



BOARD MEETING MINUTES
Sheraton San Diego Hotel and Marina
October 11, 2013
1380 Harbor Island Drive
San Diego, CA 92101
Room: MARINA 5
(619) 272-5830

Board Members Present

Alison Grimes, Chair, Dispensing Audiologist
Patti Solomon-Rice, Vice Chair, Speech-Language Pathologist
Rodney Diaz, Otolaryngologist
Amnon Shalev, Hearing Aid Dispenser
Deane Manning, Hearing Aid Dispenser
Marcia Raggio, Dispensing Audiologist
Dee Parker, Speech-Language Pathologist
Monty Martin, Public Member
Jaime Lee, Public Member

Staff Present

Annemarie Del Mugnaio, Executive Officer
Claire Yazigi, Outgoing Legal Counsel
Sabina Knight, Incoming Legal Counsel
Breanne Humphreys, Program Manager

Guests Present

Joseph McKenna, Deputy Attorney General

I. Call to Order

Chairperson Grimes called the meeting to order at 8:10am.

II. Introductions

Those present introduced themselves.

III. Approval of Meeting Minutes:

A. June 12-13, 2013 Board Meeting Minutes

The Board discussed minor edits to the minutes.

M/S/C: Manning/Raggio
Minutes approved with minor edits.

B. September 11, 2013 Telephonic Board Meeting Minutes

M/S/C: Manning/Raggio
Minutes approved as written.

The Board went into closed session.

IV. Closed Session: The Board met in closed session pursuant to Government Code Section 11126(c)(3) to discuss and vote on a petition for reconsideration of a proposed Decision and Order that had been adopted by the Board.

V. Hearing on Petition for Reinstatement of Revoked License – John Jakobcic

Roy W. Hewitt, Office of Administrative Law Judge convened the hearing. He explained that we would be hearing statement of evidence from the attorney general's office and from the petitioner in terms of reinstatement of licensure. At the conclusion, the Board will go into closed session for deliberations. Majority vote of the Board will decide the outcome.

Petitioner Jakobcic had his license revoked on December 11, 2006. He was convicted of MediCal and MediCare fraud. He served two years in federal prison and ordered to pay \$463,000 in restitution. He was engaged in a scheme for three years where an associate forwarded forged audiology testing documents and false claims were filed.

Deputy Attorney General (DAG) Joseph McKenna represented the Office of the Attorney General and the people of the state of California. He gave his opening statement, cited several investigative reports and stated the petitioner has not shown that he has been rehabilitated.

Petitioner Jakobcic declined to testify.

Petitioner Jakobcic was cross examined by DAG McKenna. Since his revocation in 2006, he has been cited by the Board and fined \$2500 for unlicensed practice in 2011. Upon conclusion of the cross, Mr. Jakobcic was asked if he had anything to add. He did not.

Board members asked questions of Mr. Jakobcic.

Judge Huett received agreement from both parties that the webcast of this hearing will serve as official transcript.

Board members went into closed session for deliberations.

VI. Return to Open Session: Executive Officer's Report

A. Budget update

Ms. Del Mugnaio reported that on August 29, 2013 the Senate Budget and Fiscal Committee held a special hearing on the Governor's loan repayment plans. In 2011/12 the former governor borrowed \$1.15 million from the Board. The Department of Finance has scheduled loan repayments beginning in FY 13/14 of \$300,000 and \$400,000 in FY 14/15, and the remaining \$450,000 in FY 15/16. She testified at the Senate Budget Hearing regarding the consequences to the Board's operations if the loan is not repaid. The Board would face a funding deficit in FY 15/16 and would not be able to support its enforcement functions.

Both CSHA and CAA testified on behalf of the Board and the need for the funding to be repaid. There was some indication that CSHA members felt that the licensing backlogs and non-responsiveness on the part of the Board remained problematic. However, William Barnaby testified that the Board's responsiveness and efficiency had greatly improved over the past year and a half.

Ms. Del Mugnaio stated that the Board should receive the first repayment prior to the close of FY 13/14.

B. Administrative Updates –BreEze/Staff Recruitment/Operational Updates

Ms. Del Mugnaio gave the following report:

Implementation of Phase I of BreEze went live October 8, 2013. There is no definitive date when our Board will go live but it is believed Phase III implementation will occur in the fall of 2014.

The Board still has a vacancy for the Non-Sworn Special Investigator position. The Department of Personnel Administration is conducting an audit of this position to determine the appropriate class and duties for the position. The Board cannot recruit until the final report is submitted.

The Board is resuming continuing education (CE) audits of its licensees. We are also including a voluntary survey with the audit letter inquiring about the quality of the CE courses that the licensees are taking and which method of instruction is most beneficial (i.e. interactive, self-study, classroom, etc.).

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

The FDA is reviewing our exemption request and work is currently underway to consider California's provisions regarding the remote acquisition of hearing aids. Ms. Del Mugnaio spoke to Vicki Dionne, AuD, of the Texas Board about a recent Cease and Desist Order

issued to Hi Health Innovations regarding the web-based hearing test and internet purchase of hearing aids. Texas does not have an exemption to enforce these provisions, but they are interested in seeing this issue go to court and be presented before the public domain. They will pursue the case as unlicensed activity.

VII. Legislative Update

Ms. Del Mugnaio gave the following legislative updates:

A. SB 305Lieu – Sunset Bill

This bill was signed by the governor and extends the Board to 2018. It included the following provisions:

- Failing to comply with the provisions of a conditional license or a probationary license is unprofessional conduct and subject to disciplinary proceedings.
- Removing antiquated language for CPD.
- Providing an avenue for the Board to merge and consolidate the hearing aid regulations with the speech-language pathology and audiology regulations.

The requirement for an applicant who is currently licensed or had previously held licensure in another state to submit a self-query report with their application from the National Practitioner Data Bank (NPDB) was not included in the bill. The Board does not have the funding to query. The Legislative Committee will carry this bill for us in 2014.

B. AB 1000 –Maienschein & Wieckowski – Professional Corporations: Healing Arts Practitioners

The Moscone-Knox Professional Corporation Act 13401.5(d)(1) states that a speech-language pathology corporation may employ licensed audiologists. Under 13401.5(e)(1) states that an audiology corporation may employ licensed speech-language pathologists. Hearing aid dispensers are not included in Moscone-Knox because they are in General Law Corporations.

AB 1000 would open up all the professions listed in Moscone-Knox to employ one another. This is a significant change because together Moscone-Knox and B&P Code 650 prohibited referrals for financial benefit. Now large professional corporations (ie. rehab) can form and can refer the consumer to each other and the referral could be for financial gain.

The Board currently has statutes that oppose this bill. (Article7. Speech-Language Pathology Corporations and Audiology Corporations 2536 – 2537.5).

Legal Counsel will look more into the ramifications of AB 1000 and will report back to the Board.

C. AB 186 Maienschein- Temporary Licenses-Military Spouse

This bill would provide for an expedited review of the application for any spouse or partner of an active military service member and would authorize the licensing program to issue a temporary license if the applicant is licensed in another state.

The Board currently has provisions for temporary licensure for all applicants if licensed in another state. The bill has not moved forward and is now a two-year bill; it will be reconsidered in the next legislative session.

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

This bill was chaptered and signed by the governor. It restricted the Public Utilities Commission from expanding the deaf and disabled program to include assistance to individuals with speech disabilities, including assistance in purchasing speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment.

SB 176 – Galgiani – Administrative Procedures

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. The Board currently involves the public in its business by holding public meetings and discussing its proposed changes prior to formulating regulations.

VIII. Practice Committee Reports

A. Hearing Aid Dispensers Committee Report

Committee Chair Manning reported that it was decided to create the Practice Guidelines for Hearing Aid Dispensing by identifying what is essential and what is recommended as best practice. He and Ms. Del Mugnaio will work on the guidelines and bring back to the committee for review.

Chair Manning asked for a motion to approve the proposed amendments to continuing education.

M/S/C Grimes/Martin

The Board adopted the hearing aid dispensers proposed amendments to continuing education. The Board granted authority to the Executive Officer to notice the proposed changes for a 45-day public comment period and to adopt the proposed regulatory changes as modified if there are no adverse comments received during the public comment period. The Executive Officer was further delegated the authority to make any technical and non-substantive changes that might be required in completing the rulemaking file.

M/S/C Parker/Diaz

The Board accepted the committee's report.

B. Speech-Language Pathology Practice Committee Report

Board Chair Grimes appointed Ms. Solomon-Rice as the Chair of this committee. Ms. Solomon-Rice gave the following committee report:

Update on International English Language Testing System (IELTS) Project

Office of Professional Exam Services will conduct a SLP Occupational Analysis with a supplemental report on the English language competency component. OPES and the SMEs decided not to use the IELTS exam because of the Australian accent of the exam moderator. OPES will assist the Board in selecting another exam.

Competencies for Internationally Trained Students

Ms. Solomon Rice gave a detailed report on an analysis that she and Ms. Raggio completed about how the 16 CA universities train students in speech-language pathology including a table listing the undergraduate and graduate curriculums of these universities.

Ms. Solomon-Rice stated the 23 courses identified as covering the core content areas required for national accreditation would be better served if they were in a regulation because competencies can change as the scope of practice changes. She reported by revising the minimum number of semester units and adding general language of what is required through revisions to the statutes, for the internationally educated applicant will be clarified. The Board will address the academic requirements in regulation.

Motion to move to make the following changes:

M/S/C Diaz/Parker

Motion to adopt the amendments to the statute and regulations to strike B&P Code 2532.2 (b) which revises the number of semester hours in the statute. Change 1399.152.1 to include the competencies listed in the draft of 2532.2(b) which are anatomy and physiology of speech, swallowing and hearing; neuroanatomy; psychoacoustics of hearing; speech and language development; neurological aspect of language; phonetics; articulation and speech disorders; fluency; voice and resonance; child and adult language disorders; aural rehabilitation; swallowing; communication modalities; clinical methods; audiology; general coursework in biological, physical, and social science; and statistics.

Amendments to the Speech-Language Pathology Assistants (SLPA) Regulations for Scope to Responsibility and Supervision

ASHA's speech-language pathologist scope of practice states that there is a minimum percentage of direct supervision for the first 90 workdays as the first 90 days is critical to the successful training of a new SLPA. Currently our provisions do not address a minimum percent of direct supervision.

Our regulations do address types of supervision required for duties performed by a SLPA. Immediate supervision (physically present) is required to any direct client activity involving medically fragile patients and may include any new screening or treatment activity that the assistant has been trained on, but has yet to perform. It is dependent on the task, the competency of the assistant, and the status or level of the client.

This is important for consumer/student protection, especially during the first critical 90 days. The speech-language pathology assistant must be fully aware of what they can and cannot do and must be trained on the limits of their scope of practice.

ASHA guidelines recommend no less than 20% direct supervision during the initial 90 days of employment. The Board gave the Executive Officer authority to send this information to the interested parties as well as the other adopted language that the Board would like to move into regulation.

Credential Waivers Issued to Speech-Language Pathologists by the California Commission on Teacher Credentialing (CCTC)

An informational discussion was held by the Committee.

The Board does not regulate speech-language pathologists who are employed in the public school districts as they are credentialed and waived under the governance of the Department of Education.

The concern is that the speech-language pathologist working under a waiver is not practicing at a minimal level of competency. The waived SLP does not have a master's degree, has not passed the Praxis, and has not completed the required 300 clock hours of clinical work under supervision of a licensed speech-language pathologist.

The issue of concern is the disparity in training for a waived speech-language pathologist and the licensed speech-language pathologist. The Board has tried to convince the legislature that it would be in the public's best interest to have a uniform standard, that being licensure. We really do not have an understanding of the process, criteria, or prerequisites for these waivers.

The Board agreed to invite the person over credentialing and issuance of waivers at CCTC to address the Board at our February meeting.

**M/S/C Manning/Diaz
Committee report and recommendations approved.**

C. Audiology Practice Committee Report

Ms. Raggio gave the committee report.

The committee is seeking to add into regulation two major areas: Supervision of Audiology Aides and Duties Outside the Scope of Responsibility of an Audiology Aide.

The committee agreed to focus on the prohibited tasks and not what is allowable in developing the following list:

An audiology aide may not perform any of the following functions:

1. Provide counseling or advice to a client or a client's parent or guardian which is beyond the scope of the client's treatment;
2. Sign any documents in lieu of the supervising audiologist i.e., treatment plans, client reimbursement forms, or formal reports;
3. Discharge clients from services;
4. Make referrals for additional services;
5. Unless required by law, disclose confidential information either orally or in writing to anyone not designated by the supervising audiologist;
6. Represent himself or herself as an audiologist;
7. Fit or sell a hearing aid without possessing a valid hearing aid dispensers license;
8. Independently adjust hearing aids or cochlear implant settings; and,
9. Perform procedures that require a high level of clinical acumen and technical skill;
10. Conduct evaluations;
11. Interpret data;
12. Alter treatment plans;
13. Perform any allowable task without the express knowledge and approval of a supervising audiologist.

Ms. Raggio presented four examples that she and Ms. Grimes developed which require a high level of clinical acumen and technical skill, stating this is not an inclusive list.

1. Choosing appropriate amplification
2. Developing a differential diagnostic plan
3. Infant ABR
4. Cochlear ear implant programming and mapping

Ms. Del Mugnaio commented that if a task is not listed as an example it may be deemed allowable when it should not be allowed.

Ms. Raggio commented that the list leaves it up to the supervising audiologist to decide what tasks are or are not difficult. She proposed that the language be changed to read that tasks that require a doctoral level clinician are not allowed, which would eliminate the need for examples. The supervising audiologist does not have to make a personal decision as to what is difficult and what is not difficult.

Ms. Del Mugnaio agreed and recommended that we rework that section and bring it back to the committee. Ms. Raggio and Ms. Grimes will rework the document.

**M/S/C Raggio/Diaz
Committee report and recommendations approved.**

IX. Licensing/Enforcement/Examination Statistical Data

The Board reviewed the Annual Report which included licensing and enforcement data.

The Board reviewed the hearing aid practical exam results from the August 24, 2013. An error was found in the computations so Board staff will rework and send back out to the Board members.

X. 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 a few of the other pending issues before the Board in addition to what the Board worked on in this two-day meeting.

- Differences Between SLP Aides –vs.- SLPAs
- Supervisory Training Manual for Hearing Aid Dispensers
- Uniform Standards

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

The next Board meeting will be held February 6-7, 2014 in San Francisco. Ms. Del Mugnaio will send out possible dates for the May meeting.

XII. Adjournment

Ms. Del Mugnaio adjourned the meeting at 1:37pm.