

**CONFIDENTIAL & PRIVILEGED
ATTORNEY CLIENT COMMUNICATION**

Memorandum

To: Ron Andro
From: Pamela J. Grimm
Date: September 2, 2003
Re: Audiologist's Scope of Practice in Pennsylvania

Per your request at our July 23, 2003 meeting, I have reviewed available Pennsylvania statutory authority regarding the scope of practice for individuals licensed to practice Audiology in the Commonwealth of Pennsylvania. More specifically, I have researched the question of whether licensed audiologists may be considered authorized by law to provide intraoperative monitoring services in Pennsylvania. I have reached a negative conclusion, on the basis of the following numbered factors, as well as a discussion with the legal counsel for the State Board of Medicine, which is also described below.

1. *Intraoperative monitoring is considered the practice of medicine under Pennsylvania law.* Intraoperative monitoring requires the collection of patient data, and interpretation of the data for the purposes of medical diagnosis and medical treatment. Based on past precedent, the Pennsylvania courts would consider this activity to fall within the realm of the practice of medicine. See *Flanagan v. Labe*, 547 Pa. 254 (Pa. Supreme Court 1997) (A medical diagnosis is commonly understood to be an identification of a disease based on its signs and symptoms). See also *Commonwealth v. Green*, 251 Pa.Super. 318, 323, 380 A.2d 798, 801 (1977) ("Medical diagnosis . . . entails a 'conclusion concerning a condition not visible but reflected circumstantially by the existence of other visible and known symptoms.' *Paxos v. Jarka Corp.*, 314 Pa. 148, 153-54, 171 A. 468, 471 (1934).").

2. Intraoperative monitoring is not included within the scope of the practice of audiology under Pennsylvania law. A review of the scope of audiology practice, as defined by the relevant regulation, reveals that an audiologist licensed to practice in Pennsylvania is restricted to "[t]he evaluation, counselling, habilitation and rehabilitation of individuals whose communication disorders center in whole or in part in the hearing function, including the prevention, identification, examination, diagnosis and treatment of conditions of the human auditory system, and including the examination for, and adapting and fitting of amplification or assistive devices." 45 Pa. Code § 45.2.

3. Intraoperative monitoring cannot be delegated by medical doctors to audiologists under Pennsylvania law. While the Pennsylvania Medical Practice Act, at 63 P.S. § 422.17(a), conditionally permits a medical doctor to delegate the performance of a medical service to a health care practitioner or technician, it permits delegation only if "[t]he delegation is not prohibited by statutes or regulations relating to other licensed health care practitioners." 63 Pa. § 422.17(a)(3). In Pennsylvania, delegation of medical practice to audiologists is expressly prohibited by statute. Audiologists are licensed in Pennsylvania (and their scope of practice is determined) under the Speech-Language and Hearing Licensure Act. Under the Speech-Language Act, the State Board of Speech-Language and Hearing is required to adopt a code of ethics providing "that, whereas speech-language pathologists, audiologists and teachers of the hearing impaired provide nonmedical and nonsurgical services, medical diagnosis and medical treatment by these persons are specifically to be considered unethical and illegal." 63 P.S. § 1705(2).

Research beyond Pennsylvania law indicated that the scope of audiology has been broadened in other states. Specifically, the states of Maryland and Oklahoma have adopted policies which would permit licensed audiologists to perform intraoperative services. This expansion of audiology practice in some states would explain the appearance of certification programs for audiologists who receive training in intraoperative monitoring, and may be contributing to confusion in the audiology field concerning the legal scope of practice in a particular state.

In light of this expansion in some states, I contacted the attorney for the State Board of Medicine, Gerald Smith, to determine whether there have been any policies or other interpretations issued in Pennsylvania to date which anticipate expanding the scope of Pennsylvania audiology practice, and specifically which would expand it to authorize intraoperative monitoring services. Mr. Smith confirmed that no such policies exist, and also advised that the

legislative history suggests that Pennsylvania audiologists have specifically rejected the possibility of being "directed" by physicians. In that regard, Mr. Smith advises that there have been several proposals to amend the Speech-Language and Hearing Licensure Act by removing the prohibition contained in Section 1705(2); however, none of these proposals have been adopted by the Board. His conclusion that Pennsylvania audiologists are not authorized to perform intraoperative monitoring is reflected in the discussion above.

Please advise me if you require additional research or review of this issue.