



## **BOARD MEETING MINUTES**

**Sacramento, CA  
November 29-30, 2018**

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 & Audiology & Hearing Aid Dispensers Board meeting to order at 1:55 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  
Amnon Shalev, HAD, Board Member  
Debbie Snow, Public Board Member  
Patti Solomon-Rice, SLP, Board Member  
Christy Cooper, AuD, Board Member  
Rodney Diaz, Otolaryngologist, Public Board Member

##### Staff Present

Paul Sanchez, Executive Officer  
Breanne Humphreys, Program Manager  
Kelsey Pruden, Legal Counsel  
Chris Sanchez, DCA Web Cast  
Katrina Martinez, Analyst  
Heather Olivares, Analyst

##### Guests Present

Ed Washington, Administrative Law Judge  
John Gatschet, Deputy Attorney General  
David Illich  
Tracy Montez, OPES  
Amy White, CAA  
Jasmine Zavala, Student  
Jacque Georgeson, University of the Pacific  
Rupa Balachandran, University of the Pacific  
Sean Green, The Speech Pathology Group  
Vanessa Cajina, HHP

Joe Bartlett, HHP  
Caitlin Jung, CSHA  
Christine Throm, CAA  
Kirsten McWilliams  
Brianna Miller, DCA Board and Bureau Services

2. Approval of the August 9-10, 2018 Board Meeting Minutes

**M/S/C Diaz/Solomon-Rice**

- **Motion to approve the August 9-10, 2018 meeting minutes as amended. The motion carried 6-0 with Mr. Shalev abstaining.**

3. Public Comment for Items not on the Agenda

Sean Green from The Speech Pathology Group thanked the licensing Board and staff for the work done to protect consumers and providing ethical and research-based practice in the field of speech-language pathology and audiology. Mr. Green raised concerns about the amount of licensing paperwork and the time it takes to process. He explained that the processing time for foreign educated applicants has increased this year which is preventing students from being seen [by a licensee]. He asked that the Board consider additional staff or improving technology to reduce the timelines as students' needs are not being met.

4. Discussion and Possible Action Regarding Board Action Taken on August 9, 2018, Regarding the Examination Requirement for Dispensing Audiologists

Paul Sanchez explained that this discussion is regarding the Board's action to accept the recommendation from the Office of Professional Examination Services (OPES) to remove the practical examination requirement for audiologists wishing to sell hearing aids, and for Board staff to work with legal and OPES to draft regulatory language to bring to the next meeting. Mr. Sanchez described Board member Amnon Shalev's concerns about the Board's motion. He explained the different options the Board could possibly take. Mr. Shalev described how this is a critical issue for public safety with taking an ear mold impression. He asked to fully deliberate the discussion before the Board takes any action. He reiterated his desire for the HAD Committee to discuss the occupational analysis (OA) before making any decisions and asked the Board to reconsider the previous vote and action.

Ms. Raggio asked who makes up the HAD Committee. The HAD Committee is comprised of two hearing aid dispensers, two audiologists, and two public members (one of which is a physician/otolaryngologist). Mr. Sanchez explained the purpose of a committee is to discuss issues for a smaller license type (such as an assistant license). Mr. Sanchez discussed two handouts for the Board meeting, test scores for the practical exam, and a letter HHP sent to the Board. He clarified that the Board has not ignored hearing aid dispensing issues and addresses issues and solicits input and feedback on these issues. Mr. Sanchez explained the reason the Board did not meet with HAD Committee on this specific issue is because it is an audiology issue, not a hearing aid dispensing issue. Rodney Diaz added that OPES gave a thoughtful analysis of the examination and the Board as a whole had a chance to make a decision. Mr. Diaz stated that the HAD Committee makes up almost the entire Board and without knowing when the Board would have another HAD member to offer further input it seemed prudent to make a decision with the majority of a HAD Committee and full Board present at the time. He expressed that his opinion wouldn't change at this point.

Ms. Raggio inquired if any of the Board members had changed their minds. Mr. Shalev commented that there is a difference in information given by OPES and new data presented today stating is 19 percent failure rate. Mr. Sanchez clarified that this information is presented in response to Mr. Shalev's request for three years of practical examination results. He explained that the data presented includes different data from the data analyzed by OPES. Ms. Raggio asked if the failure rate refers to the ear mold impression. Mr. Sanchez responded that the failure rate refers to those who failed the practical examination. The data reflects those who passed or failed regardless of the circumstances. Tracy Montez, with OPES, added that they are comfortable with the 19 percent failure rate. She elaborated that no exam is perfect, no programs have a 100 percent pass rate, there is some error involved with the exam due to incompetence, anxiety. Ms. Montez described how the practical examination is designed for the hearing aid dispensing profession. The hearing aid dispensing professional needs a high school diploma and to be 18 years old. Audiologists have many more criteria for becoming licensed (advanced degrees, supervised hours) which can work against them when they are taking an exam designed for a different type of profession.

Mr. Shalev stated that there is inconsistency with the way the Board is thinking about the exam and the safety issue. He elaborated that in regulation, hearing aid dispensers licensed in another state, who can show they worked for two years in that state, can apply for a license in California and work for one year without supervision, before passing the exams. Mr. Shalev declared that exempting audiologists who just finished school or audiologists who were licensed 20-30 years ago and have never dispensed before is not treated equally to the dispenser from out of state who has done hundreds of impressions. This is a safety issue. He detailed how some audiologists at Kaiser in southern California do not conduct ear impressions for hearing aids or swim molds, they instead send these out for referrals. He questioned why audiologists cannot take the practical exam one time to practice in California. Mr. Shalev offered the alternative issuing a temporary license issued for audiologists to work while taking and passing the exams (similar to dispensers licensed in another state). Amy White reiterated that audiologists can, and will, and do ear mold impressions without being dispensing audiologists, as this is well within their scope of practice. Ms. White elaborated that with the merging of the Boards it gives the impression that hearing aid dispensers and audiologists are the same, but they are not the same. She questioned why the HAD Committee would be the committee discussing the exam requirements for audiologists and not an audiology committee. Jacque Georgeson commented that she knows there are non-dispensing audiologists who take ear mold impressions at Kaiser in southern California because she has placed students there who have had the opportunity to take impressions. She added that many pediatric hospitals do not have dispensing audiologists, but they will do the fitting and the follow up including the ear mold impression.

Kelsey Pruden clarified that the statute defines the scope of practice for audiologists to include the selling of hearing aids (BCP 2530.2(k)), however, in the State of California, no audiologist shall sell hearing aids unless he or she completes an application for a dispensing license, pays all applicable fees, and passes an examination approved by the Board related to the selling of hearing aids (BCP 2539.1(a)(1)).

Mr. Shalev and Ms. Georgeson discussed their knowledge regarding audiologists performing ear mold impressions at different Kaisers. Mr. Sanchez commented that whether Kaiser allows it or not, we've established what's within the practice act.

Vanessa Cajina, with Hearing Healthcare Providers (HHP), expressed concern over taking away the practical exam requirement and the erosion between the audiologist and dispensing audiologist. She asked that this matter be referred to the HAD Committee and that HHP elucidated this more in the letter sent to the Board. Joe Bartlett described how the fitting and selling of hearing aids is not just ear mold

impressions. He explained that hearing aids can create upwards of 130 decibels and if not fit correctly by somebody who understands what they are doing, immediate damage to the individual's hearing can occur. Mr. Bartlett elaborated that quality control for California consumers is covered in the practical exam. He inquired as to whether someone can earn an audiology degree, do poorly on hearing aids in the national exam, and then come to California and work with devices that have the capacity to cause damage. The practical exam requirement is used for quality control for California consumers. Mr. Sanchez responded to HHP's comments and the letter sent to the Board by explaining that this is a separate issue from first time test takers, this issue is regarding whether audiologists are receiving the proper amount of training in their programs. Mr. Bartlett added that an outside source is needed to compare the state test and the national test. Mr. Sanchez explained that OPES has already compared the tests.

Rupa Balachandran, with the University of the Pacific, addressed the consumer safety concerns pertaining to audiology training programs. She explained that students are trained in amplification similar to accredited programs across the nation. Ms Rupa described the three courses that students are required to complete specific to hearing aids. She added that the audiology profession is not independent from recommending or dispensing hearing aids; any audiology program, including UOP's program, includes intensive and rigorous curriculum focused on aspects of hearing loss including otoscopy, ear mold impressions, fitting hearing aids, and probe-mic measures. Mr. Shalev stated that he would like to review the curriculum data with the HAD Committee. He questioned whether the audiologists who completed master's degrees in audiology received the same quality of education. Ms. Balachandran replied that she could only attest to current curriculum standards. Mr. Sanchez pointed out that legal counsel already addressed what an audiologist can do regardless of taking the practical exam they can do everything discussed with the exception of *selling* hearing aids.

Mr. Shalev brought up the issue regarding the cost of the practical exam and lost revenue from audiologists no longer needing to take the exam. Mr. Sanchez clarified that the application fees are based on the cost of the practical exam. Mr. Shalev opined that the revenue from the practical exam could allow the Board to hold an exam in southern California. Ms. Montez added that other Boards experienced standardization issues with administering exams in northern and southern California. The discussion of the practical exam being offered in southern California was noted as a possible future agenda item.

Ms. Montez addressed the concerns for audiologists that may have been licensed some time ago being able to dispense hearing aids. She explained that by developing regulations with parameters that may allow grandfathering individuals in based on the recency of their education to make sure they have met the current curriculum standards. Ms. Pruden expounded on the fact that the statute is very specific with the requirements for a dispensing audiologist. There may not be enough flexibility with the regulation and it would require a statutory change.

Ms. Raggio repeated the question whether any Board members had changed their minds. She added that the Board has an Audiology Practice Committee and she agreed that this issue would be best relegated to this committee rather than the HAD Committee. The Audiology Practice Committee consists of two audiologists, and two public members (one of which is a physician/otolaryngologist).

#### **M/S/F Shalev/Solomon-Rice**

- **Motion to reconsider the prior Board's vote to accept OPES recommendation regarding the practical exam requirements for dispensing audiologists and continue the discussion at the committee level. The motion failed with 4-2 with Ms. Cooper abstaining.**

## 5. Proposed Regulations – Discussion and Possible Action

Mr. Sanchez introduced Heather Olivares, a new Board staff member. He added that she is a regulation and legislation analyst and that this new position was created to help the Board move forward with regulatory packages.

- a. Dispensing Audiologist Examination Requirement – Title 16, California Code of Regulations, Section 1399.152.4

Ms. Olivares explained that since the Board maintained its position to accept OPES recommendation, the next step is to implement the action by developing regulation. She provided an overview of the proposed language for 1399.152.4. Mr. Sanchez asked legal counsel whether there is anything else that needs to be considered. Ms. Pruden discussed removing any specificity to the statute in case it changes in the future. Ms. Cajina pointed out when AB 1535 was enacted, it allowed for the Board to evaluate the practical exam requirement for audiologists when the OA was completed, but it also included language in it that a “determination has been made that a different examination is to be administered.” She asked that the Board include a requirement for an audiological program to provide a safeguard for what a practical exam should be testing for. Ms. Raggio agreed and stated that the written exam might not sufficiently cover regulations and should possibly cover anatomy and physiology of hearing as well. Mr. Sanchez asked for clarification regarding Ms. Cajina’s comment. Ms. Pruden further inquired about the need to include any reference to audiological requirements as the statute refers only to an exam regarding the *selling* of hearing aids. The history of the exam requirements, the spirit of the legislation, and the regulatory requirements was briefly deliberated.

### **M/S/C Diaz/Solomon-Rice**

- **Motion to approve the proposed language, direct the Executive Officer to initiate the rulemaking process, delegate authority to the Executive Officer to make non-substantive changes, and move forward with the 45-day public comment. The motion carried 6-1.**
- b. Supervision of Trainee-Applicants, Supervision and Training Required, and Direct Supervision – Title 16, California Code of Regulations, Sections 1399.116, 1399.118, 1399.119

Ms. Olivares described the changes discussed at the previous Board meeting to the proposed regulations language. She explained that there are some items that still need to be further discussed to develop language for the regulation changes. Mr. Sanchez commented that the changes being discussed today are a result of the HAD Committee meeting in February. Three versions of the proposed changes to 1399.118 and 1399.119 including the different definitions of direct and immediate supervision were presented to the Board for review. Ms. Pruden discussed the letter from HHP and the changes made to the proposed regulatory language based on its recommendations. Ms. Pruden and Ms. Olivares elaborated on the different versions of proposed changes. Patti Solomon-Rice asked whether the definitions for direct and immediate supervision are new definitions, or if they follow similar definitions for a SLPA. The definitions for direct and immediate supervision for SLPAs were discussed and compared.

Ms. Pruden inquired about the new continuing education (CE) requirement for supervisors. Ms. Solomon-Rice explained that the CE requirements for supervisors are specific to supervisors and can be included in the CE requirement to renew a license. The length of renewal cycles for hearing aid dispensers and speech-language pathologists was explained. Mr. Sanchez discussed the concerns regarding a new CE

requirement for supervisors based on a CE course that may not be available yet. Mr. Bartlett commented that to the best of HHP's knowledge, courses for supervisory training do not exist. Ms. Solomon-Rice responded with the fact that once it is a regulatory requirement it could be lucrative to start a supervision CE course. Ms. Georgeson explained that supervising audiologists are required to complete six hours of supervision training before supervising RPEs and three hours every four years after. Ms. Solomon-Rice brought up the fact that the entry-level for an audiologist is very different from the entry-level for a hearing aid dispenser. She asked that this is kept in mind when adding new requirements for hearing aid dispensers to complete. Mr. Sanchez added that the CE requirement for supervisors might be a barrier since there are limited course offerings at the moment and new CE courses would need to be created.

Mr. Sanchez asked HHP to comment on the definitions of supervision for trainee-applicants based on the comments in the letter submitted to the Board. Ms. Pruden clarified that the reason the proposed regulations do not include a tele-supervision option because the Board members had previously stated they did not want this as an option. Mr. Shalev commented on the description for immediate supervision and the need for the supervisor to be physically present. There is a difference between immediate supervision and over-the-shoulder supervision. He stated the lack of supervision for trainee-applicants is a concern. Immediate supervision needs to require the supervisor to be in physically present in the same room. Ms. Olivares provided different versions of direct supervision for the Board members to review. Ms. Pruden referred to the letter from HHP and agreed with the comment regarding the term "services" can be interpreted as many things. The definition should contain specific references to the practice of fitting and selling hearing aids. Ms. Cajina inquired about the option for indirect supervision. The Board members discussed clerical tasks and other tasks that would not require the supervisor's presence.

The question of whether these tasks are included in the practice of fitting and selling hearing aids was raised. Mr. Shalev explained that there are tasks that may fall into the practice of fitting and selling hearing aids that do not require supervision. Mr. Bartlett added that there are tasks including interpreting a hearing test or adjusting a hearing aid that could technically be a part of fitting and selling hearing aids but should be viewed as separately. He further added that the definition of fitting and selling hearing aids is too narrow. Ms. Pruden clarified that post-fitting activities are included within the practice of fitting and selling hearing aids. Mr. Bartlett commented that there are certain tasks that the trainee-applicant should be able to do within the practice of fitting and selling hearing aids, such as replacing tubing or using an otoscope to look for missing pieces, that may pose a risk for the consumer if not addressed immediately. If the trainee-applicant is at the point in his or her training where a supervisor is not needed for these activities, the supervisor should not be required to be physically present. Ms. Cooper stated that otoscopy is different from administrative tasks and can be harmful to the consumer. Mr. Bartlett replied that trainee-applicants would require less and less supervision as they become more skilled, for example, after the first 90 days of training. The length of time for a trainee license was discussed including the ability to renew the trainee license twice for a total of 18 months. Mr. Shalev commented that trainee license should be similar to the temporary license; 12 months as a trainee-applicant is sufficient time to receive training and pass the exams.

Mr. Sanchez detailed the definition of indirect supervision as it applies to a SLPA (CCR 1399.170(e)). He asked if the proposed regulations need to be revised and brought to the next Board meeting for discussion. Ms. Cajina observed that being a trainee and being a trainee's supervisor is completely voluntary and to have people opt-in to on-the-job training program like this is critical. She added that although consumer protection and removing consumer risk due to lack of training is a priority, they do not want to preclude potential supervisors that are hesitant on adopting a training program in their practice with restrictive supervision requirements. HHP is willing to continue collaborating with the Board regarding defining supervision levels.

The argument of whether certain tasks are included in administrative tasks (such as cleaning hearing aids or changing batteries) or if they are included in the practice of fitting and selling hearing aids was deliberated. The option of indirect supervision and the tasks that might fall under the practice of fitting and selling hearing aids but could move to indirect supervision after 90 days was further discussed. Ms. Pruden pointed out that the Board already decided that the task of otoscopic inspection of the ear was one that required immediate supervision at any time the trainee-applicant is providing the service. She provided the Board's definition of the practice of fitting or selling hearing aids (B&P 2538.11(a)). Mr. Diaz expressed concern for not explicitly defining what is not included in the practice of fitting and selling hearing aids. Ms. Pruden explained that it wouldn't be necessary to include a list of clerical tasks as these tasks would not apply to the practice of fitting and selling hearing aids. Mr. Bartlett described scenarios where indirect supervision may be appropriate for a trainee-applicant when the trainee is engaged in the practice of fitting and selling hearing aids (such as the waiting period after taking the practical exam) where the trainee has demonstrated sufficient ability and skill. Mr. Sanchez stated that allowing the supervisor to make the judgment of the type of supervision required by the trainee is what the Board is trying to avoid. Ms. Pruden informed the Board that they had already decided that they do not want a form of indirect or remote supervision option. If the Board members have changed their minds or would like to reconsider, further discussion is warranted. Ms. Solomon-Rice added that the Board is looking to find the "sweet spot" between being too specific and not specific enough with the regulations.

Mr. Sanchez reminded the Board that this is a continued discussion from the previous day on the topic of indirect supervision or those tasks that would not be considered immediate or direct supervision. Mr. Shalev returned to the CE requirement for trainee supervisors and asked if anyone knew whether courses are readily available on the market. Mr. Bartlett explained that International Hearing Society offers courses more related to the federal level which may not be within the scope of training for the state level. Ms. Solomon-Rice responded with the fact that in other professions, once the Board creates a regulation that requires some form of CE, people will start teaching them. Mr. Shalev observed that the hearing aid dispensing population is a different, much smaller population than speech-language pathologists. Ms. Raggio added that audiologists are required to take supervision courses as well. Mr. Sanchez clarified that the supervision courses for audiologists are relevant for supervising required professional experience (RPE) license holders. He elaborated that at any given time, there are only about 200 trainee-applicants, which means that there are at most 200 supervisors (including dispensing audiologists). He understands that the limited availability of CE courses in supervision may be a problem in the future. Mr. Bartlett expressed concern for the CE requirement and changing the supervision levels and explained that it would be a barrier. Ms. Raggio replied that a licensee who is a good professional does not imply the licensee will be a good teacher or supervisor. The CE requirement would allow good professionals to become good supervisors as well. Mr. Shalev inquired whether there are currently any CE courses available for trainee supervisors.

The requirement for length of time licensed of the supervisor was brought up. Currently there is not a requirement for length of time licensed for a hearing aid dispenser to become a trainee supervisor. Ms. Pruden asked the Board members if a requirement should be added and what would the requirement be. Mr. Shalev stated that three years of being licensed, without discipline, and actively practicing before beginning supervision. Ms. Solomon-Rice questioned whether the Board receives requests for waivers to supervise more than one trainee-applicant. Mr. Sanchez explained that the Board has been attempting to address the lack of supervision for trainee-applicants and asked whether the members feel comfortable with the same regulatory exception to the limit of one trainee per supervisor.

Mr. Bartlett believes that a CE course offered on the topic of supervision training would not be considered within the scope of practice for hearing aid dispensers. Ms. Solomon-Rice added that the length of time

the regulatory process takes will allow for a CE course to be developed before it's required. National associations often offer supervisory training courses. Amy White, with California Academy of Audiology (CAA), spoke about her experiences with training courses for audiologists through CAA and how it often leads to more licensees wanting to begin supervising and training others. Mr. Shalev asked about the legality of implementing a regulation requiring a course that is not available. He expressed concern over the Board's inability to make CE providers offer a course on supervision. Mr. Sanchez commented on the rulemaking processing including the economic and fiscal impact. He acknowledged the possibility of a barrier for supervisors finding a course, but he also addressed the barrier regarding supervisors who do not know how to effectively supervise, and their trainees do not pass the practical exam. Ms. Raggio stated that in both the speech-language pathology and audiology professions, before the CE requirements changed to include courses specific to supervision, the courses were not available. The professions had to develop the courses and now the HAD profession will need to develop the courses. She added that the impetus is to improve the quality of the professional. Mr. Sanchez explained that requiring more training for supervisors is to address the issue of allowing individuals without any background or training to begin practicing under supervision. Providing structure to the regulations ensures that the supervisor receives training.

Mr. Shalev opined what began as looking at the regulations due to the concern that trainee-applicants were doing earmold impressions without proper supervision has resulted in developing regulations that will end the entire profession. He believes if a dispenser files suite with the State if the Board because of the regulatory requirement, it will prevail. He asked what the Board's argument would be to require CE courses on supervision. Ms. Raggio replied with quality control. Ms. Solomon-Rice responded with consumer protection. Ms. Raggio added that implementing the requirement means the courses will be developed. Mr. Shalev disagreed and stated that every dispenser is an individual. He questioned whether the individual dispensers should develop the course on supervision. Ms. Raggio said that the professional organizations will put the word out there that this regulation is changing the requirements and it will evolve in the same way that other professions have had to evolve. Mr. Shalev asked if the supervisory course would count toward the CE requirement for renewal. Ms. Pruden clarified that based on previous conversations, the Board had agreed that the course on supervision would be considered a part of the 12-hour CE requirement.

Mr. Sanchez overviewed the CE requirement for RPE and SLPA supervisors. For an RPE supervisor, the requirement is to complete six hours before beginning supervision and three hours every four years thereafter (CCR 1399.153.3(g)). For a SLPA supervisor, the requirement is to complete six hours once supervision begins and three hours every two years thereafter (CCR 1399.170.15(b)(4)). Mr. Shalev inquired about the length of time a licensee is required to maintain records of course completion. A licensee must maintain records of completion for at least two years. Ms. Raggio commented that requiring a trainee supervisor to complete additional CE hours on supervision every year is requiring too much. Ms. Pruden observed that the proposed regulations for the responsibilities of a SLPA supervisor will change the CE requirement to complete the six hours of CE *prior* to supervision and three hours every *four* years thereafter (to match the requirement for RPE supervisors). Mr. Shalev stated that he doesn't think additional supervision training should be required every so many years. The Board members compared the CE requirements for other supervisors licensed by the Board to the proposed requirement for trainee supervisors. A future implementation date of one year after the effective date of the regulation was added. The CE requirement for trainee supervisors was changed to reflect two hours every four years after supervising.

### **M/S/C Shalev/Raggio**



- **Motion to approve the proposed language for Section 1399.116 as amended, direct the Executive Officer to initiate the rulemaking process, delegate authority to the Executive Officer to make non-substantive changes, and move forward with the 45-day public comment. The motion carried 7-0.**

Ms. Pruden reviewed the proposed changes to CCR 1399.118 and explained that many of the changes are technical in nature. She added that HHP had made comments in the letter regarding this section including reference to real ear measurements. Mr. Shalev commented that if the practical exam does not require real ear measurements, it should not be required for training. Ms. Raggio observed that the language specifies training in the “knowledge of” and not the “practice of” real ear measurements. Mr. Bartlett commented that real ear measurements are only one of the many verification techniques. Ms. Raggio clarified regarding the different verification techniques that one is subjective, and one is objective, with real ear measurement being objective. Ms. White added that real ear measurements are considered the “gold standard” for the fitting and verification of hearing aids at the national level. The state of Oregon requires performing a real ear measurement at the time of fitting hearing aids. She elaborated that real ear measurements are crucial to patient safety to prevent over-amplification or causing damage. Ms. Raggio said it’s crucial that dispensers are aware of and know about real ear measurements, but it doesn’t mean they need to change how they practice. Supervisors need to inform their trainees about real ear measurements. It was suggested to change the proposed language to reference “including but not limited to” for real ear measurements. Mr. Bartlett asked that an additional task be added to the section: otoscopic inspection of the ear.

#### **M/S/C Shalev/Raggio**

- **Motion to approve the proposed language for Section 1399.118 as amended, direct the Executive Officer to initiate the rulemaking process, delegate authority to the Executive Officer to make non-substantive changes, and move forward with the 45-day public comment. The motion carried 7-0.**

Ms. Pruden overviewed the proposed changes to CCR 1399.119 and reminded the Board that this is a continued conversation from yesterday regarding the supervision requirements for trainees. The “practice of fitting and selling hearing aids” has been added for clarification and to remove confusion over clerical tasks that would not require immediate or direct supervision of the trainee. Ms. Pruden asked whether the Board felt consumer protection would be best served by including a third level of indirect supervision which would not require a physical presence by the supervisor. She clarified that at the previous meeting, the Board members decided they did not want a supervisor to provide supervision to the trainee at a separate location. Mr. Shalev commented that there are tasks such as taking an earmold impression that requires immediate supervision, and some tasks such as changing a battery or a filter that do not require supervision, but there are some tasks such as an air and bone test that might not require immediate supervision after 90 days. The proposed definitions for direct and immediate supervision were discussed. Ms. Pruden pointed out that if the tasks are not within the practice of fitting and selling hearing aids, the tasks do not require supervision. Mr. Bartlett asked about the waiting period for the filing of their license, when a trainee has proven that they meet the qualifications but are waiting for up to two months to receive the full HAD license. Mr. Sanchez explained that there are no provisions for licensure in any category where we change the requirements; an individual is either licensed or not. For example, a student who has graduated, passed any exams, etc. to meet the licensure requirements is still required to get the license. Breanne Humphreys discussed the Board’s performance-based budget results in processing times of within three weeks for applications. She added that in most cases, the practical exam scores are received, the applicants are notified right away, and the applications are processed within a week. Mr. Sanchez

clarified that the processing times for hearing aid dispensing applications is much shorter than for speech-language pathology or audiology applications. Ms. Solomon-Rice mentioned that waiting for the permanent license to be issued does not mean the trainees cannot work; they can continue to work as trainees.

Ms. Pruden asked if there were any comments concerning the proposed changes to CCR 1399.119(d) and the tasks that would require immediate supervision throughout the duration of the trainee's license. Mr. Shalev stated that hearing aid programming and audiometric evaluations should be moved to direct supervision. Ms. Solomon-Rice asked whether the issue of competency could be added. To include language that requires direct supervision for a minimum of 90 days or until the supervisor determines competency. Ms. Raggio asked if there is other language within regulation that states the supervisor has to determine competency and therefore withdraw his or her supervision level. A comparison of the supervision levels for SLPAs was discussed. Mr. Sanchez elaborated on the reasons behind supervision requirements. Mr. Shalev stated trainees should be able to perform hearing tests after 90 days of direct supervision. The supervisor is responsible for any actions by the trainee. Mr. Bartlett recommended otoscopic inspection of the ear could be removed from section (d). Direct supervision could be sufficient for the task of otoscopic inspection. Ms. Raggio inquired about the possibility of requiring the trainee to inform the supervisor with anything abnormal. Mr. Diaz argued that having the supervisor in the room then the trainee is more likely to bring something up if they have any questions.

The difference between otoscopy for audiometric tests and otoscopy for earmold impressions was deliberated. Ms. Raggio opined that 90 days is not long enough; experienced professionals will still encounter unusual circumstances involving otoscopy. The levels of supervision and the scope of practice for audiology aides was discussed. Ms. Cooper explained that she isn't comfortable with otoscopy being removed from immediate supervision. Mr. Bartlett elaborated on the different uses for otoscopy and how the supervisor would be present most of the time (such as when otoscopy is performed before an earmold impression) so it feels redundant to require immediate supervision for the otoscopic inspection of the ear. Mr. Shalev commented that if the Board doesn't remove otoscopic procedure from section (d) the Board is prohibiting trainees from being able to perform hearing tests. Ms. Cooper noted that she has trained AuD students where she has reviewed the case history with the student, looked in the patient's ear, and she is comfortable leaving her students to perform a hearing test without being over the shoulder. However, she clarified that she will be present during inspections of the ear canal to discuss what they see. Mr. Shalev asked if she looks over the shoulder of her students for more than three months. She responded that the students she has supervised often have four years of post-graduate education and training, so the length of time is variable. Mr. Shalev opined that the Board needs to be practical. Ms. Raggio stated that the nature of supervision and training is not always practical. Ms. White illustrated the way she supervises students and trainees in her office. She elucidated that trainees are being hired to work as opposed to being hired to supervise and to train. Training does take a lot of the supervisor's time, but it's important to double check otoscopy and shouldn't be viewed as cumbersome.

Ms. Pruden reported that section (f) will be amended based on HHP's suggestion to clarify that "services" refers to the practice of fitting and selling hearing aids. Additionally, section (i) will be removed because it references that supervision is required for trainees which is redundant because the statute and regulation already provide this requirement. Recommending the addition of 2538.11 to the reference section because it spells out the practice of fitting and selling hearing aids.

### **M/S/C Shalev/Raggio**

- **Motion to approve the proposed language for Section 1399.119 as amended, direct the Executive Officer to initiate the rulemaking process, delegate authority to the Executive Officer to make non-substantive changes, and move forward with the 45-day public comment. The motion carried 7-0.**

**Petition Hearings for Reinstatement of Licensure of Other Reduction of Penalty**  
**(Time Certain: November 30, 2018 at 9:00 a.m.)**

6. Petition for Penalty Relief - Modification of Probation – David Michael Illich, AU 778

Ed Washington opened the hearing. John Gatschet presented the case to the Board. Mr. Washington swore in David Illich. Mr. Illich presented his case to the Board. Mr. Gatschet cross examined Mr. Illich. Mr. Illich responded to the Board’s questions. Mr. Gatschet gave his closing argument. Mr. Illich gave his closing argument.

**Closed Session**

7. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session to Deliberate on Above Petition

The Board met in closed session at 9:45 a.m.

Case Number 11-2004-59

**Return to Open Session**

The Board returned to open session at 1:00 p.m.

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

Ms. Raggio described the potential consumer protection issue regarding locked hearing aids (hearing aids fitted with proprietary software only available at certain outlets) and a lack of access for servicing the hearing aids. She expanded on the potential need for some form of disclosure for the recipients of locked hearing aids to inform the consumer that they are purchasing something that has to be returned to that location or an outlet from that company. Consumers need to be aware of this before they purchase a locked hearing aid. Ms. White discussed her experience with locked hearing aids. She added that consumers are unaware that the locked hearing aids cannot be programmed, adjusted, repaired, etc. by anyone other than the manufacturer. She asked that the Board consider an informed consent statement or other similar option where the consumers acknowledge the limited capabilities for services on the locked hearing aid they are purchasing. Ms. Raggio questioned whether hearing aids purchased online are able to be serviced by anyone or if they are limited as well. Ms. White stated that most hearing aids purchased online or through mail order magazines can only be programmed through the manufacturer. Mr. Shalev stated that if a consumer purchases a hearing aid through a specific retailer, it’s practical to require the consumer to return to that office and not a different one for servicing. Mr. Bartlett disagreed by explaining that if another retailer has the software it doesn’t matter where the consumer goes. Ms. White elaborated on the fact that locked hearing aids use proprietary software which why the consumer protection issue was raised. Ms. Raggio stated that it appears to be a consumer access issue and informing them would be a good consumer protection activity. The issue of jurisdiction over regulating a manufacturer versus a

licensee within California was deliberated. The Board has authority over the individual who dispenses the hearing aid in California, as well as what information is required on a receipt. Ms. White commented that an informed consent would not restrict a company from doing business in California. Mr. Diaz compared the different ways of providing informed consent to consumers.

Mr. Sanchez stated that the Board has statute and civil code regarding the warranty of a hearing aid and receipt requirements in business and professions code. Mr. Diaz inquired about holding a hearing aid dispenser liable for negligence for not disclosing information. Changing the receipt requirements would require a statutory change. Changing statute would involve working with an author and possibly a professional organization to support the bill. Ms. Cajina stated that at this time, HHP would not be able to sponsor the bill, even though they appreciate the intent and improving consumer awareness. Ms. White stated that CAA would be willing to support the bill. Ms. Raggio believes HLAA would be willing to support the bill as well. Ms. White added that CAA has made statements about locked hearing aids, but they are limited in their ability to take any further action to improve consumer awareness. The Hearing Loss and Hearing Aids – Consumer Facts brochure developed by the Board does not currently include reference to locked hearing aids. Ms. Pruden recommended that a legislative committee can be created for this task and can be done outside of a Board meeting as the Board Chair has authority to create a committee and assign tasks at any time.

## 9. Executive Officer's Report

### **November 30, 2018 Reconvene at 9:00 a.m.**

Ms. Parker opened with the need for Christy Cooper to be sworn in as the new dispensing audiologist Board member. She led Ms. Cooper in the oath of allegiance.

#### a. Administration Update

Mr. Sanchez described recent personnel changes within the Board staff. He and Ms. Humphreys have been recruiting for a new Special Investigator and believe they will make the selection within the next week or two. Mr. Sanchez informed the Board about two new staff members, Heather Olivares and Eli Heredia. The difficulties in holding practical exams in southern California was discussed including the fact that the Board does not have special funding for practical exams.

#### b. Budget Report

Mr. Sanchez provided an overview of the Board's current budget report. He explained that they are currently predicted to have a surplus. Any surplus to the budget is carried over into the Board fund.

#### c. Licensing Report

Mr. Sanchez updated the Board with number of licenses issued for the first quarter of the fiscal year as well as the licensing population for all license types.

#### d. Practical Examination Report

Mr. Sanchez discussed the practical examination results for the July 21, 2018 exam. He explained that the results for the October exam have not been received yet.

e. Enforcement Report

Mr. Sanchez briefly reviewed the formal enforcement cases pending with the Office of the Attorney General. He also mentioned the probationers that the Board is currently monitoring. Mr. Sanchez informed the Board that the enforcement cases will be separated further by license type at the end of the fiscal year.

f. Regulation

Mr. Sanchez informed the Board that he would ask Ms. Olivares to provide the Board with a legislation update.

10. Legislation Update, Review, and Possible Action

a. AB 11 (McCarty) Early and Periodic Screening, Diagnosis, and Treatment Program: screening services

Ms. Olivares explained that this bill was vetoed because the Medi-Cal state plan already requires providers to screen children for developmental delays.

b. AB 1659 (Low) Healing arts boards: inactive licenses

This bill would allow all healing arts boards and bureaus in California to establish a lower renewal fee for an inactive license. Ms. Olivares pointed out that if the Board has no desire to do so, the bill does not impact the Board.

c. AB 1801 (Nazarian) Newborns: cytomegalovirus public education and testing

Ms. Olivares explained that this bill was vetoed because researching, educating, and testing for diseases in newborns is a function of the Department of Public Health.

d. AB 2138 (Chiu) Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction

This bill impacts the denial of applications, and revocations or suspensions of licensure, with regards to criminal convictions. Ms. Olivares discussed how the Board had taken an opposition to this bill (along with many other boards and bureaus). However, the bill will become law on July 1, 2020. An overview of AB 2138 was provided. Ms. Olivares informed the Board that she and Ms. Pruden attended a meeting with several other boards and bureaus within the Department of Consumer Affairs (DCA) to combine resources since the bill applies to most boards and bureaus within DCA. Because the bill goes into effect on July 1, 2020, the Board will need to have regulations in place before that date. The intent behind the bill was discussed including reformatations regarding prior criminal history and the Little Hoover Commission. Ms. Pruden commented on the significant amount of work involved with this bill including multiple, different regulation packages. She added that because it is mandated, it is priority. Additionally, application forms will need to be updated. Proposed regulation language will be brought to the next Board meeting for review. Mr. Shalev inquired about the seven-year limitation for felony convictions. Ms. Pruden elaborated that the limitation depends on the type of crime defined in Code 1192.7. The application for licensure cannot ask questions that would require an applicant to self-disclose criminal convictions. Fingerprint results should notify the Board if there are any prior convictions. Whether or not renewal forms can ask about criminal convictions is still being researched.

## 11. Election of Board Officers

Mr. Sanchez described the role of the Board Chair and Vice Chair and the annual requirement to elect the Chair and Vice Chair. He asked the Board members to discuss or nominate members for 2019.

- **The Board voted on the re-election of Ms. Parker to the position of Board Chair and Ms. Raggio to the position of Vice Chair. The motion carried 7-0.**

## 12. Future Agenda Items and Future Board Meeting Dates

Future agenda items include clinical practicum hours required for AuD applicants, supervision requirements for audiology aides. Additional meeting dates will include August and November next year.

- a. February 7-8, 2019 – Los Angeles
- b. May 2-3, 2019 – Sacramento

## 13. Pursuant to Government Code Section 11123(c)(3), the Board Will Meet in Closed Session to Deliberate on Disciplinary Matters Including Petitions, Proposed Decisions, Stipulated Decisions, Defaults, and Any Other Disciplinary Matters.

Case Number 1C-2007-99

Case Number 1I-2017-112

### **Closed Session**

## 14. Pursuant to Government Code Section 11126(a)(1), the Board Will Meet in Closed Session for the Executive Officer's Evaluation

The Board went into closed session at 3:49 p.m.

### **Return to Open Session**

## 15. Adjournment

The meeting adjourned after returning to open session.