

NEW YORK STATE HEARING AID DISPENSING ADVISORY BOARD
MEETING SUMMARY

September 20, 2021

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. Meeting locations in Albany (99 Washington Avenue, 5th Floor, Room 505), Buffalo (295 Main Street, 8th Floor-Suite 821, Room 803), and New York City (123 William Street, 2nd Floor, Room 231) were also available to attendees.

I. INTRODUCTIONS, ROLL CALL AND QUORUM ANNOUNCEMENT

The meeting was called to order at 1:03 p.m. J. DeLollo took roll call and announced that there was not a quorum. The official attendance was as follows:

BOARD MEMBERS

Jerry Bergman
Peter Fisher
Eric Freeman
Sharon A. Gavin
MarieAnn Zumpone-Weibley

Excused:

Ana Hae-Ok Kim
Anthony Macera
Anne Orsene

DEPARTMENT OF STATE STAFF

David Mossberg
Ernest Delaney
Alison Lacy
Emily Lupe
Shannon Maguire
Marcella Rose
Denise Tidings
Paula O'Brien

EX-OFFICIO BOARD MEMBERS

Jodi DeLollo, representing
Rossana Rosado, Secretary of State,
Board Chair
Jason Kramer, representing NYSED
Commissioner
Sudarsana Srinivasan, representing NYS
Attorney General
Anita Vigorito, representing NYS DOH
Commissioner

VISITORS*

Barbara Ahern, Hearing Health Care Alliance of NY
(HHCANY)
Fred Goossen, HHCANY, International Hearing Society
(IHS)
Eric Matson, HLAA-NYS/Rochester
Barbara Kruger
*Other Public Members

- A. Approval of 6/7/21 Meeting Summary – J. DeLollo announced that the approval of the 6/7/21 meeting summary would be tabled until the next meeting due to a lack of quorum.

II. SUBCOMMITTEE AND DEPARTMENT REPORTS

- A. Enforcement Report – E. Delaney provided an Enforcement Unit report. He stated that his report would cover the period from the last Board meeting (6-7-21) until present. He reported that the Enforcement Unit received no new consumer complaints since the last meeting but did close one

complaint; the complaint was closed with a hold. He explained that the allegations involved a consumer who wanted a refund of the fees they paid for hearing aids. He mentioned that there is currently has a total of eight pending investigations. E. Delaney further reported on the eight cases that are currently opened and pending investigation, stating that these allegations include: dispenser failed to issue a required refund (4), false/ misleading advertisement (1), unlicensed activity (1), and dispenser offering online hearing aids (1). He stated that the total number of complaints received over the past 12 months is 11 (one being an online hearing aid vendor) and reported the total number of complaints by category: audiologists=0, hearing aid dispensers=10, and hearing aid vendors=1.

- B. Processing Report – E. Lupe reported on the provided August 2020 and August 2021 statistical reports. She explained that the total number of businesses and licensees are listed by county, class code, and license type and that the 2021 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 in 2021, 45 licensees have been audited and 33 have complied; 6 did not comply. She mentioned that of the six (6) pending, all are within the timeframe to respond. A. Lacy stated that course availability appears to be adequate and has not been an issue raised by licensees.
- D. Examination Report - S. Maguire reported the examination statistics for January through July 2021, reporting that the Hearing Aid Dispensing written exam was administered to 34 applicants with a pass rate of 54 percent and that the practical exam was administered to 50 applicants with an 86 percent pass rate.

III. ACTION ITEMS

- A. Overview of Board Members' Roles and Responsibilities – D. Mossberg provided an overview of the role and function of the NYS Hearing Aid Dispensing Advisory Board. He provided specifics on the original intent of the Board as well as their scope of power. He explained that the Department started issuing hearing aid dispensing registrations under 37-A of the General Business Law on July 1, 1999, and that, at the time, the purpose was stated as providing stronger consumer protections for individuals who are purchasing hearing. He added that the focus was principally on the purchasing of these devices as well as the interaction between the dispensers and the consumers. He further explained that the article focused on creating a strong framework on the business of the hearing aid dispensers. He mentioned that the jacket of the bill stated that the Hearing Aid Dispensing Advisory Board will be established, comprising of dispensers, audiologists, physicians, and consumers serving to develop recommendations for the Secretary of State regarding policies, standards, and procedures for the business of dispensing hearing aids. Citing statute, D. Mossberg explained that Section 791 of the GBL

pertains to the Board, consisting of 13 members plus 4 non-voting government ex-officio members (including Secretary of State, Commissioner of Education, Commissioner of Health, the Attorney General or his/her designee), whose principal role is to advise the other 13 members. He stated that the majority of the 13 members (even if vacancies exist) is required in order to take action. D. Mossberg further explained that pursuant to Section 791, the Board is empowered to advise the Secretary of State on the implementation and provision of the law; he cited some examples included in Section 791—the rights of the consumer when purchasing a hearing aid, consumers can file complaints, the type of educational material that dispensers have to disclose to consumers when purchasing a device, the training and educational standards to become a dispenser, the advertisements placed by dispensers, the procedures the Secretary can use to increase awareness of how to properly purchase, fit, and use a hearing aid, as well as the rights of the purchaser of those devices. He mentioned that this clarification was requested as members of the Board have been called upon to discuss, generally, the power to advocate on issues generally related to individuals who might benefit from hearing aids but are not actual consumers, hearing aid dispensers, or purchasers of devices. D. Mossberg added that on matters unrelated to the hearing aid dispenser, those matters would appear to be beyond the scope of what this Board should be focused on or for making recommendations to the Secretary. He provided an example of the Board lobbying for legislation in places of public accommodation and while this issue is important to constituency, generally, this advocacy may not be considered directly related to the duties of the hearing aid dispenser or the relationship between the consumer and the duties that a dispenser has towards the purchaser of those devices. He mentioned that the jacket of the 1999 bill outlined the Board's role as protecting the consumer and providing recommendations to the Secretary of State, adding that those recommendations must relate to the dispenser and dispensing activities. He advised that, to the extent possible, the Board's focus should remain on performing those duties.

Board member, E. Freeman asked if the Board, as hearing care professionals, could give input as hearing such as building awareness with loops. D. Mossberg stated that while general awareness is important, advocating legislation on building construction is not within the scope of the Board. D. Mossberg added that helping the dispenser understand new issues such as OTCs is clearly related because we may ask dispensers to provide information for consumers.

Regarding Article 37-A, board member, P. Fisher, stated his position that definitions are important because the whole bill depends that we know what we are talking about. He mentioned that he believes that there needs to be a change to the hearing aids definition in the article because the term does not define what we should be focused on such as OTCs. He feels that that the definition should include types and classes of hearing aids. D. Mossberg stated that the Board can make a recommendation to amend the definition but advises that we wait until the OTC federal action takes place.

Concerns were raised over individuals selling online OTC products that are shipped to residents of New York State. D. Mossberg stated that DOS enforcement may be able to investigate if the product is being sold by a New York State registered dispenser. Potential consumer protection issues were discussed, and a request was made for Consumer Protection and/or the Attorney General's office to intervene. D. Mossberg mentioned that representatives from both offices were present and that those members may be able to address the concerns at a later meeting. J. DeLollo requested that members send any pertinent information for these offices to review to D. Tidings (Board Coordinator) to forward and provide them with the opportunity to review and perhaps discuss these issues at a future meeting if appropriate.

IV. NEW BUSINESS

- A. Executive Order Update – D. Mossberg provided an update on the COVID-19 Executive Orders. He reported that the Governor’s Executive Order 202.11, allowing licensing extensions, has been rescinded. He also mentioned the EO that allowed open meetings to be conducted virtually during the state of emergency was also rescinded but that on September 2, Governor Hochul signed a bill to allow open meetings to temporarily resume until January 15, 2022.

Members mentioned their preference to continue virtual meetings. J. DeLollo stated that D Tidings will keep the members posted of any updates.

V. 2021 ADVISORY BOARD MEETINGS

- A. Next Meeting – D. Tidings announced that the next meeting of the NYS Hearing Aid Dispensing Advisory Board is scheduled for Monday, December 6, 2021, at 1 p.m.

VI. ADJOURNMENT

J. DeLollo adjourned the meeting at 1:40 p.m.