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Health Care Litigation: Overcoming Language Barriers to Reduce Liability

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In September 2006, the U.S. Census Bureau listed Hispanics as the nation’s largest ethnic group, comprising 14 percent of the American population. Although many Hispanics primarily communicate in English, or are bilingual, a significant number are still acquiring English as a second language. Consequently, these Spanish-only speakers face significant challenges when communicating in medical settings. Language barriers often preclude Hispanics, and other non-English speakers, from receiving quality health care. Courts are increasingly placing the burden on health care providers to overcome language barriers by providing language assistance programs.

Health care providers’ failure to provide language assistance to non-English-speaking patients opens the door to a world of litigation. For example, a Spanish-speaking couple in California recently sued their health insurer, alleging that the company reneged on its promise to provide coverage. When the couple first spoke to a bilingual representative of the insurance company by phone, they responded to the agent’s questions in their native language. However, when the couple received the agent’s pre-completed insurance contracts in the mail, the documents were written in English. Though the couple could not read the contracts, they signed them, assuming that the documents accurately reflected the terms the parties had previously agreed to over the telephone. The couple later submitted a claim for $130,000, which the insurance company subsequently denied, stating that the couple had inaccurately reported preexisting conditions on their signed applications. If the insurer had made a Spanish-written contract available from the onset, the need for litigation possibly could have been avoided. Further litigation could ensue unless health insurers communicate with applicants and policyholders in appropriate languages which all parties understand.

Another example of language-barrier litigation played out in Florida during 2006. In Northwest Medical Center, Inc. v. Ortiz, the Court of Appeals of Florida held that a Spanish-speaking obstetrical patient did not receive reasonable notice from her hospital regarding her participation in Florida’s Birth-Related Neurological Injury Compensation Plan (NICA). According to Florida statutes, once a patient consents to participate in the Plan, NICA provides the exclusive remedy for birth-related neurological injury claims, and impedes the signatory’s ability to file a malpractice suit against a physician covered under the plan. Although the patient signed an NICA consent form prior to giving birth to her child, the consent form was not written in Spanish, and the hospital failed to provide her with Spanish-language brochures explaining the stipulations of the NICA plan. The Court held that since the patient neither received information about NICA during her pre-registration months nor during the actual in-patient stay, the hospital failed to provide adequate notice to make an informed decision about her participation in the NICA plan. Specifically, the hospital should have provided such information in her primary language, or in some manner that would have enabled her to make an informed decision about her medical care.

Even if patients receive information in their primary languages, courts may render such information ineffective if the information is conveyed in a manner that the patient cannot comprehend. In Quintanilla v. Dunkelman, though the hospital provided a Spanish-speaking patient with Spanish-language consent forms, the patient was illiterate and was thus unable to read or understand the forms prior to signing. The Court of Appeal of California reasoned that the “conclusive presumption” of the California Evidence Code Section 622, which provides that the facts “in a written instrument are conclusively presumed to be true,” is inapplicable where substantial evidence exists that the patient “did not receive a real opportunity to read” or “was not able to read the language” of the consent form, and did not understand what procedures were going to be performed upon her. Since the hospital failed to present evidence that the consent forms were interpreted for her, or that she received adequate information regarding the procedures, the Court held that the physicians were liable for failing to obtain her informed consent.

In addition to traditional medical settings, courts have required effective language-appropriate communication for patients receiving medical care in correctional institutions. In Gutierrez v. Dubois, a class of primarily Spanish-speaking inmates sued the Massachusetts Department of Corrections, alleging, among other complaints, that the lack of interpreters in medical visits

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posed a risk to their health. Specifically, they claimed that they could not adequately explain their conditions or symptoms to the English-speaking medical staff and consequently would receive improper medical treatment as a result of the language barriers. While the Superior Court of Massachusetts granted summary judgment on the other counts, the court remanded the issue of whether the lack of regular interpreters endangered the inmates' health for further factual finding.

The need to provide language assistance in this country is not limited to non-English languages. In 2005, hearing-impaired, English-speaking patients brought suit in Gillespie v. Dimensions Health Corp. when the hospital denied their requests for sign-language interpreters to facilitate their communications with hospital personnel. Rather than providing interpreters, both doctors and nurses unsuccessfully attempted to communicate by reading lips and writing notes. Ultimately, the doctor encouraged the patients to seek treatment at another hospital. The U.S. District Court for the District of Maryland granted the hospital’s motion to dismiss two claims on jurisdictional grounds but denied its remaining motions for most of the plaintiffs. The message is clear that efforts to improve communications in health care settings must include substantial changes to address the language needs of the American population as a whole. Accordingly, effective communication in health care is no longer a mere courtesy for the patient, but rather, an essential strategy for increasing quality health care while decreasing provider liability.

Taking a lead on this issue, the California State Department of Managed Health Care has proposed the implementation of Language Assistance Programs. These programs provide enrollees with language assistance, including translation and interpretation services. Although the proposed regulations remained under comment and revisions as of late 2006, if effectuated, the programs may ultimately require language assistance services at hospitals and doctors’ offices throughout the state. Notably, the programs may require health care providers to provide beneficiaries with materials translated to their primary languages. Such measures can increase health care quality and access, while decreasing language barrier litigation.

In summary, courts nationwide are taking note of language barriers that non-English speakers face within the health care system. Specifically, there is an evolving recognition that languages need not be barriers to health care. As litigation stemming from language barrier problems increases, courts will continue to be increasingly adamant about requiring true informed consent and effective communication to patients in a language-sensitive manner. Solutions do exist and litigation can possibly be avoided. Effective communication in health care is no longer a mere courtesy for the patient, but rather, an essential strategy for increasing quality health care while decreasing provider liability.