

Deaf Patient: Discrimination Lawsuit Against Hospital Fails.

The patient was treated at the hospital ten times over a nine-year period. He was deaf. He was described as culturally deaf, meaning his primary means of communication was not spoken or written English, but American Sign Language (ASL).

The hospital never provided an ASL interpreter during any of the patient's hospitalizations.

After he died in the hospital from a stroke his children filed a lawsuit against the hospital for their father's and their own mental anguish and emotional distress from disability discrimination. There was no allegation that ineffective communication was a factor in his death.

The jury sided with the hospital. The Superior Court of New Jersey, Appellate Division, upheld the jury's verdict.

No Interpreter Requested

One telling point was that the family, according to the court, never specifically requested an ASL interpreter.

The adult children often interpreted for their father. They claimed mental anguish and emotional distress having to interpret for him during stressful healthcare episodes. They did not claim any lack of effective communication.

Requested Accommodations Were Provided

The children testified they did request a TTY/TDD telephone and a TV with closed-caption capability. The nurses testified those things were always provided.

Effective Communication

The patient's cardiologist testified he and the patient were able to communicate effectively, in his opinion, through written notes and sign interpreting by family members and hospital staff who were not trained or certified ASL interpreters.

The nurses testified they and the patient could communicate through gestures and a sign board with pictographs of health-related questions and responses.

The nurses always charted the patient's hearing deficit in the potential problem areas. **Hall v. St. Joseph's Hospital**, 777 A. 2d 1002 (N.J. App., 2001).

The US Rehabilitation Act of 1973 requires any recipient of Federal funding to accommodate the needs of disabled persons whom the recipient serves.

A hospital that receives Medicare or Medicaid payments must provide the means for effective communication between caregivers and patients with hearing disabilities.

In a lawsuit claiming violation of the Rehabilitation Act the burden of proof is with the plaintiff who filed the lawsuit.

The plaintiff must prove that he or she is disabled, that he or she was eligible for treatment at the hospital, that due to the plaintiff's hearing disability he or she was denied the opportunity to understand the treatment and fully participate the treatment, and that the hospital was a recipient of Federal funding.

After the plaintiff has proven all the elements of a prima facie case of disability discrimination, the defendant still can offer rebuttal evidence of a non-discriminatory reason why the accommodation requested by the plaintiff was not provided.

SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION, 2001.

Obstetrical Nursing: Court Says Expert Testimony Is Required To Prove Negligence.

The baby was born with brain damage from fetal hypoxia. After the birth it was determined there had been a 25% placental abruption. The parents sued, claiming the obstetrical nurse failed to appreciate signs of fetal distress, failed to communicate those signs to the obstetrician and that her negligence delayed the cesarean.

When the issue is professional negligence by an obstetrical nurse, the jury must base its verdict on the expert testimony.

In fact, it is proper for the judge to instruct the jury that they are not permitted to use their own inclinations or any personal knowledge they may have in reaching a verdict.

APPELLATE COURT OF ILLINOIS, 2001.

Due to technical errors in the complex jury instructions given by the trial judge the Appellate Court of Illinois ordered a new trial so that a second jury could re-examine the allegations of negligence against all the defendants.

However, the court said the judge was correct to instruct the jury not to speculate from their own perspectives as lay persons whether a clinical nurse specialist was negligent. The issue of professional negligence is strictly the province of expert witnesses. **Regala v. Rush North Shore Medical Center**, 752 N.E. 2d 443 (Ill. App., 2001).