

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

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*Academy of Rehabilitative Audiology
Summer meeting
Winter Park, Colorado
June 24, 1978*

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 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 found 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 knew 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 audiometry 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 examining hearing aid dealer that she had not done so poorly with the impression, 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 on 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 impressions whose ear canals could be described as trans-cranial.

The written examination instructions indicated that there was a multiple choice and true and false section. The first three multiple 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 written 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 ordinarily heard at 45, 65, or 85 dB. The proctor, who also happened to have constructed the exam, was asked if he meant SPL or HTL. 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, HTL—or what have you.

In the medical examination portion we were asked to comment 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 6000 and 8000 Hz were somewhat unusual. The examiner was taken back by the comment but suggested that the candidate go right on.

One of my colleagues received her audiology practicum examination 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 extemporaneous 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 hearing 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 experience on the subject.

In the first place, in working towards the inclusion of direct dispensing in our training program, we spent considerable time discussing the subject with our graduate students. We were surprised, and in fact impressed, by their near unanimous expression of concern over their need to register as hearing aid dealers if they were going to go out and dispense hearing aids. In fact, it was largely at their urging that we elected to postpone implementation 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, denigrating 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 continuing education program, we might be in the ludicrous position of having to take courses from untrained individuals. Finally, when we register as hearing aid dealers we are potentially subjecting a university program to monitoring of its professional and educational activities by what is essentially a business practices group.

These possibilities may seem remote but in 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.