

# Virtual Mentor

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## Health Law

### Legal Risks of Ineffective Communication

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Two anxious parents rushed their 13-year-old daughter, Gricelda, to a Phoenix, Arizona, area emergency room [1] because she was suffering from severe stomach pains. They spoke only Spanish, the hospital staff spoke only English, and Gricelda, who often served as a translator for her parents, was too ill to explain her symptoms. She was given a pregnancy test, received a diagnosis of gastritis, and was sent home with instructions to schedule a doctor's appointment within three days. But Gricelda's symptoms worsened, so the next day her parents took her to a doctor recommended by the hospital. Although accompanied by a 14-year-old bilingual friend who served as translator, Gricelda still didn't receive treatment for her symptoms. The family returned to the hospital where Gricelda was finally diagnosed with a ruptured appendix. She died a few hours later.

Gricelda's death prompted outrage in Phoenix's large Spanish-speaking community, who saw this tragedy as clear evidence of the difficulties they faced in obtaining appropriate health care. The family ultimately filed a lawsuit against the hospitals and doctors who failed to treat Gricelda. That poor communication between a doctor and a patient could have such tragic results is both shocking and unusual, but the risks of ineffective communication between a doctor and a patient are not news to anyone working in the health care industry. Although secondary to patient injury, the legal consequences of ineffective communication between physicians and patients are real, important, and can have devastating results for all involved. There are four major areas of legal concern doctors should be aware of—medical malpractice suits due to improper medical care, legal vulnerability for a lack of informed consent, breach of the duty to warn of risks associated with treatment methods and medications, and breach of the patient's privacy rights.

### Malpractice Suits

A physician who cannot communicate with a patient due to a language barrier may deliver delayed, incorrect, or improper medical care, potentially leading to a costly, time-consuming medical malpractice lawsuit. In one well-known case, an 18-year-old was rushed in to the emergency department, accompanied by his mother and girlfriend. The young man was unconscious, and the only clue to his condition was the use of the Spanish word "intoxicado" by his mother and girlfriend [2]. As no one in the ED spoke Spanish, hospital staff interpreted the word to mean that the boy was intoxicated or, more specifically, suffering from a drug overdose. What the women

had intended to convey, however, was that the boy was nauseated, not intoxicated. Nearly three days after his admission, all the while being treated for a drug overdose, the doctors ordered a routine neurological test. The test showed two blood clots in his brain, the result of a break in an artery that had been defective since birth. Finally receiving appropriate treatment for his condition, the boy regained consciousness, but was left with quadriplegia. He ultimately sued the hospital, the paramedics, the ED, and attending physicians for medical malpractice, and his settlement topped \$71 million.

The results in both cases are tragic, but the situations are not unusual. Without the help of an interpreter, doctors may fail to order necessary diagnostic tests or, as in the “intoxicado” case, may reach mistaken diagnoses based on what they believe their patients’ symptoms to be [3]. To avert serious or fatal consequences, some physicians rely on batteries of expensive, and often unnecessary, tests to fill in the gaps left by the language barrier, choosing to spend funds at the outset for the tests rather than for legal fees in the context of a malpractice defense. In reality, patients who have trouble navigating the health care system because of language barriers often have the same problems navigating the legal system, which makes suits of this type unlikely. But the very real risk of legal consequences due to improper medical care remains.

### **Lack of Informed Consent**

In addition to lawsuits for improper care, physicians may be legally vulnerable if inability to communicate prevents them from obtaining adequate informed consent. *Quintero v. Encarnacion* is an illustration of this very problem [4]. Rita Quintero was found on the streets of a Kansas town. She was dressed oddly, hadn’t bathed recently, and was unable to communicate anything other than a few Spanish words. She was taken into protective custody, where doctors determined that she was mentally ill and in need of treatment. She was involuntarily committed, remained hospitalized for 12 years and was treated with psychotropic medications. Occasionally, Spanish interpreters were contacted to attempt to explain the treatment program to Quintero, but her grasp of the language was limited.

With the intervention of an advocacy group, the doctors and facility learned that Quintero was in fact a citizen of Mexico and a member of the Tarahumara Indian tribe and was not mentally ill. The behaviors that her first physicians had attributed to mental illness, including her dress and odd behavior, were actually either traditional aspects of her culture or side effects of the medications she had been on for years. Once an interpreter who spoke her language, Ramuri, was found, she was released from the facility and allowed to return home to Mexico, where she filed an action against the doctors and state.

The physicians argued that they had met the requirement of informed consent by offering all of the relevant information to Quintero, albeit in English or Spanish, languages she did not adequately understand. The court held that informed consent could not be obtained if the explanations were conducted in a language the patient

did not understand and allowed Quintero to proceed with her suit against the physicians. To prevail in a lack-of-informed-consent case, the plaintiff must prove both what a reasonable medical practitioner in the same or similar community would have disclosed to the patient and that the defendant (the physician) had departed from that norm [3]. If the patient's capacity to understand is limited by a language barrier, and the physician proceeds without addressing this barrier, though a reasonable practitioner in the community would, the physician may be liable for failing to obtain informed patient consent.

### **Breach of the Duty to Warn**

Physicians also have a duty to warn their patients of the particular risks associated with individual prescription medications, courses of treatment, and no treatment. Under a number of legal doctrines, pharmaceutical companies fulfill their duty to warn customers by telling physicians of the known risks of prescription medications [5]. Physicians, in turn, must relate this information to patients, warn them of potential risks, and prescribe the appropriate type and dose of drug based on their medical expertise and their assessment of the patient. If a language barrier prevents doctors from ensuring that their patient understands the warnings or risks of a medication, those doctors may be liable in tort for breaching the duty to warn.

### **Breach of Patient's Privacy Rights**

Courts have held that physician's ethical duty to protect their patients' privacy is a legal duty as well [6]. Thus, whenever an interpreter is used, the physician must ensure that the interpreter is trained and competent and that the patient's privacy rights will be protected. Generally, this isn't a problem when professionally trained interpreters are used, but it can be when informal interpreters, such as family members or other hospital staff, perform the service. Unauthorized disclosure of a patient's medical records, as can happen when informal interpreters are used, constitutes an invasion of privacy that may be the basis for a tort action for damages [3]. Many patients choose not to tell family members about the information they disclose to physicians when seeking treatment. Ultimately, although using family members or other informal interpreters may save interpretation costs, medical professionals should be aware that doing so they may make them liable for breach of the patient's privacy rights.

The legal risks of ineffective communication between doctor and patient may vary, but in most of these situations the physician could have avoided legal risk through the use of a trained, professional interpreter. While access to interpreters is sometimes limited or cost prohibitive, particularly in emergencies, telephone services or professional interpreters can usually be obtained within a short period of time, and their use can actually save costs and improve treatment outcomes. Physicians should be aware of the risks they face if they proceed with treatment without interpretation and should strive to find ways to communicate effectively. Doing so ultimately protects patients and physicians.

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