

# ACADEMY OF DOCTORS OF AUDIOLOGY 2012 CONVENTION

## LEGAL AND ETHICAL ISSUES FOR AUDIOLOGISTS

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# DISCLOSURES

## Legal and Ethical Issues for Audiologists

**Robert Gippin, Esq.**

*Financial:* Academy of Doctors of Audiology: Legal fees, travel and lodging expenses received. Teaching, speaking, legal representation.

*Nonfinancial:* No relevant financial or nonfinancial relationships to disclose



ADA Convention 2012  
PHOENIX RISING



# I. Law and Ethics Structure

- A. Sources of Law: Constitutions, Statutes, Regulations, Ordinances, Court Decisions (Common Law)
- B. Parallel Jurisdictions: Federal, State, Local
- C. Codes of Ethics: AAA, ADA, ASHA

## II. Key Legal and Ethical Provisions

### A. Federal Law:

1. Hearing Aid Sales – Food & Drug Administration (FDA)
  - (a) “Used/Rebuilt”; Brochure; Medical condition advice; Waiver; False Statements
2. Center for Medicare and Medicaid Services (CMS)
  - (a) Prescription requirement; No opt-out; Accurate coding; False claims

## II. Key Legal and Ethical Provisions (Cont.)

(b) Anti-Kickback- Giving or Receiving, Referrals and Purchases; Offers of Free or Below-Market goods or services

(i) Exceptions: Discounts properly disclosed and absorbed; Group purchasing agents; Coinsurance/ deductible waivers of not general and not advertised; Harmless offers; Return on investment not related to volume; Proper leases; Referral services

## II. Key Legal and Ethical Provisions (cont.)

### 3. Hearing Aid Sales – Federal Trade Commission (FTC)

- (a) Advertising: Price comparisons; Bait advertising; Warranties and Guaranties; Endorsements (inc. by patients)
- (b) Cooling off period for sales outside office

### 4. Antitrust (Justice Department and FTC)

- (a) Price-fixing; market allocation; group boycotts
- (b) Information sharing

## II. Key Legal and Ethical Provisions (cont.)

5. Magnuson-Moss Warranty requirements: Co-Warrantors

6. Medical Records (HIPAA)

## II. Key Legal and Ethical Provisions (cont.)

### B. State Law

#### 1. Licensing – Requirements, Enforcement

(a) No early practice; Scope of practice

(b) No deception or disparagement; Unnecessary sales; Inducements; Incompetence

(c) Advertising as “Doctor” without reference to Audiology



# II. Key Legal and Ethical Provisions (cont.)

## 2. Hearing Aid Sales – Consumer protection (advertising, disclosures, rescission)

- (a) Consumer protection (advertising, disclosures, rescission, documentation)
- (b) Testing procedures

## 3. Medical Records

## II. Key Legal and Ethical Provisions (cont.)

### C. Local Ordinances

1. Facilities, zoning, advertising
2. May cover out-of-office sales

## II. Key Legal and Ethical Provisions (cont.)

### D. Codes of Ethics

1. Honesty and the appearance of honesty, especially as to patients and in dealings with manufacturers (conflict of interest)
2. Delegation to only qualified personnel
3. ASHA Code: No longer prohibits consultation or referrals with non-CCC-A audiologists

# III. Legal and Ethical Procedures

- A. Court proceedings
- B. Administrative action
- C. Criminal Prosecution
- D. Organizational hearings

# IV. Hypotheticals

## A. Patient Issues

(a) Waivers; Ambiguous need;  
Recommendations; Pricing

## B. Practice Issues

(a) Advertising; Referrals; Manufacturers;  
Antitrust

(b) Medicare and Free Hearing Tests

## V. Wrap-Up

# Question & Answer Period