



BOARD MEETING MINUTES

June 13, 2013

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

Board Members Present

Alison Grimes, Au.D., Chair
Patti Solomon-Rice, Ph.D., Vice Chair
Deane Manning, Hearing Aid Dispenser
Marcia Raggio, Ph.D.
Carol Murphy, M.A.
Amnon Shalev, Hearing Aid Dispenser
Jaime Lee, Esq., Public Member

Staff Present

Annemarie Del Mugnaio, Executive Officer
Claire Yazigi, Legal Counsel
Breanne Humphreys, Program Manager

Board Members Absent

Monty Martin, M.A., Public Member
Rodney Diaz, M.D., Public Member

Guests Present

Tricia Hunter, HHP CA
Linda Pippert, Alpha Vista Services, CSHA
Meghan Giffin, Alpha Vista Services
Jean Jackson, EBS Healthcare
Dennis Van Vliet, Audiologist

I. Call to Order

Chairperson Grimes called the meeting to order at 9:16 a.m.

II. Introductions

Those present introduced themselves.

III. Election of Officers/Appointments to Committees

The Board reappointed Ms. Grimes as Board Chair.

The Board appointed Ms. Patti Solomon-Rice as Vice Chair of the Board.

IV. Approval of Meeting Minutes:

A. January 10-11, 2013 Board Meeting Minutes

B. March 12, 2013 Telephonic Board Meeting Minutes

The Board discussed minor edits to the minutes.

M/S/C: Murphy/Manning

The Board voted to approve the January 10-11, 2013 meeting minutes and the March 12, 2013 Telephonic meeting minutes as amended

V. Executive Officer's Report

A. Budget Update

Ms. Del Mugnaio reviewed the Month 10 budget report capturing expenditures through April 30, 2013. She explained that the budget report reflects a surplus of \$133,972; however, a portion of the surplus is earmarked for a new copier with scanning capabilities and an examination validation study for the International English Language Testing Service examination.

Ms. Raggio inquired about whether the excess revenue may be used for travel expenses.

Ms. Del Mugnaio explained that the excess revenue may be used for any approved operational expenses; however, since most non-board meeting travel is restricted, the excess revenue may not be used for restricted travel.

Chairperson Grimes inquired about the General Fund loan borrowed of the Board in fiscal year 2011/2012.

Ms. Del Mugnaio reported that the loan is scheduled to be paid back in installments beginning in fiscal year 2013/2014. She commented that the repayment plan was documented in the Board's Sunset Review Report.

Mr. Manning inquired whether the surplus is retained by the Board.

Ms. Del Mugnaio explained that the surplus is returned to the Board's fund.

Chairperson Grimes inquired whether there were any staff vacancies.

Ms. Del Mugnaio stated that the non-sworn investigator position has been vacant since January 2013, but should be filled by the end of the month. She commented that this would contribute, in part, to the noted surplus.

The Board reviewed various line items and inquired about specific program expenses.

B. Status of Proposed Regulations- 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 reported that she worked with Ms. Humphreys, who serves as the Board's probation monitor, among various other responsibilities, to review the draft guidelines and recommend practical changes to the terms and conditions.

The Board reviewed the proposed minor technical changes.

M/S/C: Shalev/Lee

The Board voted to adopt the proposed text to the Uniform Standards Related to Substance Abuse and Disciplinary Guidelines (CCR Section 1399.131 & Section 1399.155)

C. Administrative Updates- BreEze/ Staff Recruitment/ Operational Updates- Continuing Professional Development (CPD) Audit 2013

Ms. Humphreys provided the administrative update:

- Announced the hire of a new non-sworn investigator.
- The rollout of the BreEze project has been postponed and the Board is not scheduled to be online with BreEze until late 2014.
- CPD Audit will begin in Fall 2013.

Ms. Del Mugnaio discussed the audit process and stated that audit information assists the Board in assessing the effectiveness of the CPD program.

D. Update on Exemption Request of the Federal Drug Administration on Mail Order and Catalog Sales of Hearing Aids

Ms. Del Mugnaio stated that the FDA sent her a letter acknowledging receipt of the Board's exemption request. She explained that since the FDA does not have an enforced timeframe to issue a decision on the exemption request, she would follow-up periodically regarding the status.

She stated that Ms. Hunter shared an email with her where the state licensing board in Texas sent a cease and desist letter to Hi Health Innovations regarding the online sell of hearing aids. Ms. Del Mugnaio stated that she would follow-up with the attorney from the Texas Board regarding the outcome of the action.

VI. Legislative Update

A. SB 306- Price- Sunset Bill

Ms. Del Mugnaio reported that the Sunset Bill provisions have been moved to another bill, Senate Bill 305, Lieu. This Senate Bill includes provisions for the Occupational Therapy Board, the Physical Therapy Board, among others, and currently has only one of the technical cleanup provisions that were requested during sunset, the provision regarding a licensee who fails to uphold the terms of a conditional license. However, Ms. Del Mugnaio reported that the other requested cleanup provisions should be reflected in SB 305 once the bill moves through the legislative process.

Ms. Murphy inquired about a provision restricting board member per diem for the Occupational Therapy members.

Ms. Del Mugnaio stated that she was not aware of any restrictions regarding board member travel and per diem for regularly scheduled meetings and authorized board business.

B. AB 1003 –Maienschein – Professional Corporations: Healing Arts Practitioners

Ms. Del Mugnaio stated that AB 1003 would remove the restriction of professional corporations allowing healing arts practitioners to be employed by, or render professional services under a professional corporation, even if the professional corporation is not operated by a licensee from the same healing arts profession. She reported that the bill appears to be stalled as the hearings on the bill have been cancelled.

Ms. Yazigi explained that the content of the bill is especially pertinent to this Board given the discussion surrounding hearing aid dispensers employed by audiologists and vice-versa. She explained that if the bill were to pass, the provisions would authorize any person licensed under the Business and Professions Code to work with another licensed individual, not necessarily licensed in the same profession under a professional corporation.

Chairperson Grimes requested Ms. Del Mugnaio to gather more information regarding the genesis of the bill and report back on its status at the next scheduled board meeting.

C. AB 186 Maienschein- Temporary Licenses-Military Spouse

Ms. Del Mugnaio reported that AB 186 is pending in the Senate. She asked Ms. Yazigi to further explain the intent of the provisions of AB 186.

Ms. Yazigi explained that legislation signed in the prior legislative cycle provided for an expedited review of the application of any spouse or partner of an active military service member. This bill would authorize the licensing agency to issue a temporary or provisional license to a military spouse, during the time the application for permanent license is being

reviewed by the Board. Ms. Yazigi stated that the following requirements must be met prior to the issuance of a provisional license:

- Prove that you are dually licensed in another state,
- Be fingerprinted, and
- No prior disciplinary action.

Chairperson Grimes inquired about a query to the National Practitioners Data Base (NPDB) regarding any prior or pending discipline.

Ms. Del Mugnaio stated that currently the Board does not have the funding to pay for the NPDB query for each new application. She explained that there is a request in the Board's sunset report to amend the licensing law and require applicants to furnish a NPDB report to the Board at the time an application is submitted.

Ms. Tricia Hunter stated that she worked with the author's office on the provisions of AB 186 to add language that would exempt boards which already have a temporary or provisional licensure status and process.

Ms. Del Mugnaio stated that the Board has a temporary license process for each of its license types.

Ms. Del Mugnaio reported that there are other laws which took effect in January 1, 2013 regarding active military personnel which requires the Board to waive renewal fees and CE requirements for licensees who are called to active duty.

D. SB 129 – Wright -Deaf and disabled telecommunications program

Ms. Del Mugnaio distributed the June 5, 2013 amendment to SB 129. She stated that prior to the June 5 amendments, the bill would have expanded the Public Utilities Commission (PUC) program for the deaf and disabled to include assistance to individuals with speech disabilities in terms of purchasing speech-generating devices and specialized equipment. Ms. Del Mugnaio reported that the amendments delete the expansion of the program.

Vice Chairperson Solomon-Rice commented that speech-generating devices are very costly, and therefore, the amendment is likely a funding issue.

Ms. Del Mugnaio stated that Mr. Larry Boles, the Speech-Language Pathology Program Director at the University of Pacific had contacted her to inquire the number of SLPs currently licensed by the Board. She stated that Professor Boules is working with legislative staff on SB 129 in terms of identifying the appropriate professionals to advise the PUC on the purchase of speech-generating devices. Ms. Del Mugnaio stated that she would gather more information regarding the recent amendments and report back to the Board.

SB 176 – Galgiani – Administrative Procedures

Ms. Yazigi explained that SB 176 would require the involvement of interested parties in discussions regarding any proposed regulation changes prior to the proposed regulation being noticed or publicized. Ms. Yazigi stated that the Board currently involves the public in its business by holding public meetings and discussing its proposed changes prior to formulating regulations. She stated that since it is already mandatory for the Board to hold such public discussions at a public meeting, she is unclear as to whether SB 176 adds another layer to the requirement to personally invite parties to such discussions.

Ms. Del Mugnaio stated that the SB 176 is pending in the Assembly.

VII. Practice Committee Reports

A. Hearing Aid Dispensers Committee Recommendations on the Proposed Amendments to the Hearing Aid Dispensers Advertising Regulations, the Development of the Standard of Care Document for Hearing Aid Dispensing, Continuing Education Courses Approved for Hearing Aid Dispensers on Related Professional Topics, and the Proposed Regulatory Amendments to Continuing Education Requirements

Mr. Manning provided an overview of the discussion and recommendation of the Committee regarding amending the advertising provisions for hearing aid dispensers and dispensing audiologists which included that the word only be added to CCR Section 1399.127(b)(2) *For hearing aid dispensers, if advertising a hearing test, state that such test is being performed “only” to properly fit and sell hearing aids.*

Mr. Manning commented that the disclaimer regarding the hearing test should be removed from the advertising regulation.

The Board discussed the difference in the scope of practice for hearing aid dispensers and dispensing audiologists in conducting a hearing test.

Chairperson Grimes commented that the hearing test performed by a dispensing audiologist is diagnostic.

Mr. Shalev stated that a hearing test performed for the purpose of dispensing a hearing aid should be same test regardless of who is performing the test, a dispensing audiologist or a hearing aid dispenser. He stated often the tests are advertised as “free” hearing tests.

Ms. Raggio explained that a dispensing audiologist approaches an audiometric assessment very differently than a hearing aid dispenser. An audiologist is not performing the test with the intention of dispensing a hearing aid.

Mr. Van Vleit provided comments regarding the audiologist scope of practice and stated that audiologists who bill third party payers, such as MediCal or Medicare, may not provide a free hearing test.

Ms. Del Mugnaio commented that existing advertising regulations provide that any advertisement *that advertises a hearing test without qualification as to the nature of hearing test that may be performed by the hearing aid dispenser* is deemed false and misleading advertising.

Mr. Shalev commented that hearing aid dispensers perform tests that do more than determine whether a hearing aid is necessary as the tests determine whether ear wax is an issue and whether there are any physical abnormalities that should be further examined by a physician.

Chairperson Grimes called for the vote on the prior motion.

Mr. Manning commented that the changes to the advertising regulations regarding the manner in which a hearing test is advertised is immaterial as the qualifier already exists in current language and the proposed change approaches the authorization to advertise a hearing test from a different angle.

Ms. Raggio commented that the spirit of the advertising regulations is to inform the consumer that the hearing test as performed by a hearing aid dispenser is not a diagnostic test.

Ms. Del Mugnaio referenced the scope of practice for a hearing aid dispenser as defined in BPC 2538.11 and commented that direct observation of the ear and testing of the hearing which are separate activities.

Ms. Tricia Hunter commented that the proposed regulations should be restricted to advertising and adding the word “only” to the provisions is opening up a scope of practice issue and further commented that any health care practitioner should recognize when there is an abnormality and refer a client for further medical evaluation.

M/S/C: Grimes/Raggio

Recommended that the Board adopt the proposed advertising regulations as drafted with the insertion of the word “only in Section 1399.127(b)(2).

Ayes: Grimes, Raggio

Nays: Lee, Murphy, Shalev, Solomon-Rice, Manning

M/S/C: Manning/Lee

The Board adopt the proposed advertising regulations as drafted and notice the proposed changes for a 45-day public comment period and delegate to the Executive Officer the authority to adopt the proposed regulatory changes as modified if there are no adverse comments received during the public comment period and further delegate the authority of the Executive Officer to make any technical and non-substantive changes that may be required in completing the rulemaking file.

Ayes: Lee, Manning, Murphy, Shalev, Solomon-Rice

Nays: Grimes, Raggio

Mr. Manning provided a report of the remainder of the items discussed at the Hearing Aid Dispensers Committee (as documented in the Hearing Aid Dispensers Committee Meeting Minutes).

Mr. Manning requested Ms. Del Mugnaio to outline the changes to the CE regulations proposed during the Committee meeting.

Ms. Del Mugnaio reviewed the changes.

M/S/C: Manning/Lee

Nays: Solomon-Rice

The Board adopted the recommendations of the Hearing Aid Dispensers Committee regarding the proposed CE changes for hearing aid dispensers as outlined and delegated to Ms. Del Mugnaio to notice the document for a forty-five day public comment period and adopt the proposed changes if there are not adverse comments received during the public comment period; delegate to the Executive Officer the authority to make any technical or non-substantive changes that may be required in completing the rulemaking file.

Vice Chairperson Solomon-Rice stated that she is in support of removing the limitation to self-study activities for all licensees. She commented that self-study activities have value and are conducive to professionals taking their time to ingest complex research studies, etc.

Chairperson Grimes inquired whether the Department has evaluated the self-study issue for all CE programs and determined whether self-study activities are an appropriate mode of on-going professional education.

Ms. Del Mugnaio commented that the Department has expressed an interest in the boards and bureaus moving forward with a continued competency plan which typically includes a variety of professional activities beyond courses. She stated that the hearing aid dispensers' CE regulations have been silent on whether self-study was acceptable toward the license renewal requirement. The new regulation changes would authorize a limited number of self-study as an appropriate mode of course delivery.

B. Speech-Language Pathology Practice Committee Report and Recommendations on the Discussion of Internationally Trained Students and Proposed Regulatory Amendments, and the Review of National Standards for Speech-Language Pathology Assistants and Proposed Regulatory Amendments

Ms. Murphy provided the report from the Speech-Language Pathology Practice Committee meeting and stated that the meeting was informational only and therefore, no formal action was taken.

The Board discussed the issue of amending current regulations CCR Section 1399.152.1 to address internationally trained applicants.

Ms. Linda Pippert commented that her work involves reviewing the academic merit of internationally trained applicants and that she has seen a variety of program requirements from other countries and the requirements are not always equivalent to training in the United States, especially in terms of training for competency. She stated that research methods and diagnostics taught in other countries are not standardized. Ms. Pippert stated that students graduating from international institutions often serve as professors at the international institution immediately upon graduation. She further commented that the English-language competency or lack thereof, with internationally trained students is a serious issue in terms of the students being able to adequately communicate with their clients and peers.

Vice Chair Solomon-Rice and Ms. Raggio agreed to collect data from California programs on the course work requirements, both graduate and undergraduate, for speech-language pathologists. The data will include a minimum number of units and competencies that should be completed within a speech-language pathology program. The data will be brought before the Board and used to amend current provisions regarding equivalent qualifications.

Ms. Murhpy inquired about the discussion surrounding the type and amount of supervision that should be afforded an SLPA as recommended by the American Speech-Language-Hearing Association (ASHA). She inquired about the type of supervision that should be provided following the first ninety (90) days.

Ms. Del Mugnaio stated that she is not familiar with the ASHA standards for SLPAs in terms of their practical application in the workforce.

Ms. Murphy and Vice Chair Solomon-Rice expressed an interest in crafting regulations that would require a specified amount of direct supervision.

Ms. Jean Jackson, from EBS Healthcare, commented that she has seen a lack of responsibility on the part of the SLPA supervisor in the workforce, and that it is often other speech-language pathologists, not their assigned supervisor, who is working with the SLPA.

Chairperson Grimes suggested that the Board collect more data on the supervision standards of SLPAs in other states.

Ms. Murphy agreed to conduct the research for the Board and bring the data before the Board at the October 2013 Board meeting.

C. Audiology Practice Committee Report and Recommendations on the Discussion Regarding the Treatment of Tinnitus and Provisions for Tinnitus Devices, Legal Opinion Regarding Audiologists Participation in the AARP/HearUSA Hearing Aid Program, and Proposed Regulations for Audiology Aide Supervision Standards and Practice Limitations

Chairperson Grimes provided the Audiology Practice Committee report as follows:

- Reviewed the oversight of a tinnitus device and whether the Song Beverly Consumer Warranty Act (SBCWA) covers a tinnitus device and whether the scope of practice of an audiologist includes the non-medical treatment of tinnitus. Ms. Grimes stated that the Committee determined through legal consultation of Ms. Yazigi that a tinnitus device is covered under SBCWA, however, the oversight of dispensing a tinnitus device is not under the Board's jurisdiction. She further commented that a letter to the inquirer should reflect that treatments offered by a licensed provider should be based in peer-reviewed research and should be proven to be efficacious.

Mr. Shalev commented that he believes that the lack of oversight of the dispensing of tinnitus devices is a consumer protection issue and that the taking of an ear impression should be a regulated function by the Board.

Chairperson Grimes delegated to Ms. Del Mugnaio the task of responding to the inquiring licensee regarding the Board's oversight of audiologists treating tinnitus and the lack of Board oversight of the dispensing of tinnitus devices, even though, the warranty of the devices are covered under the SBCWA. She further requested that Ms. Del Mugnaio convey the importance of only providing therapeutic interventions that are efficacious and support by peer-reviewed evidence.

- Chairperson Grimes reported on the discussion regarding the HearUSA/AARP program as included in the Audiology Practice Committee Meeting Minutes.

Mr. Shalev stated that while he abstained from the vote to adopt Ms. Yazigi's opinion during the Committee discussion, he is in support of the motion to accept the opinion as a public document as it pertains to the legal analysis of the plan as defined in December 2012.

M/S/C: Grimes/Lee

The Board voted to adopt the recommendation of the Audiology Practice Committee regarding Ms. Yazigi's legal conclusion of the HearUSA/AARP program and directed staff to field questions from licensees regarding the legal merit of participating in the HearUSA/AARP program as described in the December 2012 correspondence from HearUSA.

- Chairperson Grimes reported that she and Ms. Raggio, with input from Ms. Becky Bingea, will craft language regarding the supervision standards and scope of practice for audiology aides and will bring the language before the Committee and Board at the October 2013 meeting.

M/S/C: Grimes/Raggio

The Board voted to accept the report from the Audiology Practice Committee meeting.

VIII. Employment Practices for Licensees (Business & Professions Code Sections 655.2 & 2538.20, Corporation Code Section 13400 et seq.)

Ms. Yazigi stated that at the January 2013 Board meeting, the Board voted to amend Section 655.2 to make the provision bi-directional so that the provision restricts the employment of a hearing aid dispenser by a non-dispensing audiologist or physician, and the employment of a non-dispensing audiologist or physician by a hearing aid dispenser.

Ms. Yazigi commented that the intent of the legislation was to avoid collusion between the referring parties and the selling parties.

She stated that Mr. Shalev requested that Ms. Yazigi confer with supervising counsel regarding the terminology of the *medical corporation* language in BPC 655.2. Ms. Yazigi stated that in her conversations with supervising counsel, she learned that based on the construction of the statute where the inclusion of the terminology regarding the *medical corporation* in paragraph one of Section 655.2 sets forth the general rule covered in the Corporation's Code and the language in paragraph two provides for the exception to the general rule. Striking the terminology to the medical corporation language would serve to invite legislative scrutiny rather than further clarify the provision.

M/S/C: Lee/Shalev

The Board voted to approve the proposed language to BPC 655.2 making the provision bi-directional, but retaining the terminology regarding the medical corporation.

IX. Licensing/Enforcement/Examination Statistical Data

The Board reviewed the statistical data.

Ms. Del Mugnaio explained the use of sworn versus non-sworn investigators in enforcement cases.

Chairperson Grimes inquired about the license types documented in the hearing aid dispenser examination statistics, in terms of what "HT" refers to.

Ms. Del Mugnaio explained that "HTs" are hearing aid trainees and may be comprised of audiology doctoral students and hearing aid trainees.

Chairperson Grimes confirmed that the Hearing Aid Dispensers Practical Examination must be offered at least twice annually.

Ms. Del Mugnaio confirmed that the Hearing Aid Dispensers Examination must be offered at least twice per year (BPC 2538.1). Typically, the Board offers the examination between 3 or 4 times per year to accommodate the applicant pool.

X. Closed Session (pursuant to Government Code Subsections 11126(a)(1)) -Discussion of Executive Officer Performance Evaluation

The Board went into closed session to discuss the performance of the Executive Officer

XI. Public Comment on Items Not on the Agenda/ Future Agenda Items- Pending Issues Before the Board

There were no further public comments.

Ms. Del Mugnaio reviewed the pending issues before the Board.

- Tinnitus/Tinnitus Devices- Scope of Responsibility
- Audiology Aide – Formal Training
- Taking of Ear Mold Impressions
- Discussion of Credentialing –vs.- Licensure
- Differences Between SLP Aides –vs.- SLPAs
- Supervisory Training Manual for Hearing Aid Dispensers

Vice Chair Solomon-Rice requested that the Board discuss the issue of including ethics training as a mandatory part of the CE requirements for all licensees.

Vice Chair Solomon-Rice requested information regarding the process for approving CE providers and how changes in program regulations are communicated to the provider.

XII. Announcements- Future 2013 Board Meetings- October 10-11, 2013- San Diego

The Board announced that the next Board meeting will be held October 10-11, 2013 in San Diego. A future meeting was scheduled for February 6-7, 2014 in Los Angeles.

XIII. Adjournment

Chairperson Grimes adjourned the meeting at 2:32 p.m.