STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
SPEECH-LANGUAGE PATHOLOGY & AUDIOLOGY & HEARING AID DISPENSERS BOARD
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HEARING AID DISPENSERS PRACTICE COMMITTEE MEETING MINUTES
March 24, 2010
Hotel Kabuki
1625 Post Street
San Francisco, CA 94115
(415) 922-3200

Committee Members Present
Deane Manning, Hearing Aid Dispenser
Sandra Danz, Hearing Aid Dispenser
Rodney Diaz, M.D.
Alison Grimes, AuD., Audiologist
Robert Green, Au.D. Audiologist

Board Members Present
Carol Murphy, M.A.
Lisa O'Connor, M.A.

Board Members Absent
Monty Martin, M.A.

Staff Present
Annemarie Del Mugnaio, Executive Officer
LaVonne Powell, Legal Counsel
George Ritter, Legal Counsel
Kathi Burns, Staff
Cynthia Alameda, Staff
Yvonne Crawford, Staff
Debbie Newcomer, Staff
Lori Pinson, Staff

Guests Present
Tim Shannon, Hearing Health Care Providers California
Tricia Hunter, Hearing Health Care Providers California
Cindy Peffers, Hearing Health Care Providers California
Jody Winzelberg, California Academy of Audiology
Marcia Raggio, California Academy of Audiology
Rebecca Bingea, University of California, San Francisco
Art Sturm, Rexton Inc.
Priya James
Siamak Sani
Sia Sani, World Hearing Organization Inc.

I. Call to Order

Ms. Del Mugnaio called the meeting to order at 1:30 p.m.

II. Introductions

Those in attendance introduced themselves.

III. Discussion Regarding Implementation of Legislation AB 1535 – Assembly Member Jones- Authorization for Audiologists to Dispense Hearing Aids/ Merger of the Speech-Language Pathology & Audiology Board and the Hearing Aid Dispensers Bureau- Discuss Necessary

Regulation Changes Pertaining to License Renewal Requirements & Continuing Professional Development- California Code of Regulation Section 1399.140-1399.143

Ms. Del Mugnaio stated that since this meeting was the first meeting of the Hearing Aid Dispensers Committee and there is not yet an appointed Chair, she would facilitate the meeting discussion.

Ms. Del Mugnaio explained that Assembly Bill 1535, which merged the Hearing Aid Dispensers Bureau with the Speech-Language Pathology and Audiology Board, includes changes in the regulation of audiologists who are authorized to dispense hearing aids and, therefore, necessitates amendments to continuing education provisions for dispensing audiologists. She further stated that AB 1535 has also provided the newly merged Board the opportunity to examine and possibly revise the continuing education (CE) program for hearing aid dispensers. Ms. Del Mugnaio explained that members of the professional community, as well as experienced hearing aid dispensers' staff, have raised issues regarding the rigor of the CE requirements and the current approval process. Ms. Del Mugnaio outlined the suggestions brought before her as follows:

- Elimination of the individual course approval process but retain approval for CE providers.
- Restrict the number of hours a licensee may accumulate in hearing aid courses that are provided by a hearing aid manufacturer where the content focuses on the marketing of a particular hearing aid product.
- Provide specific definition for a "related" course where the topic may not be discipline-specific but has some direct relationship to or impact on the services provided by a licensee.

Ms. Del Mugnaio referenced proposed regulatory amendments to the hearing aid dispensers CE provision, as included in the meeting packets, and explained that the amendments were drafted by the former Bureau. She stated that the Board has an opportunity to move forward with the regulatory amendments as presented and may consider further amendments based on the discussion today. She stated that the Committee may wish to review the continuing professional development requirements for speech-language pathologists and audiologists, as there are specific definitions for "related" course content and "indirect" course content, and where there are restrictions on the number of hours that a licensee may accumulate in said courses to preserve a core number of required hours in the respective disciplines.

Ms. Grimes commented that she agrees the course approval process is time consuming and may be burdensome on staff, but is concerned about placing the onus on the licensee to decide which courses are appropriate. She stated that she is concerned about the Board becoming inundated with CE appeals.

Mr. Manning stated that eliminating the course approval process may result in a greater staff burden during the CE audit process.

Ms. Del Mugnaio explained that the regulations must be drafted in a manner that provides greater specificity if the Board chooses to eliminate course approval. She stated that it would be the Board's responsibility to carefully examine the CE provider application and operational plan and also adequately educate its licensing population about the CE expectations.

Mr. Manning inquired whether a licensee or provider could request the Board to review a course if the content is questionable.

Ms. Del Mugnaio confirmed that Board staff routinely reviews courses upon request by a provider or a licensee to ensure the content complies with the continuing professional development regulations.

Mr. Manning explained that existing hearing aid CE is comprised of "new" and "old" course categories or "optional" and "related" categories.

Ms. Del Mugnaio stated that there needs to be uniformity in course definitions so that the dispensing licensing population is clear as to the CE requirements and content limitations. She stated that the staff will continue to work on a regulatory proposal that incorporates the suggestions from the professional community and the amendments developed by the former Bureau, should the Committee choose to recommend pursuing the CE changes to the full Board.

Tricia Hunter representing the Hearing Health Care Providers (HHP) stated that HHP is supportive of limiting the number of manufacturer hours and placing a limit on the number of self-study hours that licensees may apply toward license renewal requirements. She indicated that HHP is also supportive of eliminating the course approval requirement and instead have a provider approval system where an operational plan of course offerings and objectives are submitted with the provider application. Ms. Hunter requested that the Committee consider expanding the number of core hours to twelve (12) hours per year and allow for more related coursework in areas such as audiological assessments.

Ms. Grimes requested that there be further clarity in the definition of self-study learning as there is a difference between the learning experience for interactive on-line courses and on-demand courses.

Ms. Del Mugnaio stated that there is clarification in the Board's continuing professional development regulations defining self-study as independent learning where a licensee is not interacting with an instructor or other course participants.

Ms. Del Mugnaio reiterated the suggested CE amendments as presented before the Committee:

- Eliminating the course approval process for hearing aid dispensers' courses and change the approval process to a CE provider approval.
- Increase the number of CE hours a hearing aid dispenser must obtain for license renewal from 9 hours to 12 hours per year.
- Limit the number of self-study hours a licensee may obtain for the purposes of license renewal. Include a definition of self-study as an independent learning experience that does not include live/interactive on-line courses.
- Restrict the number of hours a licensee may accumulate in hearing aid courses that are provided by a hearing aid manufacturer where the content focuses on the marketing of a particular hearing aid product.

M/S/C: Grimes/Manning

The Committee voted to recommend to the full Board that a regulatory proposal be developed by Ms. Del Mugnaio incorporating the continuing education changes for hearing aid dispensers as discussed and to present the regulatory amendments to the full Board at the next scheduled Board meeting.

IV. Report and Status Update on Pending Regulations and Licensing Issues Pertaining to the Practice of Hearing Aid Dispensing

Ms. Del Mugnaio stated that the following practice issues have been long-standing professional issues before the former Hearing Aid Dispensers Bureau and require either legislative action or regulatory amendments. She referenced a background memorandum and related statutory provision included in the meeting packets as prepared by Yvonne Crawford.

A. **Proposal Regarding Establishment Registration**

Ms. Del Mugnaio explained that businesses where hearing aids are sold are not regulated by the Board to sell hearing aids and that only the employees who are licensed hearing aid dispensers are under the Board's purview. She stated that the absence of the business regulation or monitoring has created problems for the Bureau in the past in terms of violations regarding advertising provisions and other business practices in which the licensee ("employee") has no control over the business's advertising or record-keeping practices, yet the licensee is notified of the violation because of the employment relationship.

Ms. Tricia Hunter stated that she was involved in many of the discussions under the former Bureau surrounding the lack of regulation for hearing aid businesses and agreed that it has been a problem in terms of enforcing advertising provisions and record-retention requirements, especially when the businesses close and do not provide for any record repository.

Mr. Manning inquired whether the registration of businesses is common in other regulated industries.

Ms. Powell indicated that Pharmacy may have some applicable laws for reference. She also cautioned that the requirement for businesses to register with the Board may appear to be non-controversial for the hearing aid profession and the Board, but in terms of large business entities and corporations, such entities may be opposed to any oversight by the Board.

Ms. Hunter stated that HHP will consider sponsoring legislation regarding the registration of hearing aid dispenser business establishments and will work with the Board regarding appropriate language.

B. **Proposal to Clarify Song-Beverly Consumer Warranty Act (California Civil Code Section 1793.02)**

Ms. Del Mugnaio stated that the Song-Beverly Consumer Warranty Act has been difficult to enforce for many years due to significant ambiguity in the provisions, as outlined in the background document in the meeting packets. She provided an overview of current law and the major issues:

- Allows for the return of an assistive device within 30 days of actual receipt or completion of fitting, whichever occurs later, if the device is not specifically fit for the particular needs of the buyer. What constitutes "completion of the fitting"?
- Allows the seller the option to adjust or replace the device or provide a complete refund of the total amount paid; however, if the seller does not adjust or replace the device so that it is specifically fit for the particular needs of the buyer, the seller shall promptly refund to the buyer the total amount paid and shall promptly return to the buyer all payments and any assistive device or other consideration exchanged as part of the transaction and promptly cancel or cause to be cancelled all contracts. May the provider retain any of the cost related to the fitting and selling of the hearing aid (e.g., earmold fees, batteries, or hearing test)?
- Allows for tolling of the 30 days, which allows the 30-day period to be stopped and restarted. At what point does the tolling end?
- Requires a licensee to deliver to the purchaser, upon the consummation of a sale of a hearing aid, a written receipt, but does not require additional receipts for adjustments, replacements, or repairs.

Ms. Crawford stated that many years ago the Song-Beverly Act provisions were interpreted to allow a hearing aid dispenser to retain a nominal fee of approximately $200 for services related to fitting the device. However, she stated that a subsequent legal opinion from the Office of the Attorney General concluded that all monies must be refunded and that the Song-Beverly Act did not authorize the provider to retain any portion of the fees paid toward the fitting and dispensing of the hearing aid.

The Committee agreed that the provisions regarding the Song-Beverly Act need to be clarified in order to be uniformly enforced.

Ms. Del Mugnaio requested legal counsel, Ms. Powell, to provide the Board guidance in terms of drafting statutory provisions that would further define and/or amend provisions of the Song-Beverly Act.

Ms. Powell agreed to work with Board member Mr. Green and Ms. Del Mugnaio on the legal framework.

Mr. Manning stated that during previous conversations with the Bureau, there was some discussion about removing hearing aids from the Song-Beverly Act and rewriting separate warranty provisions under the Business and Professions Code.

Ms. Cindy Peffers requested that the provisions regarding the delivery of a receipt to the consumer be drafted in a manner that is not burdensome in terms of time and expense for the provider.

The Committee discussed reasonable and customary patient record documentation, including receipts for hearing aid devices.

C. **Proposed Amendment of Business and Professions Code Section 3365.5 – Conditions for Referral**

Ms. Del Mugnaio explained that Business and Professions Code Section 3365.5 sets out specified health conditions that, when identified by a hearing aid dispenser may exist for a potential hearing aid user, either during an observation or on the basis of information furnished by the hearing aid user, requires the hearing aid dispenser to provide a written recommendation to the hearing aid user that the individual consult with a physician (preferably one who specializes in disease of the ear), about the suspected health conditions. Section 3365.5 is intended to mirror the provisions of Section 801.420 of Title 21 of the Code of Federal Regulations. However, Section 3365.5 lists only six of the eight conditions contained in the federal regulations and, as such, California laws should be amended accordingly. She stated that the two conditions that are not provided for in Section 3365.5 are: 1) visible evidence of significant cerumen accumulation or a foreign body in the ear canal and, 2) pain or discomfort in the ear.

The Committee discussed whether the changes to the conditions for referral should be codified in statute or regulation or whether the language should merely reference the Code of Federal Regulations.

M/S/C: Grimes/Green

The Committee voted to recommend to the full Board that a statutory change to Business and Professions Code Section 3365.5 be pursued by the Board as an omnibus measure to incorporate the mandatory conditions for referral provided for in Section 801.420 of Title 21 of the Code of Federal Regulations.

Ms. Del Mugnaio adjourned the meeting at 2:42 p.m.