

NEW YORK STATE HEARING AID DISPENSING ADVISORY BOARD
MEETING SUMMARY

March 10, 2020

The meeting was held at the Department of State, 99 Washington Avenue, Albany; 123 William Street, NYC; and, 65 Court Street, Buffalo.

I. INTRODUCTIONS, ROLL CALL AND QUORUM ANNOUNCEMENT

The meeting was called to order at 11:04 a.m. A. Penzabene took roll call and declared that there was not a quorum present. The official attendance was as follows:

BOARD MEMBERS

Peter Fisher
Anne Orsene
Jerry Bergman
Anthony Macera
Zhanneta Shapiro

Excused:

Florence Butler
Eric Freeman
Ana Hae-Ok Kim

DEPARTMENT OF STATE STAFF

David Mossberg
Mary Jo Moore
Ernita Gantt
Ernest Delaney
Marc Mastrobuono
Denise Tidings
Alison Lacy
Emily Lupe

EX-OFFICIO BOARD MEMBERS

Amy Penzabene, representing
Rossano Rosado, Secretary of State,
Board Chair
Jason Kramer, representing NYSED
Commissioner

VISITORS

Barbara Ahern, Hearing Health Care Alliance of NY
(HHCANY)
Fred Goossen, HHCANY, International Hearing Society
(IHS)

II. SUBCOMMITTEE AND DEPARTMENT REPORTS

- A. Approval of Meeting Summary for December 10, 2019 – A. Penzabene mentioned that since a quorum was not present, this agenda item will be tabled until the next meeting.
- B. Enforcement Report – E. Delaney provided an Enforcement Unit report stating that a total of five new complaints were received since the last board meeting. He mentioned that three of the new cases are closed; two were found not to be in violation and one was resulted in a warning. He mentioned that there are currently 13 pending cases. E. Delaney mentioned that after consideration of the cases received, they completed investigations on an allegation that a dispenser was identifying himself as a doctor in advertisements and another where a dispenser refused to sign paperwork that the client felt was needed.

- C. Processing Report – E. Lupe mentioned that the 3/5/2019 & 3/2/2020 Hearing Aid Dispensing licensing statistics were provided in the folders; she mentioned that the number of businesses and licensees are broken down by county, class code, and license type. She stated that the statistics remain fairly consistent between these reporting periods/years.
- D. Education/Examination Report – A. Lacy presented Hearing Aid Dispensing Examination statistics for 2019. She mentioned that there not been any written or practical exam site changes this year.

She stated that the Bureau of Educational Standards has begun auditing hearing aid dispensing renewal applications. She continued by stating that the renewal applications that do not indicate an approved course code(s), or do not appear to include telecoil, infection control and NYS and federal law, are not processed and are sent to the Bureau for an educational compliance audit. She mentioned that a renewal license will only be granted when satisfactory proof of education is provided. To date, 29 licensees have been audited and 17 have complied; of the 12 that have not yet complied, most are within the timeframe to respond and only 3 were found to be missing one or more of the required hours. A. Lacy also mentioned that the course availability appears to be adequate and has not been an issue raised by licensees.

III. ACTION ITEMS

- A. OTC Subcommittee (HR 1652) – A. Orsene reported that the OTC Subcommittee met on January 29, 2020, to discuss the Act of 2017. She stated that the subcommittee was formed to discuss the proposed FDA regulations on the sale of OTC hearing aids and their effects on dispensers and consumers in New York State. She explained that the regulations have not yet been released by the FDA and that she would inform DOS once the regulations become available. The subcommittee has agreed to meet within two weeks of the regulation release for further discussions.

She reported that the FDA is looking for feedback to ensure there are enough safeguards in place for consumers. At the subcommittee meeting it was suggested that the advisory board provide an initial response regarding these rules and disseminate it to licensees in New York State in order to weigh-in during the 180-day response period; this course of action was deemed inappropriate, as DOS does not generally take a position on federal issues. It was suggested that members could go through their professional associations/organizations to assess their position and to provide their opinions.

She stated that the FDA regulations would supersede the New York State regulations, which will most likely lead to both statutory and regulatory amendments for NYS. For example, hearing aid definitions will need to cover OTC's as they will be considered medical devices under the FDA. (The FDA regulations will define the differences between OTC's, traditional hearing aids, etc.). She mentioned that the subcommittee discussed the need to develop educational materials and make them available for consumer and licensees in New York State to ensure that everyone is

aware of the differences between OTCs and traditional hearing aids. This will assist consumers on making an informed choice and dispensers on providing accurate information to consumers regarding OTC's. She reported that the subcommittee agreed that action will most likely need to be taken in the following areas: statutory and regulatory amendments, managing consumer expectations, updating the consumer brochure, potentially updating the hearing aid dispensing syllabus and exams, and continuing education updates (the subcommittee suggested having an NYSED rep involved in this process). Lastly, we will need to ensure that all NYS-registered hearing aid dispensers are aware of these changes.

- B. Veteran's Mobility Safety Act of 2016 (HR 3471) aka 'Fit to Serve' Bill – D. Mossberg stated that at the last HADAB meeting, it was asked if the Department could do anything to ease the burden of the requirement that the VA form be signed off by a physician. He mentioned that the Department cannot do anything as this is a Federal act. He cited Section 7401, paragraph 2, which states that the Secretary shall ensure that, “services provided to veterans by hearing aid specialists shall be provided as part of the non-medical treatment plan developed by an audiologist.”
- C. Board Member Contact Information Update – D. Tidings stated that the board member contact information had been updated and that the updated information could now be found on the DOS website. She mentioned that copies of the updates could be found in the folder and that members should notify her of any future changes to their contact information. She also pointed out that approved summaries from the March 25, 2019, and the September 9, 2019, are now available on the Hearing Aid Advisory Board page of the DOS website.

IV. NEW BUSINESS

- A. Closed Captioning Law (S1650/A2076) – D. Mossberg stated that a copy of the ‘Closed Captioning Law’ was in the folder. He mentioned that this is a revised Civil Rights Law, Section 79-o, that provides for closed captioning in places of public accommodation, resort or amusement. Per Section 292 of the Executive Law, these places ‘shall upon request be required to have closed captioning enabled on all televisions that are located in the public are of such establishment during regular hours of business.’ He explained that Section 292 also states circumstances in which these provisions do not apply such as if there are no televisions capable of providing closed captioning or if two televisions are broadcasting the same channel, then only one of the televisions must provide closed captioning upon request. He stated that this law does not go into effect until July 1 of this year and, although relevant, does not fall under the General Business Law.

Licensing counsel, D. Mossberg, also mentioned that he and the Licensing Director, A. Penzabene, had a conversation with a representative from the Division of Human Rights (DHR) and requested that they attend a board meeting to explain their role in enforcing some of these provisions, including looping.

J. Bergman expressed his concerns over the restrictions of the 'Closed Captioning Law' and that the Hearing Loss Association of America (HLAA) was not included or consulted.

V. 2020 ADVISORY BOARD MEETINGS

A. Next Meeting – D. Tidings stated that the next meeting has been scheduled for Thursday, May 28, 2020, at 1 p.m. She mentioned that she had been in contact with a representative at DHR, and that he plans on attending the May 28 meeting.

VI. PUBLIC COMMENT

Regarding OTC's, F. Goossen stated that the HHCANY will be preparing a document to be sent out to their members relaying what a hearing aid dispensing office can do if a potential client comes in. They feel that consumer education should be enacted and that they would like to be involved in the information distribution. He expressed concerns of OTCs not working well and that some medical conditions may go undetected. He mentioned that the HHCANY also has some issues with the 'Closed Captioning Law'.

J. Bergman inquired about HHCANY's position on OTC products. F. Goossen stated that they do not have an official position at this point. Z. Shapiro mentioned that the FDA regulations will first need to be released before taking a position.

VII. ADJOURNMENT

A motion to adjourn the meeting was made. The meeting was adjourned at 11:42 a.m.