

# Legal Landscape of Medical Providers & Discrimination Against Deaf

Howard A. Rosenblum, Esq.  
NAD CEO & Legal Director

April 5, 2019



# Legal Mandate for Effective Communication

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- **Covered entities “shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities”**
- **Auxiliary aids and services necessary “vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.”**

# Legal Mandate for Effective Communication

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- **“Qualified interpreters” = “interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.**



# Legal Mandate for Effective Communication

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- **“Undue burden” = “significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include –”**
  - **(1) The nature and cost of the action needed**
  - **(2) The overall financial resources; number of persons employed; effect on expenses and resources; legitimate safety requirements; or the impact otherwise upon operation;**
  - **(3) The separateness from any parent corporation or entity;**
  - **(4) The overall financial resources of any parent corporation or entity; and**
  - **(5) The type of operation of any parent corporation or entity.**
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# Deaf Community's Perspective

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- Rehab Act of 1973 and ADA of 1990 were supposed to bring equality
- In many ways, closer to equality
- Of all service providers, two are by far the worst in refusing interpreters:
  - Attorneys (and sometimes courts)
  - Doctors (and hospitals)
- My theory? Out of pocket expenses are foreign to them
- Deaf/Hard of Hearing/DeafBlind



# History of the NAD & Legal Work

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- 1880 – NAD founded
- 1966 – NAD has first staff and office
- 1977 – NAD hires first lawyer
- 1990 – NAD sues Maine Medical Ctr
- 1995 – NAD sues St Elizabeth Hosp
- 1996 – NAD sues Free State Health
- 1996 – NAD sues Southwest Gen Hosp
- 1996-97 – NAD sues PG Cnty Hsp (3X)
- 1996&2000 – NAD sues Free State (2X)
- 1998 – NAD sues Swedish Covenant

## History of the NAD & Legal Work

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- 1998&14 – NAD sues Dr's Cmunity **(2X)**
  - 1998 – NAD sues SUNY Health Science
  - 2000 – NAD sues Good Samaritan Hsp
  - 2006 – NAD sues UMD Medical
  - 2008&16 – NAD sues Upper Ches **(2X)**
  - 2008-12 – NAD sues Adventist **(3X)**
  - 2009 – NAD sues Walker Baptist MC
  - 2010 – NAD sues Chester River Health
  - 2011 – NAD sues Professional Health
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## History of the NAD & Legal Work

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- 2012 – NAD sues Advanced Walk-In
- 2012 – NAD sues Martin County Hosp
- 2012 – NAD sues Iredell Mem Hosp
- 2014 – NAD sues NY Hosp/Queens
- 2014 – NAD sues District Hosp Partners
- 2015 – NAD sues Mountain States Hlth
- 2016 – NAD sues Mercy Medical
- 2017 – NAD sues Lifespan
- 2018 – NAD sues Centura Health



# DOJ Health Care Initiative

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- **Began in 2012**
- **47 Cases between 2012 and 2017**
- **30 involving denial of communication at hospitals and doctors offices (64%)**
- **Of the 30, 5 specifically mention deaf companions; 1 is deaf parent**



## **Other Lawsuits against Doctors/Hospitals**

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- **Based on legal research, estimate of 180+ federal cases against doctors and hospitals since 1973**
- **Only represents small percentage of denial of effective communication cases against medical providers**
- **Many deaf people try to resolve in other ways or do not bother**



# Typical Defenses of Hospitals/Doctors

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- Request not made (typically not recorded or lost in process)
- Don't know where to get an interpreter or family/friends can suffice
- Undue Burden Myth: Cost of interpreter more than payment for visit
- Insurance does not cover it
- Patient can read and write English
- Less than 15 people in office
- "Signing" staff



# Joint Commission Guidance

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- **Joint Commission recognized the access problem and issued its “Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care: A Roadmap for Hospitals” in 2010**
  - **Emphasized by Joint Commission that these were not new rules, but intended to help hospitals follow mandates**
  - **Problems remain**
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# Language Access & Impact on Deaf

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- Hospitals began implementing language phone lines to provide comm access
- VRI became the equivalent, without regulation
- Instead of denying interpreters, now VRI is often offered as sole option
- The GWUH story (representing many others)



## Doctor's Offices

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- Many outright refuse interpreters
  - Many refer deaf patients to other doctors
  - Many tell deaf patients to see them at hospital instead of office
  - Some hire “signing” staff
  - Some retain unqualified interpreters exclusively, and schedule deaf patients around interpreters' availability
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- A faint, circular logo for the National Association of Deaf Interpreters (NAD) is visible in the bottom right corner of the slide. The logo consists of the letters 'NAD' in a stylized, bold font, enclosed within a circular border.

## Other Issues

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- **Rights of Companions who are Deaf**
- **Charging costs of interpreters to insurance & deaf patients**
- **Missed appointments and charging deaf patients**
- **Qualifications of interpreters for serious medical issues**



# QUESTIONS?

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