

**MEDICAL SOCIETY**  
of the  
**STATE OF NEW YORK**

Elizabeth Dears, Esq.

Senior Vice President /  
Chief Legislative Counsel

*Division of Governmental Affairs*  
**MEMORANDUM IN SUPPORT**

**IN ASSEMBLY HIGHER  
EDUCATION COMMITTEE**

**A.127-A (BUCHWALD)**

**IN SENATE CONSUMER  
PROTECTION COMMITTEE**

**S.4080-A (MURPHY)**

**AN ACT to amend the general business  
law, in relation to permitting certain audiologists and  
hearing aid dispensers to dispense hearing aids for a profit**

This measure would amend the general business law to allow an audiologist or hearing aid dispenser, employed by an otolaryngologist (Ear Nose and Throat Physician) to sell hearing aids for fair market value. **The Medical Society of the State of New York strongly supports this bill.**

Currently, the law allows audiologists and hearing aid dispensers to sell hearing aids for profit, but prohibits audiologists employed by ENT physicians from doing the same. New York is one of only two states that prohibits this practice. The result is a burdensome process to purchase hearing aids, a process that is particularly troublesome for the elderly, and ends with New Yorkers paying more for their devices.

When an individual, or their family, realizes they are having hearing issues, more often than not, they contact their primary care doctor, who then refers them to an ENT physician. The ENT physician performs a thorough medical exam and hearing test, to both confirm hearing loss and more importantly rule out more serious medical conditions, such as tumors or bacterial infections, as the cause of the hearing loss. The ENT physician, despite employing an audiologist that is trained and licensed to dispense and fit hearing aids, must write the patient a prescription and force the patient to go to a big box retailer, such as Sears, Costco, or Walmart, or a hearing aid dispenser to be fitted for their device. For the elderly patient, those most susceptible to hearing loss, this can be both confusing and taxing.

The elderly and frail elderly must frequently rely on family and friends for transportation needs, further exacerbating the toll this process takes. Frequently, they do not have transportation available to go to multiple offices to get a hearing aid, so they do not fill the prescription given to them by their ENT physician. Or the process forces them to forgo the FDA mandated medical exam, and abandon seeking the treatment of an ENT physician all together.

In seeking to circumvent this burdensome process, patients can go directly to the independent audiologist or hearing aid dispenser, and have a hearing test performed. But in doing so, patients forgo a medical exam designed to rule out more serious medical conditions. By skipping this vital step in the process, retailers are required by law to advise

their customer to seek the treatment of a physician, and then require the customer to sign a liability waiver, waiving the FDA mandated medical examination and all liability on behalf of the big-box retailer or hearing aid dispenser.

Making matters worse, sometimes hearing aids are not even the proper course of treatment. Hearing loss is sometimes correctible by medication or surgery, or even through cleaning wax out of a patient's ears. A patient might not even need a hearing aid, but because the system in New York is set up in a way that simplifies the process for those who forgo proper treatment and forgo a medical exam— some patients end up paying thousands of dollars for a device that is not needed in the first place. The fact is, independent audiologists and hearing aid dispensers, are unable to offer these alternatives to patients. Only physicians can.

Hearing aids are expensive, selling between \$2,000 and \$7,000 each, and this cost is not covered by most insurance plans. The markup on the devices varies widely, between 100% and 500%. From a purely economic standpoint, permitting audiologists in the employ of ENT physicians to dispense hearing aids would increase competition and drive down the price of hearing aid devices across the state.

*Consumer Reports* magazine reported in 2009, that the best provider of hearing aids is a medical office, headed by an ENT physician that employs an audiologist to fit and dispense hearing aids. Currently, New York law prohibits this best practice.

Because of the above, **the Medical Society of the State of New York strongly supports this bill and urges that it be passed.**

Respectfully submitted,

ELIZABETH DEARS, ESQ.

5/2/16 – Support  
JPM