Notice of Public Hearing Pursuant to Part WW of Chapter 56 of the Laws of 2022, proposed resolution authorizing the use of videoconferencing and written procedures governing member and public attendance.

OPEN MEETING

DATE: June 2, 2022 at 1:04 p.m.

VENUE: WebEx

BEFORE: DAVIS MOSSBERG, HEARING OFFICER

Reported by Howard Hubbard
APPEARANCES:

DAVID MOSSBERG, H.O., Chair
MICHAEL SHANNON, Host
DENISE TIDINGS, Co-host
BRANT CAMPBELL, Attorney General’s Office
ANA KIM, Board Member
ANNE ORSENE, Board Member
JERRY BERGMAN, Board Member
MARIE ANN ZUMPONE-WEIBLEY, Board Member
PETER FISHER, Board Member
SHARON GAVIN, Board Member
ALISON LACY, D.O.S.
EMILY LUPE, D.O.S.
ERNITA GANTT
JACK BILELLO, D.O.S.
KHALIL ALSHAER
SHANNON MAGUIRE, D.O.S.
BARBARA AHERN
BARBARA KRUGER
CARL CASE, JR.
JANE ARAO
JASON KRAMER
LAUREN SCHECHTER
LISA HELMAR
MARCELLA ROSE
PAULA O’BRIEN
ROBERT GLAZER
SUJANA CHANDRASEKHAR
CHAIR MOSSBERG: Good afternoon, everybody. My name is David Mossberg. I am Secretary of State Robert Rodriguez' designee to sit on the New York State Hearing Aid Advisory Board. For those attending, this is an open meeting being held remotely. The remote meeting is being conducted in accordance with the Governor's executive orders relating to the COVID-19 pandemic, as authorized by Chapter 417 of the Laws of 2001, Chapter 1 of the laws of 2022 in Part W.W. of Chapter 56 of the law of 2022.

I will open the meeting by taking roll call. So if -- when I call your name if you could just say present for the record. Jerry Bergman?

J. BERGMAN: Here.

CHAIR MOSSBERG: Peter Fisher? I think Peter is on mute. Peter?

P. FISHER: Peter Fisher is here.

CHAIR MOSSBERG: Okay, Eric Freeman.

Eric's on mute again. Eric?

E. FREEMAN: Here.

CHAIR MOSSBERG: Sharon Gavin?

S. GAVIN: Sorry for the delay.
CHAIR MOSSBERG: There's -- there's feedback coming from your device, Sharon, so I'm going to unmute -- I'm going to mute --

S. GAVIN: Thank you.

CHAIR MOSSBERG: -- you. But if you need to speak or like say something, just put something in the chat --

S. GAVIN: Yup.

CHAIR MOSSBERG: -- or signal and we'll unmute you.

S. GAVIN: Will do.

CHAIR MOSSBERG: Dr. Ana Kim? Is she here?

D. TIDINGS: She's here. I don't see -- she -- she doesn't have a video she's having difficulty with that. She said she's having a hard time logging the video and audio. And I don't see a way to unmute her.

CHAIR MOSSBERG: I see a box for her, but I don't see --

M. SHANNON: Yeah, she -- she is signed in but not connected to video or audio yet.

CHAIR MOSSBERG: All right.

D. TIDINGS: Mike, do you think that
maybe you can help her in chat?

M. SHANNON: Yeah, we can -- we can chat and see what we can do for her.

CHAIR MOSSBERG: Okay, MarieAnn Zumpone-Weibley?

M. WEIBLEY: Present, thank you.

CHAIR MOSSBERG: Jason Kramer on behalf of the Commissioner of State Education Department?

J. KRAMER: Here.

CHAIR MOSSBERG: Okay. Dr. Alshaer on behalf of the Commissioner of Department of Health.

Dr. Alshaer?

BASSETT: Present. I'm sorry.

CHAIR MOSSBERG: Oh, thank you.

BASSETT: Okay.

CHAIR MOSSBERG: And Brant Campbell on behalf of the Attorney General's Office? Hi, good afternoon.

B. CAMPBELL: Hi, present.

CHAIR MOSSBERG: Thank you. So it appears as if we have a quorum. So we'll move on to the agenda items for today. The first item on the agenda is welcoming the new representative from the
Office of the Attorney General, Brant Campbell.

Brant, I don't know if you'd like to make an introduction or say something to the Board. But certainly welcome and give you the opportunity to say hello.

B. CAMPBELL: Sure. Thank you for that opportunity. I'm pleased to appear on behalf of Attorney General James and -- and the office. And I've been with the Attorney General's Office for seventeen years now. I work in the health care bureau. So I'm happy with this opportunity.

CHAIR MOSSBERG: Okay. Welcome, and we look forward to working closely with you. The next item on the agenda One(b) is the approval and review of the meeting minutes from March 21st, 2022 posted on the website and provided to all the Board members in advance of the meeting with a summary.

So I don't know if there's anyone who has questions or comments from the Board. Did all the Board members have an opportunity to review the minutes?

A. KIM: Uh-huh, yes.

CHAIR MOSSBERG: Will one of the voting members of the Board like to make a motion to
approve the minutes from the last summary?

A. KIM: I'll make a motion to approve.

CHAIR MOSSBERG: Okay.

S. GAVIN: I'll second it.

CHAIR MOSSBERG: Thank you. Any Board members oppose? Okay, so there being motion seconded to approve the minutes with no opposition. The meeting minutes from 03/21/2022 are approved. The next item on the agenda is the public hearing pursuant to part W.W. of Chapter 56 of the laws of 2022. The proposed resolution authorizing the use of video conferencing and written procedures governing member and public attendance. I’ll take just one moment.

So what I’m going to do is I’m going to open the public hearing on that issue. It is approximately one ten p.m. on June 2nd, 2022. This is a public hearing conducted by the New York State Hearing Aid Advisory Board, pursuant in part to Section 103-A of the Public Officers Law for the purposes of receiving comments on the proposed adoption by the Board of a resolution authorizing the use of video conferencing and to establish written
procedures governing member of public attendance for
meetings of this Board and meetings of any and all
committees or subcommittees, now existing or
hereinafter.

As designated appointed Chairperson on
behalf of the Secretary of State I will serve as the
officer for today's public hearing. Section 103-A of
the Public Officers Law authorizes a public body to
allow its members to participate in a meeting
remotely under extraordinary circumstances at
locations that do not allow for in-person physical
attendance by the public, provided that such public
body adopts a resolution authorizing such remote
attendance and establishes written procedures
governing member and public attendance consistent
with Section 103-A of the Public Officers Law.

If adopted, the proposed resolution
would authorize this Board, any and all of its
committees or subcommittee, now existing or
hereinafter to use video conferencing to conduct
meetings in a manner contemplated by Section 103-A of
the Public Officers Law, i.e. those meetings where
members are unable to physically be present at any
such meetings due to an extraordinary circumstance
provided that the public is able to attend and participate in meetings by video conferencing from a remote location that is not open to the public, and to establish written procedures governing member and public attendance for such meeting.

The proposed resolution would also confirm that the Board continues to authorize the members and any and all of its committees, subcommittee now existing hereinafter to use video conferencing to conduct meetings where each member wishing to attend in such meeting is physically present at such meeting at a location where the public can attend.

Notice of this public hearing was posted on the Department's website along with the proposed resolution and written procedures. All persons wishing to present comments today, please indicate by putting something in the chat or signaling using the raising hand function on the WebEx. If you are appearing at our New York City office, please inform a member of our staff that you would like to make a public comment.

I'm just going to look around the WebEx just to see if any person is raising their
hand. Okay, I see Jerry with raising hand.

J. BERGMAN: Thank you. I don't recall having received this particular resolution by mail. Is -- is that correct?

CHAIR MOSSBERG: It would have been emailed as part of the materials for today's package as well as posted on the Department's website.

J. BERGMAN: Oh, well --

CHAIR MOSSBERG: Yeah.

J. BERGMAN: Sorry if I missed it then. Could you give us a brief layman's short summary of the intent of this bill, this provision and along with that --.

CHAIR MOSSBERG: Sure. So actually, the next item or item four on the action items would have been actually to -- to go over that. And so I -- I would do that at that point if you'd like. Right now, basically, what we want to do is see if any members of the public want to provide public comment before the Board discusses the resolution. That makes sense?

J. BERGMAN: Yes. You're asking just about public comment, not Board member comment?

CHAIR MOSSBERG: Correct, yes.
J. BERGMAN: I'll confirm.

CHAIR MOSSBERG: Okay. Thank you. So any person not a member of the Board that would like to provide public comment, just looking around again on the WebEx. And it doesn't appear as if any individuals at the public location in New York City would like to speak. Noting for the record, that this meeting is also being recorded, and will later be posted on the Department's website.

Again, having provided opportunity for members of the public to provide comment, there appears to be no public members wishing to offer public comment at this time. As the hearing officer for this meeting, I'm going to close the record. It is approximately one-fifteen p.m. No one has appeared to comment to provide statements regarding the proposed resolution and written procedures and I therefore declare that this hearing is now closed.

The next item on the agenda is Number Three, the Department and subcommittee reports. I'll turn it over to Jack Bilello with the enforcement report. Jack? Jack you're on mute. Hold on.

J. BILELLO: Yes. Can you hear me?

CHAIR MOSSBERG: Yup.
J. BILELLO: I'm good now?

CHAIR MOSSBERG: Yes.

J. BILELLO: Okay, thanks. So I'm here, again, I'm Jack Bilello. I'm here to give the enforcement report for the period of March '22 to May '22. There's been one change since I drafted this report and I'll go over that in a moment. So as indicated in the report, the total number of consumer complaints that the Department received since the last Board meeting is zero.

The total number of complaints closed since the last Board meeting is now two. The total number of pending investigations with the Department is three. And the three complaints that we're investigating now involve the following allegations. There's one complaint in which there's an allegation that the dispenser demonstrated incompetency and failed to issue a refund to a consumer.

The second investigation that's still active is it involves an allegation that a dispenser is offering online hearing aids. And the third active complaint concerns an allegation that a dispenser has engaged in misleading advertising by way of print media relative to the scope of hearing
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So those are the three active complaints that the Department of State is still looking into. And the last category is during the last twelve months we've only received consumer complaints regarding one hearing aid business. And - and during that same twelve months' timeframe we haven't received any complaints about specific hearing aid dispensers or -- or audiologists. So that is the report. Thank you. Any questions regarding them?

CHAIR MOSSBERG: Thank you. As Jack asked, does any of the Board members have questions or comments to project? Okay, it doesn't appear as if there's any comment or questions. Moving on --.

E. FREEMAN: So Dave?

CHAIR MOSSBERG: Oh, I guess there was.

E. FREEMAN: Just a small side question regarding this. Obviously, we're not getting complaints. I guess, most of us are all doing pretty well. I've had some patients come to me recently where they've been to other providers, so it's not a tattle in any way. It doesn't seem like
our providers are handing out the New York State form regarding purchasing consumer guide.

CHAIR MOSSBERG: Uh-huh.

E. FREEMAN: Can we get something back out there for our providers through the State to make sure that's being followed up with?

CHAIR MOSSBERG: I can certainly discuss that with Jodi and have an update at the next meeting regarding, you know, more outreach to our licensees to remind them of their obligations and --.

E. FREEMAN: I -- a lot of people -- providers I spoke to, they didn't realize it's a regulation that they need to adhere to, they feel it's like a kind of an if --

CHAIR MOSSBERG: Right.

E. FREEMAN: when giving an audiogram, so.

CHAIR MOSSBERG: Unlike some of our other licensing disciplines, not all of them -- all of the licensees provide like an email so for other disciplines, we're able to provide sort of like email blast notifications and alerts. It's my understanding that this is one of the disciplines that -- that isn't a requirement, and the system
isn't set up that way.

So the only way to really communicate with them is sort of, you know, through regular mail. And I recall, at one point, licensing was attempting to provide notices on like renewals, so that they had that paperwork. But I will certainly go back and, you know, talk to Jody to see if there's another way to remind them. And it looks like Anne has a question and Brant so I'm just unmuting you both. Anne?

A. ORSENE: Yeah, I just wanted to point out that this is something that could be stressed in the New York State Law mandated course that all dispensers have to take, is that --

CHAIR MOSSBERG: Yeah.

A. ORSENE: -- the brochure -- it's part of the law that that brochure needs to be provided to the patient at the time, I believe it's at the order.

CHAIR MOSSBERG: Yeah, so what I could do is like I said, I'll follow up with Jody on alerts and then seeing if there -- maybe there's a way to sort of communicate with the schools.

B. CAMPBELL: David --
E. FREEMAN: All right, my next question David would be on the ...
CHAIR MOSSBERG: Well, it looks like -- sorry, it --
E. FREEMAN: ...
CHAIR MOSSBERG: -- looks like Brant.
Sorry, it looks like Brant wanted to say something.
E. FREEMAN: I'm sorry.
CHAIR MOSSBERG: Brant?
B. CAMPBELL: Yes, thank you. And -- so I apologize you know, I'm relatively new to this -- to this group. But I'm trying to understand the scope of the jurisdiction that the Department of State has with respect to, you know, complaints regarding hearing aids. Is there -- does the Department of State have any -- any jurisdiction over like out-of-state hearing aid companies you know, those that might market through the internet? Or is it really just solely you know, New York brick-and-mortar sorts of institutions?
CHAIR MOSSBERG: So our jurisdiction is really limited to businesses that obtain a license to lawfully engage in the business, if an out-of-state business is conducting business illegally, you
know, it's our understanding that potentially that
might fall under the Attorney General's Office, you
know, to enjoin persistent illegality under 63 —
Section 63 of the Executive Law.

Under the General Business Law,
businesses aren't allowed to actually do direct, you
know, mailing of hearing aid devices. You know,
there's a question to some degree about how that may
change with the federal regulations that are not yet
to be in effect regarding over-the-counter hearing
aid devices and what devices might fall under that
final bucket, because there is part of the federal
statute, a specific preemption issue that prohibited
the states from preventing sort of the sale of those
particular devices.

So as it stands currently, you know,
we -- when we would have jurisdiction over those
businesses that are licensed, a business that is
conducting business sort of illegally, wouldn't fall
under our jurisdiction. But you know, an out-of-
state business could set up a -- like a foreign
corporation, for example, could set up a shop in New
York, obtain a license and dispense hearing aids
through that process, consistent with the General
B. CAMPBELL: Yeah, just -- just a follow-up, sorry. So if you got a complaint from, you know, an entity about an entity that is not licensed to do business in New York, would that be still counted as a complaint? Or is this -- or is that not registered because it's not, you know, an entity that the State has the jurisdiction over?

CHAIR MOSSBERG: So I -- I believe, and perhaps somebody from enforcement could confirm. But I believe we count it for the purposes of having received it, but then close it for lack of jurisdiction because they are unlicensed.

B. CAMPBELL: And -- and offline or through a separate communication I'd like to just reach out to you, David, and you can put me in touch with someone. I have an inquiry that I'd like to make about a particular out-of-state company just to see if you're receiving complaints about them.

CHAIR MOSSBERG: Sure. Why don't we schedule the time offline?

B. CAMPBELL: Yeah.

CHAIR MOSSBERG: And then we'll be more than happy to help, and we'll get our
enforcement team as well -- there as well.

B. CAMPBELL: Okay. I appreciate that. Thank you.

CHAIR MOSSBERG: Sure.

J. BERGMAN: David?

CHAIR MOSSBERG: Yeah, Jerry.

J. BERGMAN: Going -- going back to the previous comment, your previous comment, based on Eric's inquiry, I think the question that you might want to ask is a more appropriate one than the one you mentioned. I think the question really is more appropriately should be what is the State Department Division of Licensing doing to advise audiologists of their obligations, under State law, of which the dispensing of those brochures is one -- the providing of information about assistive listening devices and specifically telecoils is another, I believe a couple of years ago, when we modified the literature online and with print we -- we added information about that.

And I think that I'd like to ask if at the next meeting, come back -- come back and tell us what is being done proactively to advise audiologists of their responsibilities to avoid complaints, to avoid violations.
CHAIR MOSSBERG: Yes, I -- I think that that's a good suggestion and I will speak to program staff to see if we could have that information for you at the next meeting, Jerry. Anne?

E. FREEMAN: Eric?

A. ORSENE: I just want to clarify, Jerry, you keep saying audiologist, do you mean hearing aid dispensers in New York State?

J. BERGMAN: Oh, thank you. Hearing Care providers is the preferred term. Thank you, that encompasses everyone. Thank you, Anne.

A. ORSENE: Okay.

J. BERGMAN: Had his -- Eric had his hands up, I think?

E. FREEMAN: David, just to go back, and is there any way to bring up to the powers-that-be about developing an email list for the Department of State to send out notices or things such as what we're doing, so that our registered dispensers, audiologists, hearing specialists, and so forth, get all the information so that they are in tune with what's happening?

CHAIR MOSSBERG: I mean, certainly,
like I said, we -- I'll approach that with, you know, the programs and the operation side. The issue in part is that you know, some dispensers have been practicing for some quite time and so they may not have ever provided that information to us on like an application.

I don't -- I'm not -- I'm not sure that we capture that. And so the last thing that we would potentially want to do is like, slow down applications or deny applications because people aren't giving us, you know, an email address so that we can contact them. So there's always, I think, going to be a potential segment of the licensed population that we just don't have email addresses for.

But -- but as I said, you know, these are good points and after the meeting, I'll be able to raise them with Jody, and then the program staff and we'll be able to come back and, you know, provide an update to the Board at the next meeting. Anything -- yup?

J. BERGMAN: Just to follow up, it occurs to me that one piece of mail -- you said mail is currently the preferred method of reaching the
audiology and dispensing communities, one simple form
with a response sent in and a reply envelope, could
yield information on the extent to which they're
familiar with the law, and the extent to which they
comply by informing their customers about assistive
listening and telecoils.

And it could mention the website
citation where they can see the law and what it says.
And that could also remind people of the sign that we
updated that all of their offices need to have
posted. And these are very basic, best practices
items. And you know, I think once a year that kind
of thing could be done in such a way that failure to
respond would risk their loss of -- and I think you'd
get a healthy response from them.

P. FISHER: Let me chime in. I think
Anne was right on the money when she indicated that
because we are all obligated to take C.E.U. course on
federal law and State law, and that the content of
that class has to be approved by the Department of
State, then if that particular relationship, or if --
if -- if it's not in the course content, then the
course wouldn't be approved.

So what we need to do is perhaps, look
at who's delivering the courses. And if in reality, they are telling everybody, you know, you have to be aware of the State law. And that State law, you know, spelled out.

J. BERGMAN: If I understand Peter, what you're suggesting, are you saying that the courses that are now required for licensure is sufficient to have everybody in compliance? Because our -- our understanding is, in the general population of people with hearing aids, there are many, many, many people who never receive any information from their dispensers?

P. FISHER: I do believe that all we can do is tell the dispenser, this is what you are supposed to be doing, whether you want to go to every office and see if that's just indeed what they are providing, that's going to be a tall task.

J. BERGMAN: I didn't say that. I said, send out one mail and require everyone to state that they are in compliance, and they understand.

P. FISHER: Well, --.

J. BERGMAN: I know you're opposed to regulation, but I'm trying to look out for consumers.

P. FISHER: I'm not opposed to
anything. Okay. But all I know is that you shouldn't have to be told more than once, especially if you are a responsible dispenser, that this is something you need to do and you should do it. That's all.

J. BERGMAN: I hope you have everyone's ears.

CHAIR MOSSBERG: It looks like Marie has her hand up?

M. WEIBLEY: Yeah, I do. I actually teach the -- the infection control regulations course for the Long Island Speech and Hearing Association. We're having -- having a meeting next week. The content is in there. They are told what they're supposed to do. But again, it's -- and I'm going to have to agree with what's been said, you can lead the horse, but you can't force them.

They know the information, but if they're not going to apply it, that's on them. There is a bit of an honor system involved. But I don't think it's not that we're giving them the information. I know, I've gotten phone calls from people who said, well, you know, this happened or that happened, and I always refer them back to the
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website, because the information is all there in black and white.

So I don't think it's a case of we're not conveying the information. I think some people are just choosing not to apply it.

CHAIR MOSSBERG: Uh-huh. Anne?

M. WEIBLEY: Sad to say.

A. ORSENE: Yeah, I'm just kind of following up on what was just said, you know, and all licensed hearing aid dispensers need to take the coursework every two years. And it is the same information pretty much every two years. So I don't think that the issue is that the hearing -- licensed hearing aid dispensers in New York are aware of the information because they hear it every two years.

I think it's more of the fact that they just are choosing not to, you know, do everything that they're told that they need to do during the process.

J. BERGMAN: Correct, Anne. I agree with --

E. FREEMAN: Thanks for bringing that up --

J. BERGMAN: -- I think ...
E. FREEMAN: -- and if there was way
to do an email blast to our registered dispensers
from the State, it just kind of gives a little boost
to say, hey, we're aware this isn't happening. Get
on board.

J. BERGMAN: Yes, and if it says --
E. FREEMAN: Put it on conferences --
CHAIR MOSSBERG: We'll --
J. BERGMAN: -- if they -- if they
have to sign a piece of paper.

CHAIR MOSSBERG: Yeah.

J. BERGMAN: ...

CHAIR MOSSBERG: So like I said, we'll
-- we'll present something to the Board next week on
what, if any, you know, avenues exist to convey this
information again, to the industries. Jerry, you'd
like to say something?

J. BERGMAN: If the licensing Board
had everyone stipulate in writing, that they
understand and comply. If they -- they get a
complaint, they could have their license revoked --
CHAIR MOSSBERG: And so --
J. BERGMAN: -- or they could be
fined.
CHAIR MOSSBERG: so Jerry, on their original application, they are required to affirm that they understand and read the provisions of Article 37-A of the General Business Law, the rules promulgated there under under Title 19 of the NYCRR. So they they already affirmed it, they're already aware of their obligations.

It's -- you know, as everyone had said sort of it's -- it's not them not being aware, it's potentially them just being lax in their responsibility. But again, I understand what everyone is saying. I will -- I will talk to program, we'll have an update on what is feasible and actually possible at the next Board meeting. Next item on the agenda is Item Three (b) the processing report from Emily. Emily, are you there?

E. LUPE: Good afternoon. Included in the materials you're provided, you will find licensing statistics for May of 2018, 2019, 2020, 2021, and 2022. The reports of the number of hearing aids business broken down by county, a business list broken down by class code or license type, and report of hearing aid dispensers broken down by type and county.
Please note that in 2020, and 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. And that concludes the processing report.

CHAIR MOSSBERG: Thank you, Emily. Did any member of the Board have any questions for Emily regarding the processing report? Okay, it doesn't appear as if any of the Board members do. Thank you so much, Emily. Item Three (c) Education report, Alison Lacy. Alison, are you there?

A. LACY: I'm here.

CHAIR MOSSBERG: Great. Can you please proceed with the Education report?

A. LACY: Sure.

CHAIR MOSSBERG: Okay.

A. LACY: Good afternoon, everybody. 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, sixty-four licensees have been audited and fifty-four have complied. Two licensees did not comply. Of the eight pending, all are within the timeframe to respond.

A new regulation went into effect on December 7th, of 2021 that allows for hearing aid dispenser educational providers to offer qualifying and continuing education courses and a live distance education delivery method.

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?

CHAIR MOSSBERG: Thank you, Alison.

It doesn't appear as if any of the Board members have questions. And so thank you for that. Item Three (d) on the agenda is the examination report by Shannon Maguire. Shannon, are you there?

S. MAGUIRE: Good afternoon, everyone.

The following statistics cover exams -- exams administered from January to April of 2022. The hearing aid dispenser written exam was administered to seventeen applicants with a pass rate of eighty-two percent. The practical exam was administered to twenty-two applicants with an overall pass rate of ninety-five percent.

This total includes ten audiologists with a pass rate of ninety percent and twelve trainees with a pass rate of one hundred percent.

Any questions?

E. FREEMAN: What was the amount of dispensers again?

S. MAGUIRE: For the practical exam, we had ten audiologists with a ninety percent pass rate and twelve trainees with a pass rate of one hundred percent.
CHAIR MOSSBERG: Okay, just looking around the WebEx, it doesn't look as if any Board members have questions. So thank you for the report, Shannon.

S. MAGUIRE: Thank you.

CHAIR MOSSBERG: Next item on the agenda, item four is the assessment of public comments consideration of motion to adopt resolution and written procedures. Jerry, this is in relation to the public hearing and your question earlier on. So as everybody knows, we are appearing virtually using video -- video conferencing technology in part because of the COVID-19 pandemic, and the governor's emergency order or executive order relating to the same.

Earlier this year, Chapter 56 of the laws of '22 was signed by the governor, which authorizes public bodies such as this Board to adopt a resolution and written procedures that would allow one or more of its Board members to potentially appear using video conferencing technology in the future under what those law defines or calls as an extraordinary circumstance.

So this is an optional provision for
the Board, the Board does not have to adopt a proposal like this. There's -- the -- the current executive order that were operating under is valid through June 14th, I believe? And part W.W. goes into effect, I believe, June 18th. I may have had my dates reversed.

But what will happen is if the current state of emergency and executive order is not continued after that June date, all public bodies are going to have to meet again, in-person. Video conferencing technology, telephone conference technology won't be permitted unless the state of emergency continues.

So what Part W.W. authorizes is that after the state of emergency ends and bodies, public bodies have to meet in person where the public is able to attend in person. Part W.W. allows Boards to adopt a resolution that would authorize some of its members to appear using video conferencing where the public won't be.

So looking around the room, you know, I can guess a lot of us are you know, remotely at home, that home address isn't public, members of the public aren't sitting next to us, you know, in our
home offices. So if the Board chooses to adopt the resolution, it -- it -- it -- this would sort of be the opportunity, and also the written procedures that explain the specific process.

Part of this specific process, for example, still requires that the majority for the quorum be in the public location. So you know, not everyone is going to be able to, you know, claim an extraordinary circumstance. The -- the quorum, majority quorum still has to appear at a public location that the public can attend.

But if after the state of emergency expires, and one of the Board members has an extraordinary circumstance, and can't be at that public location, but still wants to participate, a resolution such as this would potentially allow that member to appear virtually, and still actively participate and -- and even vote on measures.

So part -- in order to -- to adopt the resolution Part W.W. requires a public hearing that is noticed to the public so the public could provide comment. That's the second item that we already had on the agenda. No public members participated or offered comment.
And it's up to the voting members of the Board to determine whether or not they would like to adopt a resolution and written procedures and so that's sort of the purpose of this agenda item it has to be done sort of in two parts if that's what the Board would like to do.

So first, somebody would have to make a motion to adopt the resolution to authorize you know, video conferencing pursuant to Part W.W. And then the second part, or the second motion would be to adopt specific written procedures. Again, the resolution and written procedures were shared with the Board, part of the Board package posted online, if we adopt such a resolution, it's going to be posted on the Department of State's website.

And it would be, you know, sort of the -- the rule subject to, you know, future Board action. It looks like Eric, you had a question?

E. FREEMAN: Just when would we adopt this process -- process and procedures? I'm assuming it's going to be at the next meeting?

CHAIR MOSSBERG: No, now. I mean, if -- if the Board would like to, so. Because if we don't know when the next Board meeting will be? If
the next Board meeting is not during the state of emergency, then everyone will have to be here in person.

E. FREEMAN: I mean -- then I'll -- I'll vote yes to adopt this process.

CHAIR MOSSBERG: Well, so again, just to be clear, if there's a resolution and a written procedure you know, the majority of the Board still has to be at, you know, public location. So usually it's you know, 123 William Street, the Buffalo Office or 99 Washington Avenue, One Commerce Plaza in Albany, which are usually our location. But I know Jerry, you had a question earlier on, so I just want to make sure I was responsive to -- to Jerry's question. So Jerry, do you have any more questions?

J. BERGMAN: Thank you, David. Part of my frustration at the moment is the quality of the closed captionings that are appearing. Do we have a live CART provider today or are these auto-captions?

CHAIR MOSSBERG: I believe it's the auto caption.

D. TIDINGS: We should have a CART provider here too. They were going to stream. I sent out the streaming link to all the Board members.
with the meeting invitation. And it's also posted on
the public notice, I believe.

CHAIR MOSSBERG: Is -- is it possible
for you to put that in the chat if you have it,
Denise? Maybe, that's something that Jerry could
just click on and see it.

J. BERGMAN: Denise, did you just say
that it's auto-captioning, regardless of how we
choose to receive it?

D. TIDINGS: Do you want the WebEx to
have the auto caption? We -- you can remove that I
believe yourself from your computer, like I can put
mine up and down. As far as the CART service
provider that we've secured, they provide us with --
with a streaming link that was sent out with the
invitation, the meeting invitation. If you have that
you should have that link to add your streaming link.

J. BERGMAN: Denise, my experience of
many years, as long as we've had Zoom, primarily is
that when we meet via Zoom, and we have a CART
provider, the CART provider's captions are streamed
into Zoom on the same screen. If I heard you
correctly, you said the only way I could access the
CART provider's captions would be via a supplemental
screen. In which case, I can't look at people and read the captions at the same time, as I'm doing or attempting to do right now with the auto captions.

The auto captions are slow, and the auto captions are inaccurate. And I can only read two or three lines at a time. So if I miss something, by the time I try to go back and see what it in fact said it's gone. So you know, I think that I've complained before about WebEx. I think that from a technical standpoint, the Department of State should look at trying to do something about this.

At the very least seeing if you can't get your CART provider who I assume is doing a good job to feed their captions into the WebEx stream.

And David --.

D. TIDINGS: Perhaps we can do that with a demonstration. And it -- it was difficult, but I do know that we have had an upgrade to our WebEx. So maybe there have been some improvements on that part, and I can check that out for you and get back to you, Jerry.

J. BERGMAN: Yeah, I don't know anyone else who is dependent on captions at the moment. But if there are other people, I would think they would
have a similar problem to mine.

CHAIR MOSSBERG: So Jerry if I could just offer a suggestion. Have you tried changing the setting on the WebEx? So instead of grid, it stacks so that when the person is speaking, they're highlighted and then just have the CART page open side by side. That way you could see everything. You know, I'm doing that right now and it seems --.

J. BERGMAN: Are you asking me if I could split my screen between WebEx and Stream Text, so I got both on the same screen?

CHAIR MOSSBERG: Yes. And then --

J. BERGMAN: I don't --

CHAIR MOSSBERG: -- if you change --

J. BERGMAN: I don't have --

CHAIR MOSSBERG: -- the --

J. BERGMAN: I don't have the skill set to split the screen on my laptop, unfortunately. I'm sorry. And I didn't have the time this morning to set up the Stream Text on my iPad and try to put it next to my computer. But I don't want to take up any more time on -- on this.

D. TIDINGS: That's okay, I'll get in touch with you, Jerry. I'll -- I'll ask about the
new version of the WebEx and if there's any improvements where -- where they could provide the captioning right into and -- and to our screen here. And I'll -- I'll get back to you on that.

J. BERGMAN: Okay.

E. FREEMAN: It's -- Denise, it's -- it's captioning quite well on my computer screen.

D. TIDINGS: Mine too.

E. FREEMAN: So Jerry, if you have any questions, please feel free to call us and we can work on that. You know, and a lot of people -- the skill set, as you said, can be difficult sometimes. So we need to make sure it's more accessible.

J. BERGMAN: Thank you. David, I had just one simple question about the resolution. I assume that all of the requirements for accessibility continue to apply under these new rules and regulations?

CHAIR MOSSBERG: I don't understand the question or what you mean?

J. BERGMAN: If we need -- if we need access to effective communication for a hearing disability continue to be a requirement under these new provisions?
CHAIR MOSSBERG: So that Part W.W. doesn't change, you know, anything with respect to like accessibility. After -- unless the governor extends the state of emergency, once that ends, our Board meetings we're going to go back to in-person at, you know, the general office is 123 William, and so everything that we were doing sort of pre-pandemic, in terms of accessibility will -- will continue to be there.

The law doesn't change any of that. What the law does is it just say, for example, let's say you know, one of the Board members had you know, on the way to the office and sort of like car accident or -- or something and whatever, you know, and wanted to participate at the Board meeting, that Board member would be able to participate at his or her, you know, office or in the hospital bed or wherever they were using ostensibly, the WebEx features that we are using now.

J. BERGMAN: All right. Thank you.

CHAIR MOSSBERG: So hopefully, I've answered the Board's questions. Does any member of the Board like to make a motion to adopt the draft resolution?
A. ORSENE: I'll make a motion.

E. FREEMAN: I'll second the motion.

CHAIR MOSSBERG: Okay, are any other Board members in favor? Okay. For the record, do any voting Board members oppose the resolution to adopt the resolution -- the motion to adopt the resolution? Sorry. Okay, it doesn't appear as if any of the Board members are in opposition. Having passed a motion to adopt the resolution. Is there a motion by any of the voting Board members to adopt the draft written procedures on how to use video conferencing technology pursuant to Part W.W.?

E. FREEMAN: Vote to adopt that process.

CHAIR MOSSBERG: Okay. Motion being made by Eric Freeman. Is there a second?

A. ORSENE: I'll second it.

CHAIR MOSSBERG: Okay. All in favor?

E. FREEMAN: Aye.

A. KIM: Aye.

A. ORSENE: Aye.

CHAIR MOSSBERG: Okay. Anyone oppose? It doesn't appear as if there's any opposition. So meeting minutes should reflect that unanimous vote of
the voting members voted in favor to adopt a
resolution to authorize video conferencing pursuant
to Part W.W., a second motion to adopt written
procedures pursuant to Part W.W.

So of course, in the event that the
state of emergency is continued by another executive
order, we will certainly communicate that to the
Board in advance of the next Board meeting, so that
we're aware of, sort of, if we have to be there in
person or not. And so we'll definitely be in touch
with the Board members. The next item on the agenda
is discussion on a legislative proposal.

This topic came up briefly at our last
Board meeting just background, a few days prior to
the Board meeting, Dr. Kim had requested an
opportunity to have two presenters or speakers speak
to the Board about a certain legislative proposal at
the last Board meeting. Jerry had also raised a
concern regarding the Board -- to the Board regarding
that legislative proposal.

I had advised then that given sort of
the short period of time from when Dr. Kim had asked
to -- to speak on the issue as -- as well as Jerry,
we were going to table it until today's meeting where
I was going to provide more background to the Board. So we do have the two speakers that Dr. Kim had referenced to the Board. I believe they're here.

But before we do that, I would just want to advise the Board to provide that background information to the Board on the pending proposals for Board discussion. Please note that the Department of State doesn't have a position on these pending legislative proposals at this time.

It is standard policy of the Department not to comment or to offer opinion on legislation until it's passed both houses and presented to the governor for possible signing or veto. So nothing that I'm about to say should be construed as the Department expressing an opinion on the proposal.

That said, there is a current proposal to amend Section 802 of the New York State General Business Law. That section as it currently exists states in part no otolaryngologist or other licensed physician who has conducted a medical evaluation of hearing loss shall engage in the business of dispensing hearing aids for a profit.

Article 37 of the General Business Law
where that section is located, which also grants the
Department jurisdiction over hearing aid dispensers
does not define the term for a profit. The current
version of that law has not been substantially
amended since it was first enacted back in 1998.

And 19 -- the prior version of the
1998 law stated substantially the -- the same text,
but what it did say was no otolaryngologist or other
licensed physician who has conducted an examination
and issued a written recommendation pursuant to
Subdivision One of Section 784 of the Article to
engage in the business of fitting, renting, selling
hearing aids for a profit provided, however, that
such not-for-profit renting, fitting, or selling
shall only include the cost of the hearing aid plus
such other reasonable and necessary costs and
expenses to be established by rule and regulation
promulgated by the Secretary.

So the 1998 Amendment obviously
repealed that discretionary power of the Department
to promulgate regulations to define other necessary
and reasonable costs beyond the cost of the hearing
aid, which is what the original statute provided for
prior to 1999.
In 2001 when the 1998 law was going into effect, the Department had issued in response to an inquiry that noted that because the Department no longer had the power to issue regulations define it, that the for-profit should be limited to actually the cost of the hearing aid, which is what the old law had said, but noted that a five percent increase above that cost would likely fall within sort of a safe harbor provision.

Since 2001, the Department has adhered to the original interpretation that is still the current law in effect. But the current legislative proposal, which is noted at the last Board meeting on March 21st, relating to Senate Bill S-3380, would amend Section 802 of the General Business Law to delete that first sentence.

And so in effect, it would delete the sentence that says no otolaryngologist or other licensed physician who is conducting a medical evaluation of hearing loss shall engage in the business of dispensing hearing aids for profit. So if the proposal were to advance, that sentence that I just read would no longer be part of the general business law.
And therefore, there wouldn't be a restriction on licensed physicians to engage in the dispensing of hearing aids for a profit. It's noted also at the last Board meeting this bill is similar to prior bills that had been offered in multiple legislative sessions specifically the '09 to '10 under S-5257, the '11-'12 session under S-3788, '13-'14 session under S-3354, '15-'16 session under S-2024, '17-'18 session under S-3488, and the '19-'20 session under S-2565.

It should also be noted that there is another bill also pending, which would establish a pilot program to allow for-profit sales solely within the County of Westchester. That bill is S-5597.

Again, just noting this to the Board, the Department of State doesn't take a position on any of the bills.

This is just being provided for informational purposes, in part because Dr. Kim had requested an opportunity, as well as Jerry to discuss this at our last Board meeting. And with that, I guess, we can open it up to the Board for discussion. And then we can go to Dr. Kim's invited guests. So it looks like Anne, you have your hand up.

A. ORSENE: Yes. So the first comment
that I'd like to make is that if they are to remove
that language, that they cannot dispense for whether
it be profit or nonprofit, can we assume that means
that they would have to apply for and become
registered hearing aid dispensers? Because as I see
it as a -- as a licensed audiologist who had a
doctoral level degree, I still have to register to be
-- ensure that I have the appropriate coursework and
-- and take the practical examination to dispense
aids either for-profit or non-for-profit in the State
of New York.

So my question is removing that line I
would assume if a E.N.T. would like to dispense
hearing aids in New York State, they would have to
become New York State fully licensed registered
hearing aid dispensers to do so, correct?

CHAIR MOSSBERG: So the -- the bill --
the proposed legislation doesn't change any other
provisions under Section -- sorry under Article 37-A
of the General Business Law, the proposal only
strikes that one sentence. So Section or paragraph
two of the same Section 802 states every licensed
physician who engages in dispensing of hearing aids
in compliance with the provisions of this section
shall be required to comply with other sections of the article.

So you know, unless there's something more clear, I would expect that your assumption is correct that they would be a business and then, therefore, would have to operate as a business in kind like everybody else, but it's unclear in the legislature, and so I think we would have to wait to see if there's any more information about the bill.

A. ORSENE: Yeah, I just -- sorry, David. My -- my understanding, and this is the information that I give when anybody calls me with questions, is that in New York State, nobody's allowed to touch a hearing aid or work with a hearing aid unless they are a trainee or licensed under the New York State to dispense hearing aids. So I think really, that gets to the bottom of it, right?

Like, if I understand whether that -- that sentence is removed or not, isn't really the issue. The issue is if they're going to be licensed to do so? Because, right, for consumer protection as a Consumer Protection Board, we want to make sure we're protecting the consumer. And we would only want hearing aids to be dispensed by somebody who not
only is licensed to dispense in New York State, and also receives that continuing education.

If not, then we have a consumer protection issue, because we have somebody who is allowed to dispense hearing aids without any -- following any of the requirements under that federal business law.

CHAIR MOSSBERG: Well -- oh, sorry, Eric, you wanted to say something?

E. FREEMAN: I'm in full agreement with Anne. My understanding that this was being put in place in order for a particular group, I'm not going to get into that part, and that's irrelevant. The idea of the concept, though, is to enhance and fully facilitate ease of access for hearing healthcare to be provided.

And the fault was with an E.N.T., or physician per se, that they'll just be able to hire an audiologist dispenser, or if it's under a licensing plan of a doctor's office to do whatever they're trained as a trainee or whatever. My concern is, as a hearing healthcare professional, just as Anne stated, our E.N.T.'s are booking up months and months just to see a person for earwax removal, how
are they going to spend half an hour to an hour
dispensing, correcting, counseling on care?

Okay, so it does not improve access,
it -- it improves a cash flow for a segment of
physicians or so forth. And I'm looking for my --
for -- for E.N.T.'s to provide, I want them to, if
they're the ones doing it, or if they have registered
dispensers as a part of that program to that there is
a dispense, as you may know audiologists in my
region, that they are not dispensing, but this is
clinical for the E.N.T.

I'm good with that, too. We need more
providers. But we need registered dispensers that
take care of the patients, audiology, H.I.S. And
haven't gone that proper path how can we give that
information besides talking directly to our
legislative bodies that are making decisions without
the input of this Board?

CHAIR MOSSBERG: It looks like Maria
had a hand up there.

M. WEIBLEY: Yeah, I wanted to -- to
piggyback onto what Anne was saying, and now what
Eric has just said. In that if a E.N.T. is subject
to the same rules and regulations as the rest of us,
and they're providing that care, that's fine, but it does become a consumer protection issue. And it also from an audiologic standpoint -- from an audiologists standpoint as a doctor of audiology is a medical professional, a physician then using my profession as an audiologist as a subcategory for -- I'm sorry, and I'm going to call it what it is, a cash flow to their office.

CHAIR MOSSBERG: Yes.

M. WEIBLEY: I mean, I've heard E.N.T.s say it. We need streams of revenue. I went into audiology to provide hearing healthcare. If I wanted to be rich, I probably would have found something else to do. I think the State needs to look at it from a consumer's standpoint, looking at what does the E.N.T. provide? I'm sorry, I don't mean to be very entertaining, but it's the truth.

What is that E.N.T. going to provide that the licensed certified ASHA audiologist, Doctor of Audiology, or hearing aid dispenser who's dispensing according to the rules of the State going to provide that's going to allow this patient so much of an improvement?

CHAIR MOSSBERG: Thank you. Next
Jerry, it looks like you have your hand up?

J. BERGMAN: Thank you. First, let me say I have not explored this at all since the last meeting, but when the legislation proposed first came to my attention, I consulted with others through the Hearing Loss Association leadership and its professional advisors. And the best way to put it is that we believe that this bill, if passed, is a slippery slope.

And there's very little to be gained and a good deal to be concerned about, as the previous speakers I've addressed. David, do you have any information about whether this bill has gone anywhere? Because I believe it's simply an attempt by the State Medical Board to try to give doctors another source of income. And it's been done for several years, and it's never gone anywhere.

So I think we should not pay any attention unless it's a threat to take seriously.

CHAIR MOSSBERG: So you know, that the current bill, Senate Bill S-3380, you know, to my knowledge hasn't gone anywhere. And actually, I believe today is the last day of the legislative session. So I'm not sure that it's likely to go
anywhere, to my knowledge, it never even went to committee.

So you know, I -- I can't say with certainty that, you know, it won't get picked up or won't progress. But I suspect likely that in this legislative session, considering today's the last day, it's not likely to -- to go anywhere. I saw Peter had your hand up?

P. FISHER: Yes. I've been tackling this particular dilemma for probably more than twenty years participating in discussions up in Senator Little's or the L's office in Albany one of the -- the hopes of our organization or this particular group should be that we are able to provide the consumer with the opportunity to know that they are going to get an objective opinion related to the need for amplification, and not based upon the opportunity to profit.

And so if you have a person who you would like to have examined by a physician, because you have some questions or there are one of the eight red flags, you have to then begin to wonder, is the doctor going to say, oh, you definitely need hearing aids, you can get them right here, as prior to the
adoption of allowing physicians to dispense. And has said, you know, I think you can wait a year or two, it isn't that bad.

And so it really eliminates the opportunity for a professional who you would hope would act in a professional manner to deliver an objective opinion. Also, if we are indeed required to have the sign on the wall that says that the State and Food and Drug Administration recommend that you see an E.N.T. prior to purchasing a hearing aid, will they eliminate that particular requirement? Because it seems like all we're doing is providing business opportunities to physicians.

So it's a -- it's a situation where we need to be able to sit down with the legislators and explain to them the minute details of what changing the law means.

CHAIR MOSSBERG: Thank you, Peter. It looks like Jason, you had your hand up?

J. KRAMER: Yes. Thank you, David.

Just I'm from -- I'm with the -- the Executive Secretary for the State Board for Audiology over here at the Education Department. For those of you who are not Albany creatures like -- like a few of us
here are, there are lots of bills out there. There are lots of bad bills out there. This bill has been around it looks like since at least 2009.

I would -- I would not -- I -- I don't think it's -- it merits getting too upset about this bill. This is a bill that the Education Department has continually opposed on the fact that we -- we view this as an infringement on a protected scope of practice. So you know, we -- we could have a lot of fun and find lots of crazy bills to argue about.

This is just one of those that possibly, you know, in my experience, when I was still over in the legislature, you know, very often you will get somebody introduces a bill to make one of their constituents happy, and they just put the bill in. So I -- I would caution against taking this too seriously.

CHAIR MOSSBERG: It looks like Sharon, you had your hand up?

S. GAVIN: Yes. In listening to all this information about there being, you know, lots of bills out there, I am confused as to how are, for example, pilot programs allowed to even be developed if there are rules about dispensing. And there are
bills proposed but, for example, in Westchester, if there are pilot programs, how they're even allowed to exist? I'm very confused. How does that happen?

CHAIR MOSSBERG: So they're -- they're basically two bills that were proposed during this current cycle. The first bill would change Section 802 to just delete that one sentence that I had read --

S. GAVIN: Okay.

CHAIR MOSSBERG: -- that said, no otolaryngologist or other licensed physician who's conducted a medical evaluation of hearing loss, engaged in the business of dispensing hearing aids for profit, so that’s just one proposal that was offered by a legislator. The second proposal is entirely different. And that one would actually establish a new law that would create all of the requirements to establish a specific pilot program solely within Westchester County.

I believe the current proposal would be for five years, and then after five years, it would be up to the legislature to decide if they would, you know, continue the law by either, you know, passing a new law that would extend the time,
or you know, decide that this pilot program has proved to be a value, and you know, potentially offered it across the State.

So the answer to your question is like, how is that done? Currently, it can't be done. It requires an act of the legislature to pass both bills and send it to the assembly, and then give it to the governor, and the governor has to sign it. So these are just proposals that were partially discussed at the last meeting.

And so you know, the -- the purpose of putting it on the agenda today was just you know, it seemed as if the Board wanted to have an opportunity to have an open and fair discussion about it.

S. GAVIN: Within -- as of today, the physicians' offices or E.N.T.'s offices they're supposed to be operating according to today's New York State Law, not --

CHAIR MOSSBERG: Correct.

S. GAVIN: -- any pilot program?

CHAIR MOSSBERG: Correct. Yes. It looks like Eric, you have your hand up?

E. FREEMAN: Yeah, a small note. I know for example, at a local hospital in my area,
they have an E.N.T. Department and an audiology Department. And the audiology Department I love them there and they're doing a fantastic job, but they dispense and it's separate. And I'm -- that's great. Bringing them together could be where those conflicts of interests are, I believe for audiologists and hearing specialists.

A small point, for example, the O.T.C. bill that came up that got pushed the Lewis bill, if anybody hasn't heard, proposed is now pulled out saying they're going to do hearing aids. They were the number one push. Okay, they decided that somewhere along the lines, you needed a hearing healthcare professional to take care of the patient.

I think as Jerry said, and we've all been discussing, it's a slippery slope. And so when all these information, these bills get popped up, as an advisory Board, I understand our guidelines of what we can do. I'm asking how can we have more teeth to take our advice as a consumer advocacy Board to the Department of State, the powers—that-be to get it to our legislators, to get it to our governor.

So when these things pop up, they ask the questions, so they're better educated. I want
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hearing aids for everybody that needs help. Okay, whether I give away free hearing aids, or whether Medicare picks up more, reimburses better, whatever it is, we need to do more. But slippery slopes never help our consumers.

CHAIR MOSSBERG: It looks like Sharon, you have your -- I'm sorry, Ana -- Dr. Kim, it looks like you have your hand up?

A. KIM: Yeah, certainly this has triggered a lot of healthy conversation. I think this is the most heated debate we've had in the last couple of years. So you know, I -- I agree with all the previous speakers, certainly, if you're going to get into the hearing aids business you got to be licensed.

So I mean, to me that's a no-brainer. But I also -- I kind of disagree with the fact that hearing aid dispensers should be separate from Oto, certainly at Columbia, otolaryngologist are hearing aid dispenser. We work in tandem. And when -- when that -- when they see something abnormal they come -- come by, they ask us to take a look at this.

It's some kind of a mutual teamwork in a way. I don't think it's mutually exclusive. I
think having an otolaryngologist and an audiologist work together would provide the best care for our patients. So on that aspect, I do disagree.

But you know, some of the earlier comments certainly, we're not making a profit here from -- from selling hearing aids and in fact, I -- I invited Dr. Chandrasekhar, who was our previous president of our academy and -- and Robert Glazer to come and talk to us about their experience, because how they practice is very different from ours.

So David, I don't know, unless there's more Board member comments, maybe it would be a good time to have that talk.

CHAIR MOSSBERG: Sure. So thank you for making that sort of introduction. I will go and unmute. Oh, fantastic. So you know, Dr. Kim mentioned there are two speakers. So we'll -- we'll turn it over to you both. Thank you and welcome. And you know, feel free to address the Board.

R. GLAZER: Thank you. So my name is Bob Glazer. I'm the C.E.O. for E.N.T. and Allergy. And thank you for inviting me to this session. So by way of background, E.N.T. and Allergy is -- is a large private practice group that employs right now
over a hundred and twenty-five licensed audiologists and hearing aid dispensers. And we work in tandem, our otolaryngologist and audiologist to provide what I think is stellar hearing healthcare to our patients.

We see over a hundred thousand patients a month across. And we're in -- in New York and New Jersey. And in New York, we probably have thirty locations. But we are really the -- the primary provider right now in the community for -- for the hearing impaired and -- and the hearing health population. Our -- our audiologists are all licensed A.U.D.'s and -- and they all also get hearing aid dispensing licenses.

And I want to say from the outset that our otolaryngologists and our audiologists are -- are tasked with providing great care and not doing this for a profit. It's doing without doubt patients who have hearing problems and nothing more. I think that the real issue that we're encountering, particularly, post COVID is finding enough licensed professionals, hearing health professionals in -- in the environment right now, there's a whole bunch of people that retired.
There's not enough people licensed and there's a real need for additional hearing health professionals. I'm happy to say that again, we've had a pretty good track record of recruiting what I think are some of the finest audiologists to our team that work in conjunction with otolaryngologists. And what we're looking for is really for the State to amend the legislation to allow otolaryngologists in conjunction with licensed audiologists.

Everybody can't sell hearing aids I agree with that without having all the licensing in place. But to do that because this has become a real patient access issue. And I'm going to ask Dr. Chandrasekhar who, by the way, is the past president of the American Academy of Otolaryngology to talk about her experience. She is by the way, a fellowship trained neurotologist on top of a -- of a residency trained otolaryngologist. Dr. Chandrasekhar?

S. CHANDRASEKHAR: Good afternoon. Thank you for inviting us and thank you for listening to us. Thank you for allowing us to listen to your very robust discussion. So you know, the American Academy of Otolaryngology, which represents thirteen
thousand practicing otolaryngologists in the United States, of which I was president a couple of years ago, really believes and sort of preaches the mantra to combine the help of the hearing healthcare team.

So patients or individuals with hearing loss of hearing concerns with tinnitus, and hyperacusis, and misophonia. All of these individuals are served best when they are cared for by an otolaryngologist in conjunction with an audiologist or hearing instrument specialists. And yes, there are these ten red flags and I heard some of the discussion about why it might be, I guess, bad for a otolaryngologist to take care of these patients.

I will tell you, we have a lot to offer these patients as to audiologists as to hearing insurance providers. We can address the ten red flags. We all each of us can provide you with stories about, maybe people who didn't have the right motivation, and people with hearing aids who just really needed cerumen removal or maybe could have benefited from tympanoplasty or safety surgery and need to be given that counseling first to them

And that's something that, you know,
we can lead in, because we are able to discuss the benefits and alternatives of various methods in which to improve your hearing, improve your quality of life. We -- personally, I routinely have patients who are sent to me by community not inside my practice, because we do have, as Mr. Glazer said, a hundred and twenty-five audiologists in our practice, and it's really a pleasure to work side by side with them.

I think they get a lot of challenging cases, you know. Dr. Kim can tell you when you're a neurotologist, every single patient is something abnormal, every single patient has -- you know, it's a very difficult audio to do. And it's really lovely to be able to work with them in conjunction, but I routinely consult patients from outside private practice, audiologists, and hearing instrument specialists, because they're concerned about perhaps one of these red flags or they have some things don't quite look right or the patient isn't getting the benefits that they need.

And when I can see the patient and address the issue, I, of course will send them back to their local person. The best hearing healthcare
is the one you can access. Right? So -- and -- and we want to provide top level and hearing healthcare that is accessible. It may be true that there are otolaryngologist for whom a cerumen appointment takes a few months, but in our practice, you actually can get in the same day or the next day.

We have Board certified otolaryngologist and have that problem taken care of.

We have about two hundred and fifty doctors in our -- physicians in our practice. So and they -- we range a huge geographical range. And I think people -- as -- one of the things we learn from COVID is how to use technology better, so people can make appointments easier.

If people cancel other people can get in so that nobody's time is wasted. When I see somebody with hearing loss, I'm going to look for various types of hearing loss, I'm going to look for genetic, I'm going to look for family history, I'm going to look for ameliorating issues that are very important to deal with. And I actually will be able to counsel them about medical management, about surgical management, and about device management.

And that device may be air conduction
hearing devices, it may be personal sound amplification products, if they're just you know, a mild or at least sort of entry-level kind of hearing issue. It may be bone conduction devices, and it may be surgically implanted hearing devices, that yes, I implant.

But of course, I rely on my really incredibly trained and experienced audiology colleagues to program and to interface with maybe an air conduction device on one side and implanted device on the other side.

So I think the issue is complicated, and in my perception, and I've been following this issue for just about as long as it's been around. I've been in practice in New York since I finished -- in New York and New Jersey since I finished my fellowship, which was back in 1993.

So I think the problem is that the law as it's written now, actually, for them -- otolaryngologist from performing our full range of our specialty. We're not going to individually dispense hearing aids. We're just not going to do it. We actually have to use our time and our skills in a different manner.
Counseling, absolutely, but the audiologist either work with in our offices or in the community, and we have this two-way communication, who'll do the dispensing. So this -- this is -- it's a -- it's a measure to allow us to perform the whole aspect of otolaryngologic care of ears, nose, and throat, care of helping to restore or improve quality of life.

And I wonder if you don't mind if I can ask Mr. Glazer to talk to us a bit about the audiologists who work within our practice?

R. GLAZER: Sure, thank you, Dr. Chandrasekhar. So again, we have a hundred-and-twenty-five licensed audiologists, hearing aid dispensers. So they -- they take all the tests and -- and all the licensing. Typical audiologist has got a, you know, a schedule where they're seeing anywhere from two to three patients an hour for both clinical and/or counseling sessions.

We really -- you know, the issue is being able to compensate audiologists in a way that encourages them to join the profession. Being a A.U.D. these days, four years of a bachelor's degree and then four years of postdoc training, you know,
you've got to, as a result of that you know, be able
to compensate people appropriately. And I think that
we do that.

We're an attractive employer. After
all, how do you keep a hundred and twenty-five
licensed audiologists happy? I have trouble keeping
happy another two hundred doctors, but we do because
I think at the end of the day, we provide a great
service to our patients. And that's what this is all
about, providing a great service to our patients.

And I think it's become even more
difficult for patient access, and we're trying to
solve for that -- solve for it together. That's --
that's what I'm trying to get, so.

CHAIR MOSSBERG: Thank you.

J. BERGMAN: You're muted, David.

CHAIR MOSSBERG: Thank you, Jerry. So
I forgot to hit the unmute button. So thank you for
those comments. It looks as if a couple of the Board
members have their hands up. So just going in the
order in which they're appearing on my screen. It
looks like Anne, you have your hand up?

A. ORSENE: Yeah, I have a question.

I'm just a little confused, because I thought we were
previously talking about how currently it was not --
so audiologists -- sorry, hearing aids are not
allowed to be dispensed for profit in an E.N.T.
office, but we're hearing from a group that's doing
that.

So I'm confused how this fits
together, because I thought that -- that regulation
had not yet been put into place that hearing aids
were being allowed to be dispensed in an E.N.T.
practice in New York State. Am I missing something?

CHAIR MOSSBERG: You know, I -- I
can't answer that question. I suspect that they're
probably like technically like different legal
entities that are involved in each of these
situations. I've seen this, you know, from
experience previously where, you know, the -- the
particular situation that I recall seeing years ago
would be, you would have, you know, the physician's
office in, you know, an office, a medical office sort
of suite.

And they would go in through one door,
and that would technically on paper be the legal
entity of the physician's office and then they would
leave into the vestibule area enter a different door,
which was technically then a separate legal entity, which was the business that would be selling the devices.

It's -- I don't want to call it an irregularity with the law, but without knowing the specific business model that was just described, you know, it would be inappropriate for me to speculate as to how they're actually engaged in the business model that they're just describing to us, I guess.

A. ORSENE: So it's fair for us to ask that question? Is it two separate businesses?

CHAIR MOSSBERG: I mean, I don't there's anything that I'm aware of that prohibits the Board from engaging in an open dialogue. And if --.

D. TIDINGS: I bring my mother to a practice like that and there's two separate copays. You do go on to one side, you pay the copay, you see the audiologist. You go on the other side you pay your copay. You see the doctor, but they're kind of the same practice. They may have two separate names. I'm not quite sure.

A. ORSENE: Yeah. So there's two separate businesses --

CHAIR MOSSBERG: Yes.
A. ORSENE: -- functioning in the same building.

D. TIDINGS: Right, they're kind of together but separate.

CHAIR MOSSBERG: So my --.

A. ORSENE: So they're two.

CHAIR MOSSBERG: Yeah, please Anne.

A. ORSENE: No, I just -- so is -- were we hearing from E.N.T. and Allergy as an example of how two separate businesses can function together? Or are we hearing from E.N.T. and Allergy because they're a group that is an E.N.T. practicing that is hiring an audiologist to dispense for profit or nonprofit in their business?

CHAIR MOSSBERG: Yeah, I don't know if Mr. Glazer, if you want to answer that?

R. GLAZER: So -- I will answer it because I -- I think that you know, this is an issue that has been around for a long time. We believe we're in compliance with the laws, we interpreted it as the -- as we interpreted what profit was defined, and that has been what our legal counsel has advised us and -- and we -- we certainly do a cost accounting model here that -- that -- that shows the cost of
selling a hearing aid along with the cost of the
audiologist, the space, all the people to show that
we're not making more than this five percent
threshold that the State has out there.

Now, we go through a lot of
machinations to do that. We're not two separate
companies. We are -- I'm being totally, you know,
upfront with you and saying we're just looking to
provide a great service here for our patients. And I
think that, you know, in the past, there were other
physicians and I'm going to say other specialties,
ophthalmologists, optometrists, all sorts of people
that were trying to make a profit on selling hearing
aids, not professionals that we're really trying to
do good for the patients.

We're trying to do good for the
patients where we want to maintain and -- and have
colleagues that are audiologists. I hire more
audiologists than anybody but the V.A. We are the
biggest employer of audiologists other than the V.A.
in the country. And I want to work together with you
as a team to provide great care to -- to our
patients.

And what we're looking for again, is
for this committee working with us to advocate that otolaryngologists together with audiologists can do this service. We're not looking to make sale pitch here we're looking to provide a great service to patients. That's all.

A. ORSENE: So -- so Dr. Glazer?

R. GLAZER: No, I'm not -- I'm not a doctor.

A. ORSENE: Sorry. So Mr. Glazer --

R. GLAZER: -- I’m a C.E.O.

A. ORSENE: -- so -- so audiologists and E.N.T. work together clinically throughout the State in a lot of variety of settings to diagnose hearing loss, so that relationship is very well-grounded throughout the State. Audiology and E.N.T. definitely do work together. Audiologists often go in as contractors into E.N.T. practices to provide that testing, however, the devices are fit based on, you know, within audiology -- hearing aid dispensing practice.

So that's -- it's the differentiator. Nobody's arguing that audiology and E.N.T. don't work together because they do. For example, our organization, we work with a group of E.N.T.'s, who
provide -- you know, we together provide cochlear implants, bone-anchored hearing aids, all those things, but the dispensing is not done within the E.N.T. practice.

And you know, you -- your group appears -- you know, that you guys do a great job. The concern is not every -- not -- not every E.N.T. group would.

E. FREEMAN: So I want to piggyback off Anne --.

R. GLAZER: I know a lot of the -- I know a lot of E.N.T. groups outside of ours who, you know, don't have the quality that we do.

A. ORSENE: Yeah.

R. GLAZER: And -- and I'm proud of what we do and proud of the service that we provide as I would tell you that all of our audiologists would say the same thing too. We're not selling a hearing aid to make the profit, we're selling the hearing aid to help the patient.

CHAIR MOSSBERG: So thank you. It looks like several Board members have their hands up. So I'm going to go in order of the hands that appear on my screen. Eric?
Dr. Chandrasekhar, I want to thank you for what you've shared. In my nineteen years as a hearing healthcare specialist and, you know, hearing specialist Board certified, I'm on the State Board, et cetera et cetera. So let's share a comment my mother taught me. If you care about the ears, the ears will take care of you.

So first and foremost, yes, we all have issues in our field where it feels as though it's always about selling a hearing aid. I think we have to get away from the commodity of selling a hearing aid and think of simply improving quality of life through a device as a hearing aid or as a AHA or cochlear implants for those that can provide that. Myself, I'm a provider for ADHEAR.

I'm a big advocate for the ADHEAR. I have had patients come to me because of issues that there's no one working with them. So I see them for ADHEAR or other. And when I have patients that come to me that have hyperacusis or misophonia, for example, I refer back to my local audiologists that are not part of my group and to the local E.N.T. clinics.
I think the collaborative care is huge. I'm glad you're doing that and the E.N.T. associates are doing that. That's what we need to do. My biggest concern is, I'll use an example that happened, I went to a Physician's Group, which is associated with a hospital that has a E.N.T. and audiology clinic. These patients have traveled forty-five minutes just to get there.

I had a service center, a minute walk from where that was. And they said, no, we refer all the patients to this group. So I understand the concept of possibly opening up for more care, collaborative care, and ease of transaction. I mean to say transaction from one to the other. I think we have to keep sight of that patient's need a choice.

Insurance companies are not given choices and -- and I'm not saying doctors aren't. But when I refer out, I've had people come back to me that say we referred to the audiology clinic, part of the hospital or a particular instead of refer back to you and they were concerned as to why.

I was under the impression that we should be providing a list of providers, audiologists, and hearing specialists in our
community so that the patient can advocate for themselves where they want to go. I could be wrong. But I think the collaborative concept is wonderful and we need to do a better job.

I don't think we need to change a law. Now, if it is a matter of a business practice as you -- as you said, sir, to get properly reimbursed. I think that's another issue. Other than stripping the regulations that protect our -- our patients in -- in New York or our hearing-impaired community in the State of New York. I think there could be a better way to do that.

I hope I'm right on the way I'm conveying myself doing something with that. And I, you know, I thank you for your time for sharing that because I have had patients come to my area from your group and they get wonderful, and what they've expressed about your clinic is top notch. They did, they just find my area. I don't think we should be following to one group. I think that's something that New York has to be careful of, in my opinion.

CHAIR MOSSBERG: Thank you, Eric. It's looks like the next Board member has a hand up according to my screen is Jerry -- Jerry, you want to
say something?

J. BERGMAN: Thank you, David. I want to thank Robert Glazer and the doctor, whose name I won’t try to pronounce, for being with us today.

D. TIDINGS: It's Chandrasekhar, like, salt shaker.

J. BERGMAN: It's been, oh, thank you. It's -- it's glad -- it's good that you're here and it's been helpful. I want to say I'm a representative of the consumer on this panel. I am deaf and have hearing loss, so I currently have two cochlear implants. But six or eight years ago, when I was just starting to suffer from increasing hearing loss gradually every year until I needed new hearing devices, I had a sudden decline in my hearing ability, it was suggested that I see an E.N.T. doctor.

And I then do an E.N.T. analogy, very qualified doctor affiliated in Manhattan with Mount Sinai. I checked him out very thoroughly and he assured me that I was not suffering from anything beyond Sensorineural Hearing Loss and referred me to an audiologist. The audiologist happened to be down the hall.
So I was cared for for a couple of years by an audiologist relatively well. My point is, as has been said before, more recently by Eric, I really don't understand what the purpose of this legislation is. I do understand that as Mr. Glazer said, we should encourage more people to become audiologists. I'm not sure this -- this legislation in any way would affect that.

If it's a matter of how they are compensated, I think that compensation for the audiologist is something that the entire and -- and dispensers it's something that the entire profession has to deal with and doesn't so much relate to the issue before us. So you know, if it's five percent that's a cap on what you can take in. Then that's a separate issue, it seems to me also and should be addressed as such.

CHAIR MOSSBERG: Thank you, Jerry.

Looking at my screen, it looks like two other Board members have their hands up, according to -- present on my screen, it looks like Jason has a comment?

J. KRAMER: Yeah, thank you very much.

And I want to speak on behalf of myself out of the Education Department. I've -- I've worked for the
government here at Albany for about fifteen years and a lobbyist for about fifteen years. This legislation is not moving. I've been wrong before, if you're not sure about that, you can go ask my wife, she'll tell you I'm wrong all the time.

However, it looks like to me, this -- this is what we call a one house bill. This is -- it has only one sponsor in one house. And it's been around for thirteen years. So for the Board members, I wouldn't be concerned, or Dr. Chandrasekhar -- Chandrasekhar, sorry.

And Mr. Glazer, if you have hired representation in Albany and they're telling you this moving, and something's going on with this bill, you should have a hard conversation with them. And they can assist. I hate to see when Albany does this to people, and gets people worked up on both sides of an issue, but there's -- there's nothing happening with this bill in -- in my professional opinion.

CHAIR MOSSBERG: Okay. Thank you, Jason. It looks like the next Board member on my screen that has the hands up, it is Marie.

M. ZUMPONE-WEIBLEY: Yeah. I just wanted to, first of all, thank Dr. Chandrasekhar and
Mr. Glazer for -- for coming in today and sharing their viewpoint. I have an interesting perspective. Much like Eric, I had lived in the southern tier of New York for a number of years and ear healthcare is an issue.

However, Mr. Glazer, you were speaking directly to E.N.T. and Allergy being a source of hearing care in -- in the largest source. I lived in the southern tier, there is no E.N.T. and Allergy in the southern tier of New York. If you needed hearing health care, typically you went to either Corning or you went to Rochester.

So I don't see how having an E.N.T. practice such as in Allergy is going to have any effect on the consumers in the remainder of the State. What we need to figure out is how to get better access to consumers in the portions of the State where we don't have immediate access to good quality hearing healthcare.

And I know, Eric, you're in Upstate, New York. And I think you could speak to that better than I, but I do know personally living up there. Audiologists were few and far between in Upstate, New York.
E. FREEMAN: Still are.

M. ZUMPONE-WEIBLEY: And -- and that's the problem audiology has. And I don't think E.N.T.s selling hearing aids, hiring an audiologist or using that service is going to solve that problem. And I think we need to look at the picture of the entire State of New York, not what's referred to as Downstate, New York, Long Island, New York, Westchester.

So maybe we need to look at this issue from a slightly wider lens. That's all I wanted to say.

E. FREEMAN: If I could share a thought? I brought this up on the Board and I appreciate Dr. Chandrasekhar and for Mr. Glazer to hear this information I've got I've been doing this study over six, seven hundred participants asking specific questions about how many people have their eyes checked, their teeth checked, their hearing checked.

The numbers are staggering, ninety-eight percent, ninety-nine percent. Under forty percent people get their hearing checked. And the last question I asked, has a general practitioner
spoken to you about hearing health and getting the baseline of hearing. That number's under ten percent.

My concern is we talk about access, we need our general practitioners and any E.N.T., podiatrist, optometrist, ophthalmologist, to say, you know what, if you have an ophthalmologist say, hey, you know what? You're not going to get your visual here because your issues with your vision, oh, why don’t we get your hearing checked to get a baseline.

We don't have this happening, so what happens is our -- when customers -- or excuse me clients or patients for some. My clients, my patients, I can't say patients, they come to us when they feel they have a problem, instead of being simply informed get a baseline if it shows need of assistance, get help.

That doesn't require a physician to have a registration to dispense hearing aids. We need to improve access for patient information about hearing health and when to get help. Because if I understand right here, I'm not the audiologist, but the longer we go with oratory deprivation, and that's terminology I use, or not having oratory sensation,
I'm not hearing, it affects how we process.

So why have people come to us when
they're seventy and eighty when they could've been
seen, get help in the fifties. When -- what happens
is, we'll see in a couple years. It is not bad for
your age. How can we improve that? That's something
I think we could share across the Board. I hope that
helps.

CHAIR MOSSBERG: Thank you, Eric. It
looks like the next, the number on my screen that has
the hands up is Dr. Kim?

A. KIM: Thanks, David --

CHAIR MOSSBERG: Uh-huh.

A. KIM: -- well, this has been a
really enlightening dialogue, and that was the
purpose of having the two invited speakers. You
know, at the academy, we've been working on age-
related hearing loss screening with the Department,
you know practitioners, family doctors, geriatrics.
It has had some progress, and I feel that we have to
come from multiple angles.

And obviously, you know, this dialogue
was, just to like educate everybody, how can we
expand greater access, how can we work together, and
leave the monetary, the financial aspect out of it.
But obviously, it -- it's a -- it's a dialogue in progress. And I -- I really thank that Mr. Glazer and Dr. Chandrasekhar for coming and educating the Board today.

CHAIR MOSSBERG: Thank you, Dr. Kim.

It looks like the next Board member has their hand up is Anne? Or just to get, yeah, Anne?

A. ORSENE: Yes, thank you. I think, you know, as we wrap up this discussion, I think that we are -- everybody here is on the same page. We want to be able to provide service and care to as many individuals in New York State as possible. And I think we're talking about the wrong issue, because if we look at the reports on the number of registered hearing aid dispensers in New York State that was given earlier by the State representative, we will see that our numbers over time have actually declined.

I went through them before this meeting. We all know that, you know, the baby boomers are upon us, there are a lot more people looking for hearing health care now than ever before in -- in history. So you know, we're -- we're
spending a lot of time talking about, E.N.T.s and dispensing, whatever.

Really the problem is we don't have enough hearing aid dispensers whether they're working at an E.N.T. office, or an audiology practice, or a private practice. So you know, if we're really going to help more people, we need more licensed hearing aid dispensers in New York State. If not, we're just shuffling people around to do, you know, I mean, if E.N.T.s are discussing in their office, we still don't have any more providers, we're just shuffling the people to providers we have to -- working for different places.

So that's my closing statement and something that, you know, perhaps we can discuss at another Board meeting as how this Board, as a consumer protection Board, we want to be able to get people access to hearing healthcare. So how can we get, you know, the word out there, try to get more people in -- in dispensing hearing aids in New York State.

R. GLAZER: Uh-huh. So Anne --

A. ORSENE: Thank you.

R. GLAZER: If -- if I can, David.
Anne, you're spot on.

CHAIR MOSSBERG: Uh-huh.

R. GLAZER: We don't have enough audiologists and hearing aid dispensers. And the fact is, is that it's so costly to get the education to get this these days, that, and New York State, and whether you're Downstate or Upstate, very expensive, I -- I went to school in Upstate, New York.

I have colleagues, E.N.T. colleagues, practices in Albany and Rochester. They cannot recruit audiologists up there because the cost of living is so high, the cost of getting the licensing and education is so high. It's become unaffordable to live in New York State.

And what's happening is we're actually training audiologist in New York State, and they're going to Connecticut and Pennsylvania and Florida. This is a real patient access issue, right? What I can tell you is, is that E.N.T. analogy and support higher salaries for the audiologist, because we're doing this clinical audiology component, that combines with the audiology dispensing.

Now that's how we're able to come up with salary levels that can attract a hundred-and-
twenty-five audiologists, and -- and license practitioners. So that's what I'm advocating is that we're shooting ourselves in the foot here, because there aren't enough providers. I looked at that, that same report that was on here.

And I said wow, look at the -- the low number of -- of providers, that we're working ourselves into a bad situation. So I think patient access issue. I -- I really -- this is not about some extra hearing aid for another three hundred bucks. This is about the patient who comes in, who really needs help, and -- and the longer they wait and cannot get that help, we know that their mental efficiency is going to go down.

I'm not a doctor, I'm just -- I'm just trying to provide a great service, so I'll leave you with that thought. I want to work with you.

CHAIR MOSSBERG: And --.

E. FREEMAN: Just a question, Mr. Glazer. Does your program, does your business, I hate saying business model. Do they hire hearing instrument specialists as well?

R. GLAZER: All of our lic -- we hire licensed audiologists and required them to take both
E. FREEMAN: So, right, no, I understand that. So my question goes back to, I think, you answered it, is hearing instrument specialist are not part of your group.

R. GLAZER: As -- as I'm telling --

S. CHANDRASEKHAR: We provide --

CHAIR MOSSBERG: Go ahead, Sujana.

S. CHANDRASEKHAR: Right, I'm sorry, but I'm going to jump in, because our audiologists need to be audiologists because we provide a full spectrum of audio vestibular testing. So that we really need people with, you know, that's how we hire, and -- and -- and work in our offices with doctors of audiology, because they're trained to do not just the audiometric testing, but sort of more complicated audiometric testing and audio vestibular testing.

Because we really do, like there's a mission is what we all went into, whenever we went into, right, is to provide the best possible, whatever care we're giving in a timely fashion, in a compassionate and comprehensive fashion. So that's why we don't -- yeah, we can't hire hearing
instrument specialist because we're trying to provide a full spectrum of -- of audiometric and audio vestibular care.

E. FREEMAN: I'm not opposed --
R. GLAZER: So --.
E. FREEMAN: -- I'm not opposed to that concept.
R. GLAZER: You know, I am in the spots of, you know, I hire audiologists and they can do dispensing, but you know, it's getting tougher and tougher to find audiologists. So I would tell you, we all have to re-think what -- what we're doing in this day and age. So I'm certainly not opposed to that concept.
E. FREEMAN: And I appreciate that. You know, like I said, in the southern tier, we have a minimal amount of audiologist E.N.T.s to accommodate my community and my concern is access period.
R. GLAZER: Yes.
E. FREEMAN: And again, it's not a concept it’s a phrase funneling, okay? I don't mean it to be in a negative way. But as a hearing instrument specialist when I can -- when I'm working
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with somebody with sensorineural hearing loss. And they qualify to be under my care, or under their hearing instrument specialist care. They should, consumers should have the option of choosing where to go.

And being on the advisory Board, I'm on that aspect for in New York State, consumers in New York State to make sure they had to choose their access, not go out from one door to another and I'm not dismissing that, it's a function that is -- it's working, it's happening. Overall, I'm okay with that.

But as you just shared, without hearing instrument specialists that are capable in doing their job --

R. GLAZER: So we get --.

E. FREEMAN: -- we get -- we don't get those referrals, they get funneled, and I hate that to a particular audiologist. And I'm not saying it's going to diminish the hearing instrument specialists, but I think we ought to work at improving overall access across the Board. And I -- I would like to think that change of legislation isn't the way to go, I think we can look at improving salary inputs
through different measures, if that's the case.

But I think we need to look at getting more audiologists in schools. I understand, as a number up in Syracuse, I think the numbers was like twenty -- twenty audiologists coming out of this program is what occurred. That's not a lot of audiologists. So we need more health care. And I think New York has a good program for specialist to be part of it. And I think that opens that up across the State for --

S. CHANDRASEKHAR: Thank you.

E. FREEMAN: -- and collaborative care for, these E.N.T.s and audiologists. Thank you.

CHAIR MOSSBERG: Thank you. Thank you, Eric. So it, you know, I -- I agree with the Board members, you know, this has certainly been a new vibrant discussion. So I just want to thank everybody. Dr. Chandrasekhar as well as Mr. Glazer. The next item on the agenda is just confirming the next meeting date, Thursday September 22nd, at one p.m.

S. CHANDRASEKHAR: Thank you very much.

CHAIR MOSSBERG: Thank you. Before
At this point, if there are any members of the public that would like to make a comment before the Board, please indicate by raising your hand. It looks like Barbara Ahern has her hand up, so I'm going to unmute you. Thank you and welcome.

B. AHERN: Thank you. Am I unmuted?

CHAIR MOSSBERG: Yes, we can hear you.

B. AHERN: Okay. Thank you, Dave.

And I -- I appreciate the -- the opportunity to provide some public comment on the item that you discussed and are discussing, and that is legislation that would permit physicians, E.N.T.s, otolaryngologists to dispense hearing aids, which is not presently allowed under the law except in, within the restrictions that I think you have already talked about.

I -- I represent the Hearing
Healthcare Alliance, which is an organization composed of dispensers both audiologist dispensers and non-audiologist dispensers. We were one of the groups that worked for years to re-write the article in the General Business Law, that currently governs the way that all hearing aid dispensers must operate. And it is talked about all the time, it was talked about today at this meeting. Though those discussions involved dispensers, audiologists, it represented the organization that represents audiologists only, NYS SLHA the New York State Speech-Language-Hearing Association, which I believe Anne is a member of, was an important part of those discussions.

So everyone had an opportunity to talk about what was important. We had a lot of consumer groups in those discussions not the one that Jerry is affiliated with, but -- but I think that the predecessor organization and many other general consumer organizations. And the concern was really about consumers. So the law was written to provide a lot of consumer protections. And I think Jerry reminds us all the time when those consumer
protections are not being provided to people getting a hearing aid or seeing a provider with questions about hearing aids. So when I deliver the course tomorrow on New York State and Federal Laws and Regulations and Professional Conduct, because the Hearing Healthcare Alliance starts its meeting tomorrow.

I will certainly emphasize all the things that Jerry once emphasized that dispensers must do. But I think we have some -- some strong concerns that the legislation -- both bills that you have brought before the Advisory Board, David, do not really provide those consumer protections.

And you have, I think, you answered Anne's enquiry that the -- the one bill that is very simple is just an amendment to Section 8802, allowing physicians to dispense, does not require them to do anything that other dispensers must do that are all of the consumer protections and consumer services that we worked so hard for.

So I'm not sure that -- that is in anyone's best interest. The other bill which is, as you have said, a pilot program for Westchester County only, was I believe introduced at the request of
E.N.T. and Allergy, and you heard from, from two of their employees here today.

And I would point out that that bill also does not provide the consumer protections that are so important, because what it talks about and in this pilot program that, as you said, David, might at the end of the five-year pilot program period be continued or expanded to the rest of the State.

It allows a licensed audiologist employed by an E.N.T. to dispense hearing aids to someone that has been seen by the medical part of the practice. There is no requirement in that bill that the licensed audiologist be a registered hearing aid dispenser. So I appreciate Mr. Glazer saying that the business model followed by E.N.T. and Allergy is to require that, but that's not what he is putting in place with the legislation that his lobbyist has introduced and has introduced for the last several years.

And we are strongly opposed to both of those bills. Jason, I -- I wish I could agree with you that these bills are never going anywhere. The pilot program bill was passed in the Senate in 2019, the first year that was introduced. It took us a
little bit by surprise. We have worked very hard.

    NYS SLHA has worked very hard to make

sure that that bill is not passed. But it will
continue to be introduced. It is a continuing
battle, and there is actually one member of the
assembly who chairs the assembly Higher Education
Committee. Jason, I'm sure you know her very well,
who is strongly opposed to this idea and -- and she
has been instrumental in making sure that that bill
is not considered in the Assembly.

    And she did work very hard to defeat

it in that committee when it came up in committee a
few years ago. I'm not sure if she is going to
continue in the assembly. I'm not sure if she is
going to continue as chair of that committee. Things
in the legislature are very fluid all the time. So I
think it is very important to look hard at these
bills, and what they would do.

    And they -- they may provide

additional providers for people with hearing needs,
with hearing health needs. But they also may not.
Peter Fisher mentioned Betty Little who was a
senator, no longer a senator. She had a similar bill
that she had introduced when she served in the
Senate. She tried to find a way that it could be
something that dispensers, and audiologists, and
physicians could agree with.

And we did have a round table meeting
at which an E.N.T. from the capital district region
did in fact say in front of all of us, this is a
profit center for my medical practice, and that's why
I need this legislation. And if -- if you listen to
those E.N.T.s, those M.D.s who view it that way, it's
not everyone, but there's nothing in the legislation
that prevents those people from serving consumers.

And none of the bills that are brought
before this advisory Board would do anything to help
consumers. And there are members of the Hearing
Healthcare Alliance who get people walking into their
place of business, and saying I have a hearing aid
that I got from an audiologist, here's my receipt.

I've seen this. It is a one-page
business receipt. It is not the extensive agreement
that is required under the General Business Law. And
it was an audiologist employed by an E.N.T. practice
down in New York City. Checking the Department of
State's database, it was an audiologist who was not a
licensed dispenser.
This was, maybe, it was -- it was immediately pre-pandemic, so let's say it's three years ago. But that is also going on out there. That is what we fear with all of the legislation that has been introduced to date. And that is a big reason why we opposed those bills.

The other reason why the members of the Hearing Healthcare Alliance oppose those bills is because it may not do what you're talking about as, the -- the most important thing that needs to be done, and that is increasing providers. And one of the biggest problems that we talked about in that meeting a few years ago with Senator Betty Little, was the fact that under current New York State law, dispensers are required to inform everyone that it is in their best interest to see a physician, preferably an otolaryngologist before they are fitted for a hearing aid.

Sure, there's a waiver, many dispensaries use the waiver, many of them don't, many of them do you feel that people should go to see a physician first, and many -- many -- many of the physicians otolaryngologists who have now hired audiologists or put a -- a dispensing business into
their practice, when they are finished seeing this person that's been sent to them by a dispenser complying with existing law.

They say yes, you need a hearing aid and please go down the hall and get one. And they do not send them back to the dispenser that followed the law and recommended to -- to their client that they go see an otolaryngologist. That is not going to increase the providers. It is going to decrease the providers.

And that's -- that's an ethical matter, it's nothing that can't be legislated. It is why Senator Betty Little decided that she would not pursue that legislation because she couldn't find any way of requiring otolaryngologists, who were sent someone by a dispenser to be required to send that person back to the provider that was the original hearing health professional consulted by that person.

So I've -- I've probably going on longer than I should. I know that Barbara Kruger also wants to talk. But I urge you individually, and with all of the organizations that you do represent on this Board, or privately not part of the Board, to -- to oppose what -- what is at the bottom of -- of
these bills that would allow physicians to dispense
and to dispense for a profit.

Unless there is significant change
made to those proposals that would provide fairness
and would provide consumers with all of the consumer
protections that they are currently receiving under
the law.

CHAIR MOSSBERG: Thank you. Ms.

Kruger, I see she had her hand up, I believe you're
unmuted.

B. KRUGER: Yeah, hi. It's Barbara
Kruger, and Dr. Kruger, and whatever. I'm an
audiologist, and you know I've been on the Board, and
now I've been off the Board. But I am thrilled to
have finally some discussion about dispensing and the
care of patients instead of just the numbers. So
this was a very good discussion.

I couldn't agree more strongly with
Barbara Ahearn in any business -- any business that
is involved in the -- in the dispensing of hearing
aids. So professionals in that business should be
licensed as hearing aid dispensers, they may also be
a licensed as audiologists or physicians, but they
must be licensed as hearing aid dispensers, and they
should be required to take mandated continuing education.

That there should -- that should be changed, modified somehow through the dispensing Board, get run through and put out an opposing bill. I expect you will get support from the professional agencies. The other is following up on some of the discussion about getting the -- the email addresses for all, send an email -- send a letter out, you must send back an email. This is the way we will be continuing to contact you.

And -- and remind them then that the sign regarding counseling about assisted prices and -- and telecoils and so forth must be in their office, it must be in their -- their contracts that, you know, all the things that are in the key -- key points in the law that were addressed, that need to be, they need to be reminded about, and handing out the brochures that are appropriate with regard to the proper care and delivery of service for hearing -- the aids hearing issues.

Thank you for being able to speak.

CHAIR MOSSBERG: Thank you for joining us. I'm looking around the WebEx screen to see if
there's anyone else, either from the public or the Board that would like to say anything further.

Jerry, your hand’s up.

J. BERGMAN: Thank you. I don't know if you were going to introduce new business at this point. But I did want to make an announcement.

Yesterday, the Senate unanimously approved S1852. The bill had previously been passed unanimously by the assembly. The two bills now go to the governor for signature. This would create for the first time New York State as having a commission for the deaf -- deaf, blind, and hard of hearing.

It really is a landmark piece of legislation. New York is one of only twelve states that regrettably has not had a voice for these groups of disabilities in Albany and therefore, it's been impossible for a lot of the legislation we've been talking about to get legislators informed and educated about how consumers feel and what consumers face.

So I just wanted to tell everybody, please, the Hearing Loss Association is our coalition of the deaf, deaf, blind, and hard of hearing is, and let's all give thanks for that. And I think it'll be
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a source in years to come for input that can be valuable to this group.

CHAIR MOSSBERG: That's certainly good news. Thanks for the update, Jerry. I'm just looking around again. Doesn't appear as if any members of the public or Board have their hands up. As I believe that concludes the items -- items on today's agenda, would any voting member of the Board like to make a motion to adjourn?

J. BERGMAN: I make a motion to adjourn.

CHAIR MOSSBERG: Okay, thank you.

B. KRUGER: I'll second.

CHAIR MOSSBERG: Thank you. All in favor?

ALL: Aye.

CHAIR MOSSBERG: Anyone opposed?

There being no opposition. And then today's meeting of the Hearing Aid Advisory Board is closed. Thank you to all the members, and to the staff, and public for participating. And we'll see everybody again in September. Thank you so much, everybody.

E. FREEMAN: Thank you.

J. BERGMAN: Thank you.
J. KRAMER: Bye, everybody.
E. FREEMAN: Bye-bye, Jerry.
B. KRUGER: Okay.
E. FREEMAN: Okay, Peter.
(The meeting concluded at 3:25 p.m.)
STATE OF NEW YORK

I, HOWARD HUBBARD, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, as stated in the caption hereto, at Page 1 hereof; that the foregoing typewritten transcription consisting of pages 1 through 105, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this the 14th day of June, 2022.

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