

LEGAL EAGLE EYE NEWSLETTER

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Hearing Impairment: Court Turns Down Patient's Disability Discrimination Lawsuit.

A deaf mute fourteen year-old faced a lengthy hospitalization for ulcerative colitis which required a CT scan, colonoscopy and colon-resection surgery.

One of his nurses had taken college classes in sign-language and was able to communicate on a limited basis by signing with the patient.

Other caregivers communicated by writing handwritten notes, giving the patient a writing board, giving him printed pamphlets and by speaking with the parents and an older sibling who relayed information with their limited fluency in American Sign Language (ASL) and "home signs" the family had made up themselves.

The hospital provided extensive services of a Child Life Specialist who, although not fluent or even trained in ASL, specializes in assisting pediatric patients to understand their treatments through discussion, pictorials and books.

The parents sued the hospital for alleged violations of their child's rights as a disabled person. The US Court of Appeals for the Eleventh Circuit (Florida) dismissed the case.

The hospital's internal policy said that an interpreter would be provided to any hearing-impaired patient on request.



To have grounds to sue a hospital for disability discrimination, a hearing impaired patient must show there was a substantial likelihood caregivers would be unable to communicate effectively with the patient without an interpreter and that caregivers made a deliberately indifferent choice not to provide one.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
October 3, 2014

The parents told caregivers their child preferred to communicate through ASL, but the parents never expressly requested an ASL interpreter.

According to the Court, notwithstanding this hospital's 1996 policy and current Federal regulations, failure to provide an interpreter upon request is not grounds for a disability discrimination lawsuit by a hearing impaired patient unless it was apparent to caregivers that effective communication was not taking place without an interpreter.

That is, a hospital can be held legally liable to a hearing impaired patient only if the patient's caregivers were guilty of deliberate indifference to the patient's needs in this regard.

This patient's caregivers were not deliberately indifferent because they had reasonable grounds to believe that effective communication was taking place through the auxiliary aids they were providing and the parents' and sibling's efforts to interpret for the patient, the Court said.

Federal regulations require hospitals to furnish appropriate auxiliary aids and services where necessary to afford a patient with a sensory disability an equal opportunity to participate in and enjoy the benefits of their programs.

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