

## Hearing-Impaired Patient: Court Rules Hospital Complied With The ADA And Rehabilitation Act.

A hearing-impaired patient filed a disability discrimination suit against the public hospital where he had a five-year history of receiving medical care. The US District Court for the Southern District of New York threw out the lawsuit.

### **Americans With Disabilities Act Rehabilitation Act**

Hospitals must provide appropriate auxiliary aids to persons with impaired sensory, manual or speaking skills where necessary to afford such persons an equal opportunity to benefit from hospital services. The court cited the relevant statutes and regulations in its opinion.

It is not required that a hospital provide services which produce the same result or level of achievement for handicapped and non-handicapped persons, so long as the hospital provides handicapped persons equal opportunity to obtain the same result or gain the same benefit in the most integrated setting appropriate to the person's needs, the court said.

### **Deliberate Indifference**

The legal standard for a civil lawsuit for disability discrimination by a hearing-impaired individual against a healthcare provider is that a person with authority to accommodate the individual's need for auxiliary aids to permit meaningful participation in the individual's own health care was deliberately indifferent to the individual's needs.

In this case the court ruled that a one-day delay in getting an interpreter after the patient asked for one is not deliberate indifference. As long as the patient's needs can be accommodated in a meaningful manner, the use of an interpreter who is not certified or whom the patient does not like is not deliberate indifference.

Having the patient communicate with doctors and nurses with handwritten notes is not deliberate indifference, if the patient's medical needs can be met in this fashion, the court ruled. **Alvarez v. New York City Health & Hospitals Corporation**, 2002 WL 1585637 (S.D.N.Y., July 17, 2002).

***For disability discrimination claims against hospitals by hearing-impaired individuals, the ADA and the Rehabilitation Act are basically the same.***

***To succeed with a civil lawsuit for damages, a hearing-impaired individual must demonstrate discriminatory intent amounting to deliberate indifference by a person at the hospital with authority to address the issue of accommodation.***

***The patient was given a TTY when he first came to the emergency room to enable him to phone patient relations to ask for a sign-language interpreter.***

***The patient has to ask for an interpreter. It does not matter that the patient would prefer not to have to ask for an interpreter.***

***The hospital had a policy of assigning interpreters upon request. A delay of one day is not deliberate indifference.***

***The interpreter was not certified, but that is not important as long as the interpreter is qualified to assist the patient in getting his medical needs met.***

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
July 17, 2002

## HMO Telephone Triage: Court Sees No Legal Duty To Preserve Nurses' Logs.

It was a complicated case alleging medical malpractice by a physician in the management of a patient's prenatal care leading to stillbirth of a previously viable and healthy fetus. The patient's lawyers also sued the patient's health maintenance organization (HMO) alleging the HMO was negligent for not preserving the log books containing the handwritten notes of the HMO's telephone triage nurses who had acted as intermediaries between the patient and her physician.

There was no allegation of professional malpractice against the HMO's nurses. It was only that when their log books were requested during the litigation, five years after the events in question, the patient's lawyers were told they had been destroyed in the ordinary course of business six months after they were created.

***The HMO did not take on a contractual responsibility to preserve the triage nurses' notes indefinitely, beyond the point where they had any relevance to the patient's medical care.***

***There was no indication the notes would prove anything against the physician.***

APPELLATE COURT OF ILLINOIS  
August 8, 2002

The Appellate Court of Illinois dismissed the suit against the HMO, finding no spoliation of the evidence. The court said the HMO had no contractual obligation to a member to preserve the nurses' phone triage logs indefinitely in anticipation that the member might later sue a physician. **Thornton v. Shah**, \_\_ N.E. 2d \_\_, 2002 WL 1822126 (Ill. App., August 8, 2002).