

Deaf Patients, No Live ASL Interpreter: Court Turns Down Patients' Discrimination Case.

Three deaf individuals who communicate primarily through the use of American Sign Language (ASL) joined in a disability discrimination lawsuit against a hospital where they were treated as patients at different times.

After analyzing in detail the separate facts of each case the US District Court for the Southern District of Florida ruled that none of the patients in the lawsuit had grounds to sue the hospital.

The Court turned down the idea of a court injunction as to the hospital's policies and practices for dealing with hearing-impaired patients in the future and rejected these patients' right to monetary compensation from the hospital for the way their disability was handled in the past.

The Court ruled as it did notwithstanding what the Court saw as questionable measures by the hospital's nurses and other bedside clinicians to meet these patients' needs for effective communication.

The Court ruled in favor of the hospital basically because the US Americans With Disabilities Act and Rehabilitation Act place significant legal hurdles in the path of lawsuits by hearing-impaired patients against their healthcare providers.

Hospital's Policy

Since 1990 the hospital had in place a policy for hearing-impaired patients.

A Video Remote Interpreting (VRI) computer on a wheeled cart was kept in the house nursing supervisor's office.

A bedside nurse who received a request from a patient or family member could ask the unit nursing supervisor to request the equipment from the house nursing supervisor.

The hospital also maintained a list of employees who could sign who might be available during their shift to help out.

Administrator or Risk Manager Had to Approve ASL Request

If the VRI equipment was not working or not working out as effective communication with a particular patient, the house nursing supervisor could pass along a request from a bedside nurse or clinician to a designated administrator or the hospital risk manager, the only ones who had authority to approve a live ASL interpreter.

In this case no hospital official made a decision which amounted to deliberate indifference to any one of these patients' needs.

A hospital is not required to provide live on-site American Sign Language (ASL) interpreters as a matter of course in order to achieve effective communication with hearing-impaired patients.

That is, there is no per se rule that qualified, live on-site ASL interpreters are necessary to comply with Federal law.

Federal regulations do require healthcare providers to consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to insure effective communication.

However, the ultimate decision as to what measures will be taken to aid in communication rests with the healthcare provider, provided the resulting communication is effective.

A person with a disability is entitled to full and equal enjoyment of a healthcare provider's services, but that does not necessarily mean an identical result or level of achievement as a person without a disability.

UNITED STATES DISTRICT COURT
FLORIDA
February 3, 2016

No Deliberate Indifference

By a Hospital Official

Although it was questionable that the patients' nurses and other bedside clinicians were effectively communicating with these hearing-impaired patients, there was no evidence that an official at the hospital, that is, a hospital administrator or the risk manager, was ever contacted by a patient or family member with a complaint about ineffective communication.

No hospital official ever made a decision to deny a live ASL interpreter for one of the patients in this case.

According to the Court, to sue for monetary compensation a disabled patient who was denied effective communication with his or her caregivers must show that a hospital official, not a bedside caregiver, was deliberately indifferent to the patient's need for live ASL as an auxiliary aid to effective communication.

The law intends this requirement to be a very difficult hurdle to mount for a disabled patient who wants to file a lawsuit.

No Right to Court Injunction

A disabled individual, even one whose rights actually have been violated, does not have the right to sue for a court injunction mandating reforms in the hospital's future policies and practices, unless the disabled individual himself or herself can prove that he or she definitely will be a patient at the same facility in the future and will be adversely affected during an expected future encounter by the hospital's then still existing discriminatory policies and practices.

This is also intended to be a very difficult technical legal burden for a patient to overcome who wants to file a lawsuit.

Problems with VRI Equipment

One problem was that the VRI equipment was sometimes out being used by another patient. Sometimes the equipment froze up and had to be turned off and on again to reboot the computer system, which was frustrating to the patients.

Other problems stemmed from difficulty understanding what was going on and why certain procedures were being done, issues which are not uncommon with hearing persons alike when they are hospital patients. **Sunderland v. Bethesda, 2016 WL 403481 (S.D. Fla., February 3, 2016).**