



HEARING AID DISPENSERS PRACTICE COMMITTEE MEETING MINUTES

October 20, 2011

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

Committee Members Present

Deane Manning, Chair, Hearing Aid Dispenser
Robert Green, Au.D.
Sandra Danz, Hearing Aid Dispenser
Alison Grimes, Au.D.
Rodney Diaz, M.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Spencer Walker, Legal Counsel
Breanne Humphreys, Staff
Yvonne Crawford, Staff
Ily Mason, Staff

Board Members Present

Monty Martin, M.A.
Lisa O'Connor, M.A.
Jaime Lee, Esq., Public Member

Board Members Absent

Carol Murphy, M.A.

Guests Present

Dennis Van Vliet, Audiologist
Cynthia Peffers, HHP CA
Tricia Hunter, HHP CA
Gloria Peterson, HHP CA
Marcia Raggio, CSHA, SFSU

I. Call To Order

Deane Manning called the meeting to order at 1:20 p.m.

II. Introductions

Those in attendance introduced themselves.

III. Discuss Proposed Amendments to the Hearing Aid Dispenser's Advertising Regulations and Related Guidelines (California Code of Regulations Section 1399.127)

Chairperson Manning introduced the discussion item and asked Ms. Del Mugnaio to provide background on the issue.

Ms. Del Mugnaio reported that the Board receives inquiries and complaints regarding the advertising of hearing aid dispensers. She stated that staff believes some of the compliance issues result from a lack of understanding the current advertising provisions. Ms. Del Mugnaio explained that she reviewed the current advertising provisions with legal counsel and was advised that the provisions should be further clarified.

Ms. Del Mugnaio referenced an issue paper included in the meeting packets that outlined the major advertising violations.

Ms. Grimes commented that advertisements that imply that hearing aids can eliminate background noise should be restricted.

Chairperson Manning suggested that the advertising regulations should be broad in scope so that the Board is not tasked with attempting to address every advertising situation that may arise.

Ms. Del Mugnaio suggested that the Board publish the background document and proposed advertising amendments and seek public comment.

The Committee discussed advertisements published by large hearing aid companies where no mention of an individual dispenser is listed.

Ms. Del Mugnaio referenced the proposed advertising regulations, where proposed changes would require the hearing aid dispenser's name and license number to be on an advertisement for a specific hearing aid office location.

The Committee reviewed the proposed advertising changes.

M/S/C: Grimes/Green

The Committee voted to recommend to the full Board that the proposed advertising amendments and issue paper be disseminated to both professional organizations and consumer groups to solicit public comment.

IV. Review Existing Laws on Internet Sale of Hearing Aid Devices- Discuss Relevant Consumer Protection Issues

Ms. Del Mugnaio referenced an issue paper included in the meeting packets outlining current business models for Internet hearing aid sales and the related statutory restrictions in Business and Professions Code Section 3351.5 regarding catalog or direct mail sales.

Ms. Del Mugnaio stated that the current law requires a hearing aid license to be able to sell a hearing aid in California regardless of how the business transaction is conducted.

Ms. Grimes commented that she does not believe that selling a hearing aid via the Internet is necessarily a consumer protection issue, as it provides hearing impaired individuals access to assistive devices that may prompt them to seek further treatment from a hearing professional.

Chairperson Manning commented that consumers should be purchasing hearing aids from a trained and licensed professional who can appropriately select and fit a hearing aid for the individual's specific needs as well as refer a consumer to a medical professional if there is a suspected pathology. He stated this is especially critical for children.

The Committee unanimously agreed that children should not be provided hearing aids fit or sold via the Internet.

Ms. Danz commented on elderly individuals with profound hearing loss and raised the issue of auditory deprivation that has been misdiagnosed as early-onset dementia. She stated that the amplification selected for hearing aids purchased via the Internet will not likely address many of the age-related hearing deficits.

Mr. Green stated that the issue with purchasing a hearing aid over the Internet is that the consumer has no one to provide follow-up treatment, such as fitting adjustments or repairs.

Mr. Diaz argued that the issue is definitely a consumer protection issue, as consumers are purchasing assistive devices they know nothing about, are not custom fit for their individual needs, and which are likely not going to provide the level of assistance a hearing aid otherwise would. He commented that this experience will negatively skew the consumer's perception of what a hearing aid can and should do.

Ms. Del Mugnaio stated that some in the professional community are looking to California to take action against companies conducting business via the Internet. She explained that one particular company provides a web-based hearing test that a consumer may self-administer and then, based on the results of the test, the consumer is offered a programmed, "custom fit" hearing aid.

The Committee discussed the accuracy issues of a web-based hearing test.

Ms. Del Mugnaio stated that she will contact the Federal Drug Administration (FDA) to discuss federal regulation on hearing aid sales and whether enforcing California law is in direct conflict with federal rule. She also stated that she will work with legal counsel to craft a letter to companies participating in selling hearing aids via the Internet and will share the letter with the Board.

V. Discuss Future Regulatory Action and Background Document for the Proposal Regarding the Song-Beverly Consumer Warranty Act (California Civil Code Section 1793.02)

Ms. Del Mugnaio referenced a draft regulatory proposal related to the provisions of the Song-Beverly Consumer Warranty Act (SBCWA), which includes information provided by Committee members. She stated that the draft regulatory proposal outlines return and refund provisions and would provide an exception/exemption within the Civil Code for right-of-return provisions for hearing aids. Ms. Del Mugnaio stated that the draft proposal is a working document that the Board may present to the Legislature to explain the intent of the amendments to Civil Code Section a1793.02 (i), which would then provide the Board with regulatory authority to adopt specific provisions for return and refund policies related to the dispensing of hearing aids. Ms. Del Mugnaio indicated that the Board has adopted the current document for the purpose of seeking a legislative author to carry the proposal; however, the document does not address fees

charged to consumers if the purchase agreement for the hearing aid is cancelled by the consumer prior to the consumer receiving the device. She stated that the SBCWA does not address cancellation fees.

The Committee members indicated that charging a consumer a cancellation fee is not common practice in the industry.

Ms. Tricia Hunter addressed the Board and commented that cancellation charges are unfair to the consumer, especially elderly who agree to purchase hearing aids during an office visit but who are not able to read the lengthy purchase agreements or completely understand all of the contract terms. After consulting with family members, the elderly client may have buyer's remorse and then is responsible for exorbitant cancellation fees, often over \$1,000. Ms. Hunter reported that she is meeting with legislators to discuss carrying the SBCWA amendments in a bill during the 2012 session.

The Committee agreed that the proposed regulations, which provide for a \$200 maximum amount per hearing aid that may be retained by the hearing aid dispenser upon return of a hearing aid within the specified thirty-day (30) day right of return period, should include *upon return of the device or cancellation of the purchase agreement*.

Mr. Walker recommended clarifying changes to the proposed legislative amendments.

M/S/C: Grimes/Danz

The Committee voted to recommend to the full Board to adopt the amendments to Civil Code Section 1793.02, the Song Beverly Consumer Warranty Act, as proposed by Legal Counsel and to amend the draft regulatory document to include language regarding cancellation of a hearing aid purchase agreement.

Ms. Del Mugnaio stated that she will forward the amended regulatory document and the proposed statutory changes to Ms. Hunter.

The Committee adjourned at 3:20 p.m.