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Attorneys at Law

Communication Access at Hospitals & Doctors Offices

A Special Webinar Presentation for the
Statewide Independent Living Council of Illinois
December 6, 2018

Andrés J. Gallegos, Esq.

About the Presenter

Andrés J. Gallegos is a disability rights attorney with the law firm of Robbins, Salomon & Patt, Ltd. in Chicago where he leads the law firm's national disability rights practice. In February 2018 Andrés received a Congressional appointment to the National Council on Disability, an independent federal agency that advises the President, Congress, and Federal agencies on matters affecting persons with disabilities throughout the country. He is the recipient of American Association of People with Disabilities' 2015 Paul G. Hearne Leadership Award, is a past two-term member of the Statewide Independent Living Council of Illinois, and is currently the Chairman of the Board of Directors of Access Living of Metropolitan Chicago, Chicago's Center for Independent Living.

Andrés is a person with a disability and has been living with the effects of a spinal cord injury, resulting in quadriplegia, for the past 20 years.

Andrés is a frequent speaker on accessible healthcare, speaking on the topic before national audiences, and has authored numerous articles in national professional journals on the subject.

'I was panicked': Deaf patients struggle to get interpreters in medical emergencies

STAT News.Com, Miami, Florida May 22, 2017

Deaf patients win right to sue Baptist Health for discrimination

Miami Herald, Miami, Florida, May 9, 2017

Bronx medical facility sued for excluding patients with disabilities and jeopardizing their health

Disability Rights Advocates, New York, New York, July 29, 2015

Woman cites sign language barrier at Dallas hospital

WFAA8 ABC, Dallas, Texas, March 1, 2015

Lawsuit: Colorado deaf patient denied interpreter at Rose ER

Denver Post, Denver Colorado, October 24, 2014

Deaf patients protest Hospital's sign language services

Statesman Journal, Oregon, August 16, 2014

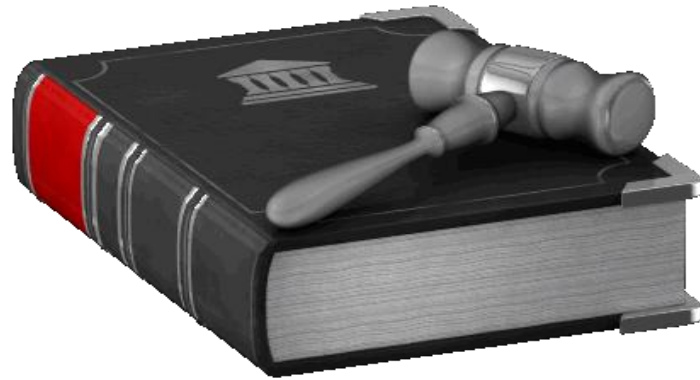
Let's Talk

- What is Effective Communication?
- Communication Access: Your Legal Rights, Your **Civil** Rights
- Patient Advocacy Strategy: Acting **B-A-D**
- Questions



What Is Effective Communication?

- The ability to share your medical and family history, symptoms, needs, etc.
- The ability to ask questions about your diagnoses, prognoses, medication, treatment, etc.
- The ability to understand the risks of a procedure or treatment, your treatment options, diagnoses, prognoses, how and when to take medication, side effects of medication, financial obligations, etc.



**Communication Access:
Your Legal Rights.
Your Civil Rights.**

Your Legal & **Civil** Rights



- 3 Federal Laws:
 - Americans with Disabilities Act
 - Rehabilitation Act of 1973
 - Affordable Care Act (Obama Care)
- Equal opportunity to participate in your healthcare
- Apply to you and your “Companion”

Your Legal & **Civil** Rights



- Doctors, hospitals, etc., must provide help to you so there is “**effective communications**”
- They are suppose to discuss with you **FIRST** to see what you need... interpreter, VRI, What?
- Tell them what you need so you can share information, ask questions, and understand what is going on... that’s “**effective communications**”

Your Legal & **Civil** Rights

- Under ADA & Rehabilitation Act:
 - Hospitals & doctors, etc., do not have to provide your favorite way to communicate, but what they provide must be effective.
 - Ask for what you want, but hospital and doctors do not have to give.
 - You control what “effective” is. If offer VRI, write notes, or other, you have to try it. IF NOT work, tell them what works... on-site interpreter? What?

Your Legal & **Civil** Rights

- Under Affordable Care Act:
 - Hospitals and doctors, etc., must give "primary consideration" to what you like. "Primary Consideration" means must ask you what you use.
 - Hospitals and doctors may provide you what you want, but do not always have to.
 - Ask for what you want, ... on-site interpreter, VRI, what? Hospitals and doctors can provide something else if effective.

Your Legal & **Civil** Rights

Who can interpret?



- Qualified Interpreter
 - Licensed in Illinois
 - Intermediate proficiency level for nursing homes
 - Advanced or Master proficiency level for medical settings

Your Legal & **Civil** Rights

Who can interpret?

- They **CANNOT** ask your family member or friends to be your interpreter.
- IF emergency, and no interpreter, and you have no choice – go ahead. They must get permission from that family member or friend first.
- You can ask for family member or friend to interpret for you... **WARNING – Be Careful!**



Your Legal & **Civil** Rights

Who can interpret?

- Your kids should not be your “interpreter.”
- IF emergency, and no interpreter, and you have no choice – go ahead.
- They should only use your kid for a short time. They must look for a real live (adult) interpreter.



Your Legal & **Civil** Rights

An interpreter is not needed...



Short & Simple Conversations:

- Ordering food in cafeteria
- Asking for directions to a clinic
- When in gift or flower shop
- Scheduling appointment, etc.

Your Legal & **Civil** Rights

An interpreter is needed...WHY?



1. Need to know your medical information, family history, or what your medical problems are;
2. Discuss what is wrong, discuss what treatment plan you need;
3. Discuss or explain what the treatment plan looks like, or what tests you will need;

Your Legal & **Civil** Rights

An interpreter is needed...WHY?



4. Discuss or explain results of your tests;
5. To explain what medicine to take, or when to take your medicine, or what can happen when you take your medicine;
6. To ask your permission and you agree for surgery, or you need the treatment;

Your Legal & **Civil** Rights

An interpreter is needed...WHY?



7. Discussion while you get treatment or testing;
8. Discussion for what you do when you get home after your surgery or treatment;
9. For mental health evaluation or therapy;

Your Legal & **Civil** Rights

An interpreter is needed...WHY?



10. To give you information about donating your blood or organ;
11. To explain about living wills or powers of attorney mean and if you want one;
12. Talking about money or insurance issues; and
13. To take classes like birthing, nutrition, CPR, and weight management.

Your Legal & **Civil** Rights

- Help to communicate is free. You cannot be asked to pay for interpreter, VRI, CART, etc.
- You are protected under the law if hospital or doctor “punish” you for asserting your rights or because you demand “**effective communication**”



Acting **B-A-D** A Patient Advocacy Strategy



Acting **B-A-D**: A Patient Advocacy Strategy



- 3-Phase Approach
 - **B**efore the appointment
 - **A**fter the appointment
 - **D**uring the appointment

Acting **B-A-D**: A Patient Advocacy Strategy



1st Phase
Before the Appointment

Before the Appointment

1. Research the hospital or doctor's office on website
2. GOOGLE:
 - "Deaf"
 - "Sign Language"
 - "Interpreter"
 - "ADA"
 - "Patient Rights"



Before the Appointment



3. Call and ask if they have an on-site ASL interpreter, VRI, What?
4. Make your appointment, tell them what you need. “I need an interpreter,” or “I need VRI.”
5. 3-days before your appointment, call and ask if they got what you asked for. If they tell you no...

Before the Appointment



If They Won't Have What You Need ... Your Choice ...

Before the Appointment

6. If you reschedule appointment, tell them to DOCUMENT in your file and EXPLAIN why you have no interpreter.
7. If you keep your appointment, tell them to DOCUMENT in your file that you have no interpreter and DOCUMENT why there is no interpreter.



Before the Appointment



8. IF they tell you they ONLY have VRI, and you don't like VRI, then tell them why.
9. IF this is FIRST appointment, you have to TRY it. If VRI still not work, you do NOT have to accept it.
10. If you there before and already tried VRI, and it STILL not working, same problem as before, you do NOT have to accept it.

Acting **B-A-D**: A Patient Advocacy Strategy



2nd Phase

During the Appointment

During the Appointment



1. When you arrive, ask if they are ready for you? Did they give you what you asked for? Interpreter? VRI? If they tell you no...

During the Appointment



If They Don't Have What You Need ... Your Choice ...

During the Appointment

2. If this appointment that you decided to keep anyways, tell them again to DOCUMENT that in your file and WHY you not have an interpreter.
3. Demand they call you after and explain why you do not have an interpreter for your appointment.



During the Appointment



4. At your appointment with your doctor or nurse, tell them if VRI or interpreter is working? Or is not working?
5. If it is not working, then need to tell them right away. Tell them what you need. VRI? Another interpreter? What?

During the Appointment



6. After finish your appointment, before you leave, get the doctor's contact information and write down the name of the person who is in charge of "patient's complaints."
- ADA Coordinator
 - Section 504 Coordinator
 - Section 1557 Civil Rights Coordinator

Acting **B-A-D**: A Patient Advocacy Strategy



3rd Phase
After Appointment

After the Appointment



1. IF they did NOT provide you with an interpreter or what you asked for. Write a letter/email and ask why not?

After the Appointment

2. In the letter/email:

- Tell them what happened and how it made you feel.
- Ask them to tell you why they did not get what you asked.
- Tell them to make sure it does not happen again.
- You need to tell them what date you want their letter.



After the Appointment



3. IF they do NOT send you a letter like you asked, or if response is not good... contact:

- Center for Independent Living
- Disability Rights Lawyer
- Equip for Equality
- IL Attorney General
- U.S. Dept. of Justice
- U.S. Dept. Health and Human Services

Conclusion



**HELLO. I AM DEAF.
I WOULD LIKE AN ON-SITE AMERICAN SIGN
LANGUAGE INTERPRETER IMMEDIATELY.
PLEASE RESPECT MY PREFERENCE.**

THE LAW

**EFFECTIVE JULY 18, 2016, UNDER THE
AFFORDABLE CARE ACT, HEALTHCARE
PROVIDERS MUST GIVE "PRIMARY
CONSIDERATION " TO A DEAF PATIENT'S OR HIS
COMPANION'S COMMUNICATION
PREFERENCE.**

**SEC. 1557 OF THE AFFORDABLE CARE ACT,
45 C.F.R. SEC. 92.202**

**Courtesy of
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Contact Information

- Equip for Equality, 20 North Michigan Avenue, Suite 300, Chicago, IL 60602; (312) 341-0022; (800) 537-2632 (Voice); (800) 610-2779 (TTY)
- Illinois Deaf and Hard of Hearing Commission, 528 South 5th Street, Suite 209, Springfield, IL 62701, V: 877-455-3323 * 217-557-4495; VP: 217-303-8010; TTY: 888-261-2698
- Illinois Human Rights Commission James R. Thompson Center
100 W. Randolph Street, Suite 5-100, Chicago, Illinois 60601, Tel: (312) 814 – 6269; TDD: (312) 814-4760; Fax: (312) 814-6517

Contact Information

- Illinois Attorney General, Disability Rights Bureau, Office of the Attorney General, James R. Thompson Center, 11th floor, 100 W. Randolph Street, Chicago, IL 60601, Tel: 312-814-5684; 1-800-964-3013 (TTY); 312-814-3212 (fax)
- Celeste Davis, Regional Manager, Office for Civil Rights, U.S. Department of Health and Human Services, 233 N. Michigan Ave., Suite 240, Chicago, IL 60601; Voice Phone (800) 368-1019; FAX (312) 886-1807; TDD (800) 537-7697
- US Department of Justice, 950 Pennsylvania Avenue, NW, Civil Rights Division, Disability Rights Section – 1425 NYAV, Washington, D.C. 20530; fax: (202) 307-1197; email: ADA.complaint@usdoj.gov; On-line Complaint Form: <http://www.ada.gov/complaint/>

QUESTIONS?

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