



FULL BOARD MEETING MINUTES

April 20, 2012

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

Board Members Present

Alison Grimes, Au.D., Vice Chairperson
Sandra Danz, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Monty Martin, M.A.
Carol Murphy, M.A.
Jaime Lee, Esq.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Claire Yazigi, Legal Counsel
Breanne Humphreys, Staff
Yvonne Crawford, Staff

Guests Present

Cynthia Peffers, HHP CA
Tricia Hunter, HHP CA
Marcia Raggio, CSHA, SFSU
Randy Sagar, HHP

Board Members Not in Attendance

Rodney Diaz, M.D.

I. Call to Order

Chairperson Grimes called the meeting to order at 9.12. a.m.

II. Introductions

Those present introduced themselves.

III. Approval of Full Board Meeting Minutes of January 13, 2012

The Board discussed minor edits to the meeting minutes of January 13, 2012.

M/S/C: Manning/Danz

Abstention: Lee (Not present at the January 13, 2012 meeting)

IV. Hearing on Petition for Reinstatement of Revoked License- Heidi Lin Cordina, SP 11555

The Board conducted the hearing on the petition for reinstatement of the revoked license for Heidi Lin Cordina.

CLOSED SESSION

The Board adjourned in closed session to deliberate the matter.

V. Closed Session (pursuant to Government Code Section 11126 Subsection (c)(3)- Proposed Decisions/Stipulations/ Other APA Enforcement Actions

-To Deliberate Petition for Reinstatement of the Revoked License of Heidi Lin Cordina

The Board reconvened in open session.

VI. Review Existing Licensing Laws on Hearing Aid Dispensing and Preemption Issues Under the Federal Drug Administration- Discussion of Provisions Regarding Mail Order and Catalog Sales of Hearing Aids (Business & Professions Code Section 2539.2)

Ms. Del Mugnaio reported that at the January 13, 2012 Board meeting, the Board directed Ms. Yazigi to write a letter to the Federal Drug Administration (FDA) requesting an exemption of Business and Professions Code Section 2538.23 regarding regulating the sale of hearing aids through catalogue and mail order. The exemption would serve to provide California the authority to regulate the remote acquisition of hearing aids, such as, internet transactions.

The Board reviewed the draft FDA letter and suggested minor edits.

Ms. Yazigi explained the FDA's exemption requirements and stated that statistical data citing actual consumer protection issues would serve to best support the Board's position on the need to regulate the remote acquisition of hearing aids. She provides the history of the current statute and its intent when initially adopted.

M/S/C: Danz/Murphy

The Board approved the amended FDA letter and directed Ms. Del Mugnaio to make the approved edits and send the letter to the FDA.

Ms. Del Mugnaio stated that she and Ms. Yazigi crafted an email survey and sent the survey to other state regulatory boards' inquiring about how each state regulates the internet sale of hearing aids and whether the state has sought an exemption from the FDA regarding any aspect of hearing aid regulation, and further, whether the state has encountered any legal challenges with enforcing their laws and regulations governing hearing aid dispensing. Ms. Del Mugnaio reported that she received feedback from thirteen (13) states with only four (4) responding that the state regulates the sale of hearing aids over the internet, and only one state indicated that an exemption had been requested for its regulatory provisions.

VII. Review Public Comments to Amendments to the Hearing Aid Dispenser's Advertising Regulations and Related Guidelines (California Code of Regulations Section 1399.127)

Ms. Del Mugnaio reviewed the public comments received regarding the proposed changes to the hearing aid dispenser's advertising provisions. She stated that at the July 2012 Hearing Aid Dispensers Committee Meeting, the Committee may begin to decide which changes the full Board should consider as a formal regulatory amendment.

VIII. Executive Officer's Report

Ms. Del Mugnaio provided a status report regarding the following:

A. Budget Update

Ms. Del Mugnaio reported that, Cynthia Dines of the Department's Budget Office had presented information to the Board at the January 13, 2012 Board meeting regarding the current system of

accounting for both revenue and expenditures of the speech-language pathology and audiology operations and that of hearing aid dispensers and dispensing audiologists. Ms. Del Mugnaio stated that the budget expenditure reports would remain separate for the purposes of tracking expenses, however, the Board's funding source was merged which meant that all revenue was deposited into one account.

Ms. Del Mugnaio reviewed the current expenditure projections for Month 8 with the Board.

B. Status of Proposed Regulations

1. Consumer Protection Enforcement Initiative (California Code of Regulations Sections 1399.150.3, 1399.151, 1399.156, & 1399.156.5)

The regulations will expand the Board's enforcement authority to: delegate to the Executive Officer to accept default decisions and approve settlement agreements for revocation, surrender, or interim suspension orders of a license, compel licensees to undergo a mental/physical examination if there is suspected mental illness; deny or revoke a license for committing an act of sexual abuse or misconduct; prohibit licensees from entering into settlements including gag clauses; take disciplinary action against a licensee for failing to provide the Board lawfully requested documents or information, including reporting felony convictions, arrests, or misdemeanors, or disciplinary action taken by another licensing entity. The proposed regulations include the authority for the Board to deny an application or revoke a license of a registered sex offender. The regulations were initially filed with the Office of Administrative Law (OAL) on June 14, 2011. No public hearing was scheduled or requested. The public comment period closed on August 8, 2011, and one comment in support of the proposal was received by the Center for Public Interest Law, San Diego.

The Final Statement of Reasons is included in the packet for the Board review.

M/S/C: Manning/Murphy

The Board adopted the proposed language and Final Statement of Reasons for the Consumer Protection Enforcement Initiative regulations.

2. Supervision Qualifications for Speech-Language Pathology Assistants (SLPA) & Required Professional Experience Temporary License Holders and SLPA Educational Program Changes (California Code of Regulations Section 1399.153, 1399.170, 1399.170.6, 1399.170.10, 1399.170.11, & 1399.170.15)

The Board discussed the proposed amendments regarding changing the requirements for an individual to qualify as a supervisor for a temporary licensee completing the required professional experience. The amendments require the supervisor to have two years of full-time work experience as a licensed (or legally authorized) practitioner prior to taking on a supervisory role. The regulatory amendments also include changes to the SLPA provisions which were previously reviewed and approved by the Board at its January 13, 2012 Board meeting.

M/S/C: Murphy/Martin

The Board adopted the proposed language for notice to the public.

3. Continuing Education (CE) Requirements for Licensed Hearing Aid Dispensers- California Code of Regulations Sections 1399.140-1399.143

Ms. Del Mugnaio stated that the Board has approved the language at previous Board meetings, however, it was brought to her attention that the Board had not addressed continuing CE exemption criteria in terms of the length of time a qualifying event must be present in order for a licensee to qualify for a CE exemption. Ms. Del Mugnaio explained that in order for licensed speech-language pathologists or audiologists to qualify for an exemption from continuing professional development (CPD), the qualifying event must prohibit the licensee from participating in CPD for at least one-year, which is half the renewal cycle.

The Board discussed the issue and determined that in order for a licensed hearing aid dispenser to qualify for a CE exemption, the qualifying event must prohibit the licensee from participating in CE for at least six (6) months, or the one-year renewal cycle.

C. Sunset Review Report- Project Management Plan

Ms. Del Mugnaio reported that the Board would be required to submit a Sunset Review Report to the Legislature by November 1, 2012. She reviewed the report questionnaire with the Board and indicated that the staff will begin compiling statistics and writing the narrative related to operations, but that she will call on the Board members for input on the professional issues. Ms. Del Mugnaio stated that the Sunset Review Committee can discuss the professional issues that should be raised in the report and begin formulating the summary for each issue. She noted the Sunset Review Committee members as follows: Alison Grimes, Sandra Danz, Jaime Lee, and a vacant seat previously filled by Lisa O'Connor.

Chairperson Grimes invited Carol Murphy to join the Sunset Review Committee to replace Ms. O'Connor.

Ms. Murphy agreed.

Chairperson Grimes stated that the workload to complete the speech-language pathology and audiology professional issues portion of the report will be onerous for the two remaining professional members in those respective fields who are seated on the Board.

Ms. Del Mugnaio stated that she will schedule a Sunset Review Committee meeting in July 2012 to discuss the project completion plan and timeline.

D. Administrative Updates: Occupational Analysis for Hearing Aid Dispensers Examination, BreEze, Personnel Changes

Ms. Humphreys provided the administrative updates as follows:

- 2012 Hearing Aid Dispensers' Examination Validation Study and Occupational Analysis survey results- 18% response rate from Dispensing Audiologists; 22% response rate from Hearing Aid Dispensers= 20% overall response rate from the professions.
 - Every licensee who completed the survey will be awarded two (2) hours of continuing education credit to be applied toward the license renewal requirements.
 - The Office of Professional Examination Resources will analyze the survey response and enlist the expertise of subject matter experts to determine whether the current examinations for hearing aid licensure reflect the knowledge, skills, and abilities and entry-level licensee should possess.
- The next hearing aid dispensers' practical examination will be administered on April 21, 2012 in Sacramento. Fifty-nine (59) exam participants were registered to take the examination.

- BreEze system will be available to the Board in February 2013.
- Working on filling the Office Technician vacancy in the office. Hiring restrictions have made recruitment challenging.

E. Project Plan for Reviewing the English Language International English Language Testing System (IELTS) Examination

Ms. Del Mugnaio reported that she and Ms. Murphy are working with Kate McKeen of IELTS to schedule a standard setting study for the Board. She explained that the study would involve a group of Board-appointed subject matter experts who will review the IELTS examination to determine relevant and appropriate passing scores for the purpose of license eligibility. Ms. Del Mugnaio stated that Ms. Murphy and a group of subject matter experts are working with IELTS to schedule a time to sit for the examination in order to get a first-hand perspective on the examination content and administration.

IX. Legislation Update

A. Senate Bill 1444 - Anderson – Assistive Devices: Warranty

Ms. Del Mugnaio distributed amendments to SB 1444 to the Board and stated that the amendments are not yet in print but are being proposed by the Judiciary Committee. She reported that the bill was heard on April 16, 2012 in the Business, Professions, and Economic Development Committee where it had unanimous support. Ms. Del Mugnaio stated that the bill was intended to provide the Board with the authority to develop regulations that further specify the warranty and return provisions for hearing aids. She reported that she and Ms. Hunter of the Hearing Healthcare Providers of CA met with the author's office as well as legislative committee staff to discuss possible amendments to the bill, as legislative staff believed the language introduced was much too broad in scope. Ms. Del Mugnaio reported that committee staff raised the issue of the Board regulating express and implied warranty provisions which was contract law and clearly beyond the authority of the Board. She stated that she provided the committee staff with the Board's draft regulatory document which was intended to be a working document to provide interested parties a conceptual framework of the Board's proposal. Ms. Del Mugnaio reported that committee staff raised concerns about the proposed language which would authorize dispensers to retain a maximum dollar amount, associated with fitting and dispensing services, upon return of the hearing aid by the purchaser. She stated that the Board is on record as supporting SB 1444 to the extent that the bill provides clarity for both the consumer and the dispenser regarding the right of return and warranty provisions for hearing aids.

Ms. Hunter addressed the Board and stated that the Hearing Health Care Providers as the sponsor of the bill supports the Board's efforts, however, the bill was intended to be an omnibus non-controversial measure. She stated that should the bill encounter opposition from other interested parties where agreements can't be reached, the bill may be pulled.

Ms. Del Mugnaio stated that she will continue to work with committee staff and the author's office on the appropriate next steps and will update the Board as to the status of SB 1444 at the next meeting.

B. Assembly Bill 1454- Solorio- Worker's Compensation: Audiologists

Ms. Del Mugnaio stated that the California Academy of Audiology is sponsoring AB 1454 which would authorize an audiologist who holds a doctoral degree in audiology and has five (5) years of work experience to serve as a qualified medical evaluator within the workers' compensation system. She stated that the Board does not currently have a position on the bill as it appears to be more a professional issue than one of consumer protection.

The Board discussed the bill and agreed that it was not appropriate to take a position on AB 1454.

Ms. Del Mugnaio stated that she would continue to track the bill and provide information to the Board at the next meeting.

C. Other Legislation of Interest to the Board

Ms. Del Mugnaio provided a list of bills that may impact the Department's boards and bureaus if passed:

- Assembly Bill 1588 – Atkins – Reservist Licensees: Fees and Continuing Education
- Assembly Bill 1904 – Block, Butler, Cook – Military Spouses: Expedite Licensure
- Assembly Bill 2570 – Hill – Licensees: Settlement Agreements

X. Discuss Proposed Statutory Language Establishing Unprofessional Conduct & Violations of Probation as Grounds for Discipline

Ms. Del Mugnaio referenced proposed statutory language that would add a provision to Business and Professions Code Section 2533 regarding unprofessional conduct. This would include any violation of a term or condition of a probationary order, or of a license issued by the Board.

Ms. Yazigi explained that by adding the proposed language to the unprofessional conduct provisions, it strengthens the Board's disciplinary authority to either revoke or impose further restrictions on a licensee who either violates their probationary terms or is not in compliance with the conditions of a license issued by the Board.

M/S/C: Murphy/Martin

The Board voted to adopt the proposed statutory change to Business and Professions Code Section 2533 and directed Ms. Del Mugnaio to pursue a legislative vehicle.

XI. Review Proposed Amendments to the Uniform Standards Related to Substance Abuse and Disciplinary Guidelines for Speech-Language Pathologists, Audiologists, & Hearing Aid Dispensers (California Code of Regulations Sections 1399.131 & 1399.155)

Ms. Del Mugnaio referenced the proposed regulatory document which updates the Board's disciplinary guidelines (DGs) and incorporates the new uniform standards into the Board's regulations. She stated that the Board has reviewed the proposed document at previous meetings and approved the DGs which combine the guidelines for speech-language pathologists, audiologists, and hearing aid dispensers, however, the Board requested further guidance from legal counsel as to how to implement the new uniform standards given the legal challenges of identifying a licensee as a substance abusing licensee.

Ms. Yazigi addressed the Board and stated that there has been extensive discussion surrounding whether the adoption of the uniform standards by the board is permissive or mandatory. She stated that the authority for the Board to promulgate regulations implementing the uniform standards is provided under Business and Professions Code Section 315 and that both the Legislative Counsel and the Government Law Section of the Office of the Attorney General have issued opinions concluding that the uniform standards are mandatory and should be implemented by healing arts boards without further

modification. Ms. Yazigi provided a brief history of the development of the uniform standards and its legal challenges.

Ms. Del Mugnaio reviewed the proposed trigger language that may be used as a method to implement the uniform standards. She stated that the trigger language would require any licensee whose underlying violation deals with a controlled substance to be subject to a clinical diagnostic evaluation to determine whether the licensee is a substance abusing licensee and if diagnosed as such, the licensee would be subject to the uniform standards. Ms. Del Mugnaio stated that pursuant to the uniform standards, the licensee's license would be suspended pending the outcome of the clinical diagnostic evaluation.

Ms. Yazigi outlined the drug testing exceptions as included in the uniform standards. She commented that the standards are circular in that the licensee is subject to the uniform standards when the license is suspended and the clinical diagnostic evaluation is ordered even though the licensee has not yet been identified as a substance abusing licensee.

The Board discussed the restrictive nature of the standards and inquired whether the standards represent both minimum and maximum terms of discipline.

Ms. Yazigi stated that the uniform standards are a floor or a minimum and that the Board has discretion to impose more restrictive terms and conditions in cases where public harm is imminent. She also advised the Board that the uniform standards may be imposed on licensees who are not diagnosed as a substance abusing licensee if the nature of the violation or potential threat to the public warrants such restrictions.

Ms. Del Mugnaio impressed upon the Board the importance of adopting the new DGs as the existing DGs are outdated and do not provide the Board, Administrative Law Judges, the Office of the Attorney General, or opposing counsel with updated guideline that are reflective of current law and professional standards.

Ms. Yazigi stated that the Board has the option of pursuing the DGs as a separate regulatory proposal from the uniform standards if the Board is not prepared to adopt the uniform standards at this time. She commented that this is more work from a regulatory perspective, but it does provide the Board with the option of filing the amendments for the DGs now and updating its guidelines, absent the new uniform standards, until such time as the Board can decide how it will implement the new standards.

Ms. Hunter expressed her concern that the uniform standards are extremely punitive and the boards have no discretion to enforce appropriate terms for each individual case that comes before the board for consideration.

The Board discussed the uniform standards at length and the issues with the circular nature of the provisions.

Ms. Del Mugnaio offered to discuss the Board's concerns with the Department's Legal Office and inquire of other boards how their programs are dealing with such challenges.

The Board requested that Ms. Del Mugnaio report back to the Board regarding her discussions at the next Board meeting.

XII. Discussion Regarding Changes to the National Examination in Audiology and Speech-Language Pathology as Reported by the Educational Testing Service

Ms. Del Mugnaio reported that she emailed the Educational Testing (ETS) Service on March 27, 2012, at the request of Chairperson Grimes, to obtain specific information regarding the changes to the national examination in audiology. Specifically, the Board was interested in learning how the new examination differs from the previous version and is seeking detailed information on the changes in the scoring methodology, and pass/fail statistics. Ms. Del Mugnaio stated that she has not received a response from ETS to date.

Chairperson Grimes directed Ms. Del Mugnaio to send a second request to ETS for the information.

XIII. Statistical Data on Licensing & Enforcement

The Board reviewed the statistical data as provided by the staff.

XIV. Public Comment on Items Not on the Agenda

There were no further public comments.

XV. Future Agenda Items- Discussion On Continued Competency Programs/ Audiology Aide Provisions

Ms. Del Mugnaio stated that the issues of continued competency and audiology aide provisions will be placed on a future meeting agenda. She also stated that the issue of reimbursement by Medi-Cal for hearing aids has been a topic of discussion in the state based on a recent report issued by the Board of Equalization where a comparison of actual acquisition costs of hearing aids, verses consumer costs, were highlighted in an attempt to research cost savings to the state Medi-Cal program.

XVI. Announcements - Future 2012 Board Meetings – July 19-20, 2012, October 18-19, 2012 (Locations TBD)

The Board reviewed the meeting calendar and rescheduled the July 2012 meeting to July 26-27, 2012 to be held in San Diego

XVII. Adjournment

Chairperson Grimes adjourned the meeting at 2:46 p.m.