

NEW YORK STATE HEARING AID DISPENSING ADVISORY BOARD
MEETING SUMMARY

September 22, 2020

The meeting was held by the Department of State, Division of Licensing Services, via WebEx conferencing. A virtual meeting was held to comply with COVID-19 social distancing directives. Due to the fact the meeting of the NYS Hearing Aid Dispensing Advisory Board was held remotely, the public hearing section was held in abeyance.

I. INTRODUCTIONS, ROLL CALL AND QUORUM ANNOUNCEMENT

The meeting was called to order at 1:09 p.m. A. Penzabene took roll call and declared that there was not a quorum present. The official attendance was as follows:

BOARD MEMBERS

Jerry Bergman
Peter Fisher
Eric Freeman
Anthony Macera
Anne Orsene
Zhanneta Shapiro

Excused:

Florence Butler
Ana Hae-Ok Kim

OTC SUBCOMMITTEE MEMBER

Eric Matson, HLAA-NYS/Rochester

EX-OFFICIO BOARD MEMBERS

Amy Penzabene, representing
Rossana Rosado, Secretary of State,
Board Chair
Jason Kramer, representing NYSED
Commissioner
Anita Vigorito, representing NYS DOH
Commissioner

DEPARTMENT OF STATE STAFF

Jodi DeLollo
David Mossberg
Ernita Gantt
Ernest Delaney
Denise Tidings
Emily Lupe
Shannon Maguire
Marcella Rose
Alison Lacy
Paula O'Brien, NYS Division of Consumer Protection

GUEST ATTENDEE

John Herrion, NYS Division of Human Rights (DHR)

VISITORS

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

- A. Approval of Meeting Summary for 12-10-19 & 3-10-20 – A. Penzabene mentioned that since a quorum was not present, the approval of the meeting summaries will be tabled until a future meeting.

II. SUBCOMMITTEE AND DEPARTMENT REPORTS

- A. Enforcement Report – E. Delaney provided an Enforcement Unit report covering the period from April 2020 through August 2020. He stated that during this time period, one new complaint was received. He reported that they closed two complaints during this period explaining that of these

two complaints, one was closed as a withdrawal (the complainant decided not to go forward with the complaint) and the second one was closed due to insufficient evidence. E. Delaney stated that the current caseload is five complaints and mentioned that the type of complaints are allegations of unlicensed activity and requests for refunds (complainants that made a deposit on a hearing aid and later wanted a refund).

- B. Processing Report – E. Lupe reported on the provided August 2019 and August 2020 statistical reports. She explained that the total number of businesses and licensees are listed by county, class code, and license type and that the 2020 figures only include active licensees and may not cover expired licenses covered by EO 202.11 which allows licensed individuals to extend their license term during the current State of Emergency.
- C. Education Report – A. Lacy reported that the Bureau of Educational Standards continues to audit hearing aid dispensing renewal applications. She mentioned that those renewals that do not indicate approval code numbers or do not appear to include telecoil, infection control, and NYS and federal law, in addition to the balance of required hours, are not processed; they are sent to the Bureau for an educational compliance audit. A. Lacy stated that a renewal license will only be granted when satisfactory proof of education is provided. She reported that to date, 48 licensees have been audited and 44 have complied; of the four noncompliant, two are within the timeframe to respond. A. Lacy stated that course availability appears to be adequate and has not been an issue raised by any of our licensees.
- D. Examination Report- S. Maguire reported that on March 16, 2020, the Division of Licensing Services suspended all exams due to the COVID-19 outbreak. She stated that hearing aid written examinations resumed in July and that the practical exam was piloted in July (in Albany) and has since resumed in all other locations. S. Maguire reported that the following COVID-19 safety measures have been established for exam proctors, examiners, and examinees: ensuring that the capacity remains such to ensure that six feet distance can be maintained between exam candidates; exam proctors, examiners, and examinees are advised not to attend the exam if they have symptoms, have been in contact with a confirmed or suspected COVID-19 positive person in the past 14 days, or if they have tested positive in the last 14 days. She mentioned that COVID-19 safety precautions have been posted at all of our exams sites and that masks are required to be worn at our sites at all times; exam candidates have been asked to sanitize their hands before and after the exam as well as bring their own writing instrument to the exam.

III. ACTION ITEMS

- A. DHR's Role in Enforcing Existing Laws Including Looping – J. Herrion introduced himself as the Director of Disability Rights for the NYS Division of Human Rights. He explained how the Division enforces the Human Rights Law and that he was invited here to discuss public accommodation specific to a regulation on television screen captioning in establishments.

He provided an overview on how the agency operates. He reported that their Division enforces the NYS Human Rights Law which prohibits discrimination for a wide variety of protected

classes, including disability. He stated that last year, the DHR received over 6,000 complaints alleging various forms of discrimination; close to one-third of those complaints include allegations based on disability discrimination (disability and race are the top two areas of complaints that they see in volume). He explained that they enforce the law by investigating, prosecuting, and adjudicating complaints of discrimination. He mentioned that during the pandemic, they continue their work by taking complaints over the phone as well as virtually and have waived the notary requirement to facilitate easier access to the Division in terms of filing a complaint.

J. Herrion shared the definition of disability under the State Human Rights Law, which he stated is more generous than the federal Americans With Disabilities Act (ADA). Under the ADA, it requires a significant limitation of a major life impairment (major life activity). He stated that under the State Human Rights Law, there are no such qualifiers. He explained that someone who has a level of hearing impairment that is not substantial may not meet the federal standard, but that would not be a concern under the State's Human Rights Law. He stated that the focus on the State level is more on determining whether (or not) there has been discrimination.

Regarding the provision added to statute under the Civil Rights section of the NYS Law that requires places of public accommodation to provide captioning on television screens, J. Herrion stated that the definition of public accommodation falls under DHR's Law; he explained that there are a few exceptions (most places that are open to the public are covered as places of public accommodation under the NYS Human Rights Law). He explained that religious organizations are likely the biggest exemption but that the Division may, also, 'take a look' at them if they are holding events that are open to the public. He summarized by stating that the provision in the Civil Rights Law is not a provision that is enforceable by the NYS Human Rights Division but believes that individuals can bring a private cause of action or ask the Attorney General's office to bring cause of action.

He mentioned that while there is no explicit language in the State Human Rights Law obligating owners of places of public accommodation to provide captioning, there is language in the State's Human Rights Law that clearly obligates owners and places of public accommodation to reasonably accommodate people with disabilities. He continued by stating that in that provision of the law, it discusses axillary aids and devices and that captioning would clearly be a form of an axillary or aid or device that would allow someone with a disability to participate or access goods or services in a place of public accommodation and be able to effectively communicate (he added that the phrasing in the State Law is 'effectively communicate' and an 'obligation to reasonably accommodate'). He explained that if an individual wanted a visually featured element to be audibilized in some way or captioned and they ask the owner to do that and the owner refused, the individual could file a complaint with the NYS Division of Human Rights to

investigate. The Human Rights Law states that it is unlawful to refuse; in order to be a refusal, there must be a request. He stated that DHR does a reasonable accommodation on these cases, which means they are looking at the cost of the modification compared to the resources of a particular business (it is on a case-by-case basis). He mentioned that it is arguable that captioning would not be something that would create an undue burden at this point for someone operating a television screen, as most televisions are equipped with that feature or can be addressed through a cable provider. He stated that owners of establishments who have visual mechanisms in place, would be 'hard pressed' to say this would be unreasonable. He emphasized that complaints are case-by-case and analyzed by the reasonable accommodation standard.

J. Herrion discussed DHR's engagement, outreach, and education in this area and stated that DHR went around the state prior to the pandemic but now conducts virtual sessions for agencies focused on people with disabilities as well as independent living centers throughout the state to share information about how NYS Division of Human Rights enforces the Human Rights Law, how people can file complaints, how the Agency operates, and what is and is not covered under the Law. He mentioned that they also have a Division-initiated investigations unit; that unit can conduct its own investigations and file its own complaints in areas where they see patterns or practices of discrimination. He added that DHR may be considered a resource for this group (the Board) when patterns or practices of discrimination are seen.

J. Bergman mentioned that there may be some forthcoming legislation in New York City that would make the captioning mandatory so that individuals would not have to make the request. J. Herrion mentioned that he encourages people to persist and be a good advocate as well as to file complaints when their requests are denied. J. Bergman inquired as to what was being done on a State level to inform others of this new law. J. Herrion pointed out that the provision is under the Civil Rights Law, but that DHR would address disability rights, and he will make this part of his outreach.

E. Freeman asked what the Board can do to let other dispensers know that clients need to make the request for an accommodation. J. Herrion mentioned that he prefers to get covered entities or their advocates in a group to explain insulating themselves from liability if they disregard a request of accommodations. He suggested that posting signage explaining disability rights may also be useful. J. Herrion mentioned that Disability Rights NY is a great resource and represent people with disabilities; he added that the Division of Human Rights is a law enforcement agency.

- B. CPB's Role in Consumer Awareness/Outreach – P. O'Brien stated that the Consumer Protection Board (CPB) is now the Division of Consumer Protection (*a Division of the NYS Department of State*). She explained that their Division is charged with advocating for consumers statewide and

protecting consumers from harm. She continued to explain that the Division “weighs-in” on State legislation to advance consumer protections and make sure things are clear, conspicuous, and equitable in how consumers engage in the marketplace and how things are offered to them. She mentioned that the Division of Consumer Protection can be a resource to the Board for providing feedback on FDA changes in regulations. P. O’Brien also explained that their Division has a robust, statewide outreach and education program which is usually done live but has now been switched to virtual due to COVID-19; they provide a myriad of consumer protection forums to help inform consumers about engaging in the marketplace and being savvy.

P. O’Brien discussed the Division’s consumer assistance program which operates a consumer help line from 8:30-4:30 p.m. each State business day; the phone number is 800-627-1220 and aggrieved consumers can call for assistance with contractual disputes, marketplace concerns, and, if warranted, they can go online and file a complaint, and the Division will engage in mediation on their behalf. She explained that the complaint volume is up 298 percent because of COVID-19 and mentioned that they have had numerous complaints because of ‘shut-downs’ and tension over businesses being able to provide services.

A. Penzabene invited P. O’Brien to join the OTC Subcommittee to assist in reviewing federal regulations for over-the-counter hearing aids once the regulations are released. P. O’Brien accepted the offer and requested that their Division’s program counsel be added as well. A. Orsene welcomed P. O’Brien to the subcommittee and mentioned that the subcommittee plans to meet within two weeks of the FDA’s regulations being released. P. O’Brien mentioned that the Division of Consumer Protection is also connected to the Consumer Federation of America, and that these larger consumer protection advocacy organizations often have different briefing items and a national presence and may be “weighing in” on the regulations as well.

A. Penzabene thanked J. Herrion and P. O’Brien for providing the Board members with information concerning their respective roles.

IV. 2020 ADVISORY BOARD MEETINGS

A. Next Meeting – D. Tidings announced that the next meeting has been scheduled for Monday, December 7, 2020, at 1 p.m.

Board members inquired about board vacancies. D. Mossberg explained that decisions to fill board positions are made by the Governor’s Appointment office. E. Freeman requested that the Licensing Division look into the status of these vacancies. A. Penzabene stated that the Division will look into the status of this Board’s vacancies.

V. ADJOURNMENT

A motion to adjourn the meeting was made. The meeting was adjourned at 2:02 p.m.