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A Question of Ethics

Ethics at AudiologyNOW! 2006

The focus was on ethics as an energetic crowd of more than 200 Academy members attended back-to-back interactive NOW!Sessions regarding professional behaviors and standards in audiology practice. The Ethical Practices Committee (EPC) of the American Academy of Audiology organized these two interactive NOW!Sessions to educate the membership and take advantage of the opportunity to sample members' opinions on a wide variety of issues related to professional ethics. NOW!Session attendees responded to ethical practice questions through individual electronic response systems.

Audiology: Law and Professionalism

Bryan Liang, MD, PhD, JD, was the special guest speaker for the session titled "Ethical Issues Facing Audiology: Law and Professionalism." Liang, a professor at the California Western School of Law and the UC San Diego School of Medicine, enlightened the audience with an informative discourse highlighting ethical standards. As audiologists strive for autonomy and visibility as a doctoring profession, Liang stressed the importance of adhering to a Code of Ethics. Why should we care? Not only is it the right thing to do for our patients, ourselves and our profession…but we must not forget the potential criminal and civil penalties involved for failing to do so. Liang advised the audience to recall the laws of fraud and abuse: the Anti-kickback Statute, the False Claims Act, and Stark Self-Referral Prohibitions. The topic of HIPAA regulation was discussed as it pertains to our field and patient privacy. He also stressed that audiologists must be guided by Conflict of Interest (often referred to as "COI") rules in our business and professional endeavors. To illustrate these points, he provided several scenarios to educate the membership on "what is and is not" considered sound ethical practice. A few of these scenarios and the corresponding audience interactive response are provided below. (Just in case you missed the session or simply want to review the issues!)

For every hearing aid purchased, money is put into an account with the manufacturer for use by your office to purchase equipment, use for continuing education reimbursement and/or tuition reimbursement. Is this a violation of Rule 4c of the Academy's Code of Ethics?

A. No, the money is used in ways that benefits the patients. 22%
B. Though it may not be the best practice it is still OK. 12%
C. Not sure/don't know. 7%
D. This just has the appearance of conflict of interest. 23%
E. Yes, it is a clear conflict of interest. 36%

Liang counseled the audience that "E" is correct.

An audiologist and a physician share office space. The audiologist conducts the evaluations and hearing aid fittings while the physician agrees to base the monthly rent on the volume of tests and hearing aid sales. Is this an ethical arrangement?

Yes 7%
No 81%
It depends on the contract specifics. 12%

Liang agreed with the majority vote in this case. Money in any kind, including rent money and test/sales income, is considered a kickback and in this case could be considered a Stark Self-Referral issue as well.

Dr. Liang concluded by summarizing that audiologists must decide which ethics model they wish to adopt, a business model or a professional model. His examples were in the field of pharmacology (a professional model) and optometry (a business model). As he explained, both professions are well respected and professionals are capable of making a good living from either profession. However, each model operates under a different set of values, ethics focus and norms. Ultimately, ethics is defined by public perception and professional context. Liang stated that audiologist's behaviors over the next several years will likely define the ethics and public perception of our field.

What Were They Thinking?

A lively interactive NOW!session entitled "Ethical Practices Board: What Were They Thinking?" followed Liang's talk. Rather than use imaginary scenarios, the EPC utilized real issues,

Bryan Liang speaks at AudiologyNOW! 2006 during "Ethical Issues Facing Audiology: Law and Professionalism" session.

problems and activities that were considered by the committee during 2005. Again, using interactive voting, session attendees responded with their own opinions on how to handle the issues presented. A sampling of these issues follows. Here's what the membership (and the EPC) had to say:

Are there ethical implications in how audiologists use the title "doctor"?

Yes = 80% No = 20%

The EPC agreed with the majority on this issue.

Is it misleading for an audiologist <u>not</u> to inform patients in ads or business cards that he/she is an audiologist?

Yes = 92% No = 8%

The EPC agreed with the majority on this issue.

Is the lack of clarification regarding the use of the title "doctor" harmful to the profession?

Yes = 89% No = 11%

The EPC agreed with the majority on this issue.

Is failure to sign an audiogram a violation of the Code of Ethics?

Yes = 41% No = 59%

The EPC agreed with the majority on this issue. Although it is sound professional and business practice to sign the audiogram, it is not unethical if you choose not to do so.

Is it considered ethical for an audiologist with a hearing loss to accept a free hearing aid from a manufacturer?

Yes = 54% No = 46%

The EPC did NOT agree with the majority on this issue. Such practice could have the appearance of a conflict of interest.

Is it considered ethical to accept a free hearing aid for a family member?

Yes = 38% No = 62%

The EPC agreed with the majority on this issue. It is of interest to note that the audience in general believed it more ethical to accept the hearing aid for yourself as an audiologist than to accept it for someone else.

Is it considered ethical for a student of audiology to accept a free hearing aid from a manufacturer?

Yes = 40% No = 60%

The EPC agreed with the majority, again because of the potential conflict of interest.

Is it the responsibility of supervisors to teach their students what could be considered a conflict of interest?

Yes = 97% No = 3%

The EPC agreed with the majority.

A patient purchases his/her devices on the internet and presents to you for assistance in the fitting. Is it ethical for the audiologist to:

(1) elect not to participate in the management of this patient 5%
(2) elect to help the patient and charge for such participation 26%
(3) refer the patient back to the source of the purchase for additional help 10%
(4) all of the above 27%
(5) two of the above 32%

The EPC agreed with #4, but notes that as a profession it is our responsibility to provide guidance and/or assistance to the public we serve.

If the audiologist chooses not to participate in the care of a patient who purchases a hearing aid through the internet:

(1) The patient should be advised to return to the internet sales person/company. 13%
(2) The patient should be advised to seek appropriate professionals in subsequent ventures in amplification. 8%
(3) The patient should receive information regarding the role of audiological intercession into hearing problems. 4%
(4) All of the above 67%
(5) None of the above 8%

The EPC agreed with #4 above.

If the audiologist elects to participate in helping the patient who purchases an internet hearing aid:

(1) The audiologist may charge for tests, configuration of the instruments and any follow-up care.
(2) The audiologist may treat the patient in the same manner as if the patient originated from his/her office.

(3) Neither of the above
(4) Both of the above
The EPC agreed with #1 above. Although the devices were purchased through an internet company and the audiologist must enter that fact into the cost of the services provided.

Is it a conflict of interest for an audiologist to accept a sales incentive-based trip from his/her employing company (not directly from a manufacturer)?

Yes = 45% No = 55%

The EPC did NOT agree with the majority on this one. This situation has the potential for a conflict of interest because the audiologist has a personal gain from the sale of the most, and perhaps the most expensive, aids he/she can dispense.

Is it unethical for an audiologist to supervise a staff person in their office who was assigned by the ENT to be trained at a weekend workshop as an ototech when that audiologist does not believe the person to have the proper skills to perform the task?

Yes = 64% No = 36%

The EPC recognizes the awkward position this puts the audiologist in when asked to provide supervision. However, this situation is not really one of ethics but rather a matter of legal/personal concern. Physicians are exempt from state statutes and may perform, train and/or supervise staff. The physician is legally responsible for supervising his staff. If he/she asks you as the audiologist to become involved, YOU are also legally responsible for the staff person's actions. It is unfortunate, but your job security may be at stake if you refuse to supervise. It might be helpful to review your particular state's statute or rules and regulations as they pertain to assistants..

The Ethical Practice Committee (from left) Robert Margolis, Chair Jane Kukula, Patricia Gans, Georgine Ray, Laura Wilber, Chair-elect Gloria Garner, Michael Metz, Erin Miller and Stephen Gozenbach.

ETHICS UPDATE

Clarification of Hearing Aid Billing Issues

It has come to the attention of the Ethical Practices Committee (EPC) that a statement made at the AudiologyNOW! session titled " EPB Update: What Were They Thinking Last Year " has been over-generalized by some attendees. The EPC would like to clarify the issues that seem to be raising some concern.

When under contract with a third-party payer agreeing to reimbursement for the actual cost of a hearing instrument and for services such as hearing aid evaluation and dispensing fee, the audiologist must give the third-party payer all of the discounts on the hearing instrument. This includes back end adjustments, for example, monthly volume discounts. If the audiologist does not pass on the discounts when under a contract requiring billing of actual cost, it could constitute an act of fraud. Fraudulent billing is a violation of the Code of Ethics of the American Academy of Audiology and is also illegal. The passing of all discounts to the third-party payer applies when the contract requires billing for actual cost of the instruments.

Also mentioned in the session was unbundling of hearing aid prices, that is, to attach a specific monetary value to the professional service component of dispensing hearing aids and subtracting it from the cost of the instrument(s). Services associated with the hearing aid, for instance the hearing aid evaluation, assessment, fitting and follow-up, may be billed under separate CPT codes. Though the EPC finds this to be an ethical billing model, it is not considered the only ethical manner of billing.

The EPC welcomes questions regarding ethical practice in audiology. Inquiries can be sent to: Jane Kukula, Chair, Ethical Practices Committee, C/O Sarah Sebastian (ssebastian@audiology.org), American Academy of Audiology, 11730 Plaza America Drive, Suite 300, Reston, VA 20190.●