

Use of Interpreters When Treating the Deaf Client

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The following article is for informational purposes and should not be construed as constituting legal advice. A psychologist concerned about how to comply with the provisions of the Americans with Disabilities Act is advised to consult with an attorney familiar with the applicable Federal statutes.

A New Jersey jury recently awarded a deaf patient \$400,000 in damages because her rheumatologist had refused to hire an interpreter to communicate with her during treatment. The interpreter would have charged more than the amount of the physician's reimbursement, so the physician instead treated the patient using her nine-year-old child and domestic partner as interpreters. The patient repeatedly requested a professional interpreter and alleged that the physician eventually discharged her from the practice because of these requests. Unfortunately, in this case, neither settlement nor defense costs were covered by the rheumatologist's malpractice insurance.

It is not unlikely that during their career, psychologists may be faced with a similar situation as the rheumatologist in the example above. Most psychologists are somewhat familiar with the [Americans with Disabilities Act](#) (ADA). But many are unaware of the requirement that health care practitioners, regardless of the size of their business, are considered providers of public accommodation by the ADA, and must provide "auxiliary aids and services" to ensure "effective communications" with persons with disabilities. Auxiliary aids and services include sign language interpreters, note takers, computer aided transcription services, and Assistive Listening Devices. The only limitation on this requirement is when the auxiliary aid would fundamentally alter the nature of the services being provided or result in an undue financial burden to the psychologist.

Many psychologists who called regarding accommodation for deaf clients noted that the cost for using an interpreter may exceed the charge for the psychologist's services, resulting in a net income loss to the psychologist for each hour of service provided. Using family members as interpreters to avoid additional costs could well be counterproductive especially for the delivery of mental health services. Therefore, it may be even more important to use the services of an independent, trained interpreter at additional costs to the psychologist when working with a deaf client. The psychologist naturally and intuitively thinks that losing money is the very definition of undue financial burden. But that assumption is incorrect. According to the US Department of Justice (which is charged with ADA enforcement) and courts that have considered the issue, whether or not a particular expense is an "undue burden" is determined in reference to one's annual income and not the expense of individual transactions.

On the other hand one might argue that requiring psychologists to provide services at a net loss fundamentally alters the nature of the services being provided. Since the success of psychotherapy depends on the quality of the relationship between the therapist and patient, one might ask if any resentment (i.e., counter-transference) caused by being forced to accept patients in this way could seriously diminish the possibility of success? Further, cultural competence is a requirement of successful treatment and many psychologists with normal hearing may have a poor understanding of deaf culture. The argument would be that being forced work with deaf clients and to pay for the services of an interpreter would fundamentally alter the nature of the services being provided. It is very unlikely this line of defense would hold up in response to a complaint before a licensing board or ethics committee. It may be even more difficult to use such a justification for a complaint to the ADA.

The nature of the ADA enforcement process makes this line of defense potentially costly and unlikely to succeed. The Department of Justice is charged with fair and flexible enforcement, but strident and organized advocacy groups often weight in on the process in favor of the rejected or aggrieved client. The ADA enables the Attorney General (an adversary to whom expense is not an issue) to penalize first offenders as much as \$55,000 for noncompliance. It also enables aggrieved patients to directly sue service providers.

In the final analysis, it is not unreasonable for a handicapped individual to expect that health care providers of all kinds, including psychologists, accommodate their handicap; in fact the ADA was passed to assure handicapped persons have access to quality care. While it is statistically unlikely that psychologists will face this scenario with regularity during their careers, the establishment of the ADA and the rise in the number and severity of impairments covered under the ADA suggests enhanced sensitivity to the reasonable expectations of the disabled and their accommodation in therapeutic settings. When health care providers of all types are asked to accept and accommodate disabled clients in their practices, they might see it as an opportunity to mitigate the often exceptional burden the disabled endure. For psychologists, it is an opportunity to observe Principle D (Justice) of the [Ethical Principles of Psychologists and Code of Conduct](#):

Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists.