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The Music Therapy For Older Americans Act

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8. Sony Corp. of America v. Universal City Studios, Inc., 464 U.S. 417 (1984).

9. Comment, *supra* note 7, at 734. Under the DAT recording process, digital signal information is stored on magnetic tape using the same pulse-code modulation format used for CD's. Like a computer, the digital signal is saved as numerical data.

10. Bill Holland, *Senators Hear Foes Agree On Taping Royalty*, BILLBOARD, Nov. 9, 1991, at 1.

11. *Witnesses Hail Compromise Bill*, *supra* note 6.

12. Digital Audio Recording Act of 1987, § 506, 100th Cong., 1st Sess. (1987).

13. Digital Audio Tape Recorder Act of 1990, H.R. 4096, 101st Cong., 2d Sess. (1990). SCMS allows direct disk to disk copying of prerecorded material, but prevents the ability to make copies of prerecorded material. Comment, *supra* note 7, at 762.

14. *Senate Panel Weighs Merits of Bill To Limit Copying By DAT Recorders*, 40 BNA PAT. TRADEMARK & COPYRIGHT J. No. 985, June 14, 1990, at 157.

15. *Id.*

16. *Class Action Is Filed To Block U.S. Sales of DAT Recorders & Tapes*, 40 BNA PAT. *Trademark & Copyright* J. No. 989, July 19, 1990, at 243 (hereinafter *Class Action*); *Cahn v. Sony Corp.*, No. 90 Civ. 4537 (S.D.N.Y. July 9, 1990).

17. *Class Action*, *supra* note 16.

18. *Cahn v. Sony Corp.*, No. 90 Civ. 4537 (S.D.N.Y. July 9, 1990).

19. *Id.*

20. *Witnesses Hail Compromise Bill*, *supra* note 6.

21. *Id.*

22. S. 1623, H.R. 3204, 2nd Cong., 1st Sess. (1991).

23. S. 1623, H.R. 3204 § § 1001(2), (3) & (4).

24. S. 1623, H.R. 3204 § § 1001(2) & (3). The definition of digital audio recording device also excludes dictation and answering machines. *Id.*

25. S. 1623, H.R. 3204 § 1001(4)(B)(ii). Section 1001(4)(B)(i) also excludes a material object that embodies a sound recording when it is first distributed. *Id.*

26. S. 1623, H.R. 3204 § 1002(a)(1).

27. S. 1623, H.R. 3204 § 1002(a)(2).

28. S. 1623, H.R. 3204 § § 1011(a)(1) & (2).

29. S. 1623, H.R. 3204 § 1011(b)(1). The importer or manufacturer must file the notice no later than 45 days after the first distribution of the DAT device in the United States. Section 1011(b)(2) specifies what information the notice must contain. Section 1011(c) states that the quarterly statement must include the transfer price of all DAT devices distributed during the quarter. This statement must be filed no later than 45 days after the quarter ends. *Id.* Section 1011(d) requires the annual statement to be filed no more than 60 days after the close of the fiscal or calendar year. *Id.*

30. S. 1623, H.R. 3204, § § 1011(d)(3) & (e)(1)(B).

31. S. 1623, H.R. 3204, § 1012(a)(1). Only the first person to manufacture and distribute or import and distribute the device is required to pay the royalty for the device. *Id.*

32. S. 1623, H.R. 3204, § 1012(a)(3).

33. *Id.*

34. S. 1623, H.R. 3204, § 1012(b).

35. S. 1623, H.R. 3204, § 1013.

36. S. 1623, H.R. 3204, § 1014(a).

37. S. 1623, H.R. 3204, § 1021(a)(1).

38. S. 1623, H.R. 3204, § 1021(b).

39. S. 1623, H.R. 3204, § 1031(a).

40. S. 1623, H.R. 3204, § § 1031(b)(1), (2), (3) & (5).

41. S. 1623, H.R. 3204, § 1031(b)(4).

42. S. 1623, H.R. 3204, § 1031(c).

43. S. 1623, H.R. 3204, § 1031(d). Statutory damages for a violation of section 1011 involving a digital audio recording device are between a nominal amount and $100 per device. Statutory damages for a violation of section 1011 involving a digital audio recording medium are between a nominal amount and $4 per medium. *Id.*

44. S. 1623, H.R. 3204, § 1031(d)(3)(A). If there is a willful violation of section 1011, the court shall increase statutory damages to a sum of not less than $100 or more than $500 per digital audio recording device and to a sum of not less than $4 and not more than $15 per digital audio recording medium. *Id.*

45. S. 1623, H.R. 3204, § § 1031(d)(2)(A)&(B).

46. S. 1623, H.R. 3204, § 1031(d)(3)(B).

47. S. 1623, H.R. 3204, § 1031(d)(4).

48. S. 1623, H.R. 3204, § 1031(i).

49. S. 1623, H.R. 3204, § §. 1031(e)(1)(A)&(B).

50. S. 1623, H.R. 3204, § 1031(e)(2).

51. S. 1623, H.R. 3204, § § 1031(e)(3)(A)&(B)(i).

The Music Therapy For Older Americans Act

Introduction

On August 1, 1991, a most unusual hearing was conducted before the U.S. Senate. Witnesses included a famous doctor (Dr. Oliver Sacks, subject of the movie *Awakenings*), a famous band's drummer (Grateful Dead's Mickey Hart) and an assortment of doctors, music therapists, and musicians. They were there to testify before the Senate's Special Committee on Aging on the benefits of music therapy.[1] The theme of the testimony—that music therapy represents an innovative and inexpensive means of aiding the elderly—provided the impetus for the Music Therapy for Older Americans Act, a bill that proposes amendments to the Older Americans Act of 1965 [henceforth "OAA"].[2] If enacted, this legislation would establish music therapy services for older individuals.[3]

This update examines the policies and provisions of the Music Therapy for Older Americans Act, the underlying policies motivating its proposal, and the impact resulting from its possible enactment.

Background

When the National Association of Music Therapists formed in 1950, the public's understanding of the benefits of music therapy was relatively limited.[4] Eighteen years later, in 1968, only seven schools offered music therapy programs.[5] In contrast, there are approximately 65 colleges and universities currently offering music therapy degrees, and some 5000 board-certified music therapists nationally.[6] Such an increase suggests that music does more than 'soothe the savage beast.' Rather, music can also be used to communicate most effectively with those suffering from Alzheimer's and Parkinson's diseases, and develop language and motor skills of

individuals who have lost the ability to speak or walk.[7]

Scientific research has proven that music therapy has tangible benefits.[8] By employing a technique known as "melodic intonation" developed by speech pathologists,[9] music therapists can help stroke victims speak again. Some research also indicates that subtle effects of head injuries can be detected by playing pairs of rhythmic or melodic patterns and asking the listener whether or not they are similar.[10] Most commentators believe that music elicits attention, provides motivation for movement, distracts from pain, improves motor control, increases breathing capacity, increases social contact, and provides an outlet for self-expression.[11] These benefits are obtained with little equipment and relatively inexpensive means.[12]

One of the most important aspects of music therapy in gerontological care is its socializing and preventive capacities which help combat the isolation and loneliness commonly known as "institutional neurosis."[13] Known causes for institutional neurosis (a term given to withdrawal and apathy experienced by those in nursing homes) include: bereavement, separation from adult children, retirement, physical disability, and the actual physical transfer of an individual to an institution.[14] Moreover, depression and loneliness decrease a patient's attitude toward healing and rehabilitation.[15] Music therapy is used to invoke memories and images through familiar sounds (such as a lullaby or favorite waltz).[16] Music therapy also stimulates discussion during group sessions and can increase enjoyable social contact.[17] It is hoped that increased social contact and the provision of a mode of communication will deter or delay institutional neurosis.[18] However, it is essential that those employing music therapy understand that results will not come easily to non-music lovers.[19]

Another important aspect of music therapy is its ability to motivate a patient's re-learning of former or compensatory skills.[20] Because music relaxes and stimulates the free association of ideas, music therapy can help reveal a patient's outlook on rehabilitation.[21] As one commentator wrote:

> "Psychogeriatric patients with physical disabilities are hard to rehabilitate because they are, in general, not interested. Nevertheless, it is not uncommon to see a patient, thought to be virtually chair-bound despite the best efforts of nursing staff, get up and waltz around the room when music which 'takes the fancy' is played. For others, restorative exercises (which are resisted when presented as rehabilitation *per se*) are performed enthusiastically when presented as a game or an action . . ."[22]

Music therapy is also considered by some researchers to be a branch of preventive medicine.[23] Supporters note cases where music therapy played a significant role in improving speech and motor skills in patients with multiple sclerosis and severe physical defects.[24] Moreover, some music therapy advocates have created extensive therapy programs, custom-tailored to the particular ailment at issue, which include preferable music types, model settings, and instrumentation.[25]

Although there is much support for music therapy, some authorities also believe it has its limitations.[26] For example, a rare condition known as musicogenic epilepsy is a type of epilepsy triggered by certain types of music and pitch frequencies.[27] Additionally, a patient's dislike of music will be practically insurmountable to successful therapy.[28] Furthermore, a patient whose grief finds quiet expression will not benefit from music therapy, especially within group settings.[29] Finally, patients who possess an oversensitivity to noise are not desirable subjects of music therapy.[30] Thus, those promoting the benefits of music therapy also recognize its inherent limitations.

The Legislative Response

Senator Harry Reid (D-Nev) introduced S.B. 1723 (the Music Therapy for Older Americans Act) in September of 1991 after he chaired the August 1991 Senate hearing on Aging.[31] The bill proposes an amendment to the Older Americans Act of 1965[32] to fund music therapy arising under state health care plans. It also proposes to add music therapy to a list of services designed to help older individuals in avoiding institutionalization and to assist those returning to their communities after prolonged hospitalization.[33] These amendments were proposed because music therapy groups can provide meaningful activities for older adults who are at risk from institutionalization because of mental and/or physical decline.[34] The group setting of music therapy sessions can also motivate a return to the community after hospitalization.[35] Other benefits of music therapy are that it is inexpensive and crosses cultural, economic, and social barriers.[36]

A. Major Provisions of the Music Therapy for Older Americans Act

Sections 7 through 11 of the Act incorporate music therapy into disease prevention and health promotion services, add music, art, and dance/movement therapy to the list of demonstration projects which

will improve the well being of older individuals, and create educational and informational projects to disseminate the use of music therapy.[37] The sections endeavor to develop new and innovative education and training programs in the fields of music therapy and gerontology.

Specifically, sections 7 and 8 add music therapy to the list of preventive health services found in sections 3030m(a) and 3030o of the OAA.[38] The OAA defines preventive health services as including routine health screening, group exercise programs, home injury control services, nutritional counseling, mental health services, and counseling on the benefits and limitations of Medicare.[39] Thus, the addition of music therapy services legitimizes its preventive health function. However, the OAA clearly sets forth that Medicare will not cover the preventive health services enumerated in section 3030o.[40] The OAA offers funding for preventive health services only through section 3030m(a), which commands the Commissioner on Aging[41] to execute a program making grants to states under approved state plans[42] for "periodic" preventive health services.[43]

The substantive proposals of the Music Therapy for Older Americans Act exist in sections 10 and 11 of the bill, which would amend section 3035a(b) of the OAA.[44] Section 3035a(b) pertains to enumerated demonstration projects which are to be given special consideration by the Commissioner when executing grants to states.[45] The Act would provide music, art, and dance/movement therapy services to older individuals who are institutionalized or at the risk of being institutionalized.[46] The legislation would also provide educational and training projects for music therapists in the field of gerontology, as well as educate those working in the aging network regarding the efficacy and benefits of music therapy for older persons.[47] As a result, these provisions work to disseminate information regarding music therapy and introduce new therapy services in nursing homes and similar institutions.

B. Potential Impact of The Music Therapy for Older Americans Act

If passed, this Act will provide the elderly and their caretakers with a greater choice of programs to maximize the scope and effectiveness of therapy; thereby lowering the admission of individuals to institutions and providing support services that do not have the aura of "old age" about them. This legislation would also create these alternatives cheaply, while employing professionals typically underemployed; for example, musicians and, to some extent, music therapists. Finally, the Music Therapy for Older Americans Act would instill in the public mind that music is not just a luxury item or something merely for entertainment; rather, music is a basic necessity for human health and well being. This goal can be accomplished without the necessity of building another governmental agency or bureaucratic system.

It is also important to note that music therapy has its limitations, as discussed above. One cannot expect the Music Therapy for Older Americans Act to be a 'cure all' for the crisis in health care services. Yet, the Act represents a fresh attempt to reconsider notions of health care so that treatment of the 'whole' person is available. In any case, the Act would require a report to the Commissioner containing findings on the benefits of music therapy.[48]

Conclusion

The Music Therapy for Older Americans Act, introduced in September of 1991, proposes amendments to the Older Americans Act of 1965 by adding music therapy services for the elderly to those services already established in the Older Americans Act. If passed, the innovative therapy of using music will introduce inexpensive support services to aid both the elderly in their well being, as well as stroke victims and those suffering from Alzheimer's and Parkinson's diseases in developing communication and movement skills. Ω

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1. S. 1723, 102nd Cong., 1st Sess., 137 Cong. Rec. 13,235-13,239 (1991).
2. *Id.*
3. *Id.*
4. Ritter, *Music Has Charms To Help The Elderly, Experts Say*, Rochester Democrat, Chronicle, Sept. 2, 1991.
5. *Id.*
6. S. 1723, 102nd Cong., 1st Sess., 137 Cong. Rec. 13,235-13,239 (1991). The typical study of music therapy includes a curriculum of music history and theory, with two years of behavioral and biological sciences. *Therapist, Patients Are In Tune Sometimes Music Is The Best Medicine*, CHICAGO TRIBUNE, June 4, 1986, Sec. C (Sports Final Ed.).
7. Teri Randall, *Music Not Only Has Charms to Soothe, but also to Aid Elderly in Coping with Various Disabilities*, J. OF THE AMA, September 11, 1991.
8. *Id.*
9. Melodic intonation is where the patient is taught to sing a short phrase, eventually inducing a sing-song way of speaking in stroke victims who previously could not talk. *Id.*
10. Ritter, *Music Has Charms To Help The Elderly, Experts Say*, Rochester Democrat, CHRONICLE, Sept. 2, 1991.
11. S. 1723, 102nd Cong., 1st Sess., 137 Cong. Rec. 13,235-13,239 (1991).
12. S. 1723, 102nd Cong., 1st Sess., 137 Cong. Rec. 13,235-13,239 (1991) (statement of Dr. Oliver Sacks).
13. RUTH BRIGHT, MUSIC IN GERIATRIC CARE 5, 30-32 (1972).
14. *Id.* at 5.
15. *Id.*
16. *Id.*