

# Gloucester County Orthopedic Surgeon Pays \$100,000 For Failure to Communicate With Deaf Patients

In two unique cases in New Jersey, an Orthopedic Surgeon agreed to settle complaints filed by deaf patients who alleged he failed to provide accommodations for their disability. The New Jersey doctor entered into two public consent orders agreeing to utilize certain protocol to ensure that reasonable accommodation will be provided to future deaf patients under the Americans with Disabilities Act and the Rehabilitation Act of 1973. The Doctor further agreed to pay monetary damages of \$50,000 to each patient for his failure to provide Sign Language Interpreters to each profoundly deaf patient for medical exams and treatment performed in his office. These consent judgments are similar to those entered into with twenty-five other hospitals and with another New Jersey Doctor, Dr. Michael Goldberg as a result of complaints filed by deaf patients. In addition, these consent judgments are also being used in various other hospitals throughout the country. Shane Baldwin & Joseph Bingham who are both profoundly deaf and communicate in American Sign Language began going to see the Gloucester County Orthopedic surgeon in 1997 and on repeated occasions requested an interpreter be provided to them.

However despite their many requests that an interpreter be provided to Shane Baldwin & Joseph Bingham, the doctor refused to provide one. Shane Baldwin & Joseph Bingham were not provided with a qualified interpreter, despite federal and state law which requires that all doctors' offices provide reasonable accommodation, including qualified interpreters, to ensure that effective communication take place with all patients.

After experiencing the terror, frustration and emotional anguish of receiving medical treatment, surgery and aftercare without understanding much of what went on, Shane Baldwin & Joseph Bingham decided to sue the Orthopedic Surgeon so this would not happen to other deaf patients. They were both represented in these cases by Clara R. Smit, an attorney in East Brunswick who specializes in serving the deaf. After five years of litigation the parties agreed to enter into consent judgments wherein reasonable accommodations will now be obtained to ensure effective communication. The consent orders provide for signage to be posted throughout the doctor's office to alert both patients and staff alike of

their responsibility to provide interpreters to deaf patients who require same for effective communication. In addition the consent orders mandates the doctor and his office follow several steps to ensure all possible efforts are made to obtain an interpreter whenever required throughout the day or night. Training and policy changes to implement the consent orders which will become part of the doctor's policy are also required as part of the orders. The orders were entered as a judgment against the doctor; therefore failure to comply with the orders by the doctor in the future will subject the doctor to court contempt charges. Shane Baldwin, Joseph Bingham and Ms. Smit are extremely pleased and excited with the settlement and hope to see major changes in doctors' offices and those across the country, in their policies and practices, as more and more of these cases are brought.

Although the ADA and the Rehabilitation Act, specifically require that a doctor provide reasonable accommodation, such as interpreters to the deaf when necessary for effective communication, it is only recently that deaf people have begun to feel empowered to start bringing these lawsuits. Communication difficulties in the past created extremely limited access to the legal community and the courts in general for deaf individuals. Thus, Clara R. Smit, who is fluent in American Sign Language and whose parents are deaf, is the first attorney in New Jersey to bring these suits. She currently has a case pending against another New Jersey doctor's office, for failure to establish a relationship with a deaf patient. For further information please contact Clara R. Smit, Esq. at (732) 843-6600 Voice.

