

# Hearing-Impaired Patients: US Court Turns Down Disability Discrimination Lawsuit.

Three deaf individuals who were patients or a family member of a patient joined in a disability discrimination lawsuit for compensation from the same hospital.

Each individual's allegations boiled down to the fact that, despite their requests, live in-person American Sign Language (ASL) interpreters were not provided immediately and at all times while the deaf individuals were at the hospital.

The US Court of Appeals for the Eleventh Circuit (Florida) looked carefully at the facts of each case and concluded that none of them had grounds to sue.

## Deaf Heart Attack Patient

A deaf individual arrived in the E.R. with his deaf girlfriend. He was in the throes of an acute heart attack.

They requested an ASL interpreter. Hospital personnel phoned an outside vendor to send over an ASL interpreter, but the hospital could not wait for the interpreter to arrive before the patient had to be rushed to the cardiac catheterization lab.

Before going to the cath lab the physicians used the hospital's video remote interpreting system to explain things to the patient as best they could and used hand gestures and written notes with the girlfriend who could read lips and sign.

Afterward the cardiologist visited the patient in the ICU and used a handwritten note to tell him his procedure went well.

## Deaf Mother of Obstetric Patient

A deaf individual brought in her hearing teenage daughter in preterm labor.

The deaf individual herself had been a patient in the hospital forty-eight times before and was well known to the nurses.

On each previous occasion she had had no problem with remote video interpretation, but this time she insisted on a live ASL interpreter, who was not provided until some time after her daughter's baby was born healthy.

## Deaf Patient - Minor Head Injury

A deaf individual who had had live ASL interpreters during forty-two previous visits or stays spent two hours in the E.R. for a minor head abrasion from falling off his motorized scooter. Handwritten notes were used to communicate and typed discharge instructions were provided.

***Even if the hospital did fail to provide appropriate and necessary auxiliary aids for communication, such failure by itself does not allow the patients to sue the hospital for compensation.***

***To sue for compensation the patients must show that such failure was the result of intentional discrimination, that is, that the hospital was guilty of deliberate indifference to their rights as disabled individuals under Federal antidiscrimination laws.***

***Deliberate indifference would mean that the hospital knew that a violation of the patients' rights was substantially likely to occur but failed to act.***

***The hospital's failure to provide an ASL interpreter on demand is not necessarily deliberate indifference, unless the patient can show there was a substantial likelihood the patient would be unable to communicate effectively without an interpreter and the hospital still made the deliberate choice not to provide one.***

***The court looks carefully at the facts of each case. The more complex the medical issues, the more likely an interpreter would be required.***

UNITED STATES COURT OF APPEALS  
ELEVENTH CIRCUIT  
July 31, 2015

## Disabled Patients/Family Members Right to Effective Communication

The US Americans With Disabilities Act applies to places of public accommodation, including hospitals.

The US Rehabilitation Act applies to any recipient of Federal funding, including hospitals that receive Medicare or Medicaid reimbursement.

Both laws provide that an individual with a disability, including a hearing impairment, cannot be excluded from participation in or denied the benefits of the hospital's services, programs or activities.

Exclusion or denial occurs when a hospital fails to provide appropriate auxiliary aids to a deaf patient or family member where necessary to ensure effective communication.

Effective communication is provided when the deaf individual has an equal opportunity compared with hearing individuals to participate in and benefit from the hospital's services.

Auxiliary aids may include live ASL interpretation, video remote interpretation, computerized transcription, printed materials or exchange of handwritten notes. The type of auxiliary aid that may be necessary varies depending on the individual's customary communication method, the nature, length and complexity of the communication and the context in which it occurs.

## Deliberate Indifference Required For a Lawsuit for Damages

However, to qualify to sue a hospital for damages a disabled individual must prove that exclusion or denial of services was the result of intentional discrimination.

A service such as live on-site ASL interpretation is not automatically considered necessary simply because a disabled person requests it. Not every denial of a request for an auxiliary aid creates grounds for a lawsuit.

The question is whether the hospital effectively and intentionally excluded a disabled individual from the benefits of the hospital's programs or services by failing to provide a live ASL interpreter rather than another auxiliary aid to communication. ***Martin v. Halifax Healthcare Systems, Inc., \_\_\_ Fed. Appx. \_\_\_, 2015 WL 4591796 (11th Cir., July 31, 2015).***