

The contribution of speech pathology in legal and related matters

involving people with aphasia

Alison Ferguson, University of Newcastle, Australia



THE UNIVERSITY OF
NEWCASTLE
AUSTRALIA

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

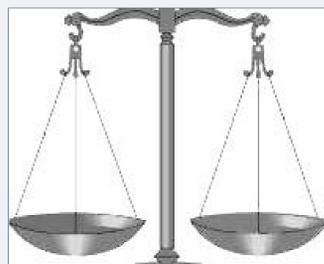
Legal competence: the actions that can be taken in order to protect or obtain a legal right (Schetzer, Mullins & Buonamano, 2002)

Legal needs: 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 the 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)

When are speech pathologists likely to be involved, and in what roles?

What resources assist speech pathologists?

- Qualitative analysis of in-depth telephone interviews with 9 speech pathologists about 20 critical incidents in which they recall being involved in relation to legal and related matters for people with aphasia (Ferguson, Worrall & Duffield, 2010).
- Online survey completed by 59 speech pathologists regarding their practices in relation to legal and related matters for people with aphasia (Bray, 2008 Honours thesis; Aldous, 2011, Honours thesis).

How do speech pathologists contribute to interdisciplinary management in these matters?

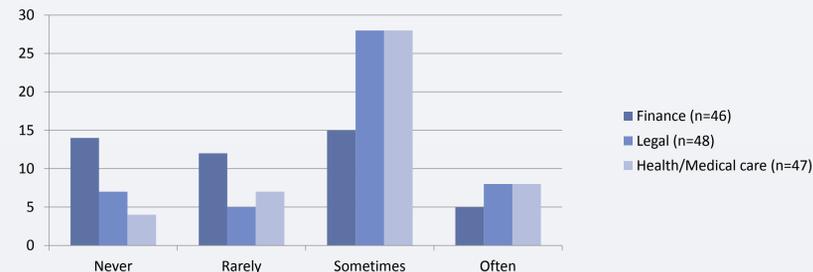
- Qualitative analysis of detailed field note observations during a consecutive series of 6 interdisciplinary case conferences involving 10-14 team members in a Stroke Unit from medical, nursing, physiotherapy, occupational therapy, social work, and speech pathology professions (Ferguson, Worrall & Sherratt,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

Key findings that have clinical implications

Potential legal/related situations that may face people with aphasia	Examples of reported potential roles of speech pathologists
Financial and consumer issues	•Advise care team, family members in relation to calculation and written comprehension
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.

From the concerns raised by people with aphasia and their family members in interviews about their needs following stroke, there would appear to be a wide range of potential concerns around autonomous decision making. The issues raised that related to legal needs were financial and consumer issues (e.g. pensions, banking), health issues (e.g. discharge, complaint mechanisms) and accommodation issues (e.g. nursing homes, home ownership). This range of matters was also reflected in the results from interviews with speech pathologists about the types of legal and related matters they have experienced in their practice with people with aphasia, namely financial and business decisions, legal decisions (i.e. power of attorney, will-making), accommodation and discharge planning, and consent for medical treatment. An important finding from the research to-date has been the range of roles taken by speech pathologists where the autonomous decision making of the person with aphasia is queried, including some well accepted roles (e.g. assessor, therapist, consultant, educator), some challenging roles (e.g. negotiator, mediator), and some that may be more controversial (e.g. facilitator, 'interpreter').

Assessment areas



The majority of speech pathologists surveyed and interviewed reported that they relied heavily on informal, individualised assessment in all such cases, making use of in-depth interviews and observations across contexts of concern, for example through home visits, shopping and community visits, and in interaction with different partners. They reported following the principle of repeated administration of tasks in order to establish reliability of judgements and consistency of responses.

Both the interview and survey findings indicate that this area is a highly interdisciplinary shared clinical reasoning process. In the interdisciplinary case conferences where the decision making of clients was being discussed, qualitative analysis revealed a high demand for conflict negotiation across the team and family, frequently mediated by speech pathologists.

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 people 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 harnessing their expertise in supported communication strategies and communicative partner education to meet the needs of legal professionals, and family members involved in such matters.
- 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

- Coumarelos, C., & Wei, Z. (2009). The legal needs of people with different types of chronic illness or disability. *Justice Issues, 11*, 1-24.
- Critchley, M. (1970). *Aphasiology* (pp.288-295). London: Edward Arnold.
- Enderby, P. (1994). The testamentary capacity of dysphasic patients. *Medico-Legal Journal, 62*(2), 70-80.
- Ferguson, A., Worrall, L., & Duffield, G. (2010). Legal issues and aphasia: Critical incidents for speech pathologists. *International Journal of Language & Communication Disorders, 45* (2), 244-258.
- Ferguson, A., Worrall, L., McPhee, J., Buskell, R., Armstrong, E., & Togher, L. (2003). Testamentary capacity and aphasia: A descriptive case report with implications for clinical practice. *Aphasiology, 17*(10), 965-980.
- Ferguson, A., Worrall, L., & Sherratt, S. (2009). The impact of communication disability on interdisciplinary discussion in rehabilitation case conferences. *Disability & Rehabilitation, 31*(22), 1795-1807.
- Udell, R., Sullivan, R. A., & Schlanger, P. H. (1980). Legal competency of aphasic patients: Role of speech-language pathologists. *Archives of Physical Medicine and Rehabilitation, 61*, 374-375.

Acknowledgements

The research on which this presentation is based was conducted by Alison Ferguson at University of Newcastle, Australia, and through a series of honours projects by Kerryn Aldous, Karen Barr, Rhiannon Bray, and Gemma Duffield conducted under the supervision of Alison Ferguson and Linda Worrall, University of Queensland. We acknowledge funding from the University of Newcastle's research support scheme. We also acknowledge funding from the National Health and Medical Research Council (Project Grant #401532), the contribution of participants and The University of Queensland Aphasia Registry, for the data collected by the Goals in Aphasia Project team (Bronwyn Davidson, Alison Ferguson, Deborah Hersh, Tami Howe, Sue Sherratt, and Linda Worrall).

Contact

Professor Alison Ferguson, University of Newcastle, Australia

Alison.Ferguson@newcastle.edu.au