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Making Sound Decisions: Ethics in Audiology



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Presented by: Brandon Pauley, Esq.



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Introduction





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Disclaimer

This presentation is intended for general informational purposes only. It is not intended and should not be used for specific legal advice in a specific factual situation. Questions about the legal issues discussed in these materials should be presented to knowledgeable legal counsel with respect to any given factual situation before deciding on a specific course of action.

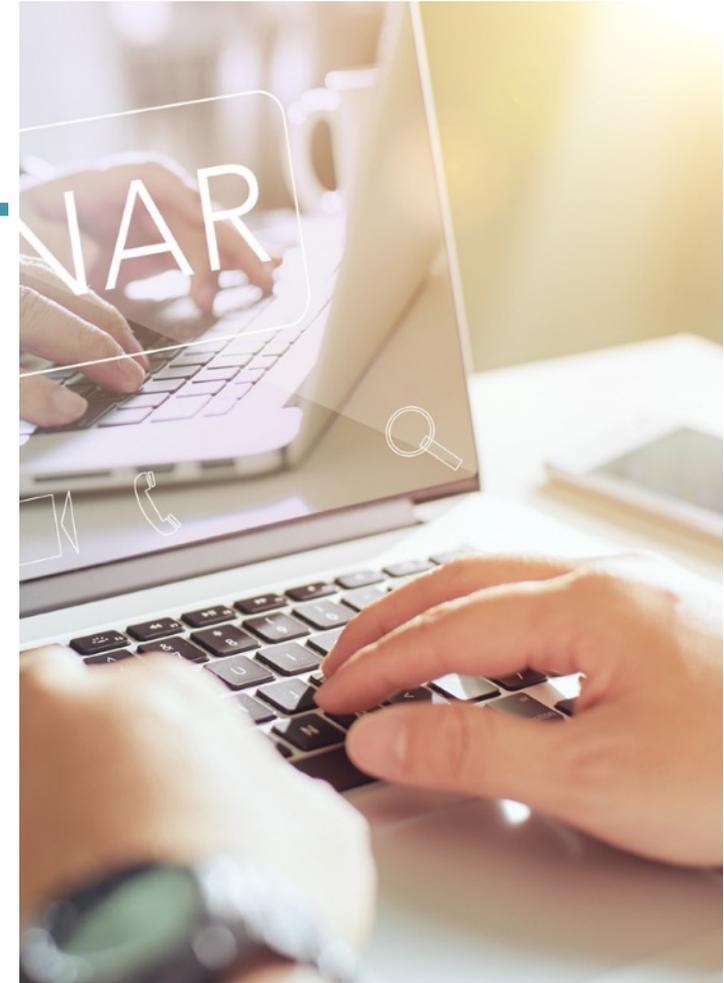
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AGENDA

- Introduction and Objectives
- Law and Ethics
 - Ethics, defined.
- Enforcement
- Ethical Challenges for Audiologists
 - Conflicts of Interest
 - Misrepresentation
 - Billing and Coding





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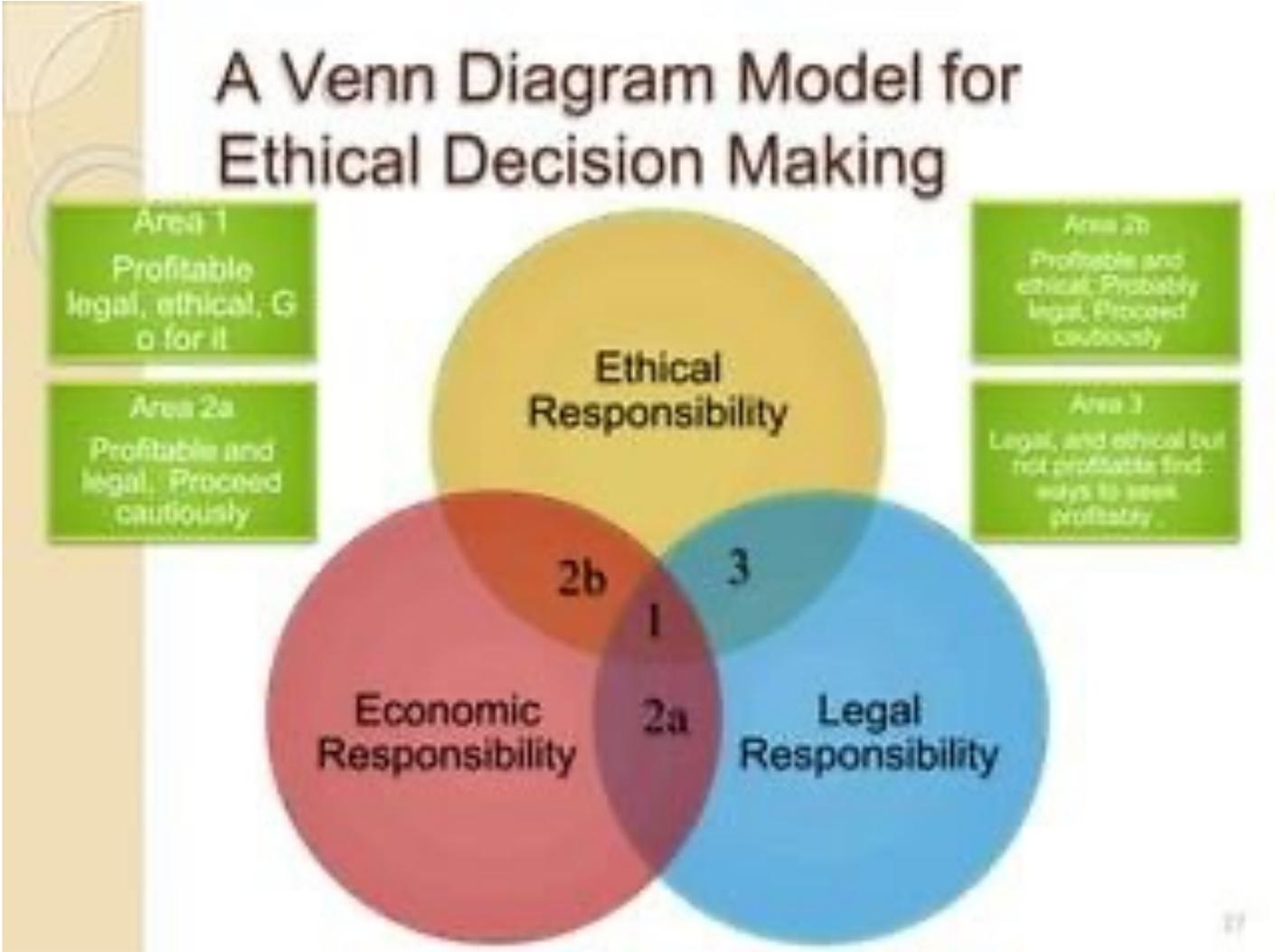
OVERVIEW

- Audiology (especially independent practitioners) merges a complex regulatory landscape with the practical issues of entrepreneurship/ownership.
- Constants:
 1. Quagmire of rules and regulations.
 2. Employment relationships.
 3. Ever changing business strategies.
- 1. Intersection of:
 1. What is right?
 2. What is easy?
 1. What is profitable?
 2. What is best for the patient?



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Law and Ethics Overview





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Ethics: Defined

In a medical setting, ethics refers to a system of moral principles and values that guide healthcare professionals in their actions and decisions, focusing on patient well-being, dignity, and rights, and resolving dilemmas through principles like beneficence (doing good), non-maleficence (doing no harm), autonomy (respecting patient decisions), and justice (fairness).



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National Ethical Standards

- The the Academy of Doctors of Audiology (ADA), American Academy of Audiology (AAA), and the American Speech-Language-Hearing Association (ASHA) have all published Codes of Ethics.



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ADA Principles



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State Ethical Standards

- Some states also incorporate the national ethical standards and guidelines into their state-specific codes of conduct.
 - For example, the Illinois Professional Conduct Standards reference the Code of Ethics of the American Speech-Language-Hearing Association (2016).
- Audiologists should consult their state's code of ethics and conduct to understand their state's view on conflicts of interest, both real and perceived.
- The controversy and concern that the manufacturer loan agreements have caused indicates that a perceived conflict of interest already exists, so audiologists entering into these agreements should evaluate their terms carefully in the context of their own state's law.



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State Law – Kentucky

- 201 KAR 17:041: Professional Code of Ethics
 - Responsibility to Patients
 - Confidentiality
 - Professional Competency and Integrity
 - Responsibility to Student or Supervisee
 - Financial Arrangements
 - Advertising



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State Law

- Licensing –Requirements, Enforcement
 - Scope of practice
 - No deception or disparagement; Unnecessary sales; Inducements; Incompetence
 - Advertising regulations
- How do law and ethics intersect?
 - Gray at times...
 - ASHA/AAA/ADA Codes of Ethics adopted at state levels.



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Why Ethics Matters

- **Guides Practice:** Provides a moral compass for healthcare professionals to navigate complex situations and make ethical decisions.
- **Ensures Patient Welfare:** Helps prioritize the patient's well-being, dignity, and rights within the healthcare system.
- **Promotes Trust:** Fosters trust between patients and practitioners and confidence in the overall healthcare system.
- **Addresses Dilemmas:** Offers a framework for resolving ethical issues that arise in practice, such as those involving confidentiality, informed consent, or treatment options.



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The Basics: Enforcement

- Association Codes of Ethics
 - Generally, only applies to members (Internal Enforcement)
 - Complaints can be filed by other professionals, patients, or the public
 - Ethics Committee reviews complaints
 - Potential outcomes:
 - Informal resolution
 - Letter of warning or reprimand
 - Censure (public disciplinary action)
 - Suspension or termination of membership



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The Basics: Enforcement



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The Basics: Enforcement

- Employers
 - Hospitals, clinics, and schools/universities often have their own codes of conduct and HR procedures
 - Violations (e.g., patient privacy breaches, falsifying results) can lead to:
 - Termination
 - Mandatory training
 - Reporting to state boards or certifying bodies



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The Basics: Enforcement

- Legal Implications
 - Some ethical violations are also legal violations, such as:
 - Fraud (e.g., billing for services not provided)
 - HIPAA violations
 - Practicing without a valid license

These can result in:

- Criminal charges
- Civil lawsuits
- Loss of license and credentials



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Case Studies – Conflict of Interest

1. Conflict of Interest - A situation in which the concerns or aims of two different parties are incompatible.

Example:

An audiologist receives a commission from a specific hearing aid manufacturer and steers all patients toward that brand — even when it's not the best fit for their needs.



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Gifts

- Acceptance of gifts from any company that manufactures or supplies products that he or she professionally uses or recommends, may compromise, or give the appearance of compromising, the audiologist's ability to make ethical decisions, and should be avoided.
- Gifts represent a conflict of interest because of the real or apparent influence they may have on audiologists' clinical decisions.
- "Gifts" are defined as anything of value given to individuals by industry for personal use and/or personal profit.



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Compensation Models

- Base Salary Only
- Base Salary + Bonus
 - Variable (Tier Based)
- Commission Only
 - Variable (Tier Based)
- Commission + Bonus
- Base Salary + Commission
- Base Salary + Commission + Bonus



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Incentive Based Compensation

- Volume or Value?
- Financial incentives are commonly implemented by employers as a way of motivating employees to improve their performance and productivity in line with organizational goals.
- 2023 ASHA Report suggested up to 30% of the 450 private practice audiologists surveyed received some commission based compensation.



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Are commissions illegal?

-
- As with most arrangements, it depends...
 - AKS employee safe harbor is available at 42 C.F.R. § 1001.952(i)
 - ‘Bona fide employment relationship’
 - Australian Competition and Consumer Commission (ACCC) conducted an inquiry into concerns related to hearing healthcare incentives.
 - A 2017 report identified concerns of both consumers and clinicians regarding issues surrounding hearing device sales.
 - The report stated that the profession’s sales-driven environment was highly likely to encourage unethical conduct.



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Are commissions unethical?

-
- Again, it depends...
 - ADA Code of Ethics Principle II: Member's clinical judgment and practice must not be determined by economic interest in, commitment to or benefit from, professionally related commercial enterprises.
 - Volume based incentives: Presumption
 - The ACCC report stated that the profession's sales-driven environment was highly likely to encourage unethical conduct.



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Case Studies – Misrepresentation of Credentials or Services

1. Misrepresentation- Misrepresentation of services is a false statement, omission, or misleading claim made by a provider that induces a customer to enter into a contract or transaction. It can be intentional or unintentional.

Example:

An audiologist misrepresents the efficacy and/or necessity of specific services.



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Marketing Considerations

- State Attorneys General: Consumer Protection
- ADA Code of Ethics
 - Code of Ethics Principle IV states the following:
 - Members must not misrepresent their training or competence.
 - Members' public statements about services or products must not contain false, deceptive or misleading information.
 - Promotional activities used by members shall comply with applicable state and federal laws, rules and regulations.
- Interplay with ethics
 - Emerging science and marketing
 - Cognitive disorders (Diagnosing?)



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Case Studies – Fraud and Abuse

- 1. Fraud – Intentional deception or misrepresentation to obtain healthcare benefits or payments.**
- 2. Abuse – Practices that deviate from accepted medical standards or business ethics, even if not intentional.**

Example:

An audiologist bills for services not performed.



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Billing and Coding

- Upcoding
 - More complex code than performed
- Undercoding
 - Increased costs to patients; Skews data.
- Misrepresentation
 - Billing for procedures not performed.
- Improper Supervision
 - Scope of practice
 - Direct supervision?



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Billing and Coding

- Corruption
 - False Claims
 - Services not performed
 - Services performed outside of scope
 - Anti-Kickback
 - Payments or incentives given to healthcare providers to influence their decisions, such as referring patients or prescribing specific products and services.
 - United States, ex rel. Kimberly Cummings v. Phillip B. Klapper, P.S.C., Phillip B. Klapper, M.D., and Patricia Klapper, Civil Action No. 5:13CV-216-TBR (Employee of ENT office filed Qui Tam action regarding fraudulent billing for audiological and hearing aid related services - \$2.8M Settlement)



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Potpourri

- Social Media Posts
 - HIPAA Claims
 - Can the patient be identified?
 - Serial numbers
- Interpreters
 - Patient presents and cannot speak/understand English
 - Provide an interpreter
- Patient with specialized needs present
 - Pediatric patient
- Patient presents with desire for one specific, premium device
 - Duty to inform of alternative, less expensive options?



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Questions?



Brandon Pauley, Esq.
(614)-246-7510
btpauley@bmdllc.com