Hearing Aid Dispensing as An Integral Part of Audiological Rehabilitation: A Legal Consideration And Professional Issue

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The Department of Audiology and Speech Sciences at Purdue University now offers direct hearing aid dispensing as part of its audiology clinic service. We do this out of recognition that it is a necessary component of audiology training.

The direct dispensing of hearing aids by audiologists has been a controversial subject and raises many issues, but there is one in particular which for us has loomed larger than all the others. Ironically enough, it was the last issue we had to face before proceeding with dispensing. I refer to the need for audiologists to register as hearing aid dealers rather than to dispense hearing aids under their own licensing law. This is the case in Indiana, where we have both a Hearing Aid Dealer Registration Act and an Audiology Licensure Law.

In a state such as Colorado, where audiologists are not licensed, but hearing aid dealers are, there seems no alternative but for audiologists who wish to dispense to register as hearing aid dealers, as deplorable as that situation seems to me. On the other hand, in the state of Utah, where there is audiology licensure and no Hearing Aid Dealer Registration Act, audiologists are able to dispense hearing aids under their own licensure act. It has just
come to my attention that in the state of Pennsylvania, where there is both a hearing aid dealer registration act and an audiology licensure act, the Attorney General has rendered an interpretation that audiologists may dispense hearing aids under their own licensure act. I find this to be very helpful.

The situation in New York state is a mixed bag. There the audiologist need not register as a hearing aid dealer, in order to include direct dispensing of hearing aids in his or her practice, but only if the hearing aid is sold under a not-for-profit model of dispensing. I have a feeling that this is not constitutional, but I'm not sure what difference that makes.

As far as I can determine, in most states, audiologists who dispense hearing aids must register as hearing aid dealers to do so. This comes about because, on the one hand, their own licensure statute fails to specifically mention the hearing aid as a component of audiological rehabilitation and the hearing aid registration, on the other hand, fails to specifically exclude the audiologist from its purview.

We spent about thirteen years evolving the philosophy and attitude which brought us to dispensing and about three years in direct effort to gain authority from Purdue University to undertake this activity. We now find ourselves in the unusual circumstance of possessing authority but considering electing to postpone implementation of the activity. One colleague described the situation as not wanting to throw out the baby with the wash but not knowing which was the baby and which was the wash. We know that we wanted to dispense and had worked hard for it, but we had grown convinced that to do so as registered hearing aid dealers might represent a disservice to ourselves, our students and the profession. For these reasons we elected to postpone implementation of our program for almost six months while we continued our efforts towards allowing us to conduct our dispensing activities under control of our licensure statute. That is how important the issue was to us.

Let me describe the Indiana hearing aid dealer registration statute. Essentially, it requires that HADs be at least 21 years old, not have been convicted of a crime of moral turpitude, not have any communicable disease specified by the Board of Health and that the applicant pass an examination that is, by law, "conducted in such a manner that college training not be required in order to pass the examination." The candidate need not even possess a high school education. That's a brief, but fair, summary of the law.

We eventually took the exam and describing it may help give you the flavor of the situation. It has an ear impression practicum, a written section, a medical section, and audiology section and a hearing aid trouble shooting section.

Hearing aid dealers reported that "audiologists have difficul-
ty passing the ear impression section. " One audiologist who had
failed this portion of the examination had been told by the examin-
ing hearing aid dealer that she had not done so poorly with the im-
pression, but that he thought she could use more practice. Another
audiologist who failed the ear impression portion initiated legal
steps to sue the governing state agency because he was prepared
to demonstrate that the ear impression he produced was perfect
for the ear in which it was fabricated. It had not occurred to the
examining hearing aid dealers to look at the ear when evaluating
the impression. This student received a special re-examination by
an audiologist and passed. The word was out that the dealers liked
impressions with "full" canals and we provided them with im-
pressions whose ear canals could be described as trans-cranial.

The written examination instructions indicated that there was
a multiple choice true and false section. The first three multi-
ple choice questions were actually fill in the blanks. I think one of
these asked for the names of "the three little bones" in the middle
ear. A helpful hint indicated that we could use either the
English or Latin names. The right answer (we think) to another
multiple choice question was that binaural hearing aids "give the
person more dBs." We had no problem with "dBs" because
earlier on they were defined as meaning "decibels." Another
multiple choice question asked if conversational speech was or-
dinary heard at 50, 60, or 80 dB. The proctor, who also happened
to have constructed the exam, was asked if he meant SPL or FFT.
He said that we should just put down whatever we wanted and
commented that the examination had been prepared eleven years
ago and he had not gotten around to adding SPL, FFT— or what
have you.

In the medical examination portion we were asked to com-
ment on an example audiogram and a person's status relative to
amplification needs. One of my colleagues felt constrained to
remark initially that the bone conduction thresholds on the
audiogram at 4000 and 8000 Hz were somewhat unusual. The ex-
aminer was taken back by the comment but suggested that the
candidate go right on.

One of my colleagues received her audiology practicum ex-
amination from a hearing aid dealer who, among other things,
questioned her at some length concerning central auditory
disorders. She had the scholarship to provide and extem-
poraneous treatise on the subject but I think the point eluded the
dealer.

The hearing aid trouble shooting practical portion was a
source of much animation on our part. I apparently discovered a
fault in one of their test hearing aids, which had gone unnoticed by
the hearing aid dealer examiners. That hearing aid was
withdrawn from the examination process. One of the faulty hear-
ing aids was a body aid, and it was obvious that the difficulty had
to be in the cord. A number of us, however, were unable to
evidence that difficulty in spite of rather vigorous manipulation
of the receiver cord. I believe we may have convinced them that the
cord really was good. We just aren't sure.

The entire examination process was quite hilarious—in a
grim sort of way. But you are now looking at a bona fide, certified,
registered hearing aid dealer. I do not want you to think that I am
not open minded about this. Some of my best friends are
registered hearing aid dealers. I see some of you in this room. The
question is, why make an issue of this need to register. Why not
leave well enough alone. Let me share our thinking and ex-
perience on the subject.

In the first place, in working towards the inclusion of direct
dispensers in our training program, we spent considerable time
discussing the subject with our graduate students. We were sur-
prised and in fact impressed, by their near unanimous expression
of concern over their need to register as hearing aid dealers &
they were going to go out and dispense hearing aids. In fact, it was
largely at their urging that we elected to postpone implementa-
on of our dispensing program.

We had worked hard to develop competence and a sense of
pride in them, and they felt that the need to be examined by
business persons who typically are uneducated and untrained
was, to say the least, demeaning and would in fact cast doubt
upon why they had to go through the extensive years of education
and training to reach that point. They suggested that although
there was a lot of training that preceded it, the hearing aid dealer
examination might come to be viewed as the key entry point for a
significant portion of their audiology practice. It was also felt that
hearing aids were a component of audiological rehabilitation and
that their activities with hearing aids should be controlled under
their audiology license. They also argued from a practical point of
view that only the professors, as leaders in the profession, would
be in a position to fight this battle because the practitioner whose
livelihood depended on a day to day sale of services and products
could not afford to undertake an effort of this sort.

Concern also originated from legal considerations. By
registering as hearing aid dealers we would be acceding to the
jurisdictional authority of a business group over our professional
prerogatives and responsibilities. We could then be required to
follow their rules of operation whether or not they are logical or in
conflict with our obligations to the university or to our licensure
act. Furthermore, if the hearing aid dealers mandated a continu-
ing education program, we might be in the ludicrous position of
having to take courses from copyrighted individuals. Finally, when
we register as hearing aid dealers we are potentially subjecting a
university program to monitoring of its professional and educa-
tional activities by what is essentially a business practices group.
These possibilities may seem remote but at least one state we hear rumblings of some of these circumstances coming to pass.

Dual and overlapping authority was an issue. The hearing aid dealer registration act prohibits a dealer from calling himself an audiologist. I am a registered hearing aid dealer and I am also an audiologist. Generally in law when two statutes overlap in authority the more rigorous one holds sway. We felt that it was proper for us to dispense hearing aids under the more rigorous standards of our license.

We were not, however, able to bring about a change in the legal requirement to register and our intense desire to proceed with dispensing caused us to go ahead with the examination. We did this under official protest and retain the legal right to work against the statute under which we now function.

It would be easy now to forget about the hearing aid dealer registration situation. My registration is good for life as long as I pay my dues and report any change in address. We do feel however, that the issue has long range policy implications for the profession as well as the public. For example, most rules and regulations about hearing aids, either in force or being considered, are predicated on the well known history of the traditional marketing of these instruments. The training, professional stature and ethical standards of the audiologist may well indeed require differential authority and responsibility under various rules if the best interest of the hearing impaired consumer is to be served.

We have been urged by students and colleagues to discuss these issues with others in the hope that we as a professional group can take steps which facilitate changing the situation in which audiologists find themselves unable to dispense hearing aids under their own audiological licensing and/or certification controls. To that end, for example, I have prepared a resolution for the forthcoming ASHA Legislative Council meeting. This resolution asks the association to recognize the issue and undertake activity designed to foster a change in the situation.

When we sought legal advice we were told that part of our difficulty was that we appeared to be a small minority who were concerned about the need to register. Perhaps developing awareness to the problem will help bring about a favorable solution.