

NEW YORK STATE HEARING AID DISPENSING ADVISORY BOARD
MEETING SUMMARY

December 6, 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. 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 1:08 p.m. D. Mossberg took roll call and announced that there was not a quorum present; a quorum was later declared as other members joined the meeting. The official attendance was as follows:

BOARD MEMBERS

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

Excused:

Ana Hae-Ok Kim
Anne Orsene

EX-OFFICIO BOARD MEMBERS

David Mossberg, representing
Brendan C. Hughes, Acting Secretary of
State, Board Chair
Jason Kramer, representing Dr. Betty A.
Rosa, NYSED Commissioner
Anita Vigorito, representing Dr. Mary T.
Bassett, NYS DOH Commissioner
Sudarsana Srinivasan, representing
Letitia James, NYS Attorney General

DEPARTMENT OF STATE STAFF

Jodi DeLollo
Ernita Gantt
Ernest Delaney
Alison Lacy
Emily Lupe
Shannon Maguire
Marcella Rose
Denise Tidings

VISITORS*

Barbara Ahern, Hearing Health Care Alliance of NY
(HHCANY)
Eric Matson, HLAA-NYS/Rochester
Barbara Kruger
Jonas Neri
Adam Teeney

*Other Public Members

A. Approval of 6/7/21 & 9/20/21 Meeting Summaries – D. Mossberg stated that although a quorum was achieved through the number of board members and ex-officio members present, not enough voting members (board members) were present to vote on the approval of the June 7 and September 20 meeting summaries; this agenda item was, therefore, tabled until the next board meeting.

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 September 2021 through December 2021 (present date). He reported

that the Enforcement Unit received no new consumer complaints since the last meeting and that two complaints were closed. E. Delaney further reported on five remaining complaints that are currently pending investigation, stating that these allegations include: dispenser failed to issue a required refund (2), unlicensed activity (1), dispenser offering online hearing aids (1), and convicted of a crime related to the qualifications, functions, and duties of a hearing aid dispenser (1). He stated that a total of six complaints against hearing aid dispensers were received over the past 12 months, including one alleged online hearing aid vendor.

- B. Processing Report – E. Lupe reported on the provided November 2020 and November 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 2020 figures only include active licensees and may not cover expired licenses covered by EO 202.11 which allowed licensed individuals to extend their license term during the 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, 85 licensees have been audited and 53 have complied and seven licensees did not comply. She mentioned that of the 25 pending, all are within the required 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 on the examination statistics for January through November 2021, reporting that the Hearing Aid Dispensing written exam was administered to 44 applicants with a pass rate of 48 percent and that the practical exam was administered to 90 applicants with an 87 percent pass rate.

J. Bergman inquired whether any trend data was available on the number of licensees on an annual basis. He stated that he was interested in knowing whether the number of licensees for hearing aid dispensing, including both audiologists and dispensers, is constant, increasing, or decreasing over time. S. Maguire stated that this information could be compiled and mentioned that the 2020 statistics may be lower than usual since examinations were suspended from March 2020 to July 2020 due to COVID-19. D. Mossberg asked S. Maguire to provide those statistics to D. Tidings (Board Coordinator) for dissemination to Hearing Aid Dispensing Advisory Board members and Ex-officio members.

III. NEW BUSINESS

- A. FDA Release of OTC Draft Regulations – D. Mossberg reported that on October 20, 2021, the FDA published in the Federal Register the proposed regulations regarding over-the-counter hearing aids. He shared some highlights of the proposed regulations and mentioned that once the FDA releases more information then we (the Department of State) will have a better idea of how we are going to

move forward and will attempt to implement some of these provisions to the extent that we are required to. He stated that the comment period expires on January 18, 2022, and that pursuant to the published notification, the FDA's current proposed effective date would be 60 days after publication of the final rule in the Register. D. Mossberg explained that the process is similar our State's regulation process and that there is a comment period; after evaluation of the public comments, there will be an opportunity for the FDA to make changes and further propose regulations or move forward with the adoption and once filed, their rule would not be effective for at least 60 days following that publication in the Federal Register.

P. Fisher stated that from what he gathered from the proposal, OTC hearing aids would not fall under our jurisdiction because they are not considered 'true' conventional hearing aids; he feels that a discussion of OTCs by the Board and DOS may not be relevant if we have no authority over OTCs. E. Freeman inquired as to whether the list that the OTC subcommittee developed (to assist consumers on deciding how to acquire hearing aids) could be finalized and disseminated to dispensers for consumers. D. Mossberg stated that this is something the Department will be considering once there is more finality from the FDA and what their rule is going to say (classifications, etc.) before we advise our licensees. He explained that the next agenda item will discuss AOG's consideration of alerting the general public.

J. Bergman stated that he feels the professional organizations are the best avenue for submitting commentaries on the proposed ruling. P. Fisher named some organizations that could potentially assist in alerting legislators to problems that may arise or have arisen.

B. Consumer Alert Relevant to OTC Sales – S. Srinivasan introduced herself as the Health Care Bureau Chief from the NY Attorney General's Office, representing Letitia James. She reported that it was brought to their attention by a member of this board that other State Attorney Generals had issued a consumer alert regarding OTC hearing aids even though there is no FDA action on them. She explained that their office has not received any consumer complaints regarding OTC hearing aids and inquired if others were receiving complaints. She clarified that the Attorney General can take any action in this area that she deems necessary. She inquired as to whether anyone had seen OTC advertisements in New York or have heard from any consumers or patients and expressed her desire to get more information from the Board regarding this matter.

E. Freeman stated that consumers have come into his office with products that were being sold as a hearing aid that didn't work; the consumer never attempted to return the product. He added that individuals may take several years to seek professional care after this type of experience. He feels that, in general, consumers that have a negative experience with OTC hearing aids will not file a report with the Attorney General's Office and are most likely unaware of the process to do so. E. Freeman stated that he feels it is a good idea for the Attorney General's Office to make reporting information available to consumers.

P. Fisher mentioned that the purpose of the consumer brochure is to help educate the consumer and that individuals who have an impairment should do their research. E. Freeman explained that they provide consumers with the available brochure, and he feels that New York should be proactive on this topic and enforce the rules to ensure the proper care for the hearing aid community. J. Bergman

mentioned that he was in favor of being proactive as opposed to reactive and asked if we could send out brochure to offices with information on how to report violations. He inquired as to whether the office can send out an advisory to hearing aid dispensers and audiologists asking them to let us know if they encounter an incident where there may be a violation. He also inquired as to whether the Board (through DOS) can attempt to seek consumer affairs assistance for looking into issues and putting out consumer literature as well as advising organizations so they may update their own literature and be proactive. S. Srinivasan clarified that the AG's Office can send out a general public notice (not to targeted group) alerting them to this issue and asking them to report any potential issues. P. Fisher questioned whether investigations are based on the number of complaints and if so, perhaps that is why hearing aid issues have not been addressed. S. Srinivasan reiterated that the AG's Office has not received any complaints but is glad that the potential issue was brought to their attention and that information was shared with regards to what other states are providing to consumers. E. Freeman inquired about a hotline for consumers to call. S. Srinivasan stated that a hotline already exists. E. Freeman inquired if a link to this information could be provided on the DOS website. S. Srinivasan mentioned that this information is already available online. J. Bergman asked if they could send out something through DOS; S. Srinivasan stated that these are two separate agencies and that there have not been any complaints to the AG's Office warranting this type of attention at this point.

J. Bergman added that NYS could be more attuned to individuals with deaf/blind issues. He inquired as to whether there has been any thought to license CART providers and other services providers that specialize in accessibility to the deaf/blind in New York State. D. Mossberg stated that there is no proposal, to his knowledge, to license those professions and that generally this starts at the legislature level. He explained that framework sometimes takes time to develop and usually begins with a legislative process and that DOS is not in position initiate legislation. D. Mossberg added that DOS is equipped in licensing various categories and if tasked, we would effectively oversee the licensure at DOS. J. Berman stated that he believes there is a bill to potentially license ASL translators and that he believes consumers would like to see more licensure without restricting those who are qualified and currently providing those services. E. Freeman stated that there are some resources to assist the deaf/blind community but would like to see more services in this area as well.

C. 2022 Meeting Dates – D. Tidings announced the tentative 2022 meeting dates:

- Monday, March 21 @ 1 p.m.
- Thursday, June 2 @ 1 p.m.
- Thursday, September 22 @ 1 p.m.
- Monday, December 12 @ 1 p.m.

She stated that members should notify her as soon as possible if they have any conflicts with these dates.

IV. ADJOURNMENT

D. Mossberg adjourned the meeting at 2:06 p.m.