When the Patient is Hearing-Impaired

A question that comes up frequently these days in optometric offices is what the legal responsibilities of an optometrist are with respect to hearing-impaired patients. In particular, optometrists want to know about their obligations under the federal Americans With Disabilities Act (ADA). Such questions probably arise with hearing-impaired patients more often than with any other disabled patients because of the wide array of accommodations available for the hearing-impaired. While the legal principles remain the same for all disabled patients, the issue of which of many accommodations to choose appears paramount to patients who have a hearing disability. A proper analysis starts with the primary obligations imposed by the ADA.

An optometric office is considered a public accommodation under the ADA. As such, it must provide access to people with disabilities, including those who are hearing-impaired. This requires that reasonable accommodations be made to allow the disabled individual to access the services in the optometric office. Reasonable accommodations include providing auxiliary aids or services for disabled patients. One possible auxiliary aid or service for a hearing-impaired person is a sign language interpreter.

However, there are other reasonable aids or services that can be substituted for a sign language interpreter. Thus, it may be possible to communicate by writing notes on pads or some type of slate, or by using a computer and computer screen. It may also be possible for a family member to act as the interpreter. The disabled person is entitled only to a reasonable and effective accommodation, not to the best of all possible accommodations. Thus, a hearing-impaired person may not demand a sign language interpreter if another reasonable, alternative accommodation would prove to be satisfactory, even though the hearing-impaired individual would prefer a sign language interpreter. Of course, in any case where it could be established that no satisfactory alternative was available, then it would be required to provide a sign language interpreter.

The answer to the question of what constitutes a satisfactory accommodation could differ from one hearing-impaired patient to another. Hearing impairments take many forms, and have many underlying causes. The practical difficulty for an optometric office is whether it is worth challenging an intransigent hearing-impaired patient on this issue, even though the optometric office may be technically correct in its application of the ADA. The courts have tended to give weight to the expressed preference of the patient if that preference has any kind of reasonable justification for pointing to one type of accommodation over another. On the other hand, courts have not upheld a mere demand to have a sign language interpreter where reasonable alternatives were completely ignored by the patient. As always, being able to win in court does not mean an optometrist is immune from being sued. Every optometrist must weigh winning against the cost of achieving victory and make a personal decision as to which course of action to pursue in such cases. Consulting with a knowledgeable attorney is crucial when making such a decision.

In all cases, an optometric office need not provide any accommodation that would pose an undue burden on the office. An undue burden is legally defined as a significant difficulty or expense. However, the courts have applied the undue burden exemption very narrowly, and unless it could be established that the cost of a sign language interpreter, for example, was so disproportionate to the overall yearly budget for an optometric office – a rather unlikely fact – the undue burden exemption would not shield an optometric office. The undue burden exemption has generally been limited to big-ticket expenses, such as elaborate handicapped access systems, that would truly be financially impractical for an office to install. Thus, if a hearing-impaired patient requests a sign language interpreter, and there are no other
reasonable, alternative accommodations that can be made for the particular patient, and the optometric office has no employee who can perform the interpreting service, then the office would have to hire a sign language interpreter. This is true regardless of whether the patient is a new or existing patient. The ADA draws no distinction between the two, and an optometric office could not turn away a new patient merely because the patient requested a sign language interpreter. That would constitute a violation of the ADA.

However, it may be possible for a family member to interpret, or for the optometric office to obtain free interpreting services from a local or county community service organization. In all events, the optometric office should explore with the patient what other accommodations could be reasonable for that particular patient. Again, the patient cannot unreasonably refuse an alternative accommodation that would otherwise be acceptable for his or her disability. If an optometric office determines that there is no alternative to hiring a sign language interpreter, the best place to look for such services would be through licensed audiologists, who are likely to know where to obtain such services at reduced or no cost. In an emergency, a nearby hospital might be a source for obtaining an interpreter’s services.

A hearing-impaired patient cannot be referred to another optometrist, facility, or ophthalmologist unless there is a medical/optometric justification for the referral. Referring the person solely because he or she is hearing-impaired, or because the person wants a sign language interpreter, is a violation of the ADA. If a patient is properly referred for a medical/optometric reason, then the optometric office is responsible for the referral, just as it would be for any other patient it refers. The bottom line is, the disabled person cannot be treated differently than any other patient would be with respect to a referral. Proper documentation in the patient record of the medical or optometric need for the referral is essential.

Should an optometric office need to hire a sign language interpreter, the office must bear the entire cost of hiring the interpreter and cannot pass this cost along to the patient. Any attempt to do so is a violation of the ADA. Again, in the unlikely event that the cost would be prohibitive, the optometric office could claim the undue burden exemption and refuse to provide the sign language interpreter. However, the chances of most optometric offices justifying the undue burden exemption are virtually nil on this issue. That is why it always pays to explore alternative auxiliary aids with particular patients.

The key to dealing with a patient who needs an accommodation for a hearing disability is to intelligently explore the full range of available auxiliary aids. Problems arise when an optometrist allows confrontation to set in with a patient who may simply be doing what comes naturally by starting out asking for the best, most expensive accommodation. Not every hearing-impaired patient is attempting to draw the proverbial line in the sand by making such a request; and it is difficult to accommodate anybody if you yourself adopt a confrontational position. Keeping a level head so as to explore all your options will keep you in compliance with the ADA.

For more general assistance with treatment of disabled patients, there is a toll-free number at the United States Justice Department that can provide some guidance. That number is 800-514-0301. The Justice Department has legal specialists available to answer ADA questions on the spot.

There is also a toll-free number for the Access Compliance Board, a private group that helps businesses comply with the ADA: 800-872-2253. The Access Compliance Board is generally more useful for building issues than for most auxiliary aid issues. Nevertheless, it can be helpful in a pinch.

From the AOA website: http://www.aoa.org/x6163.xml

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