



FULL BOARD MEETING MINUTES

January 10-11, 2013

Kensington Park Hotel
450 Post Street
San Francisco, CA
(916) 263-2666

Board Members Present

Alison Grimes, Au.D., Vice Chairperson
Amnon Shalev, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Monty Martin, M.A.
Carol Murphy, M.A.
Patti Solomon-Rice, Ph.D.
Jaime Lee, Esq.
Rodney Diaz, M.D.

Staff Present

Annemarie Del Mugnaio, Executive Officer
Claire Yazigi, Legal Counsel

Board Members Absent

Marcia Raggio, Ph.D.

Guests Present

Dennis Van Vleit, Audiologist
Jody Winzelberg, Audiologist, Lucile Packard Children's Hospital
Tricia Hunter, HHP
Cindy Peffers, Hearing Aid Dispenser HHP

I. Call to Order

Chairperson Grimes called the meeting to order at 1:50 p.m.

II. Introductions

Those present introduced themselves.

III. Election of Officers and Appointments to Committees

Chairperson Grimes appointed Amnon Shalev, to the Hearing Aid Dispensers Practice Committee and appointed Marcia Raggio to the Audiology Practice Committee and the Hearing Aid Dispensers Committee.

IV. Ethical Decision Making for Board Members- Claire Yazigi, Legal Counsel

Ms. Yazigi provided an overview of a board member's responsibilities in terms of both compliance with the Open Meetings Act, and Conflict of Interest guidelines. She explained the provisions of the Open Meetings Act and provided specific examples of when it would be appropriate for a board to conduct business in closed session. Ms. Yazigi further provided guidance regarding potential conflicts of interest and used hypothetical situations to further educate the Board on potential conflicts.

V. Discussion Regarding Sunset Review Report, Review Process, and Spring Hearings

Ms. Del Mugnaio stated that the Board's Sunset Review Report is available on the Board's website for review. She explained that the report explains the Board's operational mandates and program responsibilities and is a form of an audit report. Ms. Del Mugnaio stated that the Board will receive questions/issues from the Senate Business Professions and Economic Development Committee (BP&ED) and will be asked to testify on such issues before the BP&ED at a public Sunset Review hearing to be held in March 2013.

Chairperson Grimes inquired whether interested parties may raise issues not covered in the report at the public hearing.

Ms. Del Mugnaio stated that the hearings are open to the public and public comments are welcome.

Mr. Manning pointed out an error in the operative dates of legislation as outlined in the report. The dates of the first three legislative actions should reflect 1999, instead of 2009.

Ms. Del Mugnaio stated that she would make the necessary corrections.

Chairperson Grimes adjourned the meeting at 3:28 p.m., to be reconvened following the conclusion of the Hearing Aid Dispensers Committee.

Chairperson Grimes reconvened the meeting at 5:30 p.m.

VI. Approval of Meeting Minutes:

- A. July 26-27, 2012 Board Meeting Minutes**
- B. October 4-5, 2012 Board Meeting Minutes**
- C. November 26, 2012 Teleconference Board Meeting Minutes**

The Board discussed minor edits to the minutes.

M/S/C: Murphy/Lee

The Board voted to approve the July 26-27, 2012 Board Meeting Minutes, October 4-5, 2012 Board Meeting Minutes, and the November 26, 2012 Teleconference Board Meeting Minutes as amended.

VII. Executive Officer's Report

Ms. Del Mugnaio provided an update on the following:

A. Status of Proposed Regulations

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

Ms. Del Mugnaio stated that as directed by the Board, she has resubmitted the disapproved rulemaking file regarding the Consumer Protection Enforcement Initiative to the Department of Consumer Affairs for review and will subsequently transmit the file to the Office of Administrative Law for approval.

2. Continuing Education Amendments for Hearing Aid Dispensers (California Code of Regulations 1399.140-1399.14)

Ms. Del Mugnaio reported that she has not noticed the continuing education amendments for hearing aid dispensers as previously approved by the Board to date, but will do so following the meeting. She requested the Board to change the operative date to the proposed continuing education regulations to January 31, 2015 to provide for ample time for licensees to comply with the new provisions once adopted.

M/S/C: Manning/Lee

The Board approved the motion to change the operative date of the continuing education amendments for hearing aid dispensers to January 1, 2015.

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

Ms. Del Mugnaio stated that the Office of Professional Examination Resources is in the process of interviewing the Board's subject matter experts who took the IELTS examination to prepare data for a standard setting study.

C. Administrative Updates- BreEze/ Staff Recruitment/ Operational Updates

- The Board's new target date for implementation of BreEze has been delayed due to programming issues that have surfaced with boards currently undergoing implementation. A new date will be provided at the next Board meeting.
- An employment offer has been extended to a candidate for the Board's Office Technician position. The Board is currently recruiting for its Special Investigator position.
- The Board is holding a hearing aid dispensing practical examination on Saturday, January 12, 2013. Approximately 40 candidates will be examined. Based on the recent Hearing Aid Dispensers Validation Report as adopted by the Board, both the written and practical examinations will be modified to reflect the outcome of the study. Examination workshops with subject matter experts are currently being held to incorporate the relevant changes.

January 11, 2013 - 9:00 a.m. Continuation of the Speech-Language Pathology & Audiology Board & Hearing Aid Dispensers Board

Chairperson Grimes reconvened the meeting at 9:21 a.m.

VIII. Practice Committee Reports

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 provided an overview of the Committee discussion.

M/S/C: Diaz/Murphy

The Board voted to approve the report of the Hearing Aid Dispensers Committee.

IX. Licensing the Internationally Trained Applicant – Discussion Regarding Application Review Process and English Language Competency as a Prerequisite to Licensure

Ms. Del Mugnaio stated that she was contacted by a member of the California Council of Academic Programs in Communication Sciences and Disorders (CAPCSD) who inquired about the Board's process for evaluating the academic and clinical merit of internationally trained students. She stated that at least two members of the CAPCSD had planned to attend the Board meeting and discuss the issue of internationally trained students approaching university personnel requesting them to review the person's international transcripts to determine the eligibility for licensure and credentialing. Ms. Del Mugnaio stated that the CAPCSD representatives were unable to attend the January meeting. However, she wanted to provide the Board with an overview of the current process which is as follows:

- The applicant must submit the official international transcripts to a transcript evaluation service approved by the Board. The transcripts must include both didactic and clinical training.
- The transcript evaluation service provides a detailed course-by-course evaluation of the transcripts and verifies the authenticity of the documents and the conferred degree.
- The Board sends the transcripts and the evaluation report to a Board-appointed subject matter expert who analyzes the information and recommends to the Board whether the applicant has met the academic and clinical equivalency standards provided for in the laws and regulations.

Ms. Del Mugnaio commented that the Board's regulations need to be amended as they are not specific to internationally trained students and therefore, the terminology in the regulations is unclear.

Ms. Solomon-Rice commented that she is aware of internationally trained students approaching university program chairs to request transcript evaluation assistance. She stated that the CAPCSD is concerned about its university personnel providing such services as they are not commissioned to do so, on behalf of the Board. She further stated that many internationally trained applicants have completed the required coursework, but may not have been awarded an actual graduate degree as the course sequencing in other countries is not necessarily consistent with that in the United States. Ms. Solomon-Rice requested that Ms. Del Mugnaio provide the Board with a sample packet of information as reviewed by the Board's subject matter expert for internationally trained applicants.

Ms. Murphy explained that an added layer to the equivalency issue is that credential waivers are issued to individuals who do not possess master's degrees and therefore, internationally trained students may qualify for credential waivers, but not licenses.

Ms. Del Mugnaio stated that the issue regarding evaluation of internationally trained applicants will be revisited at the next meeting and agreed to provide sample evaluation materials. She also stated that she will invite members of the CAPCSD to further discuss the matter with the Board.

X. 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 distributed a revised document for the proposed amendments to the Uniform Standards and the Disciplinary Guidelines and a document containing statistical information on complaints and administrative discipline where the underlying violations involved substance abuse.

The Board discussed the statistical data and the triage process the staff employs to determine whether violations involving substance abuse are elevated to discipline.

Ms. Del Mugnaio provided information on other healing arts board's enforcement policies and what violations trigger formal or informal action. She reported that there are a few boards that have been successful in adopting the Uniform Standards and others that are in process of submitting regulatory amendments. Ms. Del Mugnaio reported that the Board of Pharmacy has requested an independent legal opinion from the Attorney General's Office regarding the Board's discretion in adopting the Uniform Standards Related to Substance Abuse as adopted by the Substance Abuse Coordination Committee of the Department of Consumer Affairs. She commented that Ms. Yazigi suggested an option of adopting the Disciplinary Guidelines separate from the Uniform Standards; however, she stated that several of the Uniform Standards are captured in the Board's Disciplinary Guidelines and therefore, it seems prudent to adopt the document under one regulatory action.

Ms. Yazigi commented on the Board's discretion in applying the separate provisions of the Uniform Standards in that, the provisions include binary terminology where the Board determines whether certain conditions exist and if they do, the provisions of the Uniform Standards must be applied.

The Board reviewed the specific drug testing standards as provided in the Uniform Standards.

Ms. Del Mugnaio reviewed the changes to the proposed document since the Board last approved the proposal:

- The document includes a listing of standard terms and conditions (1-15) as well as those terms that are optional (16-30) in disciplinary cases.
- A provision regarding restricting licensees from supervising other personnel.
- Updated minimum and maximum penalties for speech-language pathologists, speech-language pathology assistants, audiologists, dispensing audiologists, and hearing aid dispensers.
- Reordered probationary sections for clarity.

M/S/C: Shalev/Manning

The Board voted to approve the proposed text and notice the document for a forty-five (45) day public comment period; hold a hearing if requested by the public; delegate to the Executive Officer the authority to adopt the proposed regulatory changes if there are no 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.

XI. Professional Corporate, General Corporate & Other Entity Employment Practices for Licensees (Business & Professions Code Sections 655.2 & 2538.20, Corporation Code Section 13400 et seq.)

Ms. Del Mugnaio explained that she receives questions regularly regarding employment practice for licensees regarding which professionals may employ professionals of other healing arts' professions and

under which corporate structure. She referenced a document outlining the laws and regulations as provided by Ms. Yazigi.

Ms. Yazigi stated that speech-language pathologists and audiologists may employ one another in a professional corporation setting, but other healing arts professionals may not work for a speech-language pathologist or audiologist. She further explained that the only corporate structure that a speech-language pathologist and audiologist may own is a professional corporation, whereas as hearing aid dispenser may work in, and own, a general law corporation. Ms. Yazigi stated that the law has been in effect since the mid-60's. She stated that the law was written to prevent prohibited referrals from one health care provider to another where the referral would be based on the financial benefit of the providers. She stated that in Business and Professions Code Section 2538.20, hearing aid dispensers are authorized to practice under a general law corporation.

The Board discussed recent proposed legislation that would have authorized physical therapists to practice under a medical corporation. The legislation was unsuccessful.

Ms. Yazigi explained that the Moscone-Knox Act is an exception to common law and general rule as it provides for a professional corporate structure permissible for individuals who practice a regulated profession.

Ms. Yazigi requested the Board to review Business and Professions Code Section 655.2 which explains that a non-dispensing audiologist or a physician, who is not licensed to dispense hearing aids, may not employ a hearing aid dispenser. Ms. Yazigi explained that the provision does not provide for the alternate employment arrangement where a hearing aid dispenser employs a non-dispensing audiologist or non-dispensing physician, although, it would appear from her legislative research that the intent of the statute was to prohibit such employment of dispensing and non-dispensing practitioners to avoid prohibited referrals.

The Board discussed the inclusion of the language *or medical corporation* in Section 655.2 and how the language is confusing as neither hearing aid dispensers nor audiologists may be employed in a medical corporation pursuant to Corporation Code Section 13401.5.

Mr. Shalev made a motion, seconded by Mr. Manning to amend Section 655.2 but retain the language "*or medical corporation*" so that it does not appear that the Board has intent in changing provisions related to medical corporation practices or employment.

Ms. Del Mugnaio further explained the enforcement concerns and clarity issues with retaining the "*or medical corporation*" language.

Mr. Shalev withdrew his previous motion.

M/S/C: Manning/Martin

Oppose: Shalev

The Board voted to remove the language in Business and Professions Code Section 655.2 regarding "*or medical corporation.*"

M/S/C: Lee/Shalev

The Board voted to amend Business and Professions Code Section 655.2 to make the employment prohibition between hearing aid dispensers, non-dispensing audiologists, and non-dispensing physicians bi-directional.

Ms. Del Mugnaio indicated that she would discuss the legislative change with the Senate Business Professions and Economic Development Committee.

Mr. Shalev asked Ms. Yazigi to discuss the motion of removing the language regarding the *medical corporation* in Section 655.2 with her peers to obtain input on whether there is a risk in removing the language.

XII. Licensing / Enforcement/Examination Statistical Data

The Board reviewed the statistical data as provided by staff.

XIII. Public Comment on Items Not on the Agenda/ Future Agenda Items- [Attached Pending Issues Before the Board]

Ms. Del Mugnaio referenced a document outlining the pending issues before the Board.

The Board prioritized the issues listed and discussed which issues should be placed on 2013 agendas.

Ms. Hunter expressed the concern of the Hearing Healthcare Providers that the Board has yet to draft regulations regarding audiology aides and there have been report of audiology aides providing hearing aid dispensing services without the proper license to dispense.

XIV. Announcements- Future 2013 Board Meetings- April 4-5, 2013- Sacramento, July 25-26, 2013-Los Angeles, October 10-11, 2013- TBD

The Board changed the meeting date from April 4-5, 2013 meeting to March 27-28, 2013, to be held in Sacramento. All remaining 2013 dates will remain as posted.

XV. Adjournment

Chairperson Grimes adjourned the meeting at 12:47 p.m.