



## **MEETING MINUTES**

**July 26-27, 2012**

Wyndham Garden Hotel

“Aztec Room”

3737 Sports Arena Blvd

San Diego, CA

(916) 263-2666

### **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.

Rodney Diaz, M.D.

### **Staff Present**

Annemarie Del Mugnaio, Executive Officer

Claire Yazigi, Legal Counsel

Breanne Humphreys, Staff

### **Guests Present**

Cliff Johnson,

Tricia Hunter, HHP CA

Jacque Georgeson, SDSU

Don Tucker, HHP

## **I. Call to Order**

Chairperson Grimes called the meeting to order at 4:10 p.m.

## **II. Introductions**

Those present introduced themselves.

## **III. Approval of Full Board Meeting Minutes of April 20, 2012**

The Board discussed minor edits to the meeting minutes of April 20, 2012.

**M/S/C: Murphy Martin**

**The Board voted to adopt the April 20, 2012 Board meeting minutes as amended.**

## **IV. Executive Officer's Report**

### **A. Budget Update**

Ms. Del Mugnaio provided a budget expenditure report through the end of fiscal year 2011/2012. She stated that the Board has little reversion of funds at the close of FY 2011/2012 and that the mid-fiscal year change combining the funding of the two programs was challenging from an accounting perspective. Ms. Del Mugnaio stated that the 2012/2013 budget will be much easier to monitor as the Board will be managing one funding source, but will maintain two accounting

records to track spending for the hearing aid dispensing program costs versus costs for licensing and enforcement of speech-language pathologists and non-dispensing audiologists.

## **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)**

Ms. Del Mugnaio reported that the Consumer Protection Enforcement Initiative regulations have been approved by the Board and the Department and are currently being reviewed by the Department of Finance.

### **2. Supervision Qualifications for Speech-Language Pathology Assistants (SLPA) & Required Professional Experience (RPE) 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)**

Ms. Del Mugnaio requested the Board to review a proposed change to the SLPA supervision requirements which would change the current requirement of SLPA supervisors obtaining supervision training once every two years to obtaining supervision training once every four years, which would make the requirement consistent with that of Supervisors of RPE temporary license holders.

**M/S/C: Murphy/Lee**

**The Board approved the proposed change to Section 1399.170.15(b)(4) of the California Code of Regulations, which would require SLPA supervisors to obtain three (3) hours of supervision training once every four (4) years.**

### **3. Continuing Education Requirements for Licensed Hearing Aid Dispensers- California Code of Regulations Sections 1399.140-1399.143**

Ms. Del Mugnaio stated that she has yet to publish the notice for the regulations and that she will pursue the public notice in early January 2013. Ms. Del Mugnaio stated that the effective date of the new Continuing Education requirements needs to reflect, January 31, 2014 in order to provide ample time for the regulations to take effect and for licensees to be notified of the changes.

Ms. Hunter requested that the implementation date of the Continuing Education regulation be established a year from the implementation date to allow licensees ample time to accumulate the requisite hours.

**M/S/C: Manning/Danz**

**The Board approved the proposed change to the effective date of the continuing education regulations for hearing aid dispensers and to set the proposed regulations for a forty-five (45) day comment period.....**

## **C. Administrative Updates: Occupational Analysis for Hearing Aid Dispensers Examination, BreEze, Personnel Changes,**

Ms. Humphreys provided the following administrative update:

- Occupational Analysis for Hearing Aid Dispensing – Survey was distributed to licensing professionals and Office of Professional Examination Services (OPES) is currently reviewing the results of the surveys. Two additional expert workshops will be held to analyze the results of the survey data and to draw conclusions regarding the content of the hearing aid dispenser examinations.
- The next hearing aid dispenser’s practical examination will be held August 25, 2012 in Sacramento.
- The Board’s new website will be live in mid-August.
- Personnel Changes- Still recruiting for the Administrative Assistant position. Recruiting has been difficult due to budget cuts, position reductions, and a limited pool of eligible candidates. An Executive Order has been issued eliminating the use of Student Assistants.
- BreEze- Board is in the second phase roll-out which was original scheduled for February 2013 and has now been postponed to April 2013.

#### **D. Project Plan for Reviewing the English Language International Testing System (IELTS) Examination**

Ms. Murphy has identified a group of six subject matter expert speech-language pathologists to take the IELTS examination and work with the OPES to determine whether the examination is appropriate for testing applicant’s English-language competency. Several of the experts are scheduled to take the examination in August 2012.

### **V. Legislation Update**

Ms. Del Mugnaio reported the status of the following legislation:

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

SB 1444, the Song Beverly Consumer Warranty Act (SBCWA) amendments was pulled from the legislative calendar as Senator Anderson’s Office has suggested the Board work with the Senate Business, Professions, and Economic Development Committee during Sunset Review to address necessary amendments to the SBCWA.

#### **B. Assembly Bill 1454- Solorio- Worker’s Compensation: Audiologists**

AB 1454 would include audiologists who hold the doctoral degree, as qualified medical examiners for the purpose of worker’s compensation claims. The Board does not have a position on the bill as the amendments are not pertinent to consumer protection.

#### **C. Other Legislation of Interest to the Board**

- AB 1588 – Impact all healing arts professions and waives renewal fees and continuing education requirements for active military personnel.
- AB 1904 – Requires a board to expedite the licensure process for an applicant who holds a license in the same profession or vocation in another jurisdiction, and is married to, an active duty member of the Armed Forces of the United States.
- AB 2570 – Prevents a licensee or an agent acting on behalf of a licensee from including a gag clause in a settlement agreement. The Board has addressed this issue in its proposed CPEI regulations.

### **VI. Review and approval of the 2012 Strategic Plan**

**M/S/C: Murphy/Danz**

**The Board voted to adopt the 2012 Strategic Plan and to post the plan on its website.**

Chairperson Grimes adjourned the meeting at 4:50 p.m. to be reconvened July 27, 2012.

Chairperson Grimes reconvened the meeting at 9:15 a.m. on July 27, 2012.

**VII. Committee Meeting Reports**

**A. Hearing Aid Dispensers Committee Report on the Exemption Request of the Federal Drug Administration and Recommendations on Amendments to the Hearing Aid Dispenser's Advertising Regulations**

Mr. Manning presented the HAD report and requested the Board approve a motion to delegate to Ms. Yazigi and Ms. Del Mugnaio the task of amending the HAD advertising regulations to make the regulations more clear and concise and bring suggested language before the HAD Committee at the next scheduled meeting.

Mr. Manning stated that the other item discussed during the Committee meeting was the exemption request before the Federal Drug Administration (FDA) regarding the remote acquisition of hearing aids. Mr. Manning reported that the FDA has not responded to the Board's exemption request and therefore, Ms. Del Mugnaio would follow-up with the FDA.

**M/S/C: Murphy/Martin**

**The Board accepted the report of the Committee and delegated to Ms. Yazigi and Ms. Del Mugnaio the task of providing suggested amendments to the Hearing Aid Dispensers advertising regulations for consideration by the Committee at its next meeting.**

**B. Sunset Review Committee Report and Recommendations on the 2012 Report and Project Plan**

Chairperson Grimes presented the Sunset Review Committee report:

- Reviewed materials from the 1998 Sunset Report
- Committee agreed to address six new issues in the Sunset Report: 1) Pediatric Audiology standards, 2) English-language competency standards for internationally trained applicants, 3) Amendments to the Song-Beverly Consumer Warranty Act, 4) Task Force to address services for speech and hearing impairments as provided by Regional Centers, 5) Violation of the terms and conditions of a provisional license is deemed unprofessional conduct, and 6) Uniform licensing standards and the elimination of exempt settings,

**M/S/C: Manning/Diaz**

**The Board accepted the report of the Committee.**

Mr. Manning inquired whether we need to address each of these items as issues during the sunset process or are these items the Board needs to address as part of our normal course of business and policy making responsibility.

Chairperson Grimes responded and indicated that some of the items may be appropriately addressed by the Board. However, issues related to the need for new training programs in audiology, and cross-cutting issues related to programs under California Children Services, addressing practice issues within exempt settings, etc. needs legislative attention and support as the Board does not have enough influence to effect changes within these systems.

Ms. Del Mugnaio commented that the meat of the report should address those issues that pose a risk to the public or amending statutes that prevent qualified persons from being licensed.

The Board discussed potential new issues to be addressed in the Sunset Report.

Ms. Del Mugnaio commented that several of the issues being discussed, that is exempt settings, the lack of audiology training programs in the state, standards related to internationally trained applicants may be covered under the existing issues raised before the Board in the 1998 Sunset Report document. She suggested that the new issues include: amend the Song-Beverly Consumer Warranty Act, amend the language in the unprofessional conduct codes related to violations of a conditional and probationary license, and comprise a task force to address speech and hearing services provided within regional centers.

**M/S/C: Lee/Murphy**

**The Board adopted a motion to address the new issues outlined above and to further expand on the existing issues raised in the 1998 Sunset Report regarding doctoral training for audiologists, consideration of new pediatric audiology standards, issues surrounding settings exempt from licensure requirements, and provisions for internationally trained applicants.**

**VIII. 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. Yazigi provided an overview of the history of the Uniform Standards for Substance Abusing Licensees as mandated by Business and Professions Code 315. She stated that the Legislative Council issued an opinion that concluded the Uniform Standards must be adopted for all healing arts' boards. Ms. Yazigi added that the Office of the Attorney General issued a similar opinion stating that the standards are mandatory and must be adopted by regulation for each respective board.

Ms. Yazigi provided three options for how to enforce or implement the standards:

1. Presume that whenever a licensee has a substance related violation, the licensee has a substance abuse problem until the licensee proves otherwise.
2. Enforcement of the Uniform Standards is contingent upon the outcome of a clinical diagnostic evaluation and if the evaluation reveals the licensee has a substance abuse problems, the Uniform Standards are enforced.
3. Any time there is a case involving a substance abuse act or violation, a hearing is held to determine whether the licensee has a substance abuse issue. The hearing would include testimony by experts both for the Board and the respondent who would make recommendations regarding the licensee's fitness to practice.

Members of the Board inquired about who pays the cost of the clinical diagnostic evaluation and would the Board be in the position to select the diagnostician.

Ms. Del Mugnaio responded and stated the language is silent on which party must cover the costs of the evaluation, but stated that the Board would select or approve the clinical diagnostic evaluator.

A long discussion ensued regarding the automatic suspension of the license that would occur in Option #2 above and whether the suspension is appropriate pending the outcome of the clinical diagnostic evaluation.

Ms. Yazigi stated that the suspension could only be enforced if it were part of a decision ordering the Uniform Standards or pursuant to a settlement agreement between the Board and the licensee. The Board inquired about the investigatory process and how staff triages a case to determine whether it should be referred to discipline.

Ms. Del Mugnaio explained the case review process and stated that each case is independently analyzed taking into consideration the age of the occurrence, patterns of abuse, incident surrounding the arrest or conviction, and rehabilitation efforts on the part of the licensee. She commented that implementing the Uniform Standards does not change the triage phase or discretion of the staff as to whether or not to elevate a case. The Uniform Standards are specific to disciplinary terms and conditions for substance abusing licensees.

Ms. Yazigi mentioned that the Board already has the authority pursuant to Business and Professions Code Section 820 to compel a licensee to undergo a mental and/or physical evaluation if the Board suspects a licensee may not be fit to practice.

Ms. Del Mugnaio explained that if the staff encounters a case where a licensee may pose an immediate threat to the public, the staff would pursue actions such as, Interim Suspension Orders or Penal Code Section 23 Orders, which are ordered by an Administrative Law Judge based on a summary of facts and which immediately suspend a license pending an administrative hearing.

Ms. Yazigi stated that the proposed Consumer Protection Enforcement Initiative regulations would provide the Board the authority to compel applicants to undergo a mental and/or physical examination prior to being issued a license, if the Board suspects the applicant may not be fit to practice.

Ms. Yazigi reviewed Option #2 with the Board and explained that should the Board adopt the policy by regulation, the language should include a process whereby the licensee may contest or appeal the findings of the clinical diagnostic evaluation.

The Board further discussed the options presented by Ms. Yazigi and requested that Ms. Del Mugnaio present statistical information at the next meeting regarding how many cases involve substance abuse and how many of those cases are referred to discipline.

Ms. Del Mugnaio stated that she would also survey other healing arts' boards to determine their respective processes and policies.

Ms. Yazigi referenced the proposed Uniform Standards for Substance Abusing Licensees and the Disciplinary Guidelines document in the Board packet and outlined the following proposed changes:

- Incorporate the language of Option #2 and add language regarding the licensee's opportunity to contest the outcome of the clinical diagnostic evaluation.

- Include that during the licensee suspension phase, pending the outcome of the clinical diagnostic evaluation, the licensee must submit to random drug testing 2x's a week.
- Minor grammatical changes to the language.

Ms. Yazigi reviewed the language regarding the suggested penalties and the proposed minimums and maximums for each violation.

**M/S/C: Manning/Diaz**

**The Board voted to approve the proposed Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines and delegated to the Executive Officer to notice the language for a forty-five (45) day public comment period, to make any non-substance changes to the language as deemed necessary, and to adopt the language and file it with the Office of Administrative Law.**

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

Ms. Del Mugnaio referenced an email in the Board meeting materials sent by the Educational Testing Service (ETS) which provided statistical data on the new audiology examination. She stated that she requested ETS to provide an overview of the changes made to the previous audiology examination which phased out November 2011. Ms. Del Mugnaio explained that according to ETS the new audiology examination focuses more on practice and application over foundational knowledge and includes more test questions embedded in case studies of audiologic patients. She stated that the development of the new examination stemmed from an American Speech-Language-Hearing Association Audiology Practice Analysis completed in 2008.

Chairperson Grimes stated that the information provided by ETS is incomplete in that it is difficult to ascertain the scoring changes and weighting of the new examination.

Ms. Del Mugnaio stated that the new scoring scale will not be implemented by ETS until January 2013.

Chairperson Grimes expressed concern that ETS completely revamped the audiology examination with no input from state licensing boards, or other professional bodies and there is no method for lay persons to determine how the examination has changed in terms of content, rigor, and scoring. She inquired whether the Board could contract with the OPES to analyze the new examination and conduct an abbreviated validation study.

Ms. Del Mugnaio responded that she would contact OPES to determine the office's availability to conduct the study for the Board. She stated that there is a resource component in that the Board must be able to fund the study by OPES and that she would work with budget staff to determine the available resources.

#### **X. Status of the Correspondence with Department of Developmental Services Regarding the Need for Further Services Provided by Regional Centers for Deaf/Hard of Hearing Children**

Chairperson Grimes provided background regarding services provided to children who have a disability impacting their access to an appropriate education. Under Part C, of the IDEA, children

birth to 36 months, who are deaf or hard of hearing, receive services through the Local Education Agency or the public school as provided by Educational Audiologists and Teachers of the Deaf and Hard of Hearing (D/HH). She stated that if a child who is D/HH also has an additional disability, such as Autism or a motor impairment, their services are provided through the Regional Center. The Regional Centers can vendor with outside agencies to provide services, however, such outsourcing requires funding. Due to budget cuts and limited funding, the Regional Centers are providing services within their own provider resources.

Chairperson Grimes commented that the concern raised by many professionals who treat children who are D/HH is that the Regional Centers are not providing appropriate services to these children and are employing unqualified personnel to address such hearing impairments.

Ms. Del Mugnaio referenced a letter from the Department of Developmental Services (DDS), dated July 14, 2010, as included in the meeting packets, where DDS was responding to concerns raised by the Board surrounding services provided by regional centers to children with significant hearing loss. She stated that DDS committed to investigating the concerns raised by the Board. However, she commented that the problem appears more pervasive than one incident or one particular regional center and that addressing it case-by-case will not solve the systemic problem. Ms. Del Mugnaio recommended that the issue be addressed before the Legislature in the Sunset Review Report.

Chairperson Grimes agreed to spearhead the issue and provide a summary of the problem for inclusion in the Sunset Report.

#### **XI. Statistical Data on Licensing & Enforcement**

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

Ms. Del Mugnaio reported that the enforcement and licensing statistics will be included on the Board's new website.

#### **XII. Public Comment on Items Not on the Agenda**

There were no further public comments.

#### **XIII. Announcements – Next Board Meeting October 4-5, 2012 (Locations TBD)**

An announcement was made that the next Board meeting will be held in Los Angeles on October 4-5, 2012.

#### **XIV. Adjournment**

Chairperson Grimes adjourned the meeting at 1:05 p.m.