

FLORIDA BOARD OF HEARING AID SPECIALISTS GENERAL BOARD MEETING

MEETING MINUTES

October 28, 2022, at 9:00 A.M. ET



Leanne Polhill, H.A.S., Chair
Randy Ellsworth, H.A.S., Vice-Chair
Ashleigh K. Irving, Executive Director



I. CALL TO ORDER

The meeting was called to order on October 28, 2022, at approximately 9:04 A.M. EST by Leanne E. Polhill, Chair.

Roll Call was conducted by Ms. Ashleigh Irving, Executive Director.

MEMBERS PRESENT:

Leanne E. Polhill, H.A.S., Chair
 Randy Ellsworth, H.A.S., Vice-Chair
 Pamela Dechmerowski, H.A.S.
 Dean Easterwood, H.A.S.
 Thomas Hollern

STAFF PRESENT:

Ashleigh Irving, Executive Director
 Eric Pottschmidt, Program Operations
 Administrator

BOARD COUNSEL:

Deborah Loucks, Assistant Attorney
 General

DEPARTMENT OF HEALTH COUNSEL:

Collie Nolen, Senior Attorney

Opening remarks were read by Ms. Irving.

II. REVIEW AND APPROVAL OF MINUTES – July 15, 2022

Motion: by Mr. Easterwood to approve the meeting minutes.
Second: by Mr. Ellsworth.
Vote: passed unanimously.

III. PROSECUTOR'S REPORT

<u>Case Status</u>	<u>Report Date</u> 2/16/22	<u>Report</u> Date 7/7/22	<u>Report</u> Date 9/30/22
Total cases open/active in Prosecution Services:	3	2	0
Cases in Emergency Action Unit:	0	0	0
Cases under legal review:	0	0	0
Cases awaiting supplemental investigation/expert opinion:	1	0	0
Cases with PCP recommendation:	1	1	0
Cases where probable cause has been found:	1	0	0
Cases where DOAH has been requested:	0	0	0
Cases pending before DOAH:	0	0	0
Cases on Board meeting agendas:	0	1	0
Cases on appeal:	0	0	0
Cases older than one year: *	1	1	0

* Does not include cases already agendaed for final action by the Board.



(TS 00:05:58 Minutes) Ms. Nolen presented the Prosecutor's Report for review. Being that there were no open cases, there was no motion needed for the Board to authorize the continued prosecution of the year and older cases.

IV. APPLICATION REVIEWS

A. Ronald Lynch, Hearing Aid Specialist Trainee – HAS OFFICIALLY WITHDRAWN HIS APPLICATION

Mr. Pottschmidt verified that Mr. Lynch has chosen to withdraw his application, therefore Ms. Polhill continued to the next item on the agenda.

B. Dean Bartley, Hearing Aid Specialist Trainee

(TS 00:07:46 Minutes) Dean Bartley was present and did not have legal representation present. Mr. Bartley's application was before the Board for review of criminal history. Ms. Loucks noted that though most of Mr. Bartley's prior criminal charges were dismissed, there was a charge that occurred in October 2018 which was a possession of a controlled substance violation, a third-degree felony. Ms. Loucks added that Mr. Bartley pled nolo contendere to this charge and was subsequently put on probation.

(TS 00:09:13 Minutes) Mr. Bartley provided an opening statement before the Board, stating that this charge was dismissed. Ms. Loucks responded to this noting that the documentation received by the Board office does not show that the charge was dismissed, but that Mr. Bartley was sentenced to probation. Mr. Bartley reiterated that he has the documentation stating that the case was dismissed, and that this information was submitted to the Board office.

Ms. Loucks explained that if Mr. Bartley did in fact have a violation of Section 893.03(1)(a)39, F.S., the Board was prohibited by statute from issuing him a license. Ms. Loucks added that per Section 456.0635, F.S., an applicant is excluded from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended more than 10 years before the date of application, and based on the information provided in the agenda materials, Mr. Bartley's probation ended in January 2021, meaning that he would not be eligible for licensure until 2031.

(TS 00:13:00 Minutes) Additional discussion took place regarding the disposition of this offense.

(TS 00:18:51 Minutes) Ms. Loucks stated that what the Board was trying to determine was whether they possessed documentation showing that all the charges were dismissed. Ms. Loucks noted that if Mr. Bartley served a term of probation as part of a pretrial intervention program or something similar, he should have an order showing that once he successfully completed the term, the case was dismissed. Ms. Polhill stated that it seemed without this information, the Board would be unable to proceed.



(TS 00:21:50 Minutes) Ms. Loucks confirmed that if the Board does not have the documentation showing that the charge was dismissed, they would have no other option than to deny the application for licensure, unless Mr. Bartley were to waive the 90-day timeframe that required the Board to act on the application today. Ms. Loucks noted that if Mr. Bartley were to waive the 90 days, that would allow him time to obtain the documentation in question so that he may present it to the Board at another meeting. Ms. Loucks stated to Mr. Bartley that he should be able to contact the Clerk of Courts to request the particular orders that dismissed the case.

(TS 00:25:55 Minutes) Mr. Bartley chose to waive the 90-day timeframe.

After discussion, the Board took the following action:

Motion: by Mr. Ellsworth to grant a continuance.
Second: by Ms. Dechmerowski.
Vote: passed unanimously.

V. RULES DISCUSSION

A. Chapter 64B6-5, F.A.C. Continuing Education

(TS 00:27:50 Minutes) Ms. Polhill directed the Board's attention to the proposed rule language provided by the Board's attorney, Ms. Diane Guillemette, which was included in the agenda materials for review. Ms. Polhill then presented the proposed changes to the current language, which would dictate that ten of the required twenty hours of continuing education credit required for renewal must be earned in-person or by remote or distanced learning through electronic communication and are delivered in a manner that monitors attendance, minimizes distraction and allows for synchronous communication between the instructor and the attendee, with the remaining ten required hours allowed to be earned by completion of courses that are self-paced, for instance home study or courses offered anytime on-line. Ms. Polhill noted that the mandatory content would still include two hours on medical errors, two hours on laws and rules, and a one-time two-hour course in the topic of HIV/AIDS required to be completed sometime within the first two years of licensure.

Mr. Easterwood requested clarification on whether the mandatory content would need to be done via a certain delivery method, and Ms. Polhill and Ms. Loucks each responded that it was their understanding based on the proposed language being presented that the mandatory content could be done via any of the acceptable delivery methods.

(TS 00:32:49 Minutes) Ms. Dechmerowski inquired if it would be possible to require that the mandatory content to be completed in-person rather than allowing online or virtual methods. Ms. Polhill noted that while this would be possible, requiring that the mandatory content such as the laws and rules which is required for initial licensure be done in-person may create significant barriers for individuals applying for Florida licensure who reside outside of the state.

(TS 00:33:53 Minutes) Additional discussion took place between Ms. Polhill, Mr. Ellsworth, Ms. Dechmerowski, and Mr. Easterwood in reference to the acceptable delivery methods of required continuing education credit indicated in this proposed language.



(TS 00:54:27 Minutes) Ms. Polhill and Mr. Ellsworth agreed to revise the proposed language for Rule 64B6-5.001(2)(a), F.A.C., to read “Ten of the required twenty hours must be earned in-person.”

After discussion, the following action was taken:

Motion: by Ms. Dechmerowski to approve the proposed language with the revision of Rule 64B6-5.001(2)(a), F.A.C.
Second: by Mr. Easterwood.
Vote: 4/1—Mr. Ellsworth opposed.

(TS 00:57:35 Minutes) Ms. Loucks explained the process that the proposed rule language will go through.

SERC Questions

Will the proposed rule amendments have adverse impact on small business or be likely to directly or indirectly increase regulatory costs to any entity including government in excess of \$200,000 in the aggregate in Florida within one year after implementation of the rule?

Motion: by Ms. Dechmerowski to answer both questions “No”.
Second: by Mr. Easterwood.
Vote: passed unanimously.

Should a violation of this rule or any part of this rule be designated as a minor violation?

Motion: by Ms. Dechmerowski to answer “No”.
Second: by Mr. Easterwood.
Vote: passed unanimously.

Would a Sunset provision be applicable to this Rule?

Motion: by Ms. Dechmerowski to answer “No”.
Second: by Mr. Easterwood.
Vote: passed unanimously.

B. Chapter 64B6-6, F.A.C. Minimal Procedures and Equipment

(TS 01:04:50 Minutes) Ms. Polhill stated that included in the agenda materials were letters sent from the Joint Administrative Procedures Committee (JAPC) regarding language in existing rules in reference to ANSI and ANSI standards for certified testing rooms and audiometric equipment, noting that JAPC has pointed out that the ANSI standard referenced in the rule in question was from 1972.



Ms. Polhill explained that in the processing of researching the rule language, she reviewed the rule language for the Board of Speech-Language Pathology & Audiology, and expressed her favor for the language of Rule 64B20-8.003, F.A.C. Ms. Polhill, the rest of the Board, and Ms. Loucks then discussed possibly updating the Board of Hearing Aid Specialist's rule language for Rule 64B6-6.005(1)(c), F.A.C., regarding ANSI and ANSI standards with the language "in accordance with the ANSI standards for which the equipment was designed".

(TS 01:08:25 Minutes) Ms. Loucks noted that regarding Rule 64B6-6.008(3), F.A.C., JAPC was requesting explanation on which statute cited as a law implemented authorizes the rule subsection. Both Ms. Loucks and Ms. Polhill stated they were unable to locate anything in Chapter 484, F.S., with specifically covers language and advertising, other than that if a hearing aid is advertised to be at a special price, the regular or usual price must be indicated.

(TS 01:12:35 Minutes) Ms. Polhill and Ms. Loucks agreed that if there is not an existing statute which supports the inclusion of Rule 64B6-6.008(3), F.A.C., the rule would need to be removed.

After discussion, the following action was taken:

Motion: by Ms. Dechmerowski to accept proposed change to Rule 64B6-6.005(1)(c), F.A.C., as discussed.
Second: by Mr. Ellsworth.
Vote: passed unanimously.

SERC Questions

Will the proposed rule amendments have adverse impact on small business or be likely to directly or indirectly increase regulatory costs to any entity including government in excess of \$200,000 in the aggregate in Florida within one year after implementation?

Motion: by Ms. Dechmerowski to answer "No".
Second: by Mr. Hollern.
Vote: passed unanimously.

Should a violation of this rule or any part of this rule be designated as a minor violation?

Motion: by Ms. Dechmerowski to answer "No".
Second: by Mr. Ellsworth.
Vote: passed unanimously.

Would a Sunset provision be applicable to this Rule?

Motion: by Ms. Dechmerowski to answer "No".
Second: by Mr. Easterwood.
Vote: passed unanimously.



(TS 01:17:04 Minutes) After discussion, the Board took the following action:

Motion: by Ms. Dechmerowski to eliminate Rule 64B6-6.008(3), F.A.C.
Second: by Mr. Easterwood.
Vote: passed unanimously.

SERC Questions

Will the proposed rule amendments have adverse impact on small business or be likely to directly or indirectly increase regulatory costs to any entity including government in excess of \$200,000 in the aggregate in Florida within one year after implementation?

Motion: by Ms. Dechmerowski to answer "No".
Second: by Mr. Easterwood.
Vote: passed unanimously.

Should a violation of this rule or any part of this rule be designated as a minor violation?

Motion: by Ms. Dechmerowski to answer "No".
Second: by Mr. Easterwood.
Vote: passed unanimously.

Would a Sunset provision be applicable to this Rule?

Motion: by Ms. Dechmerowski to answer "No".
Second: by Mr. Easterwood.
Vote: passed unanimously.

C. Rule 64B6-2.002, F.A.C. Definitions; Rule 64B6-8.003, F.A.C. Trainee Stages, Minimum Training Requirements, and Training Programs

(TS 01:20:45 Minutes) Ms. Polhill presented the proposed changes to Rule 64B6-2.002, F.A.C. Mr. Pottschmidt noted that Ms. Guillemette was not yet ready to move forward with a vote for these rules as the Board did not yet have the legislative authority to do so. Ms. Polhill stated that this would be tabled, and they would move on to the next agenda item.

VI. NEW BUSINESS

A. FDA Full Rule Food and Drug Administration 21 Cfr Parts 800, 801, 808, And 874 i. FDA Letter to State Officials

(TS 01:23:03 Minutes) Ms. Polhill stated that the FDA has released its final rule on over-the-counter (OTC) hearing aids as well as the new rule for prescription hearing aids and provided additional details regarding the usage of the word "prescription" in the rule language. Ms. Polhill, Mr. Easterwood, and Ms. Dechmerowski further discussed the FDA final rule.



ii. Rules Discussion

(TS 01:29:14 Minutes) Ms. Polhill read a portion of Chapter 64B20, F.A.C., regarding scope of practice, and suggested the possibility of incorporating some similar rule language for the Board of Hearing Aid Specialists, as they do not have a scope of practice currently included in the rule.

B. Refunds, Right to Return, 30-Day Trial Period, And Cancellation Fee Policies.

- i. Section 484.0512, F.S. Thirty-Day Trial period; Purchaser's Right to Cancel; Notice; Refund; Cancellation Fee; Criminal Penalty**
- ii. Section 484.042(4), F.S. – Cancellation by Medical Authorization; Purchaser's Right to Return**
- iii. Section 468.1246(2), F.S. Thirty-Day Trial period; Purchaser's Right to Cancel; Notice; Refund; Cancellation Fee**
- iv. Section 468.1255, F.S. Cancellation by Medical Authorization; Purchaser's Right to Return**
- v. Rule 64B6-6.001, Florida Administrative Code - Thirty-Day Trial Period**
- vi. Rule 64B20-8.009, Florida Administrative Code - Thirty-Day Trial Period; Purchaser's Right to Cancel; Refund; Cancellation Fee.**

(TS 01:31:03 Minutes) Ms. Polhill stated that the joint meeting between the Florida Board of Hearing Aid Specialists and the Florida Board of Speech-Language Pathology & Audiology was scheduled for the upcoming week, and that the above topics would be discussed. Ms. Polhill noted that if the Board does not yet have statutory authority, they would not be able to change the rule, while also noting the importance of both Boards being on the same page during the rule development process. Additional discussion took place among the Board members regarding the possible rule language.

VII. REPORTS

A. Chair's Report - Leanne E. Polhill

i. Appointment of New PCP Member

(TS 01:47:15 Minutes) Ms. Polhill noted that the Board is currently in the process of appointing a new member to the Probable Cause Panel and solicited any recommendations of former Board members as possible appointees.

B. Vice Chair's Report - Randy Ellsworth

Nothing to report.

C. Executive Director's Report – Ashleigh K. Irving

i. Board Chair/Vice Chair Long-Range Planning Meeting

Ms. Irving stated that the Board Chair/Vice Chair Long-Range Planning Meeting would be held on January 13th, 2023, in Tallahassee, Florida at the AC Marriott Hotel.



ii. Financial Report

(TS 01:49:07 Minutes) Ms. Irving presented the financial report in the agenda materials for review, noting that the Board is currently in good standing.

Ms. Irving clarified with Ms. Polhill that the Board intends to strike through the section of proposed language for Rule 64B6-5.001(2)(a), F.A.C., that reads “or by remote or distanced learning through electronic communication and are delivered in a manner that monitors attendance, minimizes distraction, and allows for synchronous communication between the instructor and the trainee”, so that it reads only, “Ten of the required twenty hours must be earned in-person”.

Mr. Pottschmidt added that Rule 64B6-5.001(2)(b), F.A.C., reads “Ten of the required twenty hours may be earned by courses that are self-paced, for instance home study or courses offered anytime on-line,” noting that this did not include distance-learning electronic interactive courses. Ms. Polhill stated that it was her belief that if someone completed an online course that was synchronous and interactive, then that would be an online course that fits into the categories mentioned in Rule 64B6-5.001(2)(b), F.A.C.

D. Board Counsel’s Report

i. Annual Regulatory Plan

Ms. Loucks presented the Annual Regulatory Plan in the agenda materials for review.

Motion: by Ms. Dechmerowski to approve the Annual Regulatory Plan.
Second: by Mr. Hollern.
Vote: passes unanimously.

ii. Rules Report

Nothing to report.

VIII. OTHER BUSINESS

A. 2023 Delegation of Authority

Motion: by Ms. Dechmerowski to approve the Delegation of Authority.
Second: by Mr. Hollern.
Vote: passed unanimously.

B. Ratifications

Licenses Issued

(TS 01:54:11 Minutes) Ms. Polhill presented the MQA Reports showing 26 licenses issued for Hearing Aid Specialists and 38 licenses issued for Hearing Aid Specialist Trainees from July 7, 2022, through October 19, 2022.



Motion: by Mr. Ellsworth to accept the ratification list for 3601 and 3603.
Second: by Mr. Easterwood.
Vote: passed unanimously.

C. Elections

i. Chair

Motion: by Ms. Dechmerowski to accept nomination of Ms. Leanne Polhill as Chairperson of the Board.
Second: by Mr. Hollern.
Vote: passes unanimously.

ii. Vice Chair

Motion: by Ms. Dechmerowski to accept nomination of Mr. Randy Ellsworth as Vice-Chairperson of the Board.
Second: by Mr. Hollern.
Vote: passes unanimously.

IX. FOR YOUR INFORMATION

A. Examination Update from International Hearing Society

- i. Topic-Level or Domain-Level Results Request; Request Form Located at <https://form.jotform.com/222783677263062>**

(TS 01:56:45 Minutes) Ms. Polhill directed the Board's attention to a letter from the International Hearing Society that administers the international licensing exam which provides information to examinees regarding an update which will allow a new way for test-takers to view their exam results if they do not pass the exam. Ms. Polhill provided additional details on this update.

X. NEXT MEETING DATE – January 27, 2023 – Virtual Meeting

XI. PUBLIC COMMENTS

Ms. Polhill welcomed any public comment. No public comment was made.

XII. ADJOURNMENT @ approximately 11:04 A.M. EST.