Serving the hearing-impaired

An update on the use of sign-language interpreters for dental patients and their families

BY PETER M. SFIKAS, J.D.

The legal requirements concerning the use of sign-language interpreters in dentistry continue to be misunderstood by many dentists and their staffs.

A recent jury verdict in another health care arena—an obstetrics practice—provides a harsh reminder of what the law requires. In that case, a federal jury in Maine awarded $60,000 to a deaf man based on his claim that the practice unlawfully failed to provide interpreter services during his wife's pregnancy.[1] A U.S. district court magistrate imposed additional injunctive relief.

The case is one of the first of its kind in a private practice as opposed to a hospital setting. It also reinforces that the duty to provide interpreters extends beyond patients to others with whom they associate, such as their family members who may be hearing-impaired.

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A RECAP OF THE FEDERAL LAW

Since the implementation of the Americans with Disabilities Act,[2-4] or AwDA, about a decade ago, dental offices have had obligations under federal law to people with hearing impairments. Under the AwDA, a professional office of a health care provider, such as a dental office, is a place of public accommodation and prohibited from unlawful discrimination by reason of disability.

Assuming for this article that a person with a hearing impairment has a disability for purposes of the AwDA, a dental office thus cannot discriminate against such a person because of his or her condition. As I wrote in a previous column,[5] this applies to all people who may seek care from the office and to those with whom they associate, not just existing patients of record. And state law may impose even more stringent requirements, penalties or both for violation.

Under the law, dentists and other health care providers must provide effective communication, including supplying "auxiliary aids and services" as necessary to achieve "effective communication"—for instance, to ensure that communication with people who have a hearing loss is as effective as communication with others[6]—unless doing so would cause an "undue burden."

Rather than impose a one-size-fits-all solution for dealing with people who have hearing impairments, the law contemplates that the dentist will make an individualized inquiry, based on the person's needs and the procedures involved, about whether an interpreter is needed to achieve effective communication.

(This may vary, depending not only on the patient's needs, abilities and preferences, but also

on the procedure involved. It is based on the current situation with the patient at hand, not on how the dentist may communicate with other deaf patients, or how the dentist communicated with the patient in question before the AwDA was implemented.)

The law does not require that a dentist retain a sign-language interpreter for all such patients, or for all of their visits. However, when an interpreter is needed, the dentist must supply one and bear the cost.

THE OBSTETRICS CASE

Imagine a health care practice that understands its obligations to patients under the law and takes numerous steps to comply. That could well have been the case in United States of America, et al., vs. York Obstetrics & Gynecology, P.A.,[1] the obstetrics case mentioned above.

As summarized by the U.S. district court magistrate who allowed some of the plaintiff's claims to proceed to trial, the obstetrics practice, after being contacted by the patient's advocate from the Maine Center on Deafness about Ms. Smith-McLaren's needs, arranged for an American Sign Language interpreter to be present at the initial and second routine prenatal visits.

The practice also arranged for interpreter services for group sessions such as a birthing class. And while the patient received other prenatal care without an interpreter for about five months during her pregnancy, the decision was made to provide an interpreter for all visits after she was diagnosed with gestational diabetes, at which time she also was referred to a specialist in high-risk pregnancies.

Factors in the verdict. What, then, led to the $60,000 jury verdict—plus other injunctive relief that the magistrate later awarded? Two things, at least, and perhaps a third.

First, there was a dispute as to whether the patient should have had the benefit of an interpreter during the five months that she did not (even though the practice said the patient had stated that one was not necessary). The magistrate found that there was evidence in the record that both the patient and her husband had requested interpreter services during that period, and that they did not understand all that was said to them during those visits.

Achieving effective communication is important not only for antidiscrimination law purposes, but also as a matter of good risk management.

Second, there was the husband, whom the magistrate found could assert his own claims brought on his behalf by the government under federal law, and on his behalf under both federal and state law. This was in keeping with other cases reflecting the duty to provide auxiliary aids and services to nonpatients in a hospital setting. In another case, for example, a deaf woman alleged violation of federal law when a hospital failed to provide her an interpreter in connection with the treatment of her husband (see Aikins vs. St. Helena Hospital,[7] in which the claim was allowed to proceed under Section 504 of the Rehabilitation Act). In another case, a hospital failed to provide interpreter services to a father for a Lamaze class and for communicating after the birth of his child.[8]

The third reason has to do with the resources brought to bear on the McLarens' behalf. Claims were pursued by both the government under federal law, and private counsel under both federal and state law—a potentially powerful combination that is most likely to hold a practice to the highest standards, and to seek the most relief that may be sought, under all applicable laws.

The magistrate let all of these claims proceed to trial, except for the McLarens' claims for injunctive relief under the AwDA. A jury then found liability on only one of those claims—the one for compensatory (money) damages brought by the government on Mr. McLaren's behalf—but one was all that was necessary.

Impact of the outcome. Careful readers of the obstetrics case would point out that, at one level, it could stand for the proposition that health care providers who fail to provide interpreter services are at serious legal risk only if the federal government gets involved.

This is because the magistrate made plain that only the government can seek monetary damages and civil penalties under the AwDA, as it did in this case, and because the magistrate found that the patient and her husband could not sustain a claim for injunctive relief, since they did not claim or show a "real and immediate threat of repeated injury."

While this may be true, a provider can never know when the government might step in, as it did in this case. And as for injunctive relief, it may be more likely in dentistry—where there is a need for ongoing, lifelong care—that plaintiffs like the McLarens would be able to show that they were likely to use their dentist again, and that the dentist would likely refuse to provide them an interpreter, if indeed that is the case.

As noted above, the government's claim on behalf of Mr. McLaren encompassed more than monetary damages. After a series of posttrial motions, the government was able not only to maintain the $60,000 award, but also to secure injunctive relief. Unless this case is overturned on appeal, this means that the practice will, among other things, also have to take the following steps:

- develop and distribute to staff a written policy for effective communication that will ensure compliance with the law and with specific items required by the magistrate, including affirmatively offering auxiliary aids and services such as sign-language interpreters;
- distribute the policy to all personnel who have contact with the public, and develop and implement a training program so that personnel are sensitive to the communications needs of people with hearing impairments;
- post conspicuous signage in prominent places in waiting rooms advising hearing-impaired people that sign language interpreters and other auxiliary aids and services are available.

RELATED ISSUES

There are at least two related issues regarding interpreters that are worth mentioning. First, achieving effective communication is important not only for antidiscrimination law purposes, but also as a matter of good risk management.

An interpreter can help enhance a dentist's ability to fully and accurately understand patients' dental complaints, secure informed consent, ensure safe and effective treatment and promote patients' understanding and compliance. From this perspective, an interpreter helps both dentists and the patients they serve. As stated by the National Association of the Deaf Law Center, "[a]n interpreter should be present in all situations in which the information exchanged is sufficiently lengthy or complex to require an interpreter for effective communication."[9]

Second, most dental offices will be allowed a tax credit of 50 percent of the cost of interpreter services between $250 and $10,250 expended in a given year. Readers should consult with their tax advisers in this regard.

CONCLUSION

In summary, a dentist usually must pay for interpreter services as needed to achieve effective communication when providing services to people with hearing impairments. Furthermore, dentists should be mindful that this obligation extends beyond patients to those with whom they associate, such as any family members who may be hearing-impaired. ■

Mr. Sfikas is ADA general counsel and an adjunct professor of law at Loyola University of Chicago School of Law. He has lectured and written on legal issues and is a fellow of the American College of Trial Lawyers. Address reprint requests to Mr. Sfikas at the ADA, 211 E. Chicago Ave., Chicago, Ill. 60611.

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This article is informational only and does not constitute legal advice. Dentists must consult with their private attorneys for such advice.

Interested readers may wish to contact the National Association of the Deaf Law Center at 1-301-587-7730 to receive a copy of "ADA Questions and Answers for Health Care Providers."

1. United States of America, et al., vs. York Obstetrics & Gynecology, P.A., et al., Case No. 00-8-P-DMC (D. Maine).
2. 42 U.S.C. ss12181-12189.
3. U.S. Department of Justice Regulations, 28 C.F.R. Part 36.
4. U.S. Department of Justice Interpretive Guidance, 56 Fed. Reg. 35544 et. seq.
5. Sfikas PM. Treating hearing-impaired people: a look at the use of sign interpreters in dentistry. JADA 2000;131:108-10.
6. C.F.R. ss36.303(c).
7. Aikins vs. St. Helena Hospital, 843 F. Supp. 1329 (N.D. CA 1994).
8. Bravin vs. Mount Sinai Medical Center, 115 NDLR par. 61 (S.D.N.Y. 1999).
9. National Association of the Deaf Law Center. ADA questions and answers for health care providers. Silver Spring, Md.: National Association of the Deaf Law Center.