

No Sign-Language Interpreter: Court Finds Grounds For Hearing-Impaired Patient's Suit.

A sixty-seven year-old hearing impaired woman came to the E.R. with her seventy-eight year-old husband because the woman was having chest pains.

Her personal physician, through a video-relay service, had told her to go to the E.R. immediately.

She was admitted to the hospital and had laparoscopic gallbladder surgery which fully resolved her medical issues.

However, events during her E.R. visit and inpatient stay raised questions about violation of hers and her husband's legal rights as disabled persons to effective communication with her caregivers over which they filed a lawsuit against the hospital.

The US Court of Appeals for the Eleventh Circuit (Florida) found evidence that their rights were violated.

Patient / Family Member Assessment

The first step for the Court in analyzing what was required to meet the patient's and her family member's communication needs was to look at basic data about them.

The patient has been deaf in her right ear since childhood and has severe hearing loss in her left ear. Her primary means of communication is American Sign Language (ASL), in which she is fluent. Her vision is essentially normal but she reads only at a fourth-grade level.

Her husband is completely deaf. He communicates through a combination of ASL and signed English. His vision is impaired by age-related macular degeneration and he reads only at a sixth-grade level.

Communication Breakdown in the E.R.

When they arrived in the E.R. the husband passed a note to the front desk clerk asking for a sign language interpreter. The two of them also repeated this request verbally. The clerk said a nurse would take care of it, but they did not understand that.

They were pointed to the waiting area but then soon were taken in to be seen by the physician. The physician asked if they could "read my lips." They seemed to understand the question but replied, "No."

The patient was given an EKG, which was explained simply by the tech pointing to his heart, and blood was drawn for the lab. The physicians conferred but the patient and her husband could not hear them.

The US Rehabilitation Act of 1973 states that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

A hospital that receives Federal funds via Medicare or Medicaid is required by Federal regulations to establish a procedure for effective communication with persons with impaired hearing and must provide appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills where necessary to afford such persons equal opportunity to benefit from the healthcare services provided by the hospital.

Auxiliary aids may include Braille or audio-taped materials for persons with impaired vision and interpreters for those with impaired hearing.

The goal is to afford handicapped persons equal opportunity with the non-handicapped to obtain the same results and gain the same benefits appropriate to meet the person's needs.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
November 13, 2012

Later that evening the patient texted her daughter and the daughter phoned the hospital and spoke with a nurse who said they were working on getting an ASL interpreter and had a "video box" which was just as good as an interpreter.

After surgery was scheduled for the next day the patient was very worried why they were going to operate on her gallbladder when her problem was chest pains. A physician penned a note saying simply that she was going to be fine and not to worry.

A nurse handed her a surgical consent form and had her sign without any further explanation. However, according to the Court's ruling, that did not give grounds to sue for lack of informed consent.

The Court ruled in summary that mouthing words, writing cryptic notes and pantomiming gestures, rather than providing an in-person or video interpreter, were not effective auxiliary communication aids for them as required by Federal law.

Hospital's Policies, Procedures Faulted

The hospital's Communication Barriers Policy provided for interpretation through *My Accessible Real-Time Trusted Interpreter*, a piece of equipment kept in a storage room in the emergency department.

The Court pointed out that the hospital's policy gave hospital personnel no useful recommendations or definitive guidance when the device was to be used.

In practice it was left entirely to the patient's care provider, usually a nurse, to assess the patient and to use his or her own judgment to determine what was sufficient to meet the patient's communication needs.

The only in-service training anyone could recall was a ten-minute presentation on how to set up the equipment. That in-service was mandated by a consent decree which settled a prior lawsuit by a hearing impaired patient and was supposed to include information about a list of available interpreters and advice to patients that such services were available from the hospital.

Nurses who testified in this case said they were told that speaking louder, lip-reading and written messages were acceptable alternatives to providing an ASL interpreter as the last option. ***Liese v. Indian River Co. Hosp.***, ___ F. 3d ___, 2012 WL 5477523 (11th Cir., November 13, 2012).