



State of Nevada

Speech-Language Pathology, Audiology & Hearing Aid Dispensing Board

MINUTES OF PUBLIC MEETING

Speech-Language Pathology, Audiology & Hearing Aid Dispensing Board

October 19, 2022

Members Present: Tami Brancamp, Andrea Menicucci, Lynee Anderson, Minnie Foxx, Timothy Hunsaker, Adrienne Williams

Members Absent: Michael Hodes

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

Public Present: Laura Fink, Andre Lindsey, Kim Reddig

Call to Order, Confirmation of Quorum

Tami Brancamp called the meeting to order at 4:31pm. A roll call confirmed a quorum was present.

Public Comment

Laura Fink introduced herself from Nevada DETR, Bureau of Vocational Rehabilitation and stated that she was looking forward to hearing more about the Board and updates on over the counter hearing aids.

Approval of the Minutes: Board Meeting and Public Workshop July 19, 2022

Tami Brancamp asked if there were any corrections or revisions to the minutes of the meeting and Public Workshop of July 19, 2022 and none were noted. Dr. Brancamp asked for a motion. Timothy Hunsaker made a motion to approve the minutes of July 19, 2022 as written, and Andrea Menicucci seconded the motion. The motion passed.

Report Out and Consideration of Recommendations for Action from Advisory Committee on Fitting and Dispensing Hearing Aids Meeting of September 14, 2022

Tami Brancamp acknowledged that Michael Hodes was unable to attend this meeting and asked Ms. Pierce to report out for the Committee.

a. Proposed Revision to NAC 637B.0442

Ms. Pierce summarized the Committee's June 2022 decision to recommend the Board pursue revisions to NAC 637B.0442 rather than licensing of Audiology Assistants. At its September 2022 meeting, the Committee came to consensus on draft NAC language which it will review and consider for approval at its next meeting. No action was taken by the Board.

b. Examinations Required for Dispensing Audiologists and Hearing Aid Specialists

1) Availability/Use of Third-Party Dispensing Practical Exam Proctors

The Committee heard updates on the availability of third-party exam proctors that could potentially be utilized by out-of-state applicants for practical exams. Only two states appear to be

using third-party proctors, but both only administer the exam in the home state. Thus, this Board's requirements and protocols are in-line with those of other states requiring the practical exam and there does not appear to be a viable option at this time to send out-of-state candidates to qualified proctors. No recommendation was made by the Committee. There was no discussion or action taken by the Board.

2) Revision to NAC 637B.0373(5) Regarding Acceptance of Prior Passing Score on Written ILE Examination

Ms. Pierce explained that this was a new matter for the Committee at this meeting for consideration to affirm or recommend revision to NAC 637B.0373(5) which currently allows the Board to accept a passing score on the written ILE examination within the preceding 12 months, with a recommendation to extend this to 24 months in an effort to reduce licensing barriers/costs for AuD-D and HAS applicants. The Committee agreed unanimously to recommend the Board pursue a revision to NAC 637B.0373 to allow this.

Lynee Anderson shared that she believes this is a good recommendation and direction to take. Tami Brancamp further commented that this will benefit applicants in reducing both costs and barriers/time to licensure. Dr. Brancamp called for a motion. Lynee Anderson made a motion to approve the Committee's recommendation and pursue a revision to NAC 637B.0373(5) to allow the Board to accept a passing score on the written ILE examination within the preceding 24 months. Timothy Hunsaker seconded the motion. The motion passed unanimously.

c. Revisions to Board Policy 03: Dispensing Examinations

Ms. Pierce shared that a routine review of Board policies identified needed revisions to three Board policies, including *Board Policy 03: Dispensing Examinations*. This policy was revised to incorporate Adopted Revision LCB File R095-19 which established a 30-day waiting period to retake the Dispensing Practical Exam, and new language was added to address practical exam scoring and time limits. The Committee considered the revisions and voted to approve the revisions and establish a 3-hour time limit for the IHS Practical Exam to be included in the policy. Timothy Hunsaker commented on the recommendation and concurred that a set time limit was appropriate, and three hours should be more than enough time for a prepared candidate to complete the exam. Ms. Pierce recommended, and the Board agreed to table this item until later in the meeting as this is included with other policies for review and approval as part of Agenda Item 7.

d. Recommendations on FDA Rulemaking for Over-the-Counter Hearing Aids

Ms. Pierce summarized that the FDA Final Rule on Over The Counter (OTC) Hearing Aids was issued August 16, 2022 and takes effect October 17, 2022. Board staff have been in consultation with the DAG and Legislative Counsel Bureau regarding the rule's potential impact on current NRS/NAC. The Committee heard concerns regarding a potentially problematic consequence of the new rule related to an informal categorization of existing hearing aids as "prescription" devices to differentiate them from OTC hearing aids, and whether this inadvertently created a "prescription" requirement for traditional hearing aids that would impact dispensers. On 10/13/2022 the FDA issued additional guidance that dispelled these concerns. However, Ms. Pierce explained that FDA final rule does impact practice here in Nevada as follows:

- OTC hearing aids do not require the involvement of a licensed person. As such, this Board's laws and regulations do not apply to them.
- Non-OTC hearing aids are now defined as prescription devices, but there is no change to the qualifications of who may provide these. Prescription sales are still subject to 21 CFR 801.109.

- A medical evaluation or signed waiver to obtain either category of hearing aids is no longer required by federal law, as 21 CFR 801.421 was repealed. However, the federal rule authorizes states to maintain existing state laws or regulations that require a medical evaluation or signed waiver.
- All existing Nevada laws and regulations in NRS and NAC 637B remain in effect in relation to prescription hearing aids, except as indicated below where federal law takes precedence over state law:
 - **NRS 637B.242** requires a licensee to obtain a medical evaluation or waiver when selling hearing aids by catalog, mail, or internet. This remains in effect, as licensees must still obtain a medical evaluation or waiver only when selling hearing aids by catalog, mail, or internet.
 - **NRS 637B.250(2)(d)(1)** includes a violation of 21 CFR 801.421 as grounds for disciplinary action. This is no longer applicable as 21 CFR 801.421 no longer exists, so a violation of the rule could not be considered grounds for disciplinary action.
 - **NAC 637B.0444** describes requirements for obtaining a waiver of a medical evaluation, and **NAC 637B.045** requires waiver of medical evaluation to be included in patient records. Both of these are now conditionally applicable as the medical evaluation requirement was repealed by the final rule. Thus, these are not applicable to in-person hearing aid fitting and dispensing but are applicable to sales of hearing aids by catalog, mail, or internet (per NRS 637b.242).

As such, Ms. Pierce asked the Board for approval to issue guidance to licensees via the Board website and email to ensure the safety and welfare of the public and align practice with regulatory requirements. Timothy Hunsaker made a motion to delegate authority to the Executive Director to issue guidance on the FDA Final Rule on OTC Hearing Aids as recommended. Lynee Anderson seconded the motion. The motion passed unanimously.

Work Session on Future Legislative Efforts (Standing Agenda Item):

a. Consideration to Revise NRS 637B to Add Licensing of Speech-Language Pathology Assistants (SLPA)

Ms. Pierce reported out on the Public Hearing held by the NDE Commission on Public Standards earlier in the day, at which a revision to NAC 391.370 was heard and adopted, which effectively “sunset” bachelor’s level SLP staff in NDE as of October 2026. There were also at least two comments made in the Hearing suggesting NDE consider adding an “assistant” licensing level.

Ms. Pierce also updated the Board on its July 2022 request for more information on Nevada Medicaid rules and current “under the direction of” billing for other assistant types such as OTAs and PTAs. A review of the Nevada Medicaid Provider Type 34 Billing Guide indicates that services furnished in whole or in part by OTAs or PTAs may be billed by the supervising provider, though there are some limits on eligible services. CMS rules also allow OTA and PTA “under the direction of billing”, however a January 2022 change to Medicare Part B rules reduced these rates to 85% of the standard Part B amount. Ms. Pierce found that at least 38 states currently regulate SLP Assistants in some form, and a sample probe of these state Medicaid plans indicates that many do allow SLPA reimbursement, though a handful appear to not allow it, or only allow it by a “trainee” (clinical fellow).

Tami Brancamp commented that higher education programs may need time to develop SLPA curricula, and called on Dr. André Lindsay of Nevada State College, who shared that NSC currently has curricula in place to support an SLPA path. It was discussed that in order to pursue this, the best approach would be collaborative and include work with NDE and Nevada Medicaid. Kim Reddig of NSHA shared that New Mexico recently added SLPAs and NSHA staff have been working with other states on this initiative.

Many bachelors' level staff in NDE would likely already meet SLPA requirements based on their education and training. There was discussion around whether the Board could partner with NSHA and others to pursue a BDR and share financial costs for legislative services in a future session to pursue SLPA licensing, which Ms. Pierce agreed to look into. Consensus was to keep this matter as a standing agenda item and no action was taken.

b. Work Session on Future Legislative Efforts to Consider Licensing Audiology Assistants (AuDA)

Ms. Pierce referred back to the prior agenda item wherein the Advisory Committee is drafting NAC revisions. Consensus was to keep this matter as a standing agenda item and no action was taken.

c. Consideration to Revise NRS 637B to Address Telehealth and Telesupervision

Ms. Pierce reported no new information on this item and reiterated that this matter may be relevant if the Board pursues SLPA licensing in the future. Consensus was to keep this matter as a standing agenda item and no action was taken.

d. Consideration to Revise NRS 637B to Remove NBC-HIS Certification Requirement for HAS License

Ms. Pierce reported no updates on this item since the July 2022 Board Meeting, where the Board approved drafted revisions from the Advisory Committee on Fitting and Dispensing Hearing Aids. This language is ready for inclusion in a future BDR. Consensus was to keep this matter as a standing agenda item and no action was taken.

Board Work Session on Jurisprudence Exam

Ms. Pierce summarized the Board's prior work on this item which commenced after the April 2021 vote to pursue development of an exam following the revision to NAC 637B in LCB File R095-19, effective June 8, 2020 which granted this authority. An optional version of the exam was implemented in January 2022 through free online Google forms and Ms. Pierce shared trends and feedback on utilization over the past year.

The matter was brought back before the Board to consider whether to make the examination mandatory, however Board Counsel has recommended that the Board would be better positioned to require the exam only after another revision to NAC 637B to address current language stating the Board "may" require the exam, with a revision to "shall" or similar to avoid a challenge to the requirement. Additionally, the exam is not recommended for license renewals to avoid any excessive burden to maintain a license. There was lengthy discussion on the topic with consensus that if required, it would be appropriate only for new applicants and possibly reinstatements. The matter was tabled for a future meeting and no action was taken.

Review and Approval of Revisions to Board Policies, Operating Policies & Procedures, and Personnel Policies & Procedures

Ms. Pierce explained that a comprehensive review and revision of Board Policies, Operating Policies & Procedures, and Personnel Policies & Procedures was conducted with revisions made to each as indicated and all documents were provided to the Board for this meeting in their entirety for review and approval. Ms. Pierce summarized the relevant revisions as follows:

a. Board Policies

- 1) *Policy 03 - Dispensing Examinations & Scores:* Revised to include addition of 30-day waiting period for practical examination retake per NAC 637B.0373 and Adopted Revision LCB File R095-19 effective June 8, 2020. Revised and clarified other language, including establishing a time limit for the practical examination.

- 2) *Policy 04 - Licensing*: Revised to include procedures for expedited license by endorsement. Revised and clarified language regarding application process to remove references to paper applications and replace with online applications/payments.
- 3) *Policy 05 - License Renewal*: Revised to include changes to Continuing Education requirements per NAC 637B.400 and Adopted Revision LCB File R064-21 Effective June 13, 2022. Revised and clarified other language specific to CE exceptions and renewal by license type.
- b. **Operating Policies & Procedures**: Minor edits made to this document with a notable revision to *Section 7: Record Recovery System* to reflect termination of record storage services with Puliz Records Management/Vital Records Control.
- c. **Personnel Policies**: Revisions to *Section 150: Compensation* and *Section 280 Separation from Employment* to reflect changes to law as a result of Assembly Bill 385 (2021) regarding employee bonuses, fringe benefits, and termination pay.

Andrea Menicucci pointed out that Section 280 of the Personnel Policies referenced termination policies that were not universally applicable to this Board. As that section was revised to comply with AB 385 of the 81st Legislative Session, it was suggested that the section be revised to reference that section in quotes with a citation to the bill. Tami Brancamp called for a motion. Andrea Menicucci made a motion to approve the Board Policies, Operating Policies & Procedures, and Personnel Policies as revised, with a correction to section 280 of the Personnel Policies to cite AB 385. Minnie Foxx seconded the motion. The motion passed unanimously.

Disciplinary Matters: Cases Recommended for Dismissal

Ms. Pierce reviewed two complaint cases presented to the Board with recommendations for dismissal as it has been determined that there is insufficient evidence to file a formal complaint for hearing before the Board and the facts set forth in the accusations are insufficient to establish a violation of Chapter 637B of the Nevada Revised Statutes or the Nevada Administrative Code.

Case No. H21-01: The Complaint alleged unprofessional conduct, fraudulent billing, conduct that is harmful to the public health and safety, and violation of federal and state law and/or regulations relating to the fitting and dispensing of hearing aids. Tami Brancamp made a motion to dismiss the case as recommended. Adrienne Williams seconded the motion. The motion passed.

Case No. H21-04: The Complaint alleged unprofessional conduct, fraudulent billing, conduct that is harmful to the public health and safety, and violation of federal and state law and/or regulations relating to the fitting and dispensing of hearing aids. Andrea Menicucci made a motion to dismiss the case as recommended. Tami Brancamp seconded the motion. The motion passed.

Executive Director's Report

Ms. Pierce directed the Board to the written Executive Director's Report and summarized as follows:

a. Licensure Statistics

Ms. Pierce reported that FY23 Q1 resulted in a net increase of 28 licenses, a 2% increase from the prior quarter. The 102 licenses issued this quarter is the most in a Q1 since FY15, and higher (by 1 license) than the total issued last quarter (FY22 Q4), which is typically the busiest. This report also included a breakdown of new licenses by location (57% Nevada residents vs. 43% out of state) and those with military affiliation (7%). Ms. Pierce also shared several trends reports spanning FY18-FY22 to illustrate overall census increase and changes in licensee location over time.

b. FY22 Q4 Financial Report/Balance Sheet & FY23 Q1 Financial Report

Ms. Pierce shared the FY22 Q4 Summary, which resulted in a surplus of almost \$32,400. Revenue totaled \$193,581.64, an increase of over \$10,000 from FY21, and expenses totaled \$161,211.22, a decrease of over \$10,000 from FY21. Notably, the Board's end of year fund balance totaled \$103,525; an increase of over \$32,000 from FY21. These savings will continue to support the Board's effort to rebuild its financial reserves and maintain one year of operating expenses.

Ms. Pierce also explained that the increase in revenue aligns with the rising licensee census which has risen over 20% since September 30, 2019. FY22 revenue was just shy of \$200,000, which is the maximum threshold under which a Balance Sheet may be submitted in lieu of an audit. Given the Board's consistent growth, it is expected that FY23 revenue could exceed \$200,000 and as such, the FY24 budget should include funding for an annual financial audit.

The FY23 Q1 Financial Summary was also reviewed, which resulted in net income higher than budgeted (28.20% of budget), and expenses just under the quarterly projection (24.03%). License fees received were almost 40% of the annual budgeted amount, which is commensurate with the high numbers of licenses issued this quarter. Reserves (equity) now totals \$111,803.48 which is additional savings of over \$8,200 since the end of the last quarter. There were no major deviations from the budget during this quarter.

c. Update on Implementation of License by Endorsement Application Process

Ms. Pierce shared that the online LBE application went live on Thursday, July 21, 2022 and website content was revised to inform potential applicants of this option. As of 9/30/2022, 24 Standard expedited licenses by endorsement have been issued to 1 Audiologist and 23 Speech-Language Pathologists. Of these, 3 (all SLPs) were military spouses. The average time from application receipt to license issuance was 3 calendar days, with 8 licenses issued within 1 day.

d. Legislative Update

Ms. Pierce directed the members to the summary of relevant interim committees in the Executive Director's report. There are no updates from the Sunset Subcommittee of the Legislative Commission or the anticipated Governor's Bipartisan Task Force on Occupational Licensing. Ms. Pierce reported on the final meeting of the Joint Interim Standing Committee on Commerce and Labor wherein the Committee voted to pursue a BDR in the upcoming legislative session to require a number of Boards, including ours, to issue temporary licenses to military members/veterans and their spouses. Because this Board's existing NRS already includes these provisions, the Executive Director contacted the Committee Chair and LCB staff by email to clarify this and respectfully request that our Board be removed from the proposed BDR. We have been informed that our Board will be removed as requested.

e. Board Member Appointments/Reappointments

Ms. Pierce confirmed that the Board is fully appointed through July 2023 when both Tami Brancamp and Michael Hodes' terms will expire, and neither are eligible for reappointment. As Tami Brancamp is currently the Board Chair, an agenda item will be included in the Board's April 2023 meeting to elect a new Chair and Vice-Chair based on nominations made by Board Members, as well as review and consider new Bank Signatories & Financial Reviewer Appointments. Tami Brancamp suggested that Board staff begin recruitment efforts early to ensure there are no lapses in membership.

f. Complaints

Ms. Pierce reported that there were three open complaint cases following the July 19, 2022 Board Meeting. Two new complaints were received in July and October 2022, but only one case was opened

for investigation. Two cases were presented earlier in this meeting and approved for dismissal, leaving two open cases.

Report from Legal Counsel

Henna Rasul, Board Counsel had no new information to report on legal matters.

Reports from Board Chair and Board Members

- a. **Report from Board Chair and Board Members:** There were no reports from the Board Chair or members.
- b. **2023 Proposed Meeting Schedule:** The next meeting was scheduled for Wednesday, January 25, 2023 at 4:30pm.
- c. **Future Agenda Items:** The following matters were identified for the January 2023 agenda:
 - 1. Work Session: Continued work on Future Legislative Efforts (Standing Agenda Item):
 - a) Licensing Speech-Language Pathology Assistants
 - b) Licensing Audiology Assistants
 - c) Telehealth and Telesupervision
 - d) NBC-HIS Certification for HAS License
 - e) Cerumen Management by Hearing Aid Specialists
 - 2. Work Session on Jurisprudence Exam
 - 3. Board Member Recruitment/Chair & Vice Chair Nominations/Elections

Public Comment

There was no public comment.

Adjournment

Tami Brancamp adjourned the meeting at 6:09pm.