

Judges order N.J. hospitals to use signers for the deaf

BY KATHY BARRETT CARTER
STAR-LEDGER STAFF

In a decision likely to have broad implications for the state's 720,000 deaf and hearing-impaired residents, a state appeals panel ruled yesterday that hospitals must provide sign-language interpreters or related help for the patients who need it.

Hospitals are not specifically required to have sign language interpreters on staff, but they must make "reasonable accommodations" so deaf patients can participate in their treatment in the manner of other patients, the three judges said.

The ruling came in one of more than two dozen lawsuits brought against New Jersey hospitals by East Brunswick lawyer Clara Smit on behalf of deaf patients. Most of the other cases have been settled, leading to increased education of staff and posting of signs regarding the availability of sign language interpreters, Smit said.

The law clearly requires hospitals to provide interpreters when needed, Smit said, yet deaf patients often receive medical treatment "comparable to veterinarian care" because they are unable to ask questions.

"There is a major problem," Smit said.

Yesterday's ruling arose from a suit brought by Wayne Borngesser of Neptune. Borngesser sued Jersey Shore Medical Center in Neptune after his 38-year-old wife, Irene, who like him was profoundly deaf, died in 1995. She suffered from heart problems and kidney failure. During two stays, she spent six weeks at the hospital.

Borngesser did not allege medical malpractice. Rather, he sued under New Jersey's Law Against Discrimination, the federal Ameri-

cans with Disabilities Act, and the Rehabilitation Act of 1973, contending he and his wife were not allowed to fully participate in her treatment because the hospital failed to provide an American Sign Language interpreter.

According to Smit: "His wife was dying and he did not realize it. He thought she was going to get better."

After her death, the doctor wrote Borngesser a note saying: "Your wife did not survive." Borngesser did not understand what the doctor was saying. He had to rely upon his 17-year-old daughter, who is not deaf.

Smit submitted medical records with numerous entries showing the doctors and nurses were having difficulty communicating with the couple. At trial, the jury ruled in favor of Jersey Shore Medical Center. Yesterday, a three-judge panel of the Appellate Division of Superior Court reversed that verdict and ordered a new trial for Borngesser, citing "the clear evidence of substantial communication difficulties."

In a statement, the hospital said it "provided reasonable accommodations for effective communications with this family" and that the hospital employs "numerous methods and policies for accommodating and facilitating appropriate needs, including communications, without discrimination."

Ron Czajkowski, a spokesman for the New Jersey Hospital Association, said services are not necessarily the same across the board, but hospitals routinely provide interpreters for a vast range of languages, including sign language.

"It is not as if hospitals have ignored this issue," said Czajkowski. "Every hospital is addressing this one way or another."