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Deaf Nurse: Court Mandates ASL Interpreter As Reasonable Accommodation To Disability.

A graduate nurse applied for an entry-level clinical nurse position on the very same hospital unit where she had successfully completed a clinical rotation as a student nurse.

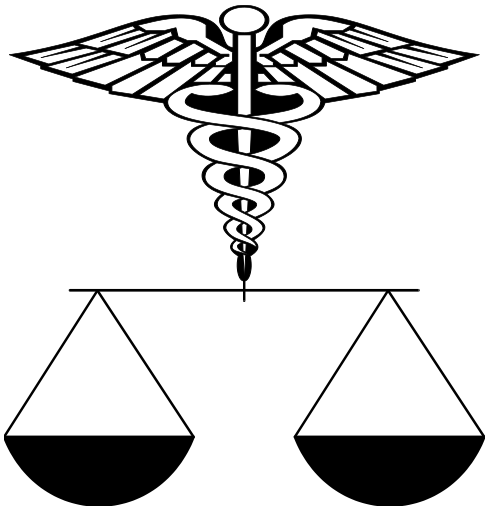
The nurse is deaf. She voices for herself and can read lips but prefers to communicate through American Sign Language (ASL).

Her nursing school had provided a full-time ASL interpreter while she was on the unit doing her clinical rotation. Her final evaluation was very positive and indicated she was fully capable of functioning as an entry-level graduate nurse with the ASL interpreter.

The hospital offered her employment on the unit, then rescinded the offer. The sole reason given to her was that the cost of the full-time ASL interpreter she requested was prohibitive.

The graduate nurse eventually obtained employment at another hospital which agreed to provide an ASL interpreter. Her employment there has worked out well. Her supervisor testified that the nurse's deafness and use of an interpreter have never negatively affected patient care, her responses to alarms or her participation in codes.

The nurse filed suit for disability discrimination against the hospital where she had done her clinical and then was denied employment.



The hospital should have provided an ASL interpreter for this deaf nurse as a reasonable accommodation.

A full-time interpreter would not have imposed undue hardship on the nurse's prospective employer and the nurse, with an ASL interpreter, has not been shown to pose a direct threat to patient safety.

UNITED STATES DISTRICT COURT
MARYLAND
January 21, 2016

The US District Court for the District of Maryland ruled the nurse was a victim of disability discrimination, reserving for a later date the exact calculation of the monetary compensation she will be awarded.

The nurse's deafness is a disability. She is a qualified individual with a disability because she has demonstrated that, with reasonable accommodation, she can perform the essential functions of the clinical nursing position she sought with her prospective employer.

No Undue Hardship to the Employer

Undue hardship to the employer from the accommodation requested by a disabled individual is a defense to a disability discrimination lawsuit.

The Court accepted as a fact that it would cost as much as $240,000 annually to accommodate the nurse with an ASL interpreter, but pointed out the department of medicine has an $88 million annual budget and the hospital system's total budget is $1.7 billion.

However, the financial figures belie the true definition of the phrase undue hardship as it is used in disability discrimination cases. Undue hardship means having to reallocate essential job functions to other employees which the disabled employee cannot perform.

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Deaf Nurse: ASL Interpreter (Cont.)

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A classic example would be requiring other nurses to lift, reposition, transfer and assist patients with ambulation for a nurse with a back problem who cannot perform those tasks. The courts have consistently held such an accommodation to be unreasonable and not required of an employer.

Here, by contrast, there would be no reallocation of the deaf nurse's patient-care responsibilities to a hearing nurse. With the requested accommodation, an ASL interpreter, she was fully capable of doing everything herself.

Court Dismisses Hospital's Argument Re Direct Threat

An employer is not required to accommodate a disabled employee whose disability poses a direct threat to the health or safety of others that cannot be eliminated through reasonable accommodation.

The hospital pointed out that some of the alarms are only auditory. The hospital argued in its defense that it would not be appropriate for the ASL interpreter, an individual with no nursing training, to engage in nursing judgment by determining which alarm was sounding and whether it constituted a patient-care priority which demanded the nurse's attention.

The Court conceded that this argument was not entirely without merit. However, in this case the hospital based its decision entirely on the cost of full-time ASL interpretation which was deemed prohibitive.

No Individualized Assessment of This Nurse's Handling of Auditory Alarms

The hospital never undertook any individualized assessment of this nurse's capability to understand and respond to auditory alarms with the aid of an ASL interpreter.

A determination that a direct threat is posed by a disabled individual's disability, even with reasonable accommodation, is something the employer must base on the best available objective evidence.

An employer, as this prospective employer did, is not permitted to rely on stereotypes, generalizations or assumptions about a disabled nurse's ability to function safely and effectively. That itself is discrimination. **Searls v. Johns Hopkins, 2016 WL 245229 (D. Md., January 21, 2016).**

Patient's Fall: Court Requires Expert Opinion.

The patient fell while getting into her car in the hospital parking lot shortly after being discharged following a right-side total knee replacement.

There were two versions of how the incident occurred.

The patient's husband claimed the CNA who helped her to the car put a gait belt around her waist, but then got distracted chatting with others in the parking lot, neglected to pay attention to what she was doing and let his wife fall.

The CNA claimed she discussed the transfer with the patient beforehand. She would help the patient stand next to the car and then the patient would pivot on her good leg and sit in the car and then the CNA would help her swing her legs in. Instead, the patient got up and tried to pivot on the right leg with the new knee, lost her balance and fell.

The patient's attorney said in his opening statement to the jury that it was a violation of the standard of care for one CNA alone to transfer the patient, without checking the chart for her physical capacity assessment and medications and for improperly using the gait belt.

At that point the patient's case became subject to dismissal because those issues can only be proven with expert testimony.

COURT OF APPEALS OF KANSAS
January 8, 2016

The Court of Appeals of Kansas ruled the case had to be dismissed because the patient did not have an expert opinion to back up the allegations her lawyer was raising in the lawsuit, regardless of which version of the facts the jury might find was the actual truth. **Lanam v. Promise, 2016 WL 105046 (Kan. App., January 8, 2016).**

Patient's Fall: Court Requires Expert Opinion.

The patient fell while attending a cookout on the grounds of the facility where she was participating in inpatient substance abuse rehabilitation.

The patient claimed she saw a small child standing on a wooden pallet that was covering a grease pit on the facility's premises. She thought the child was in danger and went to move the child, but the child moved first, forcing the pallet out of position and causing the patient to fall into the grease pit. She could not climb out on her own and had to be extricated by the local fire department. She sustained only minor injuries but major embarrassment and loss of dignity.

This case stems from an injury sustained by a patient while undergoing residential treatment.

As such it is necessary for the patient to present the court with expert testimony on the standard of care, or face summary dismissal of the lawsuit.

COURT OF APPEALS OF TEXAS
January 14, 2016

The Court of Appeals of Texas dismissed the patient's lawsuit.

The case was not a premises liability case, the catchall legal shorthand term for garden-variety slip-and-fall cases in commercial establishments like stores, restaurants and public bathrooms.

Instead, according to the Court, it was a case that stemmed from the provision of residential treatment services in a healthcare facility.

Establishing legal liability for injury to a patient in such a case requires an expert opinion as to the pertinent standard of care for the particular treatment context at issue.

The patient offered no such expert testimony and suffered dismissal of her case. **Little v. Riverside, 2016 WL 208142 (Tex. App., January 14, 2016).**