The contribution of speech pathology in legal and related matters involving people with aphasia

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Introduction

This presentation draws together the findings of a series of studies that have explored the issues around speech pathology assessment when questions may arise about legal and related decision making by people with aphasia. The purpose of this presentation is to consider what guidance may be derived from this research for clinicians working with people with aphasia.

Definitions

- Legal needs: the actions that can be taken in order to protect or obtain a legal right (Schetzer, McAlary & Bannamano, 2002)
- Legal competence: one’s capacity to make decisions regarding legal matters (Udell, Sullivan, & Schlanger, 1980)

Legal matters: issues involving civil, criminal and family law

The research has looked at the following issues:

- What situations might be faced by people with aphasia that may involve legal and related matters?
- When are speech pathologists likely to be involved, and in what roles?
- What resources assist speech pathologists to contribute to maximising the autonomy of people with aphasia in these situations?
- How do speech pathologists contribute to interdisciplinary management in relation to people with aphasia in these matters?

Methods

Previously published literature in this area has been based largely on expert opinion and presentation of descriptive case studies, primarily in relation to testamentary capacity and contracts. The present research has made use of the following methods:

- What situations might be faced by people with aphasia that may involve legal and related matters?
  - Retrospective qualitative analysis of the judgement in relation to a legal case of testamentary capacity for a person with aphasia (Ferguson et al., 2003).
  - Retrospective qualitative analysis of previously collected in-depth interviews with 50 people with aphasia and their 48 family members, and 70 speech pathologists about their experiences following stroke (Barr, 2010, Honours thesis).

- How do speech pathologists contribute to interdisciplinary management in these matters?
  - Qualitative analysis of detailed field note observations during a consecutive series of 6 interdisciplinary case conferences involving 10-14 team members in a Stroke Unit from medical, nursing, physiotherapy, occupational therapy, social work, and speech pathology professions (Ferguson, Worrall & Sherratt, 2009).

Key findings that have clinical implications

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<tr>
<th>Potential legal/related situations that may face people with aphasia</th>
<th>Examples of reported potential roles of speech pathologists</th>
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<tr>
<td>Financial and consumer issues</td>
<td>• Advise care team, family members in relation to calculation and written comprehension</td>
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| Legal issues (e.g. making or changing will) | • Advise solicitor, family re best ways to assist comprehension  
  • Expert witness where testamentary capacity is later challenged |
| Health/ medical issues | • Educate staff, mediate interactions with medical and nursing staff |
| Substitute decision making | • Advise family, medical team, and guardianship board regarding results of assessment.  
  • Advocate for rights of PWA |

Conclusions and recommendations

- Findings suggest that speech pathologists are more frequently and more pivotally involved in contributing to maximising the autonomy of people with aphasia faced with legal and related needs than has previously been apparent from scope of practice documents, guidelines for practice, and reference works.
- Speech pathologists report being able to apply their skills in comprehensive assessment of all language and related skills to provide expert consultation for members of the interdisciplinary health care team, legal professionals, family members and the person with aphasia. Speech pathologists with experience in these matters report that the individual demands of particular situations and the individual needs of the person involved precludes the development and use of a ‘one size fits all’ test for legal competence for people with aphasia. Individualised (“informal”) assessment is considered as best practice.
- Speech pathologists report and were observed to play an important role in advocating for the rights of people with aphasia in interdisciplinary discussions regarding the decision making capacity of people with aphasia.

Selected references


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