**DRAFT**

# BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY
## MEETING MINUTES
## AUGUST 11, 2010

**TIME AND PLACE:** The Board of Audiology Speech-Language Pathology (Board) meeting was called to order at 9:22 a.m. on Wednesday, August 11, 2010, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 1, Henrico, Virginia.

**PRESIDING OFFICER:** Susan G. Chadwick, Au.D.

**MEMBERS PRESENT:**
Kenneth Cox, Au.D. (listened by phone only)
Ikeita Cantú Hinojosa, JD, MSW, LBSW
Sally Jones-McNamara, MCS, CCC-SLP, CCP
Angela W. Moss, MA, CCC-SLP
Ronald Spencer, RN

**MEMBERS NOT PRESENT:** George T. Hashisaki, MD

**STAFF PRESENT:**
Leslie L. Knachel, Executive Director
Amy Marschean, Senior Assistant Attorney General
Elaine Yeatts, Senior Policy Analyst
Carol Stamey, Operations Manager
Asia Williams, Administrative Assistant

**OTHERS PRESENT:**
Neal Kauder, VisualResearch, Inc.
Kim Langston, VisualResearch, Inc.
Scott D. Rankins, MS, CCC-SLP, Speech-Language-Hearing Association of Virginia (SHAV)
Lynda Lee Lunday, M.Ed, SLP
Frani Jamieson, MS, CCC-SLP
David Bailey, SHAV
Stacy Salvadovi, MS, CCC-SLP
Ann Cyptar, MS, CCC-SLP
Lynne Fleming, University of Virginia (UVA)
Jaime Smiley, Medical Facilities of America (MFA)
Diane Rodil, MFA
Renee Bricker, UVA
George Phillips, Riverside Health
Kristin Waltman, Carolina Speech Pathology, LLC
Michael Jurgensen, Medical Society of Virginia
Susan Ward, Virginia Hospital and Healthcare Association (VHHA)
Karin Addison, Virginia Society of Otolaryngology (VSO) – Head and Neck Surgery
Matthew Stanley, VSO – Head and Neck Surgery
Catherine Reynolds, MA, CCC-SLP
Bill Harp, MD, Virginia Board of Medicine

**QUORUM:**

With five members of the board present, a quorum was established.

**ORDERING OF AGENDA:**

Dr. Chadwick requested that the order of the agenda be revised to discuss the Sanction Reference Points Manual at the beginning and added the inclusion of comments from the Chair. Dr. Spencer moved to reorder the agenda with the addition of comment from the Chair. The motion was seconded and carried.

**DISCUSSION ITEM:**

**Approval of Sanctioning Reference Points Manual**
Neal Kauder, VisualResearch, Inc., presented the Sanction Reference Points Manual for adoption and requested a date for board member training. Ms. Moss moved to adopt the Sanctioning Reference Points Manual as presented at the meeting. Ms. Knachel recommended that the training session be scheduled on the date of the next Board meeting. The motion was seconded and carried.

**CHAIR COMMENTS:**

Dr. Chadwick presented comments from the Chair regarding Guidance Document 30-7, Fiberoptic Endoscopic Evaluation of Swallowing, commonly referred to as FEES. She provided guidelines for presenting public comment, the history of the endoscopic procedure issue before the Board and the potential actions that the Board may take.

**PUBLIC COMMENT:**

Scott D. Rankins, MS, CCC-SLP, President, SHAV, submitted written comment and introduced Lynda Lee Lunday and Frani Jamieson to address the Board regarding the FEES issue. The written comment of Mr. Rankin is incorporated into the minutes as Attachment 1.

Lynda Lee Lunday, M.Ed, SLP, apprised the Board that she is employed by an acute care hospital and had been performing FEES for approximately eleven (11) years. She provided a brief history of the evolvement of FEES and provided an example situation in which a patient benefitted from a FEES procedure because the patient could not travel. Ms. Lunday stated that the FEES procedure serves as a vital tool to analyze swallowing disorders in order to maintain patient safety. She further stated that Guidance Document 30-7 limited her ability to evaluate patients and urged the Board to remove the physician restriction and grant SLPs the authority to perform independent FEES procedures.

Frani Jamiesen, MS, CCC-SLP, informed the Board of the FEES educational and mentoring processes. She stated that the FEES procedure allows for a better analysis of swallowing and secretions and provides a tool for identifying abnormalities. Ms. Jamiesen further informed the Board that physicians and nurses were on site during the performance of FEES at her location.

Lynne Fleming, Counsel, representing UVA, expressed that Guidance Document 30-7 was not an appropriate mechanism to limit the scope of practice of SLPs. She further expressed that the document was confusing and unclear to healthcare entities and appeared to restrict the statutory scope of practice. Ms. Fleming stated that the Board could pursue legislative changes through the Virginia Administrative Process Act. Ms. Fleming's written comment is incorporated into the minutes as Attachment 2.

Susan Ward, General Counsel, representing VHHA, urged the Board to rescind Guidance Document 30-7 to allow for further discussion of the SLP scope of practice. She stated that the guidance document represents a significant change to statute and a disruption to patient care. Ms. Ward noted that SLPs should be allowed to practice to their extent of education, training and skills. Ms. Ward's written comment is incorporated into the minutes as Attachment 3.

Catherine Reynolds, MA, CCC-SLP, employed by UVA Medical Center, provided a summary of her background, education, training, experience and continuing competency. She additionally stated that as part of the training and education of SLPs in her facility, twenty-five (25) patients had to be scoped under the direct supervision of an expert. Ms. Reynolds reported that physicians, nurses and respiratory therapists were located within the facility. She further expressed that the guidance document limited the SLP scope of practice in diagnosing types of swallowing disorders and speech function.

Renee Bricker, MS, CCC-SLP, employed by UVA, provided written comment and also described the sterilization process of the endoscopic equipment. Ms. Bricker's written comment is incorporated into the minutes as Attachment 4.

Jamie Smiley and Diana Rodil, employed by MFA, presented comment regarding the need for the allowance of the FEES procedures in long-term care facilities. They stated that the guidance document limits the practice of SLP and puts patients at risk by not being able to adequately diagnose swallowing disorders. Many patients in long-term care facilities cannot be easily transported to a hospital environment to have a FEES procedure done. Ms. Smiley and Ms. Rodil further informed the Board that nurses are staffed and are aware of any performance of a FEES procedure.

**DISCUSSION ITEM:**

**Review of Issues Related to Endoscopic Procedures Referenced in Guidance Document 30-7**

In response to public comment and discussion, Ms. Cantú Hinojosa moved to revise Guidance Document 30-7 as follows: It is the opinion of the Board of Audiology and Speech-Language Pathology that a SLP who is specially trained may perform FEES

pursuant to a physician's order and under the general supervision of a physician provided there are protocols in place for emergency backup. A SLP is not authorized to possess and administer prescription drugs except as provided in §54.1-3408.B. The motion was seconded. During the discussion phase, there was a request from attendees for clarification of "emergency backup." Based on the additional discussion and comments from attendees, Ms. Cantú Hinojosa amended her motion as follows: It is the opinion of the Board of Audiology and Speech-Language Pathology that a SLP who is specially trained may perform FEES pursuant to a physician's order and under the general supervision of a physician provided there are protocols in place for emergency response. A SLP is not authorized to possess and administer prescription drugs except as provided in §54.1-3408.B. The amended motion was seconded and carried.

**APPROVAL OF MINUTES:** Ms. McNamara moved to approve the minutes of the June 3, 2010, meeting. The motion was seconded and carried.

**NEW BUSINESS:** No new business was presented.

**ADJOURNMENT:** With the conclusion of board business, Dr. Chadwick adjourned the meeting at 11:54 a.m.

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| Susan G. Chadwick Au.D.<br>Chair | Leslie L. Knachel, M.P.H<br>Executive Director |
| Date | Date |

Attachment 1

SHAV

SPEECH-LANGUAGE-HEARING ASSOCIATION OF VIRGINIA

August 11, 2010

Leslie Knachel, Executive Director
Board Of Audiology and Speech Language Pathology
Department of Health Professions Perimeter Center
9960 Mayland Drive, 2nd Floor, Suite 201, Room 1
Henrico, Virginia 23233-1463

Dear Ms. Knachel and Members of the Board:

As the President of the Speech-Language-Hearing Association of Virginia (SHAV), I represent SHAV members who have performed FEES throughout the Commonwealth of Virginia and would like to express our concern with the guidance language restricting trained FEES professionals of their practice. This is in reference to the Fiberoptic Endoscopic Evaluation of Swallowing (FEES) issue Guidance Document 30-7 voted on by the Board on June 3, 2010. The Guidance Document states, "speech-language pathologist (SLP) cannot perform FEES unless properly trained and in the presence of a physician."

Members of SHAV who have been properly trained in FEES procedures follow strict guidelines and protocols in order to perform FEES and adhere to SHAV's Code of Ethics. The new guideline requiring the presence of a physician during FEES may compromise or delay patient care regarding swallowing disorders.

SHAV respectfully requests the Board to consider rescinding the current Guidance Document 30-7. We appreciate that the Board is willing to have this hearing in order for FEES-trained SLPs to inform the Board.

Scott D. Rankins, M.S., CCC-SLP
President of Speech-Language-Hearing Association of Virginia

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www.shav.org · shavoffice@shav.org

Attachment 2

# COMMENT ON JUNE 3, 2010 GUIDANCE DOCUMENT OF BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

**Submitted by:** **Lynne Fleming**
**Associate General Counsel**
**University of Virginia**
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**University of Virginia**
**Charlottesville, Virginia 22908**

For the reasons set out below, the Virginia Board of Audiology and Speech-Language Pathology should reconsider the Guidance Document "Policy on Fiberoptic Endoscopic Evaluation of Swallowing (FEES)" which it approved at its June 3, 2010 meeting. Should the Board wish to develop an enforceable rule affecting the scope of practice of speech-language pathologists currently established in Virginia law, it can pursue legislative change or the rulemaking provisions in Virginia's Administrative Process Act.

## The Guidance Document attempts to restrict the statutorily established scope of practice of speech-language pathologists:

Virginia Code § 54.1-2600 defines the scope of practice of speech-language pathology and speech-language disorders as follows:

***"Practice of speech-language pathology"*** means the practice of facilitating development and maintenance of human communication through programs of screening, identifying, assessing and interpreting, diagnosing, habilitating and rehabilitating speech-language disorders, including but not limited to:

1. Providing alternative communication systems and instruction and training in the use thereof;

2. Providing aural habilitation, rehabilitation and counseling services to hearing-impaired individuals and their families;

3. Enhancing speech-language proficiency and communication effectiveness; and

4. Providing audiologic screening.

***"Speech-language disorders"*** means disorders in fluency, speech articulation, voice, receptive and expressive language (syntax, morphology, semantics, pragmatics), swallowing disorders, and cognitive communication functioning.

As is relevant to the Guidance Document, Virginia law recognizes the scope of practice of speech-language pathologists as specifically including the "screening, identifying, assessment and interpreting, diagnosing, habilitating and rehabilitation" disorders that include "swallowing disorders". The statement in the Guidance Document that speech-language pathologists can only perform certain swallowing assessments "in the presence of a physician" impermissibly restricts a scope of practice authorized by Virginia law.

Should the Board conclude that the statutory scope of practice should be changed, it must seek a legislative change. Alternatively, should the Board conclude that FEES does not involve the "screening, identifying, assessment and interpreting, diagnosing, habilitating and rehabilitation" of swallowing disorders, it could initiate the rulemaking process specified in Virginia's Administrative Process Act to develop a regulation further defining the meaning of the term "swallowing disorder".

**A Guidance Document cannot be used as a means to restrict scope of practice:**

Virginia's Administrative Process Act at Va. Code § 2.2-4001 defines a "guidance document" as follows:

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

In contrast, the statute defines a rule or regulation as:

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws

The portion of the Board's June 3, 2010 Guidance Document that merely restates current law, *"..a SLP is not authorized to possess or administer medications or to anesthetize a patient"*, is an appropriate recitation of current law and does not affect the existing rights or conduct of any person. However, to the extent the Guidance Document intends to state that only a physician can anesthetize a patient, it is incorrect. A Certified Registered Nurse Anesthetist (CRNA) also has authority under Virginia law to administer anesthesia, under an appropriate practice agreement, and the Guidance Document cannot affect the rights of a CRNA to perform that function. Further, to the extent the Guidance Document intends to state that a physician must be present for all FEES evaluations, it does affect the existing rights and conduct of licensed speech-language pathologists and does more than merely "interpret" a statute.

## The Board Already Has Authority to Monitor the Safety of Practice of its Licensees

The Board's regulations, at *18 VAC 30-20-280* define "Unprofessional Conduct" that may form the basis of disciplinary action. Included in the definition of "unprofessional conduct" are:

7. Failure to refer a client to an appropriate health care practitioner when there is evidence of an impairment for which assessment, evaluation, care or treatment might be necessary;

14. Misrepresentation of one's professional credentials;

The Board therefore has existing authority to initiate disciplinary action in situations in which a speech-language pathologist fails to appropriately refer a patient or misrepresents his/her credentials. Should the Board believe that specific speech-language pathologists are engaging in the "screening, identifying, assessment and interpreting, diagnosing, habilitating and rehabilitation" of swallowing disorders in a manner that endangers patients, it may initiate disciplinary actions under a claim of "unprofessional conduct".

## The Board Has Authority to Promulgate Regulations Specifying Required Education and Training

The Board is authorized under Va. Code § 54.1-2400 to promulgate regulations specifying qualifications for licensure which "are necessary to ensure competence and integrity to engage in the regulated professions". In its Regulations at *18 VAC 30-20-120,* the Board has specified its requirements for licensure of speech-language pathologists and it could initiate rulemaking at any time it wishes to amend these requirements to specify additional education and training requirements. Further, the Board also specifies in its Regulations at *18 VAC 30-20-300* its requirements for continuing education and continuing competency and it could initiate rulemaking at any time it wishes to amend these requirements.

Attachment 3

VIRGINIA HOSPITAL & HEALTHCARE ASSOCIATION

4200 INNSLAKE DRIVE, SUITE 203, GLEN ALLEN, VIRGINIA 23060-6772
P.O. BOX 31394, RICHMOND, VIRGINIA 23294-1394
(804) 965-1227 FAX (804) 965-0475

August 11, 2010

TO: Board of Audiology and Speech-Language Pathology

FROM: Susan C. Ward, General Counsel
Virginia Hospital & Healthcare Association

SUBJECT: Guidance Document 30-7 – Performance of FEES

The Virginia Hospital & Healthcare Association (VHHA), representing Virginia's hospitals and health systems, appreciates this opportunity to comment on Guidance Document 30-7, recently issued by the Board of Audiology and Speech-Language Pathology on the performance of fiberoptic endoscopic evaluation of swallowing (FEES).

We urge the Board to reconsider the policy stated in the guidance document for the following reasons:

- The policy represents a significant change in the practice of speech-language pathologists (SLPs) in Virginia hospitals and health systems. This change disrupts care provided in hospitals, where SLPs have performed FEES safely for some time. SLP performance of FEES appears to be consistent with the statutory definition of "practice of speech-language pathology," which authorizes "diagnosing ... speech-language disorders," defined to include "swallowing disorders." Additionally, the Drug Control Act permits administration of anesthesia in hospitals by appropriately trained SLPs "under the control and supervision of the prescriber" without the presence of the prescriber during the procedure. Any proposal to restrict this practice should be considered within the Administrative Process Act's procedures so that all stakeholders may present relevant information and comment on the proposal. We suggest that a legislative change may even be necessary to restrict this practice.

- In order to preserve access to health care, it is critical that health practitioners in hospitals and health systems are authorized to practice their professions to the extent of their training and skills. Health care reform is anticipated to add to already troubling shortages of some health professionals, so this principle will become increasingly important as reform is implemented. Limits on scope of practice should be imposed only to extent necessary to protect public safety. We urge the Board to consider any proposed limit on SLPs' scope of practice in the context of the Board of Health Professions' seven criteria for determining the appropriate level of practitioner regulation, which are:

1. Risk of harm is posed by the unregulated practice of the profession;
2. Specialized skills and training require assurance of competency;
3. Autonomous practice requires independent judgment and functioning;
4. The scope of practice is distinguishable from other regulated professions;
5. The cost to the public of restricting the supply of practitioners and cost to regulators are outweighed by the benefit to the public;
6. There are no alternatives to regulation that adequately protect the public; and
7. If regulations are required, the least burdensome level of regulation will be recommended.

**VHHA urges the Board to rescind Guidance Document 30-7 to permit further discussion of the need to limit the scope of practice of SLPs with respect to performance of FEES. We offer our assistance as any study proceeds.**

Attachment 4

August 11, 2010

VA Board of Audiology & Speech-Language Pathology
9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463

Re: 30-7 Policy on Endoscopic Assessment Procedures

FEES examinations are an essential tool to help SLPs facilitate swallow evaluations. At the University of VA I have developed a rigorous training program that involves over 1 year of course work, hands on experience, and observation with a final check off by myself and our attending otolaryngologist. This examination serves as an essential tool to help SLPs determine the severity of dysphagia and safety of PO diets, and helps to guide the course of therapy. The visualization of real anatomy has been useful in helping to consult otolaryngology in the many patients who would have otherwise not been referred. Without the use of this tool to help evaluate swallow function many of our patients would not be able to have an objective swallow evaluation and therefore could affect outcomes of rehab/therapy, length of stay in the hospital, and unnecessary feeding tubes.

ASHA's position statement in 2005 states that FEES examinations are within a SLPs scope of practice who have expertise in dysphagia and specialized training in flexible endoscopy. ASHA states that SLP's are "...qualified to use this procedure independently for the purpose of assessing swallow function and related functions of structures within the upper aerodigestive tract." And that FEES is "...not intended to replace the fiberoptic examination of swallowing and/or assess the integrity of the laryngeal and pharyngeal structures in order to render a medical dx."

Langmore and Aviv (2000, 2000) have each conducted studies with thousands of FEES examinations performed, showing there were no serious complications from SLPs performing FEES. We currently use no topical anesthesia and have had no complications in the 200+ examinations that have been completed since the start of our program in March 2009. The risk of a FEES examination is no more than the risk of inserting an NG

or dobhoff feeding tube. RNs pass feeding tubes with no visualization of the patient's anatomy. The RN and physician are both aware prior to the start of every FEES examination in case complications arise. Since RNs are able to handle complications of inserting NGTs they feel able to handle any complications that may result from the passage of a nasal endoscope. ASHA's position statement says that "Care should be taken to use this examination only in settings where medical personnel are available to ensure patient safety." Alerting qualified medical personnel prior to the start of a FEES examination ensures that if complications do arise that someone is present to help.

If we had to coordinate these examinations with our otolaryngologists, who already have busy patient caseloads, the waiting time for our patients would be significant. With the constant changing status of many of our inpatients and the need for frequent swallow evaluations, FEES allows us the flexibility to immediately visualize the patients swallow function and repeat the examination as necessary. Some of our examinations can be long; we let the patient go at their own pace, assess for fatigue, trial strategies, and exercises. A physician would not have the time to leave the OR or clinic to be present during a lengthy evaluation.

The cost of managing a patient with a feeding tube, which for many has been the primary treatment option for this condition, is reported to average over $31,000 per patient per year; the total annual cost to Medicare just for enteral feeding supplies for outpatients was more than $670,000,000 in 2003, nearly six percent of the total Medicare budget for that year. Including the monies spent in hospitals, the total cost of dysphagia to the health care system is well over $1,000,000,000 annually.

FEES examinations have been an essential part of my career and the loss of privileges to use FEES independently would be devastating for SLPs and for the proper care of our patients. In health care we try to provide cutting edge, evidence-based practices to ensure the best care for our patients. There is no reliable evidence that SLP's performing FEES independently puts our patients at any significant risk. I fear the risk of not performing FEES would be far more detrimental to our patients. I hope that the board reconsiders the

impact of this law and the negative impact it would have on thousands of patients in the state of Virginia.

Thank you for your consideration in rescinding this policy,

Renee Bricker MS, CCC-SLP University of Virginia Health System