



State of Nevada

Speech-Language Pathology, Audiology & Hearing Aid Dispensing Board

MINUTES OF PUBLIC MEETING & PUBLIC WORKSHOP

Speech-Language Pathology, Audiology & Hearing Aid Dispensing Board

January 22, 2020

Members Present: Tami Brancamp, Andrea Menicucci, Michael Hodes, Bonnie Lamping, Jane McEvoy, Thomas Rainford

Members Absent: Nighat Abdulla

Staff Present: Jennifer Pierce, Executive Director
Stacey Whittaker, Executive Assistant/Licensing Coordinator
Henna Rasul, Sr. Deputy Attorney General, Board Counsel

Public Present: Sarah Adler, Amy Cocanour, Cydni Horikawa, Nancy Kuhles, Melissa Monteil, Nikki Murphy, Dan Musgrove, Alex Penchek, Kim Reddig, Rachel Walden.

Call to Order, Confirmation of Quorum

Tami Brancamp, Board Chair, called the meeting to order at 4:32 p.m. A roll call confirmed a quorum was present.

Public Comment

Nancy Kuhles, Speech-Language Pathologist and Co-Chair of the NSHA Coalition to Address Personnel Shortages referenced Agenda Item 7, Section 2, the proposed regulation that addresses exemptions for public employees who hold a Nevada DOE teaching license and do not engage as an independent contractor/private practitioner. Ms. Kuhles stated that she was seeking confirmation on the following: if the employee engages in independent contracting/private practice work, then they *must* hold a current license for that practice setting, which is a license issued by this Board.

There was no additional public comment.

Approval of Minutes

Tami Brancamp asked if there were any corrections or revisions to the minutes of the meeting of October 18, 2019. A correction was noted on page 3 to amend the following sentence (correction in bold): *"Ms. Ponton confirmed that she is currently registered, but Ms. Pierce is not and would not be able to do so until the legislative session, but she would recommend **Ms. Pierce** do so."* Additionally, it was noted that a correction to the spelling of Jane McEvoy's last name was needed on page 7. Hearing no further comments, Ms. Brancamp called for a motion. Andrea Menicucci

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made a motion to approve the minutes of October 18, 2019, as revised. Michael Hodes seconded the motion. The motion passed.

License Reinstatement Application: Cydni Horikawa, SLP License # SP-2377

Tami Brancamp called on Jennifer Pierce who explained the circumstances of Ms. Horikawa's Reinstatement Application and subsequent admission that she has continued to practice in Nevada since her license expired. Jane McEvoy recused herself from this item as she had prior knowledge of the case via an acquaintance reaching out to her with questions. The Board reviewed Ms. Horikawa's application and supporting documents and heard from Ms. Horikawa who explained the circumstances surrounding the license lapse. Ms. Horikawa's former employer, Melissa Montiel was also present via phone and explained that she also had not caught the lapse, though the licenses of the other therapists she employs all expire on the old calendar year/December 31 cycle. The Board discussed the serious nature of unlicensed practice and how the renewal process works, confirming that an email is sent to practitioners by the licensing database approximately 60 days in advance of the expiration date. The Board also considered that Ms. Horikawa is a newly licensed practitioner and has no history of disciplinary issues. A suggestion was made to impose a fine and reinstatement of the license with no conditions.

Tami Brancamp called for a motion. Michael Hodes made a motion to impose a fine of \$200 for unlicensed practice and approve the reinstatement application with no conditions imposed on the license. Andrea Menicucci seconded the motion. Jane McEvoy abstained. The motion passed.

Disciplinary Matters: Recommendation for Approval of Consent Decrees

- **Case # H19-04 Cynthea Clark, HAS; License # HAS-0513**

Tami Brancamp called on Henna Rasul, Board Counsel, who summarized the complaint case and copies of the Consent Decree were distributed for review to members in the room. Board members participating by telephone were instructed to open the electronic copies they received via confidential email. The Board took some time to read and understand the Consent Decree thoroughly and indicated their agreement with the proposed discipline.

Tami Brancamp called for a motion. Andrea Menicucci made a motion to accept the Consent Decree as presented. Michael Hodes seconded the motion. The motion passed.

- **Case #A20-01 Scott Sumrall, AuD; License # A-2133**

Tami Brancamp recused herself from this item, citing a prior relationship with Mr. Sumrall as a professor, and with his wife as a colleague. Michael Hodes also recused himself from this item, citing a prior relationship with Mr. Sumrall's family while growing up and having previously considered purchasing Mr. Sumrall's audiology business. Andrea Menicucci, Board Vice Chair assumed control of the meeting for this agenda item.

Henna Rasul, Board Counsel summarized the complaint case and copies of the Consent Decree were distributed for review to members in the room. Board members participating by telephone were instructed to open the electronic copies they received via confidential email.

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The Board took some time to read and understand the Consent Decree thoroughly and indicated their agreement with the proposed discipline.

Andrea Menicucci called for a motion. Jane McEvoy made a motion to accept the Consent Decree as presented. Bonnie Lamping seconded the motion. Tami Brancamp and Michael Hodes abstained. The motion passed.

Report from Advisory Committee on Fitting and Dispensing Hearing Aids

Tami Brancamp called on Michael Hodes, Chair of the Advisory Committee who reported the following:

- Practical Exam Policy
 - The Committee discussed the potential use of a Proctor Agreement and Confidentiality Form between the Board and any proctor who administer exams. Currently, several members of the Board and Advisory Committee serve as proctors for the IHS practical exam, yet the demand is sometimes more than the current proctors have capacity for. Board staff have identified a need to use proctors who are not already formally associated with the Board as members or Advisory Committee members.
 - The Committee discussed the potential use of a Test Subject Informed Consent Form for individuals who agree to sit as test subjects during exams. Currently, examinees are required to bring a test subject with them, i.e. a relative or friend who has agreed to have their ear(s) used for the exam. In some cases, when an examinee must travel for the exam or cannot locate a test subject, Board staff have agreed to sit as test subjects. Additionally, examinees may or may not hold a license at the time of the exam. There is inherent risk to the test subject as the examinee must perform specific tasks in and around the test subject's ear, leading to potential medical liability issues for the Board, the exam proctor, and the examinee.

It was agreed that both items would be appropriate for a Board policy that the Advisory Committee is recommending. Jennifer Pierce confirmed that she could draft a policy on Practical Examinations for review by the Board at its next scheduled meeting.

- Practical Exam Waiting Period

Michael Hodes also reported that the Advisory Committee on Fitting and Dispensing Hearing Aids voted to recommend the Board also consider a regulation revision to NAC 637B.0373 regarding Practical Examinations for Fitting and Dispensing Hearing Aids. Specifically, the Committee feels it would be appropriate to draft a revision to the regulation to add a waiting period of thirty (30) days between each exam attempt. Jennifer Pierce explained that since there is a Public Workshop as a later item on this meeting's agenda, it is allowable to add this item to the proposed regulation and incorporate it as a new section in the redrafting of the regulations following the workshop.

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- **Jurisprudence Exam**
The Committee also discussed the addition of the Jurisprudence Exam, which was required in the past under the old Hearing Aid Dispensing Board. Jennifer Pierce confirmed that this regulation is in the current proposed regulations and once that regulation is in place the Board may consider how it is implemented. There was discussion and agreement about requiring the exam at the time of application for any new license, likely administered online and managed by Board staff, with different versions of the exam developed and tailored to the different license types.
- **Proposed Legislation: New NRS to License SLP and Audiologist Assistants**
Michael Hodes reported that the Committee recommends the Board consider creation of an Audiology Subcommittee to work on specific guidance around Audiology assistants.
- **IHS Practical Exam Content Feedback**
The Advisory Committee considered IHS's request for feedback on the content included in the practical exam. Committee members agreed to send their response to the Board office by the end of the month and it will be forwarded to IHS.

Tami Brancamp called for a motion to authorize the Executive Director to draft a Practical Exam policy. Michael Hodes made a motion. Andrea Menicucci seconded the motion. The motion passed.

Public Workshop: LCB File No. R095-19

Tami Brancamp opened the Public Workshop on Proposed Regulation LCB File No. R095-19. The following revisions were presented for public comment:

- **Sec. 2.** Jennifer Pierce summarized this regulation, which clarifies existing regulation language regarding the exemption from licensure by defining “practice within scope of credential” issued by the Department of Education.
 - **Public Comment:** Kim Reddig, NSHA President commented as a follow up to Nancy Kuhles' comment earlier in the meeting. There is some confusion in practice and a question of whether it is possible for an individual to be practicing in private practice but also hold the DOE license, as the current language reads as one may do “one or the other” but not both. Ms. Reddig acknowledged that there has been misinterpretation of the DOE exemption with some believing it allows them to engage in private practice for which they are not licensed by the Board. Ms. Reddig stated that it would be helpful to clarify this language to say that practitioners who qualify for both the Board license and the DOE credential are not restricted from doing both. Jennifer Pierce clarified that the intent was not to restrict those practitioners, only to ensure that those who hold the DOE license do not assume it allows them to also engage in private practice if they do not also hold the Board license. There was additional discussion about work in charter schools and whether Medicaid is billed for those services and a suggestion was made that it may depend on whether the charter school is state-sponsored, but that in most private schools and charter schools, the practitioner is considered an independent contractor.

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- *Sec. 3.* Jennifer Pierce summarized this regulation, which establishes parameters in existing regulation language on issuing citations to cease and desist and assessing administrative fines for violation of law for practicing without a valid license or endorsement, as well as a waiver of an administrative fine for “good cause”.
 - Public Comment: There was no public comment on this item.
- *Sec. 4.* Jennifer Pierce summarized this regulation, which grants the Board authority to consider requiring applicants take and pass a Jurisprudence Examination as a condition for initial license or reinstatement of an expired license.
 - Public Comment: There was no public comment on this item.
- *Sec. 5.* Jennifer Pierce summarized this regulation, which allows an individual who wishes to reinstate an Apprentice license credit for up to two (2) years of in-service training completed during the initial license period.
 - Public Comment: There was no public comment on this item.
- *Sec. 6.* Jennifer Pierce summarized this regulation, which clarifies existing regulation language to require that a sponsor and an apprentice shall have the same employer.
 - Public Comment: Amy Cocanour commented that this provision is not included in ASHA guidelines and it was clarified that this section is only applicable to hearing aid dispensing.

Jennifer Pierce reported for the record that she has received and responded to all emails and telephone calls received for clarification on Section 2 of these regulations.

- *NAC 637B.0373 Practical Examinations for Fitting and Dispensing Hearing Aids*
Jennifer Pierce reiterated that the Advisory Committee on Fitting and Dispensing Hearing Aids voted to recommend the Board also consider a regulation revision to NAC 637B.0373 regarding Practical Examinations for Fitting and Dispensing Hearing Aids during its meeting on January 8, 2020. Specifically, the Committee feels it would be appropriate to draft a revision to the regulation to add a waiting period of thirty (30) days between each practical exam attempt.
 - Public Comment: There was no public comment on this item.

This agenda item was informational only and no action was taken.

Consideration of LCB File No. R095-19 Based on Comments Received at Public Workshop: LCB File No. R095-19

Tami Brancamp led the Board in considering additions, amendments, and/or repeal of regulations taking into consideration comments and feedback from licensees and the public on LCB File No. R095-19.

- *Sec. 2.* Ms. Brancamp summarized the concerns that were heard in Section 2 clarifying existing regulation language regarding the exemption from licensure by defining “practice within scope of credential” issued by the Department of Education. The Board discussed whether a DOE credentialed practitioner, not holding a Board license, can be hired as an independent

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contractor to work in a school. There was consensus that the interpretation is that the person may technically be hired but may not practice with Nevada students. There was robust discussion about how this impacts charter schools and their employees/contractors with agreement to look into the status of charter schools in Nevada. ASHA also provides guidance on how these DOE credentialed providers are supervised in the school setting and allowance by Medicaid for billing these services. There was discussion of how to clarify the language with consensus that Jennifer Pierce will draft changes and send them to LCB for revision.

- *Sec. 3.* No discussion.
- *Sec. 4.* No discussion.
- *Sec. 5.* No discussion.
- *NAC 637B.0373.* Andrea Menicucci inquired as to the best way to craft language around the 30-day waiting period. Jennifer Pierce explained that she had copied language from a similar, existing regulation and would send the draft to LCB for revision.

There was no vote taken as the draft will be sent back to LCB for further revision. If there is significant revision it may require a second Public Workshop, otherwise it may be placed on the April agenda for a Public Hearing.

Work Session on Legislative Priorities

Tami Brancamp called on Jennifer Pierce who summarized the potential legislative priorities presented for the Board's consideration, and the Board engaged in the following discussions:

- *NRS 637B.238 - Apprentices: Limitation on Period of Apprenticeship*
Per the earlier report from the Advisory Committee, it is recommended that the Board not pursue this revision as a legislative bill, as there is little evidence that it is an area of need based on very few requests historically, and other priorities that are a better use of the Board's resources at this time.
- *NRS 637B.175 - Fees*
This revision proposes changing the law to increase the maximum allowable fees the Board can charge but would not require the Board to increase the fees immediately. The Board discussed this being an important issue to take on to support. It was agreed that the proposed new fee caps are very reasonable, as doubling the cap amounts would give the Board room to increase fees gradually and not require engaging in legislative work during multiple sessions. It was clarified that this legislation would only increase fee caps, with later work required through regulation to change the actual fees assessed. Discussion also included the cost to the Board for proctor time and testing materials from IHS which, out of the Board's control, may increase in the future. The Board agreed to the proposed fee caps as presented with the following changes: increase Obtaining License Information fee cap to \$100; and increase Examination fee cap to \$400.

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Tami Brancamp called for a motion to move forward on a legislative bill to increase fee caps in NRS 637B.175. Andrea Menicucci made a motion. Thomas Rainford seconded the motion. The motion passed.

- **NRS - New - *Speech-Language Pathologist Assistant, Audiologist Assistant***
This proposed new legislation would define and create authority and criteria for licensing Speech-Language Pathology Assistants and Audiology Assistants in the State of Nevada. Tami Brancamp suggested that if ASHA is going to provide a model to train and encourage the use of assistants, then it would be in Nevada's best interests to follow suit. Ms. Brancamp also stated that she feels this is a big change for our state and it will be very important to have discussions with our stakeholders as the Board considers this issue. The consensus amongst the Board was to move forward and consider forming a subcommittee to look at how each assistant type would be defined.

Tami Brancamp called for a motion to move forward with licensing SLP and Audiology assistants as a legislative priority. Andrea Menicucci made the motion as stated by Ms. Brancamp and added that the Board should consider establishing subcommittees to work on each licensing type. Michael Hodes seconded the motion. The motion passed.

Review of Proposals and Contract Award for Government Relations Services

Tami Brancamp called on Jennifer Pierce who recalled the Board's decision at its October 18, 2019 meeting to issue a Solicitation for Government Relations Services to hire a lobbyist in the wake of Paula Berkley's retirement. Ms. Pierce reported that the solicitation was sent to (3) firms, with two (2) responses received from Strategies 360 and Silver State Government Relations. Both proposals were provided to the Board for review with a cost comparison worksheet showing the total costs for each in FY20 and FY21, to include the 2021 legislative session. Dan Musgrove of Strategies 360 and Sarah Adler of Silver State Government Relations were both present via telephone and invited to elaborate on their proposals to the Board. Both proposers summarized their experience and discussed their opinion on what the focus of the next legislative session will be. There was discussion that both firms appear equally impressive and competent, but that given the Board's small size and limited budget, it would be necessary to make the most prudent financial choice. Silver State Government Relations' proposal was the less expensive of the two.

Tami Brancamp called for a motion. Michael Hodes made a motion to award the contract for Government Relations Services to Silver State Government Relations. Jane McEvoy seconded the motion. The motion passed.

Draft Policy 07 - Moral Character/Criminal History Pursuant to AB 319 of the 80th Session of the Nevada Legislature

Tami Brancamp called on Jennifer Pierce who introduced *Draft Policy 07 - Moral Character/Criminal History* written in response to Assembly Bill 319 of the 80th Session of the Nevada Legislature which 1) authorizes individuals to petition a professional or occupational licensing board for a determination of whether the person's criminal history will disqualify him or her from obtaining a

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license, and 2) requires professional/occupational licensing boards to implement a process for such a petition. Ms. Pierce further explained that the Attorney General's Office has asked for an update on this process and it is expected that Legislative Counsel Bureau reporting requirements will soon include questions on our activities in this area. Board members reviewed the draft policy, paying particular attention to the circumstances that were listed specifically as not considered or automatically considered potential moral character issues or disqualifying criminal history events. Henna Rasul, Board Counsel provided guidance on these items as well, explaining that a one-time, minor occurrence should not preclude licensure and should be considered differently than a pattern of problematic behavior. Andrea Menicucci questioned Ms. Pierce as to whether she felt comfortable making decisions regarding moral character, and Ms. Pierce explained that she had performed these tasks in prior employment roles. Ms. Pierce stated that she does feel comfortable doing so, especially as this policy prescribing situations that the Board has pre-approved and gives her the latitude to elevate any situation she feels necessary to the Board's attention for review and determination.

Tami Brancamp called for a motion. Andrea Menicucci made a motion to approve the policy as drafted. Thomas Rainford seconded the motion. The motion passed.

NRS 629.021 "Health Care Records": Request for Input from the Board of Psychological Examiners

Tami Brancamp called on Jennifer Pierce who explained the request received from the Board of Psychological Examiners, whose Executive Director reached out via email regarding issues around interpretation of NRS 629.021 "Health Care Records". The matter is specific to the retention of training session recordings as some are interpreting the definition of Health Care Records to include these. The Board of Psychological Examiners requested the following: 1) Whether our Board has been approached with a similar interpretation by members of their profession; 2) Whether our Board would be opposed to adding a revision to the above statute that would allow recording materials used for the purpose of training to be destroyed and not be a part of the patient's records; and 3) Whether our Board has any further input on the issue. Board members indicated they were not aware of the issue and did not wish to take a position on the matter at this time.

Tami Brancamp called for a motion. Michael Hodes made a motion to authorize the Executive Director to respond to the Board of Psychological Examiners on behalf other Board and indicate that the Board has no position on the matter and no additional information to offer at this time. Andrea Menicucci seconded the motion. The motion passed.

Executive Director's Report - Andrea Menicucci called on Jennifer Pierce who directed the members to the written report and summarized as follows:

- *Licensure Statistics*
Licensure statistics for the period of October 1, 2019 through December 31, 2019 show a net increase of 41 new licenses, a 3% increase compared to the Q2 FY 2019 total of 1198 licensees.

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- *FY 2020 2nd Quarter Summary*

Due to the timing of this Board meeting, the 2nd Quarter financial statements are not yet complete and will be reviewed during the next meeting. Expenses and license revenue have remained stable, though we have incurred several large invoices for DAG fees due to multiple complaint cases in progress, as well as expected costs for new equipment, IT/Technical support for email conversion/setup, and the ZOOM Meetings account. Moving expenses were in line with the budgeted amount and less was spent on equipment than was budgeted.

- *Update on Office Move*

The office move was completed successfully on November 12, 2019. The Post Office Box was not renewed to save costs, and operations have been successfully separated from the Occupational Therapy and REHS Boards through conversion of the website and email hosting plan to an upgraded Office 365 account.

- *Website Development Update*

We experienced a website problem during the Office 365 migration, but it was resolved successfully. Board staff are working closely with Albertson Consulting to expedite development of the upgraded website and Albertson has agreed to manage/support the current website in the meantime.

- *Update on Sunset Subcommittee Meeting of January 10, 2020*

The Sunset Subcommittee held its first meeting of the interim on Friday, January 10, 2020 and our Board was not included in the list of those selected for review. The next meeting is scheduled for Friday, February 21, 2020.

- *Update on Board Appointments*

We are still awaiting a new appointment to replace Jane McEvoy whose term expired 7/1/2019. The Governor's Office responded to a request for a status update in late December indicating that they are still accepting and processing applications and will notify us when an appointment has been made.

- *Complaints*

There are now no outstanding complaints in the investigative process as of this meeting and the acceptance of the two Consent Decrees presented for approval.

Tami Brancamp called for a motion. Andrea Menicucci made a motion to approve the Executive Director's report as submitted. Jane McEvoy seconded. The motion passed.

Report from Legal Counsel

Henna Rasul, Board Counsel reported there is no new activity to report as the two complaint cases have now been resolved via Consent Decree earlier in this meeting.

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Report from Board Chair and Board Members

- **Meeting Schedule**

Jennifer Pierce discussed the schedule for upcoming Board meetings and there was consensus to schedule the next regular Board meeting on April 22, 2020 at 4:30pm. Ms. Pierce will send an email confirming the date. Suggestions were made to discuss strategic planning and the assistant licensing during the meeting with a plan to involve stakeholders as much as possible.

Ms. Pierce also confirmed that the February 1, 2020 Public Hearing that was scheduled to hear a disciplinary case is now cancelled with the Board's approval of the Consent Decrees heard earlier.

- **Future Agenda Items**

Since the Board agreed to move forward on work to license assistants, it was agreed that another brief Board meeting will need to be held soon to consider establishing a subcommittee to work on the project. Jennifer Pierce indicated that she would send out a Doodle Poll as soon as possible with several possible dates for an interim, one-agenda item meeting to consider this matter.

Public Comment

Amy Cocanour thanked the Board for their time in volunteering to serve.

Adjournment

Tami Brancamp adjourned the meeting at 7:13 p.m.