Okay.

All right, all right. Good afternoon, everybody. My name is David Mossberg. I am the designee appearing here today on behalf of Secretary of State, Robert Rodriguez, for the March 21st, 2022, meeting of the New York State Hearing Aid Dispensing Advisory Board. Just want to make sure everyone can hear me pretty clearly or understand what I'm saying. Anyone having any technical issues or anything before we go on?

David, we can't see you.

Oh, um. You can't see us at all in New York?

We can see everyone else.
9 Jerry Bergman 00:26:32.865 --> 00:26:33.345
Huh.

10 David Mossberg NYC-231@dos.ny.gov 00:26:33.975 --> 00:26:51.945
Uh, do you see Jack Bilello? I'm in the conference room with Jack. Oh, so I'm just literally not like, on the screen.

Jack Bilello
Oh, okay. All right so it's just a matter of the camera not being situated in the right place. Yeah, I can switch with you, Dave.

Ernita Gantt
Did you say I should be able to catch everybody.

11 David Mossberg NYC-231@dos.ny.gov 00:26:51.974 --> 00:26:52.484
Is this any better?

Anne Orsene
Yes.

12 David Mossberg NYC-231@dos.ny.gov 00:26:55.754 --> 00:26:56.504
Yeah, okay.

13 David Mossberg NYC-231@dos.ny.gov 00:26:57.614 --> 00:27:05.264
So, I gotta get closer to Jack.

Jack Bilello
Dave, you want to switch?

Yep.

14 David Mossberg NYC-231@dos.ny.gov 00:27:10.124 --> 00:27:28.604
Okay, um, so why don't we go ahead and we'll start with, uh, roll call and introductions. Um, we're also happy to mention that we have a new board member. Um, and as well as a, uh, special guest, um, at today's meeting.

15 David Mossberg NYC-231@dos.ny.gov 00:27:28.635 --> 00:27:48.495
So, hopefully everyone was able to log on that we need. So, I'm just going to start with a roll call of the voting members. If you're here, just say "present". Sharon Gavin?

Sharon Gavin
Present.
David Mossberg
Thank you. Peter Fisher?

16
peter fisher 00:27:49.035 --> 00:27:49.545
Present.

17
David Mossberg NYC-231@dos.ny.gov 00:27:50.924 --> 00:27:51.794
Eric Freeman?

18
Eric Freeman 00:27:52.664 --> 00:27:53.144
Present.

19
David Mossberg NYC-231@dos.ny.gov 00:27:55.004 --> 00:27:56.894
Dr. Anna Kim?

20
ana kim 00:27:57.764 --> 00:27:58.364
Present.

21
David Mossberg NYC-231@dos.ny.gov 00:27:59.774 --> 00:28:00.644
Jerry Bergman?

22
Jerry Bergman 00:28:02.234 --> 00:28:02.624
Here.

23
David Mossberg NYC-231@dos.ny.gov 00:28:04.184 --> 00:28:05.144
Anne Orsene?

Anne Orsene
Present

24
David Mossberg NYC-231@dos.ny.gov 00:28:09.735 --> 00:28:12.465
UH, MarieAnn Zumpone-Weibley?

25
David Mossberg NYC-231@dos.ny.gov 00:28:17.984 --> 00:28:21.254
I know we got an email from, uh, MarieAnn.

26
Barbara Kruger 00:28:23.294 --> 00:28:23.864
She's here.
She is?

She's on here wearing a mask and holding a phone next to her ear here in her office and waving.

We can't see her in our conference room set up here.

Apologies for that if she's on mute. Okay. Um, obviously, I'm here. Uh, Jason Kramer on behalf of the Commissioner of the State Education Department?

Jason, are you present?

I know the AG representative isn't here.

Okay. Sorry, this is a Brant Campbell, uh, uh, substituting for the Attorney General’s representative.

Oh, okay, fantastic.

And, uh, new board member appointed on behalf of Commissioner Department of Health, Dr. Kal Alshaer?

Yes, present.

Present. Welcome to the Board.

Thank you, thank you.
Um, can we just have a roll call of, um, so based on, um, everyone present, it appears as if we do have enough for a quorum 3, 4, 5, 6... perfect um, can we just have, uh,

members of the Department of State that are on the line, if you could just identify yourselves.

New York City, in New York City, Ernita Gantt, Department of State.

Jack Bilello
Jack Bilello, Department of State.

Any members, appearing virtually, from the Department of State, online?

Uh, Emily Lupe, Processing Unit, Department of State.

Jodi DeLollo, Director, Division of Licensing Services.

Shannon Maguire, Division of Licensing Services.

Allison Lacy, Division of Licensing Services.

Denise Tidings, Division of Licensing Services.

Marcella Rose
Marcella Rose, Division of Licensing Services.

Okay, all right. Thank you. So, the first item on today's agenda is, actually, to welcome the new Board appointee, Dr. Alshaer. So, Dr. Alshaer, would you please introduce yourself to the board.
And, uh, welcome to the Board, and we are happy to have you here.

Thank you very much. And, I'm also very glad to be here and to join this Board. Um, I am, um, one of the medical directors in the Office of Health Insurance Programs.

Which is the New York State Department of Health.

That manages the New York State.

In various... and I provide, in general, clinical support to the team

Uh, in, uh, especially to the Medicaid Managed Care team and also engage in various quality and, uh, in Medicaid. I have a background in family medicine, preventive medicine, and in public health, uh, with a focus on public health administration and practice. And, again, I'm very glad to, uh, join the team here.

Uh, thank you, Dr. Alshaer. I guess, does anyone have any questions for the new board member?

Yeah, David, it's Jerry.

Okay. Hi Jerry.

Did you say that the doctor, Dr. Alshaer, is now a member of the board?
He is representing a Commissioner of the Department of Health, so he's appearing as a Commissioner ex-officio.

Oh, okay, so he doesn't fill any of the card that you can see? That was my question.

Of course. Oh, yes, correct. He does not fill a current vacancy.

Thank you.

And, welcome.

Thank you.

Um, so the, uh, the next item on today's agenda is the approval of the three prior meeting summaries. So, will one of the voting members, if they'd like, make a motion to approve or

of course, if there are any errors or issues within those minute meetings for a discussion, this is certainly the opportunity for that.

I'll make

a motion to approve.

Okay, I'll second it.
Any voting member of the board abstain or object?

Nope, okay.

The three prior minutes: June 7, September 20, and December 6, have been approved. Before we go on to the Department and subcommittee reports, we do have a special guest appearing today. And, because of a possible conflict issue, I just wanted to take the opportunity to introduce Kim Hill of the newly established Office of the Chief Disability Officer. She is welcome to stay the entire meeting, of course, and have discussions with all the board members.

but we just wanted to ensure that we provided Ms. Hill with an opportunity to appear and speak to the board before potential conflict. So, Ms. Hill are, are you there?

Yes, I'm here.

Oh, there you are. Nice to meet you, welcome to the Board.

So, we are so grateful to have the opportunity to have you appear. I know at least one of the board members knows your organization in the new office, but we thought it would certainly be a great opportunity, if you don't mind, to speak a little about the office and your role and who you are... if that's okay.

Yeah.

Sure. Hi. So, my name is Kim Hill, and I'm the new Chief Disability Officer. I am in my, I think, fourth week on the job. So, since we're building this office from the ground up, it's been a big learning
experience. Um, from what I can tell, um, I've been reached out to by a number of different

disability organizations that runs the gamut: physical, sensory, developmental, and mental health—we're going to cover it all. We're going to be

the representation in the Chamber for all types of disabilities. So, um, right now I'm in the process of hiring my staff, dealing with some budget, and just getting to learn the 2nd floor and what issues I expect will become important. Um, I worked for the legislature for 24 years. Well, actually, 28 years...24 years in disability issues. So, I think I’ve got a pretty good handle on what is going to be coming my way, but, um, we'll see, it's a whole new role over here

on the 2nd floor, so, I look forward to working with all of you.

You know.

I expect to be hearing from all of you in different ways. Jerry, I have already met with you a couple of times, I think, so um, it's good to see you. Um, so, thank you for welcoming me. I hope that I can stay for the entire meeting. I will do the best that I can.

I'm looking forward to it.

All right, thank you so much. So, obviously, we now have this new office as a resource. Obviously, since it's new, we won't try to take advantage and send too many requests at this time, but certainly in the future, I think we'll certainly be able to collaborate and work well, and so again, you know,
on behalf of the Department, we thank you so much for joining us today and making yourself available. We know how busy you are. So, thank you so much.

Thanks, no, I really appreciate it and feel free to take advantage. I can't promise how quickly that we will get back to you, our schedule, um, I don't even have my own executive assistant yet, but I do want to hear from all of you. So, reach out when you feel that you have

to bring to our attention.

All right, thank you so much. So, with that, if, unless any of the members have something at this point, we'll continue with the regular agenda. The next item is the Department and subcommittee reports. The first report is the enforcement report from Investigator Bilello.

Hi. Good afternoon. I'm Jack Bilello. I work for the Division of Licensing Services' Enforcement Unit. I put together a short enforcement report for the period of December '21 to March 2022. I believe that those invited to this meeting were forwarded a copy of this report by email so I'm just going to go through the different categories of the report. Excuse me so, um, the first category is the total number of consumer complaints that the Department's received since the last board meeting and the answer to that is zero. We haven't received any since the last board meeting. The total number of complaints closed since the last board meeting is three. The total number of pending investigations is five, and those complaints, those five complaints have been put into different categories. Two complaints have to do with allegations that certain hearing aid dispensers demonstrated incompetency and failed to issue a refund to a consumer. So, we have two complaints in that category. We also have one active investigation.
regarding a dispenser that is allegedly offering online hearing aid services. We also have a complaint about a dispenser that allegedly is engaging in misleading advertising in print media.

And, the misleading advertising has to do with, uh, an allegation of the dispenser is advertising things beyond the scope of hearing aid dispensing practices. And, we have an additional complaint about a certain hearing aid dispenser that was issued a registration, reportedly by fraud or deceit, by way of the assistance of another dispenser and who is also a registered hearing aid dispenser instructor. So, that's, those are the five complaints that we have. And, the other category that we have is that in the last 12 months, the Department’s received two complaints regarding the hearing aid dispensing business. One is against a specific dispenser and the other complaint is about a specific hearing aid business, and we have not received any complaints in the last 12 months regarding audiologists.

Is there anything else as part of the report?

No, that is it.

All right. Thank you so much. Does any of the board members have any questions for Investigator Bilello?

No.

All right.

All right, thank you so much Jack.
Jack Bilello  
Thank you.

David Mossberg  
Next item on the agenda for today is the Processing report by Emily Lupe. Emily are you there?

Emily Lupe  00:41:40.625 --> 00:41:50.255  
Good afternoon. This is Emily Lupe. Included in the materials you were provided, you will find licensing statistics for April of 2021 and February of 2022. The report shows the number of hearing aid businesses, broken down by county, a business list, broken down by class code or license type, and a report of hearing aid dispensers, broken down by type and by county. Uh, please note that the 2021 numbers include only licensees and do not include those licensees whose licenses may have expired, but were covered by Executive Order 202.11, which allowed individuals licensed by the Department of State to extend the expiration of their license during the state of emergency. That concludes the Processing report.

David Mossberg NYC-231@dos.ny.gov  00:42:30.754 --> 00:42:31.384  
Thank you, Emily.

David Mossberg NYC-231@dos.ny.gov  00:42:32.764 --> 00:42:38.164  
Do any of the board members have any questions regarding the Department Processing report?

David Mossberg NYC-231@dos.ny.gov  00:42:42.544 --> 00:42:54.754  
Nope. Okay. Thank you so much, Emily. I really appreciate your report. Next item on the agenda is the Education report prepared by Alison Lacy. Alison are you there?

Alison Lacy  00:42:55.684 --> 00:43:02.344  
Yes, good afternoon. The Bureau of Educational Standards continues to audit
hearing aid dispenser renewals. Those renewals, which do not indicate approval code numbers, or do not appear to include T-coil, infection control, and New York State and federal law, in addition to the balance of required hours, are not processed and sent to the Bureau for an educational compliance audit.

A renewal license will only be granted when satisfactory proof of education is provided. So far in 2022, 39 licensees have been audited and 22 have complied. Eight licensees did not comply. Of the nine pending, all are within the time frame to respond. A new regulation went into effect on December 7, 2021, that allows for hearing aid dispenser or for qualifying and continuing education courses in a live distance education delivery method. Now, live distance education means providing instruction in real time where the approved instructor and the students are physically separated, but the use of remote technology allows each person participating in the educational program to view and communicate with each other in a live and interactive manner that transmits simultaneous live audio and video. Course availability appears to be adequate and has not been an issue raised by licensees. Are there any questions?

Nope, all right. Thank you so much, Alison. The last Department report is the Examination report.

I think Barbara had her hand up and is muted.

Are you muted, Barbara?

All right.
Uh.

No, no, no, no.

Okay, she had a question, I think.

Well, why don’t we give her an opportunity.

Alright, I wanted to know, Alison, what was the number of that? Uh, live distance education.

I'm sorry, what was the number?

You said that, uh, as of something or either a date, or there was a.

December 7th, 2021.

That was it and

nothing else. I thought it went through before that to be able to.

No.

I was.
Alison Lacy 00:45:35.464 --> 00:45:45.844
No, that was a temporary live distance education approval period. Now, live distance education is a, has been added. It's section 159.1.

Barbara Kruger 00:45:46.594 --> 00:45:51.394
Section 159.1 and it is now

Barbara Kruger 00:45:52.924 --> 00:45:58.834
possible for that, that will continue after as we go through the rest of COVID or after that?

David Mossberg NYC-231@dos.ny.gov 00:45:59.764 --> 00:46:03.754
After, yeah, that's a permanent regulation.

Barbara Kruger 00:46:03.784 --> 00:46:05.104
Terrific. Thank you.

David Mossberg NYC-231@dos.ny.gov 00:46:05.434 --> 00:46:07.114
that the Department promulgated you're, you're.

Barbara Kruger 00:46:07.144 --> 00:46:09.604
Thank you. I was... it was the type of code number. Thank you, Alison.

David Mossberg NYC-231@dos.ny.gov 00:46:12.514 --> 00:46:12.694
Thanks.

David Mossberg NYC-231@dos.ny.gov 00:46:12.724 --> 00:46:17.224
Thank you, Alison. Does any other board members have any other questions for Alison?

Eric Freeman 00:46:20.494 --> 00:46:40.354
A small question regarding the live courses. As a provider, some of the manufacturers are reaching out with live courses, but not many of them or not many of the classes have been State approved. Is there a particular process they need to be reaching out to or someone in direct?

David Mossberg NYC-231@dos.ny.gov 00:46:41.944 --> 00:47:02.044
So, the, the live distance education regulation allows providers that are already approved by the Department as a regular course provider to
seek, sort of, additional authorization. So, in this particular instance, the entity wishing to provide it would have to go through the regular course approval process, the same way a traditional provider would and then once they're approved, they would then provide additional information to the Department about the specific sort of technology used in order to ensure adequate education to the students. So they should contact our Education unit if they have any questions.

So, again, before we go on to the last report, I just want to make sure there's any board members have any other questions regarding the Education report, or for Alison, or for the Department?

That looks like Barbara has her hand up again. Barbara?

Okay, sorry. I've gotten questions and I answer no, that's not appropriate. People have said when a hearing aid manufacturer’s representative comes into their office, connect count is a continuing education and I say, no, because they're not prior approved. They're not prior approved instructors, and they have to have course content, not sales content. I just want to verify that and to make sure that everybody knows that so they can spread the word.

That's correct, Barbara.
Barbara Kruger 00:48:40.835 --> 00:48:41.165
Good.

David Mossberg NYC-231@dos.ny.gov 00:48:46.384 --> 00:48:51.574
So, is there anything else from the board on the Department's Education report?

sharon gavin 00:48:56.434 --> 00:48:57.424
I have a question.

David Mossberg NYC-231@dos.ny.gov 00:48:58.084 --> 00:48:58.654
Sure.

sharon gavin 00:48:59.134 --> 00:49:09.064
for Alison. What's the best way to reach you if we have questions in the future? Do you have a direct email or a phone number that we can address questions?

alison 00:49:10.744 --> 00:49:13.654
We have an email address and we have a phone number.

sharon gavin 00:49:16.144 --> 00:49:16.954
Can you share that?

alison 00:49:18.364 --> 00:49:27.964
Our phone number is 518-486-3803.

alison 00:49:30.994 --> 00:49:39.874
And, it may be easier for me to send the email address using print because to spell it out, it might get confusing over this Webex system.

sharon gavin 00:49:40.024 --> 00:49:41.044
Okay, perfect.

David Mossberg NYC-231@dos.ny.gov 00:49:42.094 --> 00:49:51.244
Of course, any of the board members, also any of the board members, if they have questions, they should certainly feel free to email me or,
of course, Denise, and, you know, we'll do our best to be responsive.

Thank you.

Of course. Okay, so the next and final report is the Examination report by Shannon Maguire. Shannon are you there?

I'm here. Hello. Can everyone hear me?

Okay, perfect. The following statistics cover exams administered in 2021. The hearing aid written exam was administered to 52 applicants with a pass rate of 50%. The practical exam was administered to 113 applicants with a pass rate of 86%. Are there any questions on that?

Thank you.

I have a question. Sorry.

Sure.

Um, so I just had a question about the written exam because there has been some confusion as to AUD students taking the written portion of the exam. From what's in the app hearing aid registration application. If you're an AUD student who has done your course work, on the requirements, is the same. As a hearing aid dispenser you can apply
to take the written exam and have the university instructor sign off that you've completed your course work. Um, I just want clarification that this is the case from the State, because there's been multiple applicants that have been, audiology students who have tried to,

to take the written exam, using this method and have been told by the State that this is not an acceptable method. They have to wait till they have then graduated from their AUD program. So, I just want clarification from the State that what's on the application is correct and the Department who is processing these requests is aware that these students are, in fact, able to take the written portion of the exam or if I'm missing something.

That's something we are going to look into a little bit more before we can respond.

I'm just wondering what it is that you would need to look into, considering that it's on the application. It's on, there is a category on the New York State Hearing Aid Dispensing registration form.

And I think it's number four.

or that you are.

Barbara, did you have a comment?
So, looks like she's on mute. However, I'd be more than happy to look into it. I’m not really

It’s not a question of looking into, it's in the law.

Right, it’s in the law.

It’s in the regulations.

Okay.

The University supervising instructor for an audiologist

The audiologists were, the audiology students were given a 3-month requirement for education for if they feel they're up to taking, they know enough in terms of coursework and clinical work to take the exam they can file, take the exam. Fill out number 4 and then register to

Okay.

take the exam for

both the written and the practical. It's only the audiologist who is already licensed who has gone all the way through the process who then

take just

the practical. If they elect to take the, the
Written.

written and practical while they're in their AUD program, all they have to do is promise to continue to remain in an AUD program and be registered in an AUD program.

Okay, so and you had mentioned

Regulation citation. I'll send it to you.

No, that's all right but and, yeah, so that you had just emailed that question to the Department a little while ago. Is that correct?

Yes, and then after I emailed it, I looked and I saw that it's right on the application. So,

I was just asking. Do you mind forwarding me your email so I could look at it as Program Counsel? If it is a legal issue, I'd be looking at it anyway. So, do you mind forwarding me the email that you had sent to the Department to make sure that I have an opportunity to look at it?

Oh, yeah, absolutely, Dave. I will, I'll, I will email it to you. Um, I guess I was just concerned.

My concern was that, you know, this is something that's written into the law and the application and
I, I don't want to, I'm obviously not in a position to speak about this because I haven't seen your question, but if it is something that involves the law, certainly I'd be happy to look into it, and I will do my best to be responsive. I just haven't seen the question so I think I'm not going to be in a good position to, to answer your question at the moment, but if you email it to me, I'd be glad to take a look at it for you.

I'll forward that to you, thank you.

All right. Thank you.

I had a question for Shannon. Shannon, you say it's 50% and then 80%, can you just...maybe I misunderstood you. Is the first pass rate 50%?

Yeah, so the pass rate for the written exam is 50%. The practical pass rate is 86%.

I see, and do you guys ratify between the AUD student or, um, AUD examiners versus hearing a straight hearing aid, or you just have a one

So, for the practical exam, we had 66 audiologists with the pass rate of 89% and 47

trainees with the pass rate of 80%.

Thank you.
You're welcome.

For written, it was only hearing aid dispensers, not audiology students?

Correct.

Um, so, do any of the board members have any last questions regarding the Examination report by Shannon Maguire? I'm sure every oh, okay.

I have a question. Who is allowed to make comments during the meeting?

Uh, generally it's just supposed to be scheduled guests or board members, department staff, but I do see that Barbara was answering questions, but, um

usually, for these meetings, there's no public op or public comment section.

Okay, thank you.

David?

Yes.

I have a couple questions to the points, um,
Okay.

Regarding the licensing and, uh,

application process that the Department oversees. At the December meeting, as reflected in the minutes, I had asked for some data to be compiled so that we have some trend information as to the degree of interest in the audiology profession, the dispensing, this is hearing health care, as well as to get a better handle on

Do you have the printout?

successful training in education is in

Uh, from year to year. Um, you had referred that, uh, at that time to Shannon Maguire and

I know.

I don’t believe I received any trend data along those lines, and I would just renew that request and

say one of the reasons there are so many gray areas in audiology health care in

New York State is the lack of a commission, or an agency, state level, that really can dig into the hearing healthcare problem that is here
And would also reference, therefore, from an accessibility advocacy standpoint. So, I would repeat that. I wanted to just repeat that request. Also, if the next item is business, if there's any remaining new business,

I would like to introduce the question regarding a bill that is currently before the legislature and is in committee, and that Bill was in April.

Sorry. Is it, sorry

So, I would like to be able to address that at the appropriate time, David.

Sure um, so a couple of things, if I may. Regarding the statistics, I apologize for that, you know, we do provide as much data as we think we have available. So, if it's a matter of seeing other data points that we might be able to research and compile, you know, I'm happy to work with Department staff on that. And so, hopefully, we'll have that, um, for the next meeting. We do have information, obviously, on number of licensees, number of applicants. So, if it's a matter of looking for historical data and providing that, um, certainly, we can provide that in a more clear fashion, but we'll work with Licensing on that, certainly. Your second point. I will, sorry, you had something?

Um, the second point was about a bill that's currently before the Senate.
No.

So, Jerry, your second point, I believe was about having an office on the State level to help with certain advocacy issues.

you know, we believe that the Governor's passage to create the Office of the Chief Disability Officer does that, which is why we invited Ms. Kim Hill here to, inform the board of that office to, to help with

um, you know

Certainly, with advocacy issues. So, we do hope that we will be able to collaborate with her office and with that agency to try, where feasible, to address those issues. The third point regarding the bill that you had yesterday.

Let me clarify what, a bit, on what you just said. I'm not talking about advocacy now. I'm talking about policy making, decision making that’s

informed.

The legislative process, which has a tendency, it seems, to run amok with respect to bills being introduced by well-intentioned legislators, without proper vetting, or consideration, or consultation with the various groups, whether it be the audiology, a fraternity, or a hearing loss association.
which represents consumers or the dispensing organization.

I wanted to bring up. Well, let me say two things. I've mentioned before, we are looking forward to a bill now, um, that would create a commission for the deaf, deaf, blind and hard of hearing, and our hope is that, that organization, which is one that exists in 38 states but not in New York, would be effective in shedding light on a lot of issues having to do with hearing healthcare, public welfare impact on the medical business, et cetera, et cetera but what I specifically referenced a moment ago was S2565.

I'm curious to know why the dispensing board was not aware, or the Department was not aware of this to bring it before us because this bill has come up annually.

for medical society, you know, wanting to
Sure, so Jerry, thank you for that introduction. I actually had a conversation last week with Dr Kim, as you know,

who sits on the board, specifically about that bill. We didn't want to surprise the board members by asking them to give an opinion, on the spot, about this bill, which they may not have an opportunity to learn about. So, I had spoken to Dr Kim last week. I'm planning on discussing it

now, so thank you for that opportunity introduction, because this is exactly what Dr. Kim and I had discussed, which was, there is a current Senate Bill S3380— that Bill hasn't been introduced in the 09, 11, the 13, 15, and 17 and the 19th

legislative session. What that proposal does, it would seek to amend GBL section 802 by removing a specific sentence of that law which states no otolaryngologist or other licensed physician, conducting a medical evaluation of hearing loss, shall engage in the dispensing of hearing aids for a profit. What the bill does, now, from the Department's perspective. Obviously, we didn't want to surprise any board members by putting them in a spot to publicly take a position on a bill that they may not have been aware of. So, I wanted to mention this bill to the board with the idea that at our next open meeting, the idea would be that the board members would be in a position to ask questions about it or make potential statements about it with the understanding,

obviously, that the Department of State is a regulatory agency responsible in part for enforcing the laws as written. Now, just for awareness of the board, this legislation, in its current form, has existence since 2001. The prior version of the law that was enacted is strikingly
similar in that it also prohibited hearing aid dispensers for selling for a profit with an additional provision that non-for-profit specifically includes the cost of the hearing aid plus such other reasonable expenses as the Department may establish the regulation. Prior to the Department ever being in a position to

establish the regulation, the law was appealed to its current form, which is why that the position of the Department has always been that it's, for-profit means the cost of the hearing aid, but in looking at other provisions of the law, we recommended that a 5% of the cost of the actual requisition would likely fall in a safe harbor. So, it's the Department, what we wanted to do, is just to inform the board members of the proposed legislation. I know Dr. Kim wanted to invite somebody at the next meeting to be able to speak on this, and, so, we wanted to provide the same opportunity for all board members so that none of the board members, as I said, Jerry, were in a position to have to speak on this without having an opportunity to be aware of the law and legislation. So, certainly, if anyone would want to discuss it more fully and in depth and take a position on it, we invite the board members to do so at the next meeting. In between then and now, obviously, if any of the board members have questions about the law, want a copy of the law, or have a question about it, you know, certainly feel free to email me, and I'll be more than happy to try to assist where I can. So, does that, hopefully, address that third point of yours, Jerry?

Yes, thank you, um, for that very, uh, comprehensive analysis from a legal standpoint, um, you know, you lost me about halfway through, but I think if you send out an email to us in preparation for the,
the next meeting.

David Mossberg NYC-231@dos.ny.gov
You know

and translate some of what you said into lay language, we'll be able to have a discussion about it at the next meeting. I should just mention, the only reason I raised it is that the Hearing Loss Association was contacted by the office of

the Senate Majority leader for our opinion. So, we did go ahead and express our opinion after polling members of our professional advisory committees.

And, obviously, it's just a reminder, you know, the Department will continue to enforce the law as

written in the way in which we believe is supported by the legislative history, and, obviously, we will continue to try to ensure that we fulfill our part of legislative mandate on this area. So, definitely

I'm sure this will be something that we will be discussing in greater depth at our next meeting, which is currently scheduled for June 2nd at 1. So, hopefully, all the board members have that written down and will be available. Does anyone have, do any members of the board have any

questions?

Eric Freeman
Yes, David, another question, going back a short bit, for Shannon. Um, you had mentioned the pass rate on the exam. Do you have a breakdown of from the first test to the first practical and second practical? What is that ratio of how many people are passing and we studying
and the second question that goes with that is, is there a particular area of study that providers need to focus more on, not pass over, but focus more on to be a better provider? Something for the national companies in the first, in the first round that did you get out there and say, you know, this is, is a general area where you folks are missing, you got to put more emphasis here, not just

Is there a breakdown out of that percentage of people that pass and fail? But, you know, is it the first evaluation, second evaluation? Because they get three attempts at the practical. And then, is there an area of concern that, for example, real ear, you measurement is, you know, strong partner practice, the best, best practices. But if people aren't focusing on real ear, and they're not going to do real ear, and that's where they're missing on the test, causing them to fail, maybe, can we somehow get that information to say, you know, what you've really got to focus on real ear and then we advise the providers to do best practice.

Our statistics don't break it down between first-time or repeat test takers. I would say anyone that fails an exam, if it's a practical,
they can request an analysis. That will show you the areas that they may need to improve on. And, they may also request a review of the written exam,

300 Shannon Maguire 01:11:46.205 --> 01:11:46.595
which will

301 Shannon Maguire 01:11:46.595 --> 01:11:49.925
show them, you know, the areas that they might want to focus on studying on a little bit more.

302 Eric Freeman 01:11:50.075 --> 01:11:51.005
But we don't have

303 Eric Freeman 01:11:51.064 --> 01:11:56.674
it, it's not like, so many, necessarily be missed or another area being missed.

304 Shannon Maguire 01:11:58.144 --> 01:12:03.634
We don't have the statistics broken down by test subject to share with you.

305 Eric Freeman 01:12:04.804 --> 01:12:06.094
Is this something that can be done?

306 Shannon Maguire 01:12:08.644 --> 01:12:12.154
We can look into that. I don't want to say, yes, I don't want to promise anything, but we can look

307 Shannon Maguire 01:12:12.184 --> 01:12:12.634
into that.

308 Eric Freeman 01:12:13.354 --> 01:12:33.304
I appreciate it and one more note and appreciation with what Jerry was saying on the other aspect. Um, I had the, I finished it last year. I did another study where I wound up with a surprising percentage and this is not an adverse number, but we're talking about

309 Eric Freeman 01:12:33.334 --> 01:12:50.404
advocacy for the hearing impaired community, and I think some of us are going in the wrong direction. If our physicians are able to share
more information about hearing health and prepare their patients as they go, more people will get help. I always

310
Eric Freeman NYC-231@dos.ny.gov 01:12:50.404 --> 01:12:50.734
ask that

311
Eric Freeman 01:12:50.734 --> 01:12:54.424
question and that is, have your, has your physician

312
Eric Freeman 01:12:54.459 --> 01:13:14.464
spoken to you about hearing loss? And, that number is very low and so, and Dr. Alshaer, when we talked about the advocacy for hearing impairment, the first place I would think we could look is how to get that information out to our physicians and not saying they're going to dispense or not, but just simply say, get a hearing

313
Eric Freeman 01:13:15.610 --> 01:13:33.035
test, but getting eyes checked and teeth checked, but no one's focused on this until well into their 60s and 70s, and if I remember the, I, if I remember right, the American Medical Association has a recommendation for every two years after the age of 50.

314
khalil alshaer 01:13:34.895 --> 01:13:35.195
Yep.

315
I think

316
Eric Freeman 01:13:36.784 --> 01:13:53.254
if we can advise the board on that, to get that information out further to whatever program there is, that's advocacy I think could help the most. Get our hearing care here in New York on a better track, and I'll leave it there.

317
ana kim 01:13:55.114 --> 01:13:57.814
Eric, you know, a couple of years ago

318
ana kim 01:13:57.909 --> 01:14:18.904
the American Academy of Otolaryngology, uh, met with the Academy of Geriatrics, met with Academy of Family Medicine, and we came up with a kind of a guideline for the aging population, and I can certainly get that to the committee.
ana kim 01:14:19.384 --> 01:14:34.444
Uh, the recommendations that were formed as a result of that multi-disciplinary meeting, and that's something that we should, it's an educational pamphlet that somehow it should be accessible to the New Yorkers.

Eric Freeman 01:14:35.254 --> 01:14:40.174
I agree, Dr. Kim. I was asked by a patient's, uh, spouse, who

Eric Freeman 01:14:40.209 --> 01:15:01.354
actually is an instructor for SUNY, to put something together for them to talk to their students as they're going through their first year at SUNY and local, my local SUNY campus. The concern I have is many patients have come into my office, they're expressing issues

Eric Freeman 01:15:01.360 --> 01:15:21.995
of vertigo, for example, and there's never been a hearing test when they've been to their physician, there's not the referral about hearing. Whether it's vertigo or a person that has a cognitive decline, there's a new state that's come out. I heard about it through my company. Uh, but basically,

Eric Freeman 01:15:22.714 --> 01:15:43.624
patients that have been tested, uh, for cognitive decline when retest after being refit, or being fit with hearing aids, that it's at a lower rate or, you know, or lower status. So, how can we get that information, like you said, out there more? Can it come through our board, like we did

Eric Freeman 01:15:43.659 --> 01:16:00.274
with the purchasing guide? You know, get that information, we're all talking about advocating, but the doctors are the first responders to a patient as they're aging and when to get that help.

ana kim 01:16:01.444 --> 01:16:04.774
Okay, it shouldn't even just be left up to the doctors. It should be more

ana kim 01:16:04.834 --> 01:16:06.544
patient education in general.

Eric Freeman 01:16:06.874 --> 01:16:07.414
Agree.
If the timing is really good on that with more information coming out about hearing loss and other comorbid conditions, um, it's really gaining a lot of momentum and there's a lot of research coming out. So, I think the timing is pretty good to get that education out to consumers. Um, I know practices do it at a practice level when you do, but I think general, it's great in general, public health information.

Absolutely, I mean, the ones that are informed will go to HLAA that Jerry's a big part of, but for the most lay people, they don't even know where to go.

No, that's where the physician at that that point could be helpful. Even if it's our ophthalmologist. I've had patients come tell me after they've been developing macro degeneration, their ability to process speech and understand it's been diminished in their subjective of their hearing and when the auditory tests are done, and they're at 60%, 70% the visual cues, they're at 80, 90%, and they lose the visual process, um, and now they're saying their hearings going. That's information that should be coming from the physician, say, no, your vision was helping, you need to get a hearing test if you're not already there. So, anybody help on that. I'd love the conversation further.
I, I mean, certainly, I think what some of the other board members have said is that, you know, certainly this is a general sort of consumer information and awareness and the timing of this is definitely key.

Once the consumer thinks that they're purchasing a hearing aid, to your point, it may already be too late. So, you know, it's one of those sort of regulatory issues from, from the Department's perspective. I think we could say speak on that because we license the dispenser. Right? We don't

have

sort of a consumer outreach, you know, component or arm so it's just a matter of whether or not the

information that we currently have is sufficient,

but

I know,

I don't think it's
to ensure where, you know, the physicians are going to sort of do this uniformly, you know, the Department yeah, yeah.

And.

And.

And.

Right.

Yes.

Hoping that this falls on the two, on Dr Kim and on Dr. Alshaer, with those departments, that maybe this information could get to where it needs to go.

Yes, I second that, and I was also going to ask Dr. Alshaer if he would make a note about this as an important health education point that needs to be promulgated a lot more. Um, and this will happen. I think also

to a greater extent, if we can get a commission established in Albany to represent the entire realm of deafness, deaf, blindness, and hearing loss and these agencies can work more closely together in the public interest.

Um, so thank you, Eric and Jerry. Is there any other new business from any board members at this time?

I would ask if there's anything new from anyone's perspective with regard to the FDA’s approval of over-the-counter devices, and I do want to remind and thank everyone for their efforts that help get our State’s
Jerry Bergman 01:20:30.725 -- 01:20:43.595
Attorney General to put out an alert for consumers to be wary of some of the practices that are going on in the interim, but I would just ask if anything's new on that front.

David Mossberg NYC-231@dos.ny.gov 01:20:48.064 -- 01:20:48.304
Um, so I can

Brant Campbell 01:20:48.334 -- 01:20:48.904
Right.

David Mossberg NYC-231@dos.ny.gov 01:20:48.904 -- 01:21:07.864
tell you what I know, Jerry, and then obviously, certainly any of the board members could certainly feel free, but last time aware the official public comment period from the proposed FDA regs expired after our last board meeting.

David Mossberg NYC-231@dos.ny.gov 01:21:07.959 -- 01:21:28.954
To our last meeting was in December, so after our meeting, obviously, this is the time period I'm talking about. So, at this point really, it's just for the FDA to, I guess, make a determination on how they're going to advance their proposed to a final rule. So.

Jerry Bergman 01:21:30.245 -- 01:21:33.365
Yeah, hopefully that will come through this current year.

David Mossberg NYC-231@dos.ny.gov 01:21:36.725 -- 01:21:37.925
Can't speak for the FDA.

David Mossberg NYC-231@dos.ny.gov 01:21:41.375 -- 01:21:50.555
Any of the board members have anything that they'd like to add in response to, to Jerry's question or anything that they want to add? Might be able to assist.

Brant Campbell 01:21:51.785 -- 01:22:01.535
Yeah, this is a Brant Campbell from the New York State Attorney General's Office, and I was just going to add that, you know, just, you know, I had asked our office, um, to
run the number of complaints that we have received regarding your hearing aids and, you know, the, the, the volume is still relatively low. Um, we’ve received, uh, seven, you know, complaints, um, you know, starting in January. Um, so the volume is relatively low and, um, you know, they, they detail, you know, sort of a different, different sets of issues, you know, regarding, uh,

refunds or hearing aids that don't work, problems with, um, insurance. Um, so, you know, we're, we have the ability to track, um, complaints that come into the office. So, as, you know, the FDA legislation goes through, we'll also be able to track our complaints and see if there's an increase in volume, and our office is also involved in an organization called the National Association of Attorney General’s where we meet with other state attorney generals and, you know, there's a subgroup that's looking into, um, you know, hearing aid

you know, fraud, so, you know, to the extent that there are items that, uh, that are worthy of bringing to this venue, we can share that with you as well.

Uh, Brant, I have a question for you. Um, I'm not sure, um,

if you'd be able to answer. Um, so anybody who purchases a hearing aid in New York State currently, you know, they, they, they need to provide to the patient that complaint number, have it posted so patients are aware of what number to call. So, I was just wondering if anybody had any information, is that same

complaint number going to be provided to patients purchasing these new devices over the counter or internet.
I, I actually, I do not know the answer to that. Um, but it's something that we can certainly look into.

Yeah, I was just wondering like, how we would really know you know, the difference if the, the consumers who are buying certain products are aware of them.

Right now, and some of the details might be in, uh, you know, the, the legislation but, you know, I'd have to, you know, dig deeper to see if there's anything there.

Thank you.

You're welcome.

Thank you, Brant. So, does any of the board members have anything else that they would like to mention, or respond to prior comment, or anything like that?

I think Barbara had a hand up again.

It goes in and out.

If we can speak about the FDA and new over the counter.

Well, so there isn't really a public comment portion. I apologize. I should have noted that earlier when you were
Barbara Kruger 01:25:25.954 --> 01:25:30.634
There used to be a place where the visitors could have a chance to speak.

David Mossberg NYC-231@dos.ny.gov 01:25:31.444 --> 01:25:34.294
Yes, um, in other meetings or previously, that, that had been something that was scheduled, but since we've moved with the virtual meetings in order to be able to try to ensure sort of a efficiency in the discussion, because we can't really know what's going on in the online world.

David Mossberg NYC-231@dos.ny.gov 01:25:55.955 --> 01:26:01.625
We did remove that from the agenda so that's why it's not listed.

Eric Freeman 01:26:02.585 --> 01:26:05.495
Can we put it back on then for future virtual meetings?

David Mossberg NYC-231@dos.ny.gov 01:26:06.515 --> 01:26:07.055
Um

Eric Freeman 01:26:07.535 --> 01:26:16.385
I feel that if there's advocates in the community, whether it's Fred or anybody coming through the State that wants to discuss a matter, if they're going to take the time,

Eric Freeman 01:26:16.804 --> 01:26:19.054
I think they should have their, their moment.

David Mossberg NYC-231@dos.ny.gov 01:26:21.274 --> 01:26:29.704
So, but, I mean, like you mean, like, like a scheduled agenda item, or, like, something on a particular concern, or just open the floor?

Eric Freeman 01:26:32.074 --> 01:26:37.054
For 10-15 minutes, if that's what it needs to be, or if there's, if they could
uh, put the questions in ahead of time, that's great, but they don't always come up obviously.

Right, so, I mean, certainly the advanced notice would help sort of for the efficiency, the same way in which I had this discussion last week with Dr. Kim when she wanted to approach the board with the current bill to,

to propose the statutory amendment in GBL802, you know, we didn't want as I said, to put the board members in a bind to have to speak on a bill without sort of a heads up. So, certainly, if, you know, there's a particular item that any of the board members, or if they have a guest

that they would like to present a discussion on a particular topic, certainly more than welcome, but, I think, at this point, it's the only thing we have is just one comment from Barbara. We're certainly happy to entertain that now if you want to speak, Barbara.

It looks like you're on mute, Barbara.

Got my finger on it. If the FDA document groups things into over the counter, and then prescription hearing aids the entire law and regulations are going to need to change and over the counter is not

regulated by anything but the FDA and I, Fred is nodding his head, yeah, I could see he was saying the same thing that I was. It’s buyer beware, consumer can buy and do anything. So that's one, and I think looking specifically or forming some committee to address

what's coming and how the changes might take place. It's likely to come out as early as June and maybe as late as maybe September, October. Um, there, I still haven't gotten a response to my 8-page document that I wrote, and I know several of the board members wrote very good
Barbara Kruger 01:28:43.984 --> 01:28:49.354
positions, because all of them were available at the FDA website.

Fred Goossen 01:28:54.245 --> 01:29:12.875
Comment please, point of order to, the Department of State has no authority for over-the-counter hearing aids because no one's selling over-the-counter hearing aids is a registered hearing aid dispenser. Very similar to the person who

Fred Goossen 01:29:13.234 --> 01:29:31.624
who sold hearing aids online, who was a dispenser. The floor has no coverage over Lively hearing aids or EarGo or the other online blatantly for sale hearing aids because they're not being sold by registered hearing aid dispensers or registered hearing aids.

Eric Freeman 01:29:32.344 --> 01:29:32.644
Right.

Fred Goossen 01:29:34.384 --> 01:29:50.344
Um, they are not, we're not part of the discussion. This Board is not part of the discussion, because it involves people we have no authority over regulating because none of them ever claim to be registered dispensers, they're salespeople. They sell stocks and hearing aids.

Fred Goossen 01:29:53.974 --> 01:30:04.384
We cannot alter the FDA rule. FDA will stand with no adjustments. No, not, no alterations allowed by the States.

David Mossberg NYC-231@dos.ny.gov 01:30:06.694 --> 01:30:27.034
Thank you for that, Fred, and I agree. I mean, I think I had mentioned this in the last board meeting when I was giving the update, how the FDA statute expressly provided a statutory preemption over state regulation. So, thank you for that comment, both of you. So, do,

David Mossberg NYC-231@dos.ny.gov 01:30:27.874 --> 01:30:31.324
does anyone else from the board have anything else at this time?

Jerry Bergman 01:30:32.944 --> 01:30:48.874
I have one point, just, just a point of information. Um, tell me if I'm correct. I looked at the roster of our board that accompanied the agenda today.
We have 13 statutory positions on this board. Six of them are vacant. I dare say, at least half of them had been vacant for two years or more. I could be wrong. Um, but, uh, my question to the staff is why does this continue to be such a poorly staffed up to intake? Why we don't have a full complement. I compliment everybody who's here today because otherwise we wouldn't have a quorum. Um, but it seems to me that somewhere between the Department of State and the Governor's office, there's a breakdown in the recruitment and appointment process that results in our being on this board. So, I would ask again that somebody try to get back on track. Two of the six vacancies are for consumers or consumer-related slots. Never has the staff ever asked me to reach out to try to find somebody. It's only when I've raised the issue that I've been told by Denise, well go ahead if you know anybody, but I think that we could do a lot better collectively. So, well, if I, if I can, I just want to respond to that on behalf of the Department. So, we are working with our inter-gov affairs officer. We are looking for qualified applicants and candidates that do satisfy the specific statutory requirements as well as just like I've heard nothing. We have a specific staff person that is responsible for receiving the information working with the Governor's office to pass along the resumes of these individuals to try to get these people in a position where they can be appointed. We cannot, obviously, require that the Governor make a particular appointment. So, we are forwarding as much information as we can to the Governor's office regarding specific people who do satisfy the specific statutory requirements.
Also, there is at least one other position that is not appointed by the Governor. So, obviously, neither the Department, nor the Governor have any control over that vacancy and, as we've said at every board meeting, obviously, if any of the board members or the regular public participants are aware of individuals that satisfy our specific statutory requirements for appointment in terms of the position, we welcome this at every time. So, it's not as if we have to tell you to send somebody to us until there's a complete board composition. Obviously, we welcome the opportunity for anyone to forward those names.

and information to us, but ultimately, you know, it's up to the Governor to make those appointments. We can't speak to as to why some appointments may not go through the vetting process.

How many, how many appointments are currently pending?

Well, I mean, as you said, there are six vacancies so, in theory, there's six vacancies pending.

I didn't ask about vacancies. I asked about appointments because you're saying that you put forth candidates and the Governor's office makes appointments. Tell me what's going on in that regard.

Eric.

I'm not sure I could answer that question any differently than I already did.
David, okay.

You're not telling us anything.

David, we've had very, very good success from the Department. Your office has approached us, we've taught the new Governor's policy on openness. We have been making appointments and I commend, I commend the Department for,

for reaching out and accepting and moving forward the law. I think the changing governorship has made a big change in how these things are going to happen. And I think, I think I encourage you if you have people you wish appointed, to make the applications to them because I know that we work with, with the Department and

so, I, I think we're in good shape, moving forward. I think the Department is doing a good job.

Thank you, Fred.

Thank you, Fred.

So, um, I guess I'll just ask one last time, does any of the board members have anything that they'd wish to discuss? Looking around, seeing a lot of heads shaking so, is there a motion to adjourn from one of the voting board members?

Second that.

Uh, anyone opposed or abstain?
All right, thank you, everybody. With that, this is the end of the March 21st board meeting for the State’s statutory Hearing Aid Advisory Board. Thank you so much, everyone. Appreciate your time.