



Barriers to Effective Communication

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To ensure an effective physician-patient relationship and provide quality care, you must be able to communicate with your patients.

Physicians may encounter difficulties in three situations: when a patient is hard of hearing, has limited English proficiency, or is illiterate. Federal law requires physicians to make reasonable accommodations for hard of hearing and Limited English Proficiency (LEP) patients. If proper accommodations are not afforded to these individuals, serious consequences, including medical professional liability lawsuits, can occur. Here are some risk management strategies which can be applied to reduce miscommunication with hard of hearing, LEP, and illiterate patients.

Communication options for hard of hearing patients include a qualified interpreter, note taking, computer-aided transcription services, and telephone handset amplifiers and TDDs.

Hard of Hearing Patients

The Americans with Disabilities Act (ADA) strictly prohibits any discrimination against individuals who are hard of hearing in places of public accommodation. Under Title III of the Act, a physician's office is defined as a place of public accommodation.¹ As such, it is required to make reasonable accommodations for hard of hearing patients. Because the standard is *reasonable accommodation*, there is not a bright-line rule which states what each practice must do for each patient. Appropriate accommodations will vary based on the circumstances of each patient's case and his or her needs. For example, one patient may want to write notes to facilitate communication with the provider while another may require a qualified sign-language interpreter for every visit.

Discuss communication preferences with hard of hearing patients in advance. Their options can include: a qualified interpreter on site, note taking, computer-aided transcription services, or devices such as telephone handset amplifiers and Telecommunications Devices for the Deaf (TDDs). If you have a large number of hard of hearing patients it may be effective to hire an interpreter. Then set aside a block of time when the interpreter will be present to accommodate these patients.

¹ Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).

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Nearly forty million Americans cannot read complex medical texts, and ninety million have difficulty understanding them.

Regardless of the method of assistance your patient chooses, ensure the type of aid to facilitate communication is accurate, effectively conveys medical terminology, and maintains the patient's confidentiality of protected health information.

Limited English Proficiency (LEP) Patients

Another breakdown in communication can occur with LEP patients. Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin. Because of this Act, physicians are required to ensure that non-English speaking patients have equal access to healthcare.²

You and your office staff need to take reasonable steps to make sure LEP patients have meaningful access to care. Once you determine your office's need for language or interpreting services, choose the services that best meet your patient's needs and office's resources. Your practice may also want to include a preferred language section on office intake forms so patients can tell your practice if they require accommodation.

Your options for communicating with LEP patients can include: hiring bilingual staff if English is not the dominant language in your area; using a telephone or video conferencing interpretation service; contracting with companies to provide qualified interpreters who will come to your office; or written translation services.

Some patients ask their family or friends to translate which can be helpful. However, it remains the physician's responsibility to ensure that the communication is accurate and effective. For example, if minor children translate for a parent, they may lack the knowledge or maturity to effectively convey the medical information. An adult family member or friend may not be comfortable telling the patient certain information or could fail to tell the patient important items. In certain circumstances, referring the patient to a physician better suited to communicate with the LEP patient could be an option. However, this does not need to be the sole method for accommodating LEP patients in your practice.

As with any patient, the doctor must ensure accurate communication of any medical terminology. When using an interpreter, the physician should stress the importance of confidentiality and document in the medical record the type of interpretive services used.

Minimally Literate Patients

Minimally literate patients may be difficult to identify in your practice. One article defines health literacy as "the degree to which individuals can obtain, process, and understand the basic health information and services they need to make appropriate health decisions."³ If patients cannot understand their medical information, they may be unable to follow their treatment plans, take medications as prescribed, or make educated decisions about their care. Some may turn to litigation to resolve their issues.

According to one estimate, nearly half of Americans have some type of limited ability to understand medical terminology and have difficulty understanding and acting on health information. Nearly forty million Americans cannot read complex medical texts, and ninety million have difficulty understanding them.⁴ With training, your front office staff may be able to help identify and assist minimally literate patients at check-in. Patients who avoid filling out new patient information, miss appointments, or mishandle medications may have literacy challenges. They also may bring a family member along to read their paperwork, or say they have poor eye sight and forgot their glasses.

² Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (1964).

³ Nielsen-Bohlman et al., *Health Literacy: A Prescription to End Confusion*, Institute of Medicine (Eds. National Academies Press 2004).

⁴ *Ibid.*

Contact the Risk Resource Department with any questions you have about hard of hearing, LEP, minimally literate, or noncompliant patients at 844-223-9648 or RiskAdvisor@ProAssurance.com.

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2912714/>

There are a few risk management tips when caring for minimally literate patients. Physicians and medical staff should avoid using complex medical terms. Instead of assuming a patient understands what has been said, physicians can ask questions and have the patient explain the instructions or care plan. Physicians can help minimally literate patients by using pictures or illustrations to assist patients in understanding treatment plans. If a patient brings a family member or friend to the appointment, enlist the help of the other person to aid in the patient's comprehension. As with any patient, ask if he or she has questions at the end of the appointment. A little bit of extra time during the appointment could help prevent follow-up appointments or subsequent treatments and improve the health of the patient. Ensure that your educational materials and forms are easy to read and understand. Use plain language in short sentences and avoid medical jargon.

Noncompliant Patients

Noncompliant patients also can pose a risk management risk to a physician practice. These patients may miss scheduled appointments, not follow treatment guidelines, or ignore medical recommendations for further testing or scans. Although there can be many reasons for noncompliance, open and honest communications with the patient may help you reach a compromise.

Some patients may not follow through due to financial limitations.⁵ Others may not understand the importance of compliance in their treatment goals. Regardless of the reasons, physicians and office staff must document any noncompliance in the medical record. Proper tracking and follow up procedures for missed appointments will indicate a potential problem with a patient that must be addressed. If the patient continues to be noncompliant with appointments or treatment options, the practice may consider dismissing the patient. 🐾

Service Animals in the Medical Practice

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Animals are rarely seen in physician offices, so it may take patients and staff by surprise when a person walks in with an animal. Many physicians and their staffs actively discourage the presence of animals within the office for cleanliness and hygiene reasons—as well as the potential safety threat from an uncontrollable animal. However, medical practices that prohibit all animals from their premises under any circumstances risk facing allegations that they have violated the Americans with Disabilities Act (ADA).

Because medical offices or clinics are defined as “places of public accommodation” by Title III of the ADA, they are prohibited from discriminating against individuals on the basis of disability; they must make policy, practice, and procedure accommodations for service animals of people with disabilities.⁶

The U.S. Department of Justice defines a service animal under the ADA as a dog that is individually trained to do work or perform tasks for a person with a disability—although as of 2010, miniature horses have been included as an exception to dogs in that definition.⁷ The Department

⁶ 42 U.S.C. § 12188, et seq.; 28 CFR § 36.104

⁷ 42 U.S.C. § 12188, et seq.; 28 CFR § 36.104; 28 CFR § 35.136(i)

If you have questions or a change of address, please call 800.282.6242.

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⁸ 28 CFR § 35.136(f)

⁹ 28 CFR § 35.136(b)

¹⁰ http://www.ada.gov/berenson_settle.htm

of Justice has also issued guidance on the use of service animals in places of public accommodation, which includes the following elements:

- It is only permissible to ask the handler whether the animal is required for a disability and what tasks the animal has been trained to perform. Inquiries about the individual's disability or the animal's certification are prohibited.⁸
- Neither allergies nor fear of dogs are considered legitimate or valid reasons for denying services or access to premises to individuals using service animals.
- A handler of a service animal may only be asked to remove the animal from the premises for two reasons: (1) the handler takes no action to attempt to manage an out of control animal or (2) the animal is not housebroken.⁹

In 2011, a physician's office in Florida reached a settlement agreement with the Department of Justice following a complaint; an individual stated he was treated inappropriately at the office because of his service animal. The individual in question was not asked to leave or remove his service dog from the premises. His complaint was based on comments by the office staff about the dog's presence and inquiries about the dog's training or certification. Under the settlement, the physician's office was required to establish a service animal policy, provide effective notice of the new policy, retrain office staff, and pay the complainant \$500.00.¹⁰

Physicians or medical office staff may access the Department of Justice's resources on service animals at https://www.ada.gov/service_animals_2010.htm and https://www.ada.gov/regs2010/service_animal_qa.pdf. 

While the risk of a medical malpractice claim can never be eliminated, the information provided herein will help you reduce your practice's risk of a claim. If you have a specific question regarding your practice, please contact our Risk Resource Department at 844-223-9648 and speak with a Risk Resource Advisor.