

SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY BOARD

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FULL BOARD MEETING MINUTES

November 5, 2009

Long Beach Memorial Medical Center
2801 Atlantic Avenue
"Conference Room E"
Long Beach, CA
(562) 933-2000

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.
Monty Martin, M.A.

Staff Present

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

Board Members Absent

Paul Donald, M.D.

Guests Present

Dennis Van Vliet, California Academy of Audiology
Tricia Hunter, Hearing Health Care Providers California
Cindy Peffers, Hearing Health Care Providers California
Douglas Lee, Deputy Attorney General, Office of the Attorney General

I. Call to Order

Chairperson O'Connor called the meeting to order at 9:20 a.m.

II. Introductions

Those in attendance introduced themselves.

III. Approval of Meeting Minutes for August 20, 2009 Audiology Practice Committee Meeting, Speech-Language Pathology 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/Hancock

The Board voted to approve the meeting minutes as amended.

IV. Closed Session (pursuant to Government Code Subsections (c)(3)- Proposed Amended Stipulation In the Matter of the Accusation Against Guadalupe Garcia, AU 685

The Board convened into closed session to discuss the proposed stipulation in the matter of the Accusation against Guadalupe Garcia, AU 685.

The Board reconvened into open session.

V. Status of Audit Response from San Joaquin Delta Speech-Language Pathology Assistant Program

Ms. Susan Kidwell, Speech-Language Pathology Assistant Program Director of the San Joaquin Delta Program, addressed the Board and referenced the Site Review Findings response she prepared for the Board dated October 19, 2009. She stated that the response was directed to address the outstanding deficiencies noted in the Site Review Findings Report of the Board dated April 16, 2009, which outlined the areas of concern: dedicated budget resources for the SLPA program and the proposed teach-out plan for program completion for the students attending classes at the Santa Rosa Junior College satellite campus. Ms. Kidwell explained that she also covered information regarding field-work site agency agreements and student placements.

The Board reviewed the information as submitted by Ms. Kidwell and determined that further detailed information must be provided to the Board in order for the Board to reach a determination on the status of Board-approval of the program. The Board requested that Ms. Kidwell submit the following:

- Provide an explanation of how the allocated resources for general supplies are sufficient to fund the necessary teaching materials and include a letter from the Dean confirming that adequate administrative support and resources will be directed to the program in order to preserve quality training for all enrolled students.
- Provide a status report regarding the implemented teach-out of students currently enrolled at the Santa Rosa Junior College location and provide further information on the availability and/or need for distance learning beyond the identified 2011 date.
- Provide clarifying information regarding the manner in which San Joaquin Delta vets the clinical field-work sites for student placements, including information on the process for how sites are selected and how student placements are arranged with contracting field-work sites.

M/S/C: Murphy/Grimes

The Board voted to defer the decision regarding the approval status of the San Joaquin Delta Speech-Language Pathology Assistant Program until further information is submitted by the college relative to the process for vetting its field work sites and more detailed information on budget allocation for administration of the program.

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

A. Budget Update

Ms. Del Mugnaio referenced the budget expenditure and projection report as of September 30, 2009, as included in the meeting packets. She noted that there is a 15% projected target reduction in Operating Expenses and Equipment as ordered by the Governor. She explained that the target reduction in budget expenses of \$33, 594 will reduce the Board's overall spending appropriation and

will necessitate limiting expenses in areas such as travel, printing, postage, or other line items where savings may be available. Ms. Del Mugnaio explained that one area within which the Board may save money is in meeting room expenses by locating no-charge meeting room facilities. She indicated that several individuals have notified her about no-cost meeting facilities and she will explore such options for all meetings held in 2010. Ms. Del Mugnaio reported that the Board did receive an augmentation of \$22,000 for its Attorney General budget for enforcement costs as a result of a budget change proposal approved last year. Ms. Del Mugnaio also reported that the new enforcement reform efforts and related resource needs will impact both the Speech-Language Pathology and Audiology Board budget and the Hearing Aid Dispensing subaccount. She stated that she is currently working with the Department to determine the funding needs and resource allocation, but indicated that the enforcement reform expenses may result in licensing fee increases for certain professions. Ms. Del Mugnaio stated that she would be providing an overview of the enforcement reform efforts later in the meeting discussions.

B. Status of Proposed Regulations

1. Review Final Statement of Reasons and Language for 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, at the August 20, 2009 meeting, the Board voted to make changes to the proposed regulation text originally noticed to the public on June 12, 2009, and delegated to her the task of noticing the 15-day modified text to the public. She stated that the modified language included increasing the number of self-study continuing professional development hours from a maximum of four (4) hours to a maximum of six (6) hours in order to align the self-study hours with the requisite six (6) hours of supervision training that must be obtained by those supervising Required Professional Experience temporary license holders. Ms. Del Mugnaio reported that the 15-day notice of modified text and the actual text was disseminated on September 9, 2009 to all interested parties who either commented on the originally proposed language or who requested notice of any modified regulation text, with a comment period of September 15, 2009 through September 30, 2009. She stated that no further comments were received by the Board during the 15-day public comment period. Ms. Del Mugnaio indicated that the Board had delegated her authority to adopt the Final Order of Adoption at the August 20, 2009 meeting provided that no comments in opposition were received by the Board during the 15-day public comment period and, as such, she prepared the Final Statement of Reason and Order of Adoption for the Board's reference. She stated that she is in the process of completing the final rulemaking file for submission to the Department for regulatory review and to the Department of Finance for review and approval of the fiscal impact statements.

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

Ms. Del Mugnaio explained that the Board will pursue the retroactive fingerprinting regulations once the Board receives the database match from the Department that will cross-reference the Board's active licensing population with the Department of Justice's database for fingerprint records. She indicated that the same regulatory effort will need to be pursued for the hearing aid dispensers and that she will file a combined regulatory proposal under the new merged Board after January 1, 2010.

C. Update on Communication with the Department of Health Care Services Newborn Hearing Screening Program Regarding Audiology Provider Education and Enforcement

Ms. Del Mugnaio stated that at the August 20, 2009 Audiology Practice Committee Chairperson Grimes raised concerns over the lack of a specialized center under the NHSP for the birth to two-year old population where electrophysiologic diagnostic services would be provided by highly-trained audiologists who have expertise in performing such diagnostics under sedation. Ms. Del Mugnaio stated that she would be sending an invitation to the NHSP consultants to attend the February Board meeting to discuss the opportunities for developing a new "Type D" Center, or Center of Excellence, where audiologists who are highly trained in pediatric hearing diagnosis would serve the birth to two-year population and provide electrophysiologic diagnosis under sedation.

Ms. Del Mugnaio also reported that she was contacted by the Department of Health Care Services regarding a federal grant opportunity, which provided funding to state licensing boards to assist states across the country with existing barriers to telemedicine. She stated that there are approximately 1.5 million dollars available to licensing boards that wish to partner together and address practice issues and legal restrictions surrounding telemedicine. Ms. Del Mugnaio stated that, while the opportunity is open to all health care practitioner groups, it appears to focus primarily on portability issues surrounding the practice of medicine and involved doctors and nurses. Ms. Del Mugnaio indicated that the proposal guidelines are extremely involved and would necessitate legislative approval for any California licensing board to participate. She stated that the deadline to submit a proposal for the grant funding is due November 18, 2009, and the Board would not have an opportunity to take advantage of the federal grant.

Chairperson O'Connor reported that she participated in a teleconference regarding the federal grant on behalf of the National Council of State Boards of Examiners in Speech-Language Pathology and Audiology (NCSB). She stated that the grant is a one-time offering of three separate grants for a period of two-years and each grant would be \$500,000. She stated the outcome of the telemedicine pilot should result in a national telemedicine model. She reported that another grant proposal will be available in 2012, with a proposal deadline sometime in late 2011. Chairperson O'Connor indicated that she hopes the NCSB will be involved in the next grant offering, as there was not enough time or resources to submit a comprehensive proposal this November.

D. Status Update on California Commission on Teacher Credentialing Special Education Credentialing – Communication Development Specialist- Proposed Regulations Title 5 California Code of Regulations Section 80048.6.

Ms. Del Mugnaio referenced the Board's official comments, as included in the meeting packets, raising concerns with the proposed regulations adopting a new Special Education Credential for a Communication Development Specialist. She stated that, at the August 20, 2009 Board meeting, the Board decided to submit objections to the 15-day modified text of the regulations, specifically addressing the ambiguity of the new credential's scope of responsibility, training standards, and intended work environment. Ms. Del Mugnaio reported that to date she has not received any communication from the Commission regarding the opposition and has learned that to date the Commission has not filed the final rulemaking package to the Office of Administrative Law.

The Board discussed the impending issues with the adoption of the new Communication Development Specialist Credential in terms of adding more school-based personnel with overlapping responsibility with speech-language pathologists and other special education providers and the potential for significant confusion in deciphering each of the providers' roles in treating children with speech and language disorders.

Ms. Del Mugnaio stated that she would continue to track the status of the regulation filing.

E. Examination Validation Study (Audiology)– Final Report

Ms. Del Mugnaio referenced the final Audiology Validation Study Report included in the meeting packets and stated that the draft report was adopted by the Board at the August 20, 2009 meeting and that the final report is being presented in bound copy. She indicated that the demographic survey included in the report may be used by the Board to assess practice and workforce trends in audiology and any necessary regulatory amendments that should be considered.

F. Update on Transition of the Hearing Aid Dispensers' Staff and Workload to the Board (Representative from the Department of Consumer Affairs will be Present to Address the Board)

Ms. Del Mugnaio provided an administrative report regarding the transition of the staff and the workload of the hearing aid dispensers programs. She indicated that the staff will include Yvonne Crawford, who handles the hearing aid enforcement and regulatory programs, and Debbie Newcomer, who coordinates the hearing aid dispensers' examination program and assists in the licensing of hearing aid dispensers. Ms. Del Mugnaio indicated that Ms. Crawford and Ms. Newcomer will not move physically to the existing Board office until February or March 2010, as office reconfiguration must be done to accommodate the new staff. She stated that in the interim she will be traveling to both sites to manage both staff. She also announced that she is in the process of recruiting a new manager who will manage all staff in the newly merged board. Ms. Del Mugnaio also reported on the status of the following administrative projects relative to the merger:

- In the process of creating a merged website containing information for speech-language pathologists, audiologists, and hearing aid dispensers. As a temporary measure, a landing page will be created identifying the newly merged board with links to both existing independent sites.
- Staff is working with the Department to merge licensing databases and amend renewal notices.
- Beginning to examine all program policies and procedures in order to identify inefficiencies and develop strategies to streamline enforcement and licensing work flow relative to all three professions.

VII. Update from Board Member Lisa O'Connor 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 stated that the NCSB held its national conference in New Orleans where a keynote speaker, Nina Antoniotti, PhD, RN, presented information to the group on telehealth and how states might appropriately regulate cross-borders practice. She stated that Ms. Antoniotti's presentation was incredibly informative and indicated that she would provide

a summary of the presentation along with some of the other key topic summaries shared at the conference, including regulation of speech-language pathology and audiology support personnel.

VIII. Practice Committee Reports

A. Audiology Practice Committee Report and Recommendations for Proposed Regulatory Amendments Regarding Audiology Aides, Continuing Professional Development Provisions, & Cochlear Implant Fitting and Mapping

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/Murphy

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

B. Speech-Language Pathology Committee Report and Recommendations Regarding Speech-Language Pathology Assistant Training Reform

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: Hanyak/Hancock

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

IX. Status of Proposed Legislation

Ms. Del Mugnaio referenced a legislative status report she prepared for the Board, which is included in the Board meeting packets. The following information was contained in the documented legislative status report:

A. Senate Bill 389 (Negrete McLeod) Fingerprinting Authority

Status: The bill failed to pass out of the Assembly Public Protection Committee:

As amended on June 1, 2009, this bill would make fingerprinting requirements applicable to the Dental Board, the Dental Hygiene Committee, the Professional Fiduciaries Bureau, the Osteopathic Medical Board, the Board of Podiatric Medicine, and the Board of Chiropractic Examiners. The bill would have required new applicants and petitioners for reinstatement of a revoked, surrendered, or canceled license to successfully complete a state and federal level criminal record information search. Commencing January 1, 2011, it would require licensees who have not previously submitted fingerprints, or for whom a record of the submission of fingerprints no longer exists, to complete the process necessary for a state and federal criminal offender record information search, as specified. The bill provides that, as a condition of license renewal, a licensee, as specified, shall complete the process necessary for a state and federal criminal offender record information search, to be conducted as described through the

Department of Justice and the Federal Bureau of Investigation (FBI). It states that failure to provide the necessary information on the search renders an application for licensure incomplete. The bill further states that no license shall be renewed until certification by the licensee is received by the agency verifying that the licensee has complied with the specified requirements. SB 389 states that the certification shall be made on a form provided by the agency not later than the renewal date of the license. It requires the licensee to retain, for at least three years, specified evidence that the certification was made. It subjects to disciplinary action a licensee who falsely certifies completion of a state and federal level criminal record information search. It requires licensees, as a condition of renewal of the license, to notify the Board if the licensee, or any member of the personnel of record of the licensee, has been convicted of a felony or misdemeanor since the last renewal, or **whether** this is the first renewal since the initial license has been issued. It specifically requires the Contractors' State License Board to implement the provisions pertaining to license renewal on the date on which an appropriation is made in the Annual Budget Act to fund the Board's activities to accommodate a criminal history record check. It states that if these provisions become applicable to the Contractors' State License Board on or before July 1, 2012, it shall implement this bill according to a specified schedule. It states that if the provisions become applicable after July 1, 2012, the specified license renewal commencement dates shall be delayed for one year.

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

Status: The bill did not proceed through policy hearings due to on-going sunset discussions.

This bill included 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 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.

C. Senate Bill 820 (Negrete McLeod/Aanestad) Healing Arts/Peer Review

Status: The bill was vetoed by the Governor.

The following was the veto message from the Governor regarding SB 820:

To the Members of the California State Senate:

I am returning Senate Bill 820 without my signature.

Peer review is an extremely important part of assuring the integrity and quality of care provided in our California hospitals. Unfortunately, the peer review process has also been criticized over the years because it increases litigious behavior, and lacks transparency and responsiveness. While perhaps well-intentioned, this bill does not provide a solution to the problem, but rather, jeopardizes the entire process by narrowing the reporting element to “serious” cases of incompetence involving only patients. How is this good policy? For example, what about a physician that engages in egregious behavior against hospital staff or even other physicians –how does this serve the public by keeping these reports from the Medical Board? This bill also fails to align with recent Joint Commission requirements that hospitals adopt a zero tolerance” policy towards physicians engaging in disruptive behavior in their interactions with nurses and other hospital staff. A peer review body should not be limited from acting on this type of behavior and in fact, should be encouraged to act more swiftly. I believe the peer review process is worth preserving. It does however, deserve to be thoroughly reviewed and reworked to ensure that inappropriate behavior of any kind is immediately acted upon. I would ask that the author and interested stakeholders work with my Department of Consumer Affairs to streamline and improve the peer review process in order to increase its effectiveness in taking action against providers that jeopardize quality or safety measures. For this reason, I am unable to sign this bill.

Sincerely,

Arnold Schwarzenegger

Existing law provides for the professional review of specified healing arts licentiates through a peer review process and requires specified persons to file a report, designated as an "805 report," with a licensing board within 15 days after a specified action is taken against a person licensed by that board. SB 820 would also require specified persons to file a report with a licensing board within 15 days after a peer review body makes a decision or recommendation regarding the disciplinary action to be taken against a licentiate of that board based on the peer review body's determination, following formal investigation, that the licentiate *may have* engaged in various acts, including gross negligence, incompetence, substance abuse, excessive prescribing or furnishing of controlled substances, or sexual misconduct, among other things. The bill would authorize the board to inspect and copy certain documents in the record of that investigation. Existing law requires the board to maintain an 805 report for a period of 3 years after receipt. This bill would require the board to maintain the report electronically. Existing law authorizes the Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California to inspect and copy certain documents in the record of any disciplinary proceeding resulting in action that is required to be reported in an 805 report. This bill would specify that the boards have the authority to also inspect any certified copy of medical records in the record of the disciplinary proceeding. Existing law requires specified healing arts boards to maintain a central file of their licensees containing, among other things, disciplinary information reported through 805 reports. Under this bill, if a court finds, *in a final judgment*, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board would be required to include that finding in the licensee's central file. Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose an 805 report to specified health care entities and to disclose certain hospital disciplinary actions to inquiring members of the public. Existing law also requires the Medical Board of California to post hospital disciplinary actions regarding its licensees on the Internet. This bill would prohibit those disclosures and would require the Medical Board of California to remove certain information posted on the Internet if a court finds, *in a final judgment*, that the peer review resulting in the 805 report or the hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. The bill would also require the Medical Board of California *to include certain exculpatory or explanatory statements in those disclosures or postings and would require the board* to post on the Internet a fact sheet that explains and provides information on the 805 reporting requirements. Existing law also requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose to an inquiring member of the public information regarding enforcement actions taken against a licensee by the board or by another state or jurisdiction. This bill would also require those boards to make those disclosures regarding enforcement actions taken against former licensees.

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

Status: AB 613 was held under suspense in Appropriations and did not move forward this legislative session due to the impact to the General Fund.

As amended on May 5, 2009, AB 613 would have mandated changes to the TAR process. 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 have required 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 have reduced the number of days within which these TARs shall be authorized.

E. Assembly Bill 1310 (Hernandez) Healing Arts: Database

Status: AB 1310 was held under submission and did not continue through the legislative session.

Under existing law, there exists the Healthcare Workforce Development Division within the Office of Statewide Health Planning and Development (OSHPD) that supports health care accessibility through the promotion of a diverse and competent workforce and provides analysis of California's health care infrastructure. Under existing law, there is also the Health Care Workforce Clearinghouse, established by OSHPD, that serves as the central source for collection, analysis, and distribution of information on the health care workforce employment and educational data trends for the state. As amended on June 29, 2009, this bill would have required *certain healing arts boards to collect specified information from their licensees and would require those boards and the Department of Consumer Affairs to, as much as practicable, work with OSHPD to transfer that data to the Health Care Workforce Clearinghouse.* The bill would have *further* required OSHPD, in consultation with the division and the *department*, to select a database and to *also* add *collected* data to the database. The bill would have required the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.

X. Licensing / Enforcement Statistical Data- Report on Improved Enforcement Efforts

The Board reviewed the statistical data as provided by staff.

The Board requested additional detail on future licensing statistical data with respect to documenting speech-language pathology and audiology statistics separately, statistics for Required Professional Experience temporary license holders, and registered aides. In addition, the Board requested data displaying statistics for registered speech-language pathology assistants by those who hold bachelor's degrees and associate degrees.

Ms. Del Mugnaio stated that she would provide the requested statistical detail at the February Board meeting.

Ms. Del Mugnaio provided an overview of the new enforcement reform model as proposed by the Department of Consumer Affairs. She referenced a fact sheet providing steps the Department is prepared to take in order to assist all boards and bureaus with streamlining their enforcement efforts and improving processing timelines for all complaints and administrative actions. Ms. Del Mugnaio explained that significant resources in terms of staff time has been devoted in recent months to collecting enforcement statistics and reviewing internal procedures for reviewing and acting on enforcement cases, from complaint intake through administrative discipline. She stated that the Department is seeking to augment its staff and that of its boards and bureaus in the areas complaint intake, investigations, and legal counsel (both in-house deputy attorney general staff and paralegals). Ms. Del Mugnaio stated that legislative efforts are being pursued to provide the boards and bureaus with enhanced statutory authority to take administrative disciplinary action in a more timely manner in the interest of restricting negligent or impaired practitioners from professional practice, thus providing greater public protection. Ms. Del Mugnaio indicated that additional licensing revenue in the form of licensing fee increases may be necessary in order to off-set the expenses related to hiring additional staff. She stated that she is working with the Department's budget staff to examine future funding needs.

Ms. Del Mugnaio stated that a follow-up status report on the enforcement reform efforts and the associated legislative amendments would be provided at the next Board meeting.

XI. Public Comment on Items Not on the Agenda

Ms. Cindy Peffers addressed the Board and stated that, on behalf of the Hearing Health Care Providers of California (HHP), the HHP is looking forward to the merger of the two boards and the opportunities for overall program improvement.

**XII. Announcements- Next Board Meeting- February 24-25, 2010 Sacramento
Schedule Future 2010 Board Meetings**

Ms. Del Mugnaio stated that the first meeting of the merged Board will be held in San Francisco instead of Sacramento on February 24-25, 2010, as the Board is able to secure meeting space in San Francisco at no charge.

The Board members inquired about new appointments to the Board and whether existing members should reapply for appointment to the merged Board.

Ms. Del Mugnaio stated that the direction she received from the Department's Board Relations staff indicated that existing members do not need to reapply for appointment at this time. She indicated that she would inquire again about the appropriate process for existing members who are interested in seeking Board reappointment in case something has changed and would notify the members.

XIII. Adjournment

Chairperson O'Connor adjourned the meeting at 1:17 p.m.