

This is intended to be a short White Paper on the issues of "stolen" hearing aids, lawful/unlawful grounds for seizure as well as on certain elements of the unlawful practices of certain manufacturers.
(Also Available in PDF Format at
<http://www.help2hear.org/legal/legal.pdf>)****

Interestingly, here in the states, there were a couple of "Asian gang members" working at Phonak USA who were pilfering aids coming back in for destruction. They were selling them on EBay.

There were also so legitimate VA Aids in the system, not related to the above. Phonak had put the word to their affiliates and corporate owned stores to sieze not only the stolen Phonak aids, but any of the VA aids as well that may come in for repair from other than the VA direct.

NOTE: If anyone, audiologist or otherwise threatens you with seizure of your aids, tell them to put it in writing. If they won't, immediately call the local police and have them investigate. Chances are, the local audiologist won't put a damn thing in writing because they know their liability in the matter, nor will Phonak. GET THE POLICE involved – that is the best advice to sort it out and find the truth, which has been clearly twisted on a number of occasions now that I know of personally. Once the Police are called or the treat to do so, you will find the story from the person or store attempting to seize your aids often changes!

As a result of some of these issues, I contacted the VA and after many phone calls, came across the person to help – a Criminal Investigator in the VA – Fraud Division. Here is the context of our conversation. I am not going to publish his name, but if you would like such information to verify the validity of the fact that PHONAK HAS NO LAWFUL RIGHT TO SIEZE AIDS ISSUED BY THE VA, contact me directly. Here is the text of our exchange.

----- Original Message -----

Subject:RE: Fraud Referral

Date:Mon, cc Jun 2012 11:27:50 -0500

From:Xxxxxxxx, Xxxxxxxx (OIG) <Joseph.xxxxxx.va.gov>

To:<@>

Mr. Xxxxxxxx,

Sorry for the long delay in getting back to you. I wanted to make sure I got you the right answer.

According to my contact in prosthetics at the VA, hearing aids that are issued to veterans DO NOT remain the property of the VA.

In an email to her I asked, "I would really like to get a definitive answer as to the "ownership" of VA issued hearing aids once they are given to veterans. Do they become

the property of the veteran to keep, sell, give away or throw away as they wish, or do they remain the property of the VA?"

My contact responded with the following:

Hearing Aids would not be considered reusable medical equipment. They are manufactured for a specific patient as single use item. Equipment furnished to the veteran does not have to be returned. Although, the VA will accepted items if voluntarily donated to us.

Prosthetics VHA Handbook 1173.2, page 9

(a) Reusable medical equipment will be recovered, if offered, refurbished if necessary, and reissued whenever such actions are cost-effective. For the purposes of recovery, loan items will be depreciated at the rate of 20 percent per year from the date purchased. If it is not cost effective to recover a particular item, the offer will be politely declined and the veteran or family member will be advised to donate it to some nonprofit organization; e.g., a veterans service organization, the Red Cross, or the American Cancer Society.

I cannot comment on any licensing, consumer, or business law type issues, but it is clear a veteran is free to do whatever he or she chooses to do with their issued hearing aids.

I would continued to use caution when purchasing hearing aids in order to avoid purchasing stolen property. While there is no department within VA which would be able to assist you in researching aids by serial number, please feel free to contact me if you become suspicious of potential fraud.

Thanks again,

Xxx XXXXXXXX
Special Agent
VA Office of Inspector General
Criminal Investigations Division
P.O. Box 1454
Hines, IL 60141
xxx-202-xxxx office
xxxx-622-xxxx cell

(NOTE - SEE: http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=338)

From: XXXXXXXXXXXXXXXX
Sent: Monday, June xx, 2012 1:59 PM
To: XXXXXXXX, XXXXXXXX (OIG)
Cc: Help2hearAdmin
Subject: Re: Fraud Referral

Hi XXXXXXXX,

XXXXXXXX on this end. I wanted to touch base with you to see if you could help answer a question that many people in the market are confused about. This is not have to do with the new aids such as the ones that Mr. XXXXXXXX was selling, but aids that have legitimately been issued to a veteran and then later on that veteran trades them in or sells them himself in the regular commercial or secondary markets.

The specific question is, do aids issued by the VA to a veteran remain the property of the VA or is the veteran free to trade those in through a commercial outlet or otherwise sell them?

There seems to be a lot of confusion on this issue and I don't have a clue where I could find the answer to this question inside the VA, other than any help you might be able to give me. The real bottom line is that we who deal on the secondary markets clearly do not want to deal in any property that might remain the property of the US government/VA, even though they have been issued to a veteran and that veteran has elected to sell them or trade them in and the commercial markets.

The next problem is identifying aids, by serial number that have either been issued by the VA or that remain the property of the VA. You know of any department within the VA where we might check suspicious serial numbers to verify the legitimate ownership of hearing aids that were least once issued by the VA?

Any help you could give us be greatly appreciated, even if you just point us in the correct direction to find the answer. I would have to guess that the paperwork completed when they are issued to a veteran specifies if they remain property of the VA. As a non-veteran, I clearly don't have access to that paperwork although you might.

Thanks again.

Regards,

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----- END MESSAGES -----

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ABOUT HEARING AID PRICES AND ASSOCIATED MANUFACTURER LEGAL VIOLATIONS AND PROBLEMS

By way of a bit of introduction, the objective herein is to give the person with hearing loss some additional insight into the ridiculously high prices charged for hearing aids. This information is about the facts and secrets the five or six major manufacturers (<http://hearingaidinsider.com/articles/who-are-major-hearing-aid-manufacturers>) don't want you to know; about who is getting rich, how and why are they allowed to do these things. Although the consumer sees many brand names in the market place, many of those have the same core or internal electronics with certain features enabled or disabled to differentiate the different price levels and markets.

The Hearing Aid industry marketing models and distribution channels are changing by necessity and by government enforcement of anti-trust (anti-monopoly) and fair trade laws. The industry once used the "Medical Device Safety Argument" to justify their monopoly. That argument is hollow in the context of other products such as iPods, MP3 Players and other audio devices that are capable of producing hearing damaging sound levels. The current generation of such devices, in conjunction with the head phones and ear bud they utilize are potentially far more harmful than any hearing aid ever produced or even imagined. Still, this industry utilizes this rapidly eroding argument to justify the \$5000 to \$6000 dollars per pair of devices that should sell new for the \$1000 to \$1500 range if they followed the paths of other consumer electronics.

With the help of various governmental agencies, both in Europe (particularly in Germany) and in the US, this will slowly change to a fair and free market, much like the automobile industry has had to do with the coming of age of the internet. While consumers are still captive to a large extent, and there are clear monopolistic elements, that is slowly changing with the ability to shop internationally and the legal enforcement of fair trade laws and anti-monopoly litigation and statutes.

Why are Hearing Aids so expensive and who is making excessive profits and getting rich on those who have hearing loss?

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We know the marketing paradigm for hearing aids has to change, just based upon the internet and the fact that manufactures are getting hammered badly on their sales profits and projections. More importantly, the lame "Medical Equipment" excuse they like to use is ludicrous in light of the fact that more harm comes to the average person from their iPod and ear-buds than any mis-adjusted set of hearing aids could ever reasonably cause. If someone can control the broad-spectrum volume on their iPod and ear buds or listening device, effectively attend a rock concert as many hours a day as they care to listen, are you telling me they can't be trusted or have the knowledge to set the amplification level on a pair of hearing aids to a level they can understand words when the frequency spectrum is specifically tailored to emphasize the frequencies that have to do with human speech and not broad-spectrum music from 20 Hz to 20 kHz? The argument just doesn't fly, doesn't hold water - and they know it. They are still trying to use invalid arguments to protect their massive profits - bottom line.

Yes, there are some cases where folks should have a medical checkup by a medical doctor - but to deny them the ability to hear better because they choose not to do that is another very hollow and meaningless excuse to protect their massive profits.

Just look at the games Phonak has been playing and their legal problems and maneuvering over recent years. One thing they did was to attempt to acquire GN Resound in 2006. That was initially denied by the German courts, but upon appeal, that decision was reversed. By the time the higher court reversed the decision, both parties had changed their mind about the acquisition, somewhat based upon the fact that an unrelated court settlement had influx at significant capital to GN Resound (and to Phonak, but it wasn't significant to Phonak).

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<http://m.reedsmith.com/files/Publication/71a9e1d0-376b-4608-bbdd->

6d9f4e940490/Presentation/PublicationAttachment/cce1c240-49b4-4232-a194-b25182258fec/Legal_Update_Munich_16_February_2009.pdf

<http://www.gleisslutz.com/en/news-events/press-releases/press-detail/pressemitteilung/Fusion-PhonakGN-ReSound-Gleiss-Lutz-vor-dem-BGH-erfolgreich/a-pressemitteilungen/show/c-pressemitteilungen/Anwalt/>

Keep in mind, this is the European legal system that has their sights trained on these manufacturers. It is yet to be seen how US courts and Bureaus of Jurisdiction will view it, but probably not well.

Then we move to issues of *criminal wrong-doing* that I had outlined earlier:

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FDA laws (remember, individual states have no jurisdiction in this part), Phonak gave directives to one of their retail outlets to take no orders from us, even for those items they sell directly to the public. This can be a big problem for them if it is pushed, particularly because of the fact that they sell these same things directly to the public, and have put in written form, that "They will no longer take ANY order from us".

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