

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Disability Discrimination: Quad On Ventilator Could Not Communicate With His Caregivers.

A forty-nine year-old male ventilator-dependent quadriplegic spent four weeks in the hospital for pneumonia.

His Passy-Muir valve was disconnected on admission when he was placed on the hospital's ventilator. That is a device which makes it possible for tracheostomy patients to speak, whether or not they are on a ventilator.

The hospital had call lights activated by pillow switches that function much the same as ordinary call buttons except they can be activated by a turn of the head by quadriplegic patients who cannot use their hands.

The nurses requested a pillow switch but were told none was available as they were all being used by the hospital's long-term quadriplegic patients.

The patient experienced three episodes of respiratory difficulty, two of which were discovered by family members, not his nurses, during which he could basically do nothing but hope that someone would find him in time.

The legal basis for the patient's lawsuit against the hospital was disability discrimination. The damages claimed were for mental anguish and emotional distress. There was no claim the patient suffered any direct physical injury during his respiratory crises.



***The ADA requires hospitals to provide assistance devices to patients with communication-related disabilities so that these patients can communicate with caregivers as effectively as non-disabled patients.***

***It is a basic tenet of nursing practice that patients must be given the ability to communicate with their caregivers.***

SUPERIOR COURT, LOS ANGELES COUNTY  
CALIFORNIA  
July 5, 2007

The Americans With Disabilities Act (ADA) has separate but very similar language for private and public hospitals.

Private-sector hospitals commit disability discrimination when they fail to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently because of the absence of auxiliary aids and services, unless the hospital can demonstrate that taking such steps would result in an undue burden to the hospital.

Public-sector hospitals are required by ADA regulations to take appropriate steps to ensure that communications with disabled patients are as effective as communications with others and to furnish appropriate auxiliary aids and services to afford an individual with a disability an equal opportunity to participate in obtaining services. In determining what type of auxiliary aid or service is necessary primary consideration is to be given to the requests of the disabled individual.

The patient's lawsuit against the hospital in the Superior Court, Los Angeles County, California was settled for \$295,000 during trial, right before the patient himself was scheduled to testify before the jury. ***Parco v. Pacifica Hosp.***, 2007 WL 2491516 (Sup. Ct. Los Angeles Co., California, July 5, 2007).

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