



BOARD MEETING MINUTES

Walnut, California

April 11-12, 2019

For the sake of clarity, the meeting minutes are organized in numerical order to reflect their original order on the agenda; however, issues were taken out of order during the meeting.

Full Board Meeting

Dee Parker, Board Chair, called the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board meeting to order at 1:40 p.m. Ms. Parker called roll; six members of the Board were present and thus a quorum was established.

1. Call to Order / Roll Call / Establishment of Quorum

Board Members Present

Dee Parker, SLP, Board Chair
Marcia Raggio, AuD, Vice Chair
Christy Cooper, AuD, Board Member
Amnon Shalev, HAD, Board Member
Rodney Diaz, Otolaryngologist, Public Board Member
Karen Chang, Public Board Member
Debbie Snow, Public Board Member (Day 2 only)

Staff Present

Paul Sanchez, Executive Officer
Breanne Humphreys, Operations Manager
Kelsey Pruden, Legal Counsel
Mike Sanchez, DCA Web Cast
Tenisha Graves, Enforcement Coordinator
Heather Olivares, Legislation/Regulation Analyst

Guests Present

Carrie Bower, California Academy of Audiology

2. Approval of the November 29-30, 2018 Board Meeting Minutes

M/S/C Raggio/Diaz

Motion to approve the November 29-30, 2018 meeting minutes. The motion carried 6-0 with Karen Chang abstaining.

3. Public Comment for Items not on the Agenda

There were no comments from the public, outside agencies, or associations.

4. Discussion and Possible Action regarding Regulations as a result of AB 2138 Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction (As Stated in Title 16, California Code of Regulations, sections 1399.132, 1399.133, 1399.134, 1399.156.1, 1399.156.2, 1399.156.3, and 1399.170.19)

Paul Sanchez stated the Board discussed AB 2138 regarding licensing boards and the denial of applications at the last meeting. Mr. Sanchez reported the Board Chair appointed a legislation/regulation subcommittee consisting of Board Members Marcia Raggio and Debbie Snow to discuss the AB 2138 regulations. Heather Olivares provided an overview of the provisions of AB 2138 and explained that AB 2138 was signed by Governor Brown last year and will be effective July 1, 2020; however, there is a statutory requirement to have regulations in place by the effective date of the bill. Ms. Olivares shared that she met with the legislation/regulation subcommittee to discuss two options for the regulatory language.

Ms. Olivares provided an overview of Option 1 which would establish a list of crimes that the Board determined are substantially related to the profession, which could be used for application denials and during litigation. Kelsey Pruden explained the risks of including a list of substantially related crimes in regulation such as if a crime occurs that is not included on the list more work would be involved during the litigation process. Amnon Shalev inquired if the regulation could include a list of crimes but specify that the list is "not limited" to these crimes. Ms. Pruden explained the regulation already includes a list that is non-exhaustive; however, if the Board establishes a set of crimes it is easier to litigate those crimes than a crime that is not included on the list.

Mr. Shalev asked where in the law it states the Board cannot ask for the criminal history on the application. Ms. Pruden pointed out the section of law that prohibits asking for criminal history on the application. Ms. Pruden explained that as of July 1, 2020 the Board can no longer include a checkbox asking for criminal information; however, the Board will still receive criminal history information from the Department of Justice based on the fingerprinting requirement. Mr. Shalev expressed concern whether an applicant can be properly screened based solely on fingerprinting. Mr. Shalev provided the example that currently if a crime is discovered after a person is licensed they can be disciplined for lying on the application; however, under the new law the Board would have no recourse if a crime is discovered after the applicant is licensed. Mr. Sanchez pointed out that Mr. Shalev's concerns are valid and there have been times the Board does not find out about crimes through the fingerprinting process.

Karen Chang inquired if there are crimes not listed that could potentially be included. Ms. Olivares explained the list of crimes was developed based on the common types of crimes reported by the enforcement staff. Ms. Pruden explained the crime must be substantially related and that an argument could be made the crime affects the person's ability to practice. Ms. Chang inquired if the Board could reconsider licensure if the Board later finds out a person did commit one of the substantially related crimes. Ms. Pruden stated if a license is issued by mistake there is recourse available.

Mr. Sanchez asked if there are other crimes that should be included on the list of substantially related crimes. Ms. Chang suggested arson and home robbery. The Board decided other crimes can fall within the “not limited to” provision of the regulation. Ms. Pruden stated this regulation is a starting point and there will be an opportunity to revisit the list once the law goes into effect. Ms. Olivares explained this regulation will also go through the formal regulatory process which will allow for public input.

Ms. Olivares discussed the changes to the regulations in Option 1 regarding the criteria for rehabilitation for denials and reinstatements and suspensions and revocations. Option 1 allows the Board to consider on a case-by-case basis whether successful completion of parole or probation sufficiently demonstrates rehabilitation. Marcia Raggio asked if contrition can be considered rehabilitation. Ms. Olivares explained the way this regulation is written, it allows the Board to decide whether contrition will be accepted as evidence of rehabilitation and the absence of information provided can also be considered when evaluating rehabilitation.

Ms. Olivares provided an overview of Option 2 which does not establish a list of substantially related crimes and allows the Board to decide on a case-by-case basis whether a crime is substantially related. Ms. Olivares stated the risk with this option is the Board may see more application denials going to litigation; however, it does provide the Board with broad discretion for handling applicants with a criminal history.

Ms. Olivares provided an overview of the changes to the regulations in Option 2 regarding rehabilitation for denials and reinstatements and suspensions and revocations. Option 2 requires the Board to find there has been rehabilitation if the applicant or licensee completed the criminal sentence without a violation of parole or probation. If this is not applicable, the Board could consider additional criteria to determine rehabilitation.

Mr. Shalev inquired if the Board would still be able to deny an application and place the person on probation immediately. Mr. Sanchez explained this process will not change.

M/S/C Shalev/Cooper

Motion to approve Option 1 of the draft regulatory proposals, direct the Executive Officer to initiate the rulemaking process, delegate authority to the Executive Officer to make changes consistent with Board policy, and move forward with the 45-day public comment period. The motion carried 6-0.

5. Discussion and Possible Action regarding RPE Direct Monitoring Requirements and Remote or Tele Supervision (As Stated in Title 16, California Code of Regulations, sections 1399.153 and 1399.153.3)

Ms. Olivares explained the regulatory language was approved at the August 2018 Board Meeting; however, during the preparation for the formal regulatory process, it was discovered that direct supervision and tele supervision have not been defined. Ms. Olivares pointed out changes were also made to improve the readability of the regulations.

Ms. Olivares shared the proposed definitions for direct supervision and tele supervision. Ms. Raggio asked if a time element should be stipulated such as if an entire session must be tele supervised. Ms. Olivares responded the number of hours that tele supervision can be used is specified in another section of the regulations. Ms. Pruden clarified that a session could be broken up as long as the total hours of tele supervision does not exceed the maximum number of allowed hours. Ms. Raggio suggested the language should specify whether tele supervision is required for the entirety of a session. Christy Cooper expressed concern about requiring supervision for the entirety of a session rather than allowing supervision to occur incrementally throughout several sessions to cumulatively meet the 8-hour requirement. Ms. Raggio asked for clarification if face-to-face supervision is currently required for the duration of a session. Ms. Pruden responded when a RPE supervisor is supervising they must be directly observing 100 percent of the time; however, the supervision can be in increments toward the 8-hour requirement. Mr. Sanchez clarified the direct supervision requirement is 8 hours per month and of this requirement, 4 hours can be completed using tele supervision.

Ms. Raggio asked for clarification of electronic means. Ms. Pruden responded the means can be broad such as electronic video monitoring. The Board agreed to change the definition of tele supervision to specify electronic video monitoring. Ms. Parker expressed concern that a supervisor may not always pay attention yet still count that supervision toward the required amount of time. Mr. Sanchez suggested changing the definition of direct supervision and tele supervision to require visual personal observation. The Board agreed to these changes.

Ms. Olivares provided an overview of the additional changes to the regulatory language regarding the responsibilities of RPE supervisors. Ms. Raggio asked if video monitoring needs to be added to each reference to tele supervision. Ms. Olivares stated that is unnecessary if electronic video monitoring is added to the definition of tele supervision. Ms. Pruden clarified the requirement is for direct supervision, but tele supervision is an acceptable means of supervising for up to 4 hours. Ms. Raggio asked if the limit of 4 hours needs to be justified. Ms. Pruden explained that ASHA standards were researched and ASHA allows about half of the required hours to be completed using tele supervision.

Ms. Raggio inquired if the Board should consider ASHA requirements for clinical clock hours for record keeping and report writing and offered to research the ASHA requirements so the Board is aware.

M/S/C Raggio/Cooper

Motion to approve the proposed language as amended, direct the Executive Officer to initiate the rulemaking process, delegate authority to the Executive Officer to make changes consistent with Board policy, and move forward with the 45-day public comment.

Carrie Bower with California Academy of Audiology (CAA) inquiring how report writing would be tele supervised. Ms. Cooper responded that a report is sent in advance and discussed over the phone or video. Ms. Pruden clarified the regulations include an

aspect of professional judgement for the RPE supervisor and if a task cannot be done via tele supervision than tele supervision is not appropriate.

The motion carried 6-0.

Petition Hearings for Reinstatement of Licensure or Other Reduction of Penalty (Time Certain: April 12, 2019 at 9:00 a.m.)

1. Petition for Reinstatement of Revoked License – Mary Sinclair, SLP, License Number 3009

Ji-Lan Zang opened the hearing. Vladimir Shalkevich presented the case to the Board. Ms. Zang swore in Mary Sinclair. Ms. Sinclair presented her case to the Board. Mr. Shalkevich cross examined Ms. Sinclair. Ms. Sinclair responded to the Board's questions. Ms. Sinclair gave her closing argument. Mr. Shalkevich gave his closing argument. Ms. Sinclair provided a rebuttal to Mr. Shalkevich's closing argument.

Closed Session

2. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session to Deliberate on Above Petition and Disciplinary Matters, Including Proposed Decisions, Stipulated Decisions, Defaults, Petitions for Reductions in Penalty.

Open Session

3. Executive Officer's Report
 - a. Administration Update

Mr. Sanchez announced two new staff members, Tenisha Graves and Cathy Cummings. Mr. Sanchez stated he is working on growing the Board's staff through the Budget Change Process in order to be properly staffed to handle the Board's workload.

- b. Budget Report

Mr. Sanchez provided an overview of the Board's current budget. Mr. Sanchez explained the Board's expenditures are low due to the Board's position vacancies and revenue is on target with the Board's estimates.

- c. Licensing Report

Mr. Sanchez stated the Board will be entering its peak licensing season. Mr. Sanchez reported staff are currently exceeding licensing goals; however, the licensing times are expected to increase during peak season. Mr. Sanchez also reported there is currently a licensing position vacancy.

Mr. Sanchez provided an overview of the licensing reports. Mr. Sanchez reported the Board issued approximately 3,000 licenses during the first three quarters of the fiscal year. Mr. Sanchez also reported the Board will be able to process online license renewals soon.

d. Practical Examination Report

Mr. Shalev stated of 41 hearing aid dispensers that took the practical exam, 1 failed and of 14 audiologists that took the exam, 4 failed. Mr. Sanchez stated the statistics aren't available for the April hearing aid dispenser's practical exam yet and clarified the statistics are for the January 2019 and October 2018 practical exams.

Ms. Raggio inquired whether the practical exam statistics include the number of times a person has taken the exam. Mr. Sanchez stated those statistics are available from previous years and he will share that information with Ms. Raggio.

e. Enforcement Report

Mr. Sanchez provided an overview of the enforcement report. Mr. Sanchez reported there are currently 10 formal discipline cases pending with the Attorney General's office and the Board is currently monitoring 35 probationers, of which 8 require drug or alcohol testing and 10 are in a tolled status. Mr. Sanchez stated the report includes the disciplinary actions for the past 12 months.

Ms. Raggio inquired about separating the speech-language pathology and audiology complaints. Breanne Humphreys responded staff committed to doing that at the end of each fiscal year since the report is not automated and must be completed manually. Mr. Sanchez stated the Board is working on a Business Modernization Project that may assist with this type of reporting.

4. Legislation Update, Review, and Possible Action

Ms. Olivares provided an overview of the legislative memo and pointed out several bills that staff will be watching including AB 193, AB 312, AB 476, AB 1545, SB 425, and SB 601. Ms. Olivares reported AB 862 has been amended to address a DMV issue and will be removed from the list of watched bills.

- a. AB 193 (Patterson) Professions and vocations
- b. AB 312 (Cooley) State government: administrative regulations: review

Ms. Pruden stated AB 312 will create a significant workload for the Board. Ms. Olivares responded that although there is a workload associated with this bill, a Watch position is recommended because it is unlikely this bill will move forward.

- c. AB 476 (Blanca Rubio) Department of Consumer Affairs: task force: foreign-trained professionals
- d. AB 544 (Brough) Professions and vocations: inactive license fees and accrued and unpaid renewal fees

Ms. Olivares provided an overview of the bill and pointed out concerns including the workload to process delinquent licenses and a revenue loss for the Board. Ms. Olivares stated the inability to collect delinquent fees may create a disincentive for licensees to keep their license current. Ms. Parker inquired if Board staff would inform licensees about the costs involved to bring a license back to current status when they move into inactive status. Ms. Pruden clarified that licensees must apply to move into inactive

status, whereas licensees who are in delinquent status have stopped paying their renewal fees and may not contact the Board. Mr. Sanchez explained the fee for an inactive license is the same as an active license, with the difference being an inactive licensee does not need to complete the continuing education requirement. Mr. Sanchez stated the Board currently advises licensees who no longer want their license to let the license expire.

M/S/C Raggio/Chang

Motion to Oppose the bill. The motion carried 7-0.

- e. AB 598 (Bloom) Hearing aids: minors

Ms. Olivares provided an overview of the bill and stated although this bill would not directly impact the Board, a Support position is recommended to help ensure children diagnosed with hearing loss are able to receive necessary medical devices. Mr. Shalev inquired if hearing aid dispensers can work with minors. Ms. Raggio responded hearing aid dispensers can fit hearing aids for children on Medi-Cal.

M/S/C Snow/Shalev

Motion to Support the bill. The motion carried 7-0.

- f. AB 613 (Low) Professions and vocations: regulatory fees

Ms. Olivares provided an overview of the bill and stated it is unclear whether the current process for increasing fees can still be used; however, legislative staff have indicated that both processes can be used. Ms. Olivares stated the position letter can request clarification in the legislation that both processes can be used.

M/S/C Chang/Cooper

Motion to Support the bill and delegate Board staff to seek clarification in the legislation that both processes to increase fees can be used. The motion carried 7-0.

- g. AB 780 (Brough) Hearing aid dispensers: apprentice license

Ms. Olivares reported this bill is sponsored by the Hearing Healthcare Providers of California (HHP) and is scheduled for a committee hearing on April 23rd. Ms. Olivares provided an overview of the bill and discussed the Board's concerns. Ms. Olivares recommended the Board Oppose the bill and provide the Executive Officer with authority to negotiate amendments.

Vanessa Cajina with HHP stated the apprenticeship program is an approach to bring more training into the hearing aid dispensing profession in order to achieve the goal of adding tympanometry to the scope of practice. Joe Bartlett with HHP explained why tympanometry should be added to the scope of practice for hearing aid dispensers.

Mr. Sanchez asked for clarification regarding the provision of the bill that would require an examination. Ms. Cajina responded HHP is open to discussing the required examination to minimize the financial impact to the Board.

Ms. Cooper inquired what tympanometry has to do with the fitting and selling of a hearing aid. Mr. Bartlett responded that tympanometry is part of the necessary testing done before the process of fitting and selling a hearing aid begins. Ms. Cooper stated that pure tone audiometry with air bone gap would require a medical clearance regardless if the tympanometry is positive or negative. Mr. Bartlett responded there are possible causes of a false non-air bone gap and tympanometry is another test that can be used to clarify the pure tone audiometry results.

Mr. Bartlett stated a tympanometry tip is less likely to cause damage than an otoscope. Ms. Raggio stated tympanometry can cause damage. Mr. Bartlett responded there are similar dangers in taking ear impressions and hearing aid dispensers are tested on their ability to treat an ear correctly. Ms. Raggio stated tympanometry should only be performed by someone who is highly trained.

Ms. Cooper stated tympanometry is a diagnostic test that is part of a comprehensive test battery and case history. Mr. Bartlett responded that case history is also within the scope of practice for hearing aid dispensers and licensees are trained to look for red flags that require a referral.

Mr. Shalev inquired about the difference between an apprentice license and trainee license. Ms. Cajina responded the apprentice license would require hands-on training using the International Hearing Society apprenticeship program and this legislation seeks to demonstrate there is a written curriculum and practice guidelines approved by Federal Department of Labor. Ms. Raggio inquired how a licensee would complete distance learning for tympanometry and ear impressions. Ms. Cajina clarified the apprentice program is a combination of hands-on training and distance learning.

Mr. Shalev stated the law needs to state that tympanometry cannot be used to make a diagnosis. Ms. Cajina responded current law already states hearing aid dispensers cannot perform diagnostic testing. Ms. Pruden responded this bill removes that language from current law. Mr. Bartlett stated that is a drafting error.

Rodney Diaz inquired how many states allow licensees to perform tympanometry. Mr. Bartlett estimated between 20 and 27. Carrie Bower with CAA responded that based on their research two states allow tympanometry and those states require a minimum of an associate degree.

Ms. Cooper stated it is important to have knowledge of similar professions, but that does not mean a hearing aid dispenser should perform the job of another profession outside of the practice of fitting and selling a hearing aid. Mr. Bartlett stated tympanometry would assist with the fitting and selling of a hearing aid because a dispenser wouldn't sell a hearing aid to someone who needs a medical referral.

Ms. Chang inquired about the reason for this bill. Ms. Cajina responded that in the past hearing aid dispensers did not have a prohibition on performing tympanometry and an

opinion was issued approximately 15 to 20 years ago that prohibited tympanometry. Ms. Cajina stated HHP members believe tympanometry would help their clients.

Mr. Shalev inquired if the prohibition is based on an old opinion, could the Board try to get the opinion reversed. Ms. Pruden explained current law states that hearing aid dispensers cannot perform diagnostic tests and more research is needed to determine whether tympanometry is diagnostic. Mr. Sanchez clarified the Board's authority to enforce the advertisement and practice of tympanometry is based on the interpretation that tympanometry is a diagnostic tool.

Carrie Bower stated CAA is opposed to the bill.

Ms. Pruden stated legal concerns with the bill include removing the provisions of law requiring equipment to be calibrated and prohibiting hearing aid dispensers from performing diagnostic tests. Ms. Pruden explained the Board would have a duty to ensure any testing is sufficient to prove proficiency in performing tympanometry. Ms. Pruden suggested changes to the language to make the requirements for the apprentice license consistent with the requirements for the trainee license.

Mr. Shalev inquired about the Board's costs for this bill. Ms. Olivares responded the IT costs for creating a new license type are unknown at this time; however, the exam costs are estimated to be \$280,000.

M/S/C Diaz/Cooper

Motion to Oppose the bill. The motion carried 6-0 with Amnon Shalev abstaining.

M/S/C Diaz/Cooper

Motion to delegate authority to the Executive Officer to negotiate the language of this bill based on a policy against tympanometry because it is a diagnostic tool. The motion carried 5-0 with Karen Chang and Amnon Shalev abstaining.

M/S/C Shalev/Chang

Motion to delegate authority to the Executive Officer to negotiate the language of this bill based on a policy against the apprentice license because it is duplicative to the trainee license and raising the entry level requirements for hearing aid dispensing while keeping the Board's costs in mind. The motion carried 7-0.

- h. AB 862 (Kiley) Professions and vocations: License revocation and suspension: student loan default
- i. AB 1075 (Holden) California State University: speech-language pathologist programs

Ms. Olivares provided an overview of the bill and stated although this bill does not directly impact the Board, there is a significant need for additional speech-language pathologists and recommended a Support position. Ms. Raggio stated the same case could be made for audiologists.

M/S/C Chang/Cooper

Motion to Support the bill. The motion carried 7-0.

- j. AB 1545 (Oberholte) Civil penalty reduction policy
- k. SB 53 (Wilk) Open meetings

Ms. Olivares provided an overview of the bill and stated concerns include impacting Staff's ability to work with Board Members and increasing the Board's costs to hold additional public meetings. Ms. Olivares reported a similar bill was passed by the Legislature and Vetoed by Governor Brown; however, it is unknown if this bill would be Vetoed by Governor Newsom. Ms. Olivares stated it would be difficult to work on developing regulatory language without consulting Board Members with subject matter expertise. Ms. Pruden stated e-mail communications with two or more Board Members would also be impacted by this bill. Ms. Pruden explained there isn't a loss of transparency by holding a meeting with two Board Members because the issue still must go before the full Board for action.

M/S/C Diaz/Chang

Motion to Oppose the bill. The motion carried 7-0.

- l. SB 425 (Hill) Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct
- m. SB 601 (Morrell) State agencies: licenses: fee waiver
- n. SB 617 (Glazer) Audiologists and hearing aid dispensers: sales of hearing aids

Ms. Olivares provided an overview of the bill and stated legislative staff have not been forthcoming about the direction of the bill. Ms. Olivares expressed concern that if the bill moves forward it may become an issue for the Board. Ms. Pruden reported the bill has been amended to deal with pharmacy technicians.

5. Discussion and Possible Action on Proposed Locked Hearing Aids Disclosure from Hearing Aid Dispensers and Dispensing Audiologists

Mr. Sanchez stated this issue has been discussed at prior meetings and at the last Board Meeting it was discussed whether the Board should find a sponsor for a bill. Mr. Sanchez suggested forming a legislative committee to draft a legislative proposal for next year.

Ms. Raggio inquired if there is a preference for the Board to sponsor the bill rather than getting a professional organization to sponsor it. Mr. Sanchez responded that is a decision to be made by the Board. Ms. Raggio inquired about the costs to sponsor a bill. Mr. Sanchez responded there would be a cost, but it should not be significant enough to prevent the Board from pursuing legislation, especially for a consumer protection issue.

M/S/C Cooper/Diaz

Motion to direct the legislative committee to look at this issue and develop legislative language. The motion carried 7-0.

6. Future Agenda Items and Future Board Meeting Dates
 - a. August
 - b. November

Mr. Sanchez requested Board Members to send their available dates for August and November.

7. Adjournment

The meeting adjourned at 3:40 p.m.