

INTERIM JOINT COMMITTEE ON LICENSING, OCCUPATIONS, AND ADMINISTRATIVE REGULATIONS

Minutes of the 4th Meeting of the 2021 Interim

September 23, 2021

Call to Order and Roll Call

The 4th meeting of the Interim Joint Committee on Licensing, Occupations, and Administrative Regulations was held on Thursday, September 23, 2021, at 11:00 AM, in Room 131 of the Capitol Annex. Representative Adam Koenig, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator John Schickel, Co-Chair; Representative Adam Koenig, Co-Chair; Senators Jimmy Higdon, Christian McDaniel, Michael J. Nemes, Damon Thayer, and Reginald Thomas; Representatives Kim Banta, Kevin D. Bratcher, Tom Burch, Patrick Flannery, Al Gentry, Thomas Huff, Matthew Koch, C. Ed Massey, Chad McCoy, Michael Meredith, Jerry T. Miller, Kimberly Poore Moser, Phillip Pratt, Sal Santoro, and Killian Timoney.

Guests: Rebecca Hartsough, Ph.D., Policy Director, Babbage Cofounder; Heather Wagers, Executive Director, Office of Trafficking and Abuse Prevention and Prosecution, Office of the Attorney General; Major Jeremy Murrell, Director, Division of Information Technology, Kentucky State Police; Julie Campbell, Administrator, Kentucky Board of Cosmetology; Adam Haley, Executive Director, Kentucky Academy of Audiology; Greg Brotzge, Government Affairs Consultant; Hearing Aid Association of Kentucky; State Representative Jonathan Dixon; Dave Chrisman, Monster Cleaning, Inc., and Anne Sabatino Hardy, Executive Director, Horse Country Tours.

LRC Staff: Tom Hewlett, Bryce Amburgey, Jasmine Williams, Melissa McQueen, and Lisa W. Moore.

Approval of Minutes from August 12, 2021, Meeting

Representative Koch motioned to approve the minutes from the August 12, 2021, meeting and Representative Timoney seconded the motion. Motion was approved by voice vote.

Massage Therapy Licensing Issues

Representative Koch asked for feedback on the massage therapy licensing legislation to improve it. The equine portion of the bill was removed, and color photos

being required was added in the latest version. He also said the Federal Bureau of Investigations (FBI) has requested a correction to the language requesting a criminal background check proposed by the Massage Therapy Association. His hope is to get the FBI's approval on the new language prior to the next session of the General Assembly.

Ms. Heather Wagers, Executive Director, Office of the Attorney General, said Public Law 92-544 authorizes the FBI to exchange criminal history record information (CHRI) with officials of state and local government agencies for licensing and employment purposes. This can only be authorized by a state statute which has been approved by the Attorney General of the United States. The FBI, with the assistance of the United States Department of Justice, has determined the parameters of Public Law 92-544 with respect to obtaining criminal history record information. The criteria are as follows: the statute must exist as a result of a legislative enactment; it must require the fingerprinting of applicants who are to be subjected to a national criminal history background check; it must, expressly ("submit to the FBI"), authorize the use of FBI records for the screening of applicants; it must identify the specific categories of licensees/employees falling within its purview; it must not be against public policy; and it may not authorize receipt of the CHRI by a private entity. Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and thereafter forwarded to the FBI for a "national" criminal history check.

Representative Koch noted the FBI needs to be included on the language that will ensure sexual predators are not being licensed to give massages to the public. He also said a second issue, that will be a separate bill, is to crack down on the bad actors in the massage therapy industry.

Audiologists and Specialists in Hearing Instruments

Representative Thomas testified in support of the audiologists. Adam Haley, Executive Director, Kentucky Academy of Audiology (KAA) said there is a documented shortage of primary care health professionals in Kentucky. According to the Health Resources and Services Administration, Kentucky has 176 total primary care Health Professional Shortage Areas (HPSA). Kentucky's population living in a primary care HPSA equals 1,166,737, which represents 26 percent of the overall population of Kentucky. There are 200 licensed audiologists in the Commonwealth of Kentucky who could help. Of the more than 36 million Americans who experience hearing loss, 30 percent are 65-74 years old and 47 percent are 75 years old and older. Kentucky has 916,000 residents with hearing loss, which represents 20.5 percent of the state population. Untreated hearing loss results in a greater occurrence of other physical and mental conditions in elderly patients, substantially reducing the quality of life for older adults and increasing Medicare spending. Treated hearing loss enhances the quality of life and reduces health care costs. Also, every 18 seconds, an older adult is treated in an emergency room for a fall. The average cost for a fall injury is \$30,000 and the direct medical cost for falls is \$50 billion annually. Among older adults (those 65 or older), falls are the leading cause of

injury death. They are also the most common cause of nonfatal injuries and hospital admissions for trauma. Elderly falls are preventable as are their associated financial and societal costs. Audiologists reliably diagnose and treat the vestibular disorders and help prevent older adult falls.

The KAA and its members are dedicated to delivering evidence-based diagnostic and treatment services, including hearing aid dispensing and fitting services that ensure optimal patient outcomes. Unfortunately, archaic regulations impose significant barriers for audiologists seeking to practice in Kentucky. These regulations have not kept up with evolving standards of practice. Kentucky is only one of six states that requires licensed audiologists to hold two separate licenses for duplicative hearing loss treatment and habilitative services. KAA recognizes the importance of licensure for professionals involved in fitting and dispensing hearing aids as a means of consumer protection. However, requiring audiologists to hold two licenses for the same services offers no additional protection to the consumer. Therefore, the appropriate licensure requirements for the practice of audiology should be universally and singularly contained under one licensure statute for Audiology.

Dr. Casey Rutledge-Roof, Immediate Past President (KAA), and Professor, University of Louisville, said under Kentucky statutes, audiologists who graduated after 2007 are required to hold a clinical doctorate (a Doctorate of Audiology (Au.D.) degree) for licensure. Audiologists who graduated in the year 2007 or prior are required to hold a minimum of a Master's degree in Audiology to practice. Today, an Au.D. degree is required for new graduates to enter clinical practice in every U.S. state and territory. Every one of the 70 university audiology training programs nationwide, including the top-ranked program at the University of Louisville, has eliminated master's level degrees in audiology altogether. Additionally, at 30 hours per two-year renewal period, Kentucky audiologists have some of the extensive continuing education requirements in the country.

In late 2017, President Trump signed the FDA Reauthorization (FDARA) into law. The bill contained several amendments including the Over-the-Counter Hearing Aid Act. This legislation was designed to allow adults with perceived mild-to-moderate hearing loss to purchase a new class of hearing aids without being seen by a professional. In 2016, the U.S. Food and Drug Administration (FDA) also announced that it had voluntarily stopped enforcing the medical clearance requirement that called for a "physician waiver" or a medical evaluation prior to obtaining a hearing aid. It is reasonable to anticipate a demand from consumers who need comprehensive hearing health care services, including assistance with comprehensive audiologic testing, hearing aid evaluations, fittings, and counseling services.

The KAA urges the Kentucky General Assembly to eliminate unnecessary dual licensure requirements and make it easier for consumers to access the hearing health services they need by removing the anti-competitive regulatory framework, as well as

ensuring that provider disciplinary issues are brought to the most appropriate venues. By addressing these unnecessary barriers to practice, it will help address the shortage of providers in Kentucky's HPSA's and bring much-needed updates to Kentucky's licensure laws.

Greg Brotzge, Government Affairs Consultant, Hearing Aid Association of Kentucky (HAAK), said the HAAK was formed in 1967, and is a 501C6 organization. Its mission is to promote and uphold the welfare of the hearing impaired, establish communication between hearing healthcare professionals, promote best practices, and address matters affecting Hearing Aid Dispensers within the Commonwealth of Kentucky.

Steve Clark, Past Chair, Licensing Board for Specialists in Hearing Instruments and Current Board member (HAAK), said KRS 334 was created in 1972 when there was a need across the country to enact state laws that governed the sale and fitting of hearing aids. The FDA created a set of guidelines and rules, but they did not offer enough protection to the consumer. KRS 334 was written by a group of consumers, hearing instrument specialists, audiologists, lawyers, and hearing industry representatives. The objective of the authors of the Kentucky law was to have one of the strongest consumer protection laws available for the hearing impaired. Anyone in Kentucky is required to be licensed under KRS 334 to sell a hearing instrument.

The need for more hearing aid specialists is significant, considering the number of baby boomers entering the market. It should not matter whether they are audiologists or hearing instrument dispensers as long as training and education are stressed and the consumer is protected. The HAAK is eager to work with KAA to come up with a resolution to satisfy both sides. It believes the law has worked well with few consumer complaints, and the goal of the association is to maintain a strong law that protects the consumer.

Mr. Brotzge said in addition to maintaining strong consumer protection laws, it is vital for dispensers to continue to practice as independent professionals. Dispensers provide needed access points to care and increase consumer choice. They currently dispense 50 percent of hearing aids to the general public. Audiologists are required to take the dispensing exam and abide by the consumer protection provisions under KRS 334. Legislation the past two sessions would delete these requirements and insert the consumer protection provisions into the audiology statute, KRS 334A. HAAK believes the most cost-effective option is to enforce the consumer protections laws under the dispensing board. Chairman Koenig has suggested combining the two Boards, and HAAK is receptive to this option, but noted the Audiology Board is already combined with the Speech-Language Pathology Board. Mr. Brotzge said he feels the two sides are close to an agreement.

Responding to a question from Senator Thomas, Mr. Brotzge said dual licensure is not the main concern of the HAAK, but enforcing consumer protection laws is of upmost

importance. Mr. Clark said the reason for dual licensure ensures the audiologists are 100 percent qualified to fit hearing aids. Anyone in sales needs to be trained in following these laws when dealing with the general public. Senator Thomas said Kentucky has strong consumer laws in place, and Representative Thomas noted consumer protection laws were written in the 1970's. The most appropriate venue should a patient have a concern would be the Board of Audiology.

Responding to Representative Santoro, Mr. Haley said the hearing aids are available to purchase on-line although that does not mean consumers should purchase through the internet. Again, increased sale in hearing aids are expected in near future so need to have these laws ironed out.

Chairman Koenig said strong consumer protection is important, but effective consumer protection laws is what the committee is striving for. He wants both KAA and HAAK to keep that in mind as negotiations continue and a compromise is worked on.

HVAC License Exemption for Duct Cleaning

Representative Jonathan Dixon discussed his bill 22RS BR 492 to obtain feedback to strengthen the bill. Currently, a person in Kentucky who owns a cleaning business must have a HVAC license to clean air ducts. Dave Chrisman, Monster Cleaning, Inc., Henderson, Kentucky, testified in support of the legislation. Mr. Chrisman said the demand for air duct cleaning is vast and surrounding states, such as Indiana, do not require HVAC licenses for simple cleaning of air ducts. The HVAC requirement is hindering his ability to hire people and run his cleaning business effectively.

Responding to Chairman Schickel, Representative Dixon said this legislation did not pass the House of Representatives last session. Mr. Chrisman explained the process of air duct cleaning and why a HVAC license should not be required to perform this valuable service to residential houses.

Responding to Representative Bratcher, Mr. Chrisman said residential home fires are a concern and the need for air duct cleaning is essential in preventing these fires. Reducing unneeded requirements for workers to clean them will lower the cost of the service and the more people that will be willing to pay for the service.

Responding to Chairman Koenig, Mr. Chrisman said a state inspector told him if he removed a cover from a furnace then he must have a HVAC license. He did not speak with Housing and Construction, or the HVAC Board.

Other Aspects of the Horse Industry

Anne Sabatino Hardy, Executive Director, Horse Country Tours, said Horse Country Inc. is an organization of horse farms, equine medical clinics and equine attractions dedicated to sharing the stories of Kentucky's horse country. The hope is to

create emotional experiences by sharing the story of the horses, the land, and the people with our guests; ultimately to develop fans of farms and clinics through tourism experiences. It was created in 2014 as a non-profit organization.

Horse Country, Inc. said 75 percent of its customers are from outside of Kentucky and their average stay in the Commonwealth is four days. This equates for tourism dollars for Kentucky hotels, restaurants, and other businesses. Customers are highly satisfied and leave Kentucky with a more favorable view than before coming. The horse industry has a \$6.5 billion impact on the Kentucky economy, and \$1.5 billion is the tourism impact. The Kentucky Tourism Industry has requested funds from the American Rescue Plan Act of 2021, equivalent to less than 3.5 percent of the total funds issued. She also said keeping sales tax parity, local control, and maintenance of Historical Horse Racing (HHR) rates are very important to the company. She extended an invitation to the committee to take a tour of a horse farm.

Responding to a question from Representative Miller, Ms. Hardy said NPS stands for the Net Promoter Score, which is the industry standard for customer satisfaction scores and recommendations. Horse Country Tours received a 91 NPS score. She also said maintaining current HHR rates helps to support the equine industry.

Responding to Representative Koch, Ms. Hardy said out-of-state investment in the horse industry has increased with tourism and tours. Over \$1 million was invested in the first three years of tours, especially with partnership opportunities. Microshares are growing in popularity which allow regular customers to own small shares of racehorses.

Senator Thayer said he has met with members of the Kentucky Tourism Industry and he will make a budget request to include \$75 million in funds to help Kentucky tourism recover funds lost during the pandemic. Ms. Hardy said the biggest difference between the horse industry and the bourbon industry is that it is easier to book as a one-stop-shop through the on-line website as 95 percent of tours are booked through the internet. She discussed the difference in the tours and this appeals to a wide variety of people and allows them easier access to see the horse industry up close.

Chairman Schickel invited all members to a luncheon provided by the Kentucky Distillers Association immediately following the meeting on October 21, 2021.

With no further business before the committee, the meeting adjourned at 12:00 p.m.