



Board of Examiners
For Speech-Language
Pathology & Audiology
(971) 673-0220
(971) 673-0226 fax
800 NE Oregon St
Ste 407
Portland OR 97232
www.bspsa.state.or.us

Meeting Minutes December 9, 2016 Portland State Office Building Telephone Meeting Portland, Oregon

BY PHONE: Jennie Price, Speech-Language Pathologist, Chair
Erin Haag, Executive Director
Tyler Anderson, AAG
Gail Swanstrom, Audiologist, Vice-Chair
David Linn, Administrative Assistant
Dustin Ooley, Audiologist
Randy Lerner, Audiologist, Guest
Anna Sanger Reed, Public Member
Elynor McPeak, Public Member

ABSENT: Victoria Edwards, Speech-Language Pathologist (excused)
Jean Verheyden, M.D., Otolaryngologist (excused)

CALL TO ORDER

The meeting was called to order at 12:01 p.m. by Chair Price, after a roll call quorum was established.

Haag stated that the purpose of this special meeting was for the Board (BSPA) to consider rules on tinnitus being proposed by the Oregon Health Licensing Office (OHLA) Advisory Council on Hearing Aids (ACHA). BSPA went on record in opposition to the rule at their November 4, 2016 meeting, and Haag and Anderson (AAG) met with OHLA's director and AAG at the end of November to share BSPA's concerns. Due to BSPA's concerns, OHLA extended the comment period for another 30 days to December 30th. OHLA expressed their hope that BSPA could help wordsmith the rules and come to some mutually-agreeable language, but otherwise intends to implement them. Their position is that Hearing Aid Specialists (HAS) are already activating the tinnitus devices despite the DOJ ruling last year which states that tinnitus treatment is not in the scope of practice for HAS and as such, they might as well acknowledge this and develop parameters. Haag provided her written staff analysis to BSPA including a copy of the Frequently Asked Questions document prepared by OHLA which states that evaluation, diagnosis and treatment of tinnitus is not currently in the scope of practice for HAS. That FAQ was based on a four page Department of Justice opinion issued last year. Haag also said that the American Speech-Language Hearing Association (ASHA) and the American Audiology Association (AAA) have provided letters to OHLA in opposition to the rules. BSPA must make a determination as to whether they will help wordsmith the proposed rules or oppose them in their entirety. If BSPA opposes the rules then each agency will be required to submit written arguments to a special committee of the Oregon Department of Justice which will make the final determination of behalf of the state.

PUBLIC COMMENTS:

Shelby Atwill, Portland Audiologist who works for Oregon's Early Infant Hearing Screening program expressed concerns about the rule and asked if they would be allowed to use the devices on children. Cory Richards, Bend Audiologist, sent written comments in complete opposition to the rule. Randy Lerner, Audiologist, was in

attendance and gave public comment. Since he is a member of ACHA, he made it clear he was appearing before BSPA strictly on his own accord as an Audiologist and was not in any way representing ACHA. He described the proposed rules by the Oregon Health Licensing Authority's (OHLA) Advisory Council on Hearing Aids (ACHA). He contends that there are instances of Hearing Aid Specialists (HAS) treating tinnitus by activating tinnitus masking functions on some advanced hearing devices. He also said that the proposed rules by OHLA to allow a physician's "recommendation" to authorize the HAS to activate the tinnitus masking features is not feasible since developing the specific settings and manipulating the software of the devices to the appropriate levels constitutes treating the tinnitus which is outside the scope and training of HAS. He notes that prior to becoming an Audiologist, he was a Hearing Aid Specialist and says that he certainly did not have sufficient training or knowledge to treat tinnitus at that time.

Swanstrom emphasized that the maskers are Class II medical devices with potential for patient harm. She pointed out that the FDA only allows them to be used by "hearing healthcare professionals." She said that it is not the purview of HAS to treat tinnitus because of it can be the symptom of any number of serious medical conditions. She felt the proposed rules would entangle physicians in an un-workable situation and could require multiple trips to the family physician who has no real knowledge or experience with this equipment in order to make adjustments. She questioned the training of HAS and felt a few hours of training on maskers was insufficient to protect the patient. She noted that tinnitus can have many complicated causes and symptoms that require a trained hearing health professional. Swanstrom also questioned how OHLA ACHA has any jurisdiction over tinnitus in their statutes since BSPA has jurisdiction over the practice of Audiology and hearing healthcare in Oregon.

Ooley shared the concerns of Swanstrom and other Audiologists that HAS are doing this treatment already when the Oregon DOJ previously determined it is not in their scope of practice. He underscored that tinnitus is a symptom of an underlying condition including problems as serious as tumors. He pointed out that the equipment is likely utilize software to tailor equipment to each patient, and that software could be restricted to use by Audiologists.

Public member McPeak asserted that if Class II devices had the potential for serious patient harm then the treatment should be serious enough to require a licensed hearing healthcare professional and an ENT.

Public member Sanger Reed expressed concerns about the public and their access to sufficient care. She felt untrained HAS might miss more serious conditions and harm caused to the patient by the delay in proper care. She expressed concerns about the proposed rules creating a situation where the patient is bounced back and forth between the physician and the patient and that it may cause them to give up on treatment. At the same time she said that if the treatment was effective we need to be sure that Oregonians have access to it. Haag stated there are approximately 400 licensed Audiologists in Oregon who could activate the devices within their scope of practice.

Director Haag asked each Board member if they had any suggestions to change the wording of the proposed rules. No change in language was suggested and the consensus was that it is clearly not within the scope of HAS to perform the proposed treatment.

Board council Anderson explained to the Board the process when two state agencies believe their rules and statutes to be in conflict. Each agency will have to submit their arguments in writing to the DOJ for a final decision by committee within that department. It is possible legislation would then be proposed by the "losing" party and it was pointed out that although hearing aid manufacturers might want HAS to be authorized to activate the devices, they might not want to enrage Audiologists which are about equal in number in Oregon.

Guest Randy Lerner left the meeting at 12:41 p.m. so that the Board could convene executive session and confer with their attorney.

EXECUTIVE SESSION

Chair Price called the Executive Session into order at 12:43 p.m. to consider information obtained as part of investigations of licensee or applicant conduct as provided in ORS 192.660(2)(k), consider information or records that are exempt by law from public inspection as provided in ORS 192.660(2)(f), and to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed as provided in ORS 192.660(2)(h).

The executive session ended at 1:26 p.m. and the Board returned to public session.

MOTIONS FOLLOWING EXECUTIVE SESSION

Sanger Reed moved to direct staff to file a statement in opposition to OHLA's proposed administrative rule changes on tinnitus because the Board's mission is to uphold their rules and statutes, the proposed rule is in direct conflict with BSPA statutes, the treatment of tinnitus is in the scope of an Audiologist and not a Hearing Aid Specialist, and the Board requests an advisory opinion from the Oregon Department of Justice. The motion was seconded by Ooley and passed unanimously on a roll call vote.

ADJOURNMENT

The Board meeting adjourned at 1:30 p.m. The next Board meeting will be held at 9 a.m., Friday, February 10th, 2017.