

Hearing Impairment: Court Looks At Patient's Disabled Family Member's Legal Rights.

The patient's mother was informed by phone that the patient, her young adult daughter, was being taken to the hospital.

The mother has been completely deaf since birth. When she arrived at the hospital she made a request for an American Sign Language (ASL) interpreter.

Since there was no ASL interpreter available, and the hospital's video remote interpreter (VRI) equipment was down, a nurse simply passed the mother a handwritten note saying, "Your daughter is dead." The daughter had been brought in already deceased from a heroin overdose, but nothing was explained to the mother.

The mother wanted to find out what had happened to her daughter. A meeting was scheduled at the hospital almost two months later, but when she showed up with an attorney hospital officials balked at seeing her. The mother sued the hospital.

Disability / Reasonable Accommodation

The US Americans With Disabilities Act (ADA) and supporting Federal regulations give persons with communication disabilities the right to auxiliary aids to make their communication with healthcare providers comparable in effectiveness to the communication that non-disabled patients and family members enjoy with their healthcare providers.

Patients and family members with communication disabilities are given rights by the US Americans With Disabilities Act (ADA).

However, legal barriers sharply limit enforcement of those rights through civil lawsuits.

Disabled patients and family members also have rights under the US Rehabilitation Act.

A lawsuit for damages is permitted by the Rehabilitation Act, but can succeed against a healthcare provider only if there has been deliberate indifference to the needs of a person with a communication disability.

Although the hospital's VRI was down at the time, the hospital was in compliance with regulations, making it difficult to say the hospital was deliberately indifferent.

UNITED STATES DISTRICT COURT
PENNSYLVANIA
July 7, 2015

However, the ADA does not allow a lawsuit for damages by a disabled patient or family member denied reasonable accommodation to a disability by a healthcare provider.

A disabled person can sue for a court injunction barring future discrimination by a particular healthcare provider that has denied the person reasonable accommodation, but only if the disabled person can show a strong likelihood that he or she will need the provider's services again in the future and will be denied effective communication in such a future encounter.

Although the mother was a patient in the hospital in the past, it was inconclusive that the hospital would violate her rights in the future, the US District Court for the Middle District of Pennsylvania ruled.

Lawsuits for Damages

The US Rehabilitation Act does allow a disabled patient or family member to file a civil lawsuit for damages for discrimination against a healthcare provider that receives Medicare or Medicaid funds.

However, to win a legal case the disabled person must show that the healthcare provider was guilty of deliberate indifference to the disabled person's special needs.

A temporary lapse is not deliberate indifference. Federal standards do not require hospitals to have on-site ASL interpretation. VRI complies with Federal regulations. The hospital later got its VRI up and running and then got a new VRI vendor, showing its regard for deaf persons' special needs. **Shaika v. Gnaden Huetten**, 2015 WL 4092390 (M.D. Penna., July 7, 2015).

LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession
ISSN 1085-4924

© 2015 Legal Eagle Eye Newsletter

Published monthly, twelve times per year.

Print edition mailed First Class Mail
at Seattle, WA.

Electronic edition distributed by email file
attachment to our subscribers.

E. Kenneth Snyder, BSN, RN, JD
Editor/Publisher
PO Box 4592
Seattle, WA 98194-0592
Phone (206) 440-5860
Fax (206) 440-5862
kensnyder@nursinglaw.com
www.nursinglaw.com

Clip and mail this form. Or if you prefer, order online at www.nursinglaw.com.

Print \$155/year _____ Electronic \$120/year _____ Phone 1-877-985-0977
Check enclosed _____ Bill me _____ Credit card _____ Fax (206) 440-5862
Visa/MC/AmEx/Disc No. _____
Signature _____ Expiration Date _____

Name _____
Organization _____
Address _____
City/State/Zip _____
Email for Electronic Edition* _____

*Print subscribers are also entitled to Electronic Edition at no extra charge.
Mail to: Legal Eagle Eye PO Box 4592 Seattle WA 98194-0592