

Deaf Patients: Court Turns Down Disability Discrimination Suit.

A new ruling from the US District Court for the Southern District of Florida disposed of the disability discrimination cases of three more of the patients who joined in a case we recently reported.

See: *Deaf Patients, No Live ASL Interpreter: Court Turns Down Patients' Discrimination Case*. (24)3 March 2016.

The Court expanded on the facts of the case that pertained to these three deaf patients, but in applying the law to the facts the Court reached the same result as before, that they had no right to sue the hospital for disability discrimination.

Video Remote Interpreting Did Not Work Properly

Hospital policy allowed a nurse or other bedside caregiver to get the Video Remote Interpreting (VRI) equipment from the nursing supervisor's office for use with a hearing-impaired or deaf patient.

For the patients in this case the VRI did not function effectively. The screen images were blurred and often did not show the remote interpreter's hands.

Deliberate Indifference/Hospital Official
Nevertheless, according to the Court, the hospital was not guilty of deliberate indifference to these deaf patients' needs for effective communication.

Bedside caregivers could send a request or forward a patient's request for a live American Sign Language (ASL) interpreter to a certain individual in the hospital's risk management office. That individual was the only hospital employee with the authority to obtain an ASL interpreter.

That one hospital official who had authority to order an ASL interpreter never turned down a direct request for an ASL interpreter for any of these patients.

Direct-care workers were deliberately indifferent to these patients' communication needs, but since they had no authority to provide an ASL interpreter their inaction was below the legal threshold for a disability discrimination lawsuit by a deaf patient.

Only deliberate indifference by a hospital official with authority from the hospital to determine what communication aids will or will not be provided can be grounds for a disability discrimination lawsuit, the Court said. Sunderland v. Bethesda, 2016 WL 2736087 (S.D. Fla., May 11, 2016).

Deliberate indifference to the needs of a patient with a hearing disability by a hospital official with authority to order auxiliary aids to communication is a threshold legal requirement for the patient's disability discrimination lawsuit.

Deaf patients are entitled to appropriate auxiliary aids to effective communication with their caregivers.

An appropriate auxiliary aid is not necessarily a live American Sign Language interpreter.

An auxiliary aid, different from what the patient requested, selected by the patient's caregivers, may be appropriate if it leads to effective communication.

An adverse medical outcome due to ineffective communication with caregivers is not required, if the patient experienced some degree of difficulty participating in his or her care.

Physicians' chart notes that effective communication occurred through handwritten notes do not provide a legal defense.

A deaf patient cannot obtain a court injunction without proof of a substantial likelihood of a future health-care encounter with the same institution.

UNITED STATES DISTRICT COURT
FLORIDA
May 11, 2016

Failure To Notify Physician, Family: Court Upholds Civil Penalties.

The resident complained of shortness of breath and congestion. A nurse gave her oxygen, but did so without contacting the resident's physician. The only physician's order on file at the time for the resident was for nebulizer treatments. There was no order for oxygen.

Later that same day, when the resident complained again, the nurses did contact the physician. He ordered a stat chest x-ray. The x-ray showed mild pulmonary edema from congestive heart failure. That interpretation was communicated to the nursing home, but the nurses failed to get in contact with the physician about it.

Afterward, again that same afternoon, the nurses tried to wean the patient off the oxygen. On room air her oxygen saturation level dropped dangerously, so they went ahead with the oxygen again and withheld her medications. The resident remained lethargic and did not eat. None of this was reported to the physician.

The nurses had the resident evaluated for hospice care without telling the family. The resident's family contact, her sister, learned of the hospice evaluation only when she herself phoned days later.

Despite obvious changes in the resident's health status the nurses did not communicate with the physician or notify the family.

Instead, the nurses acted improperly on their own starting oxygen and reducing her medications.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
April 28, 2016

The US Court of Appeals for the Fifth Circuit (Texas) upheld civil monetary penalties totaling \$68,950.00 against the nursing home for violations of Federal regulations. River City v. US Dept. of HHS, ___ Fed. Appx. ___, 2016 WL 1719104 (5th Cir., April 28, 2016).