

IX. Closed Session (pursuant to Government Code Subsections 11126(a)(1) & (c)(3) Ratification of Annemarie Del Mugnaio's Executive Officer Appointment

The Board convened into closed session to discuss the ratification of Annemarie Del Mugnaio's Executive Officer Appointment.

The Board reconvened into open session and announced the ratification of Annemarie Del Mugnaio's Executive Officer Appointment from Interim to Permanent.

X. Public Comment on Items Not on the Agenda

No further public comments were presented.

XI. Announcements- Next Board Meeting/Strategic Planning Session- August 20-21, 2009 Sacramento

Chairperson O'Connor announced the next meeting will be held in Orange County instead of Sacramento on August 20-21, 2009 and that a strategic planning session will be held in conjunction with the August Board meeting.

XII. Adjournment

Chairperson O'Connor adjourned the meeting at 3:00 p.m.