Interpreter Services and the Americans with Disabilities Act (ADA)

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A male patient, who is deaf and uses American Sign Language (ASL) as his primary method of communication, went to the ED of a hospital after suffering severe abdominal pain. When in the ED, he asked for an interpreter so he could communicate with the ED staff. The hospital did not have an interpreter on staff and called one of the agencies the hospital uses for interpreter services.

The patient waited four hours for the interpreter to arrive. The interpreter was present during the patient's entire examination in the ED. The ED physician consulted with a surgeon because he suspected the patient had an abdominal abscess. It was decided to admit the patient for more tests and observation, with the possibility of surgery the next day.[2] The interpreter left after the patient was admitted.

The next morning, the patient was not provided with an interpreter. The hospital called one of its agencies for another interpreter but was not told when the interpreter would arrive at the hospital. As a result, the hospital staff used alternative methods of communicating with the patient while they waited for the interpreter to arrive.

These alternative methods included written notes, a TTY telephone (text messages are sent/translated over the phone), one employee—a nurse– who knew sign language, and the patient's friend who had come to the hospital with him who also knew sign language. The patient refused these means of communication and demanded he have a qualified interpreter. The nursing and other staff caring for the patient described him as "rude, abusive, unusually challenging, belligerent, and uncooperative".[3]

The patient alleged that the charge nurse of his unit called and cancelled the request for an interpreter. Although there was a question of which date the cancellation was for (that day or the next day), the patient alleged that the order was cancelled because the hospital wanted to use its employee as his interpreter.

The patient checked himself out of the hospital because he felt frustrated, ignored and unsafe. He then checked himself into another hospital where he was provided with an interpreter and where he had his surgery.

The patient filled a lawsuit alleging that the hospital failed to provide him with a qualified interpreter as required under the ADA and the state's law against discrimination.

The hospital filed a motion for summary judgment alleging the patient did not meet the required elements of a case of discrimination. The patient also filed a motion for summary judgment, alleging that he should be granted the motion based on his allegations of liability on the part of the hospital.

The district court carefully analyzed the facts, the ADA, and the applicable state law. The court clearly held that the patient was a qualified individual with a disability under the ADA because he is deaf and uses sign language as his primary method of communication. Likewise, the hospital clearly held that the hospital was a public entity and must abide by the ADA.[4]

The court continued that the hospital held itself out as providing interpreter services for its patients and therefore doing so was not "outside their regular services." Its claim that the patient's request was one they did not usually provide was therefore unsupportable.

The court also opined that the patient was not treated comparably to others . Therefore, using a non-certified interpreter and written notes is not comparable to providing services to a person whose primary way of communication is sign language.

Next, the court tackled the issue of whether the hospital "reasonably accommodated" the patient as is required under the ADA. The hospital argued that using notes was appropriate in this situation because it was not an emergency (the court responded that whether an emergency exists is not controlling when accommodation is required); written notes were used by many staff involved in the patient's care (the court responded a certified interpreter rather than written notes was warranted due to the difficulty this presented to effective communication with the patient's caregivers); and the court also stated that a patient's informed consent for a decision as important as whether or not to have surgery could not be assured through written notes.

Last, the hospital argued that two interpreters were provided. The court opined that the patient was not comfortable with either of them because his friend "only knew the alphabet" and the nurse employee was, in the patient's estimation, not fluent in sign language. The court responded that the hospital did not provide any evidence that showed either of these two individuals was qualified, formally or informally, as a sign language interpreter.

The court denied the hospital's motion for summary judgment, holding that the patient had presented sufficient evidence to defeat that motion. The patient's motion for summary judgment was also denied due to a filing error on his part.

Two additional summary judgment motions were filed by the hospital and the patient respectively. The court denied the second motion by the hospital but granted in part the patient's summary judgment motion which allowed him to seek damages associated with any pain and suffering he incurred at the hospital on the day he was admitted to the hospital from the ED.[5]

Although as a nurse you have little, if any, control over interpretive services provided by your employer, this case illustrates the importance of not fulfilling this role. Whether voluntarily or not, if you are not

certified in a specific interpreter method (language, sign language), there may be liability for the institution in which you work if the patient raises a violation of his rights under the ADA. Moreover, if your interpretations are not correct, and the patient relies on them, a legal action against you for professional negligence (wrong interpretation) and a failure to facilitate the informed consent of the patient could occur.

You can help patients, however, who need interpretive services by acting as an advocate for the patient who needs such services and voicing the patient's right to these services to your nurse manager, your risk manager, and your Chief Nurse Officer (CNO).

FOOTNOTES

1. Abernathy v. Valley Medical Center , No. CO6-001MJP, United

States District Court, W.D. Washington, Seattle, May 25, 2006.

Available at: https://casetext.com/case/abernnathy-v-valley- medical-center-2. Accessed 9/12/15.

2. Id., at 2.

3. Id., at 3.

4. Id., at 5.

5. Abernathy v. Valley Medical Center, No. CO6-01P, United States

District Court, W.D. Washington, Seattle, December 18, 2006, 7.

Available at https://casetext.com/case/abernathy-v-valley-medical-center. Accessed 9/12/15.