

DOCTORS

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Lost in Translation

Caring for Non-English/
Limited English
Proficient Patients

find out...

- How having a plan can help you communicate with patients who have limited English proficiency.
- How you can access a qualified medical interpreter in your practice.
- How to avoid risk and properly incorporate a foreign language interpreter into the patient visit.

A LETTER FROM THE CHAIR OF THE BOARD

Dear Colleague:

As a Physician, you welcome a diverse group of patients into your practice. This group includes patients who might have limited English proficiency, which at times can create a communication barrier. In most instances, a family member or friend will suffice as a translator for the patient. However, in other circumstances, a qualified medical interpreter should be used. This article will help you identify patients who might need interpretation services, how to incorporate either a family member or qualified medical interpreter into the patient visit, and key risk management tips to help you avoid communication pitfalls.

George S. Malouf, Jr., M.D., FACS
 Chair of the Board
 MEDICAL MUTUAL Liability Insurance Society of Maryland
 Professionals Advocate Insurance Company



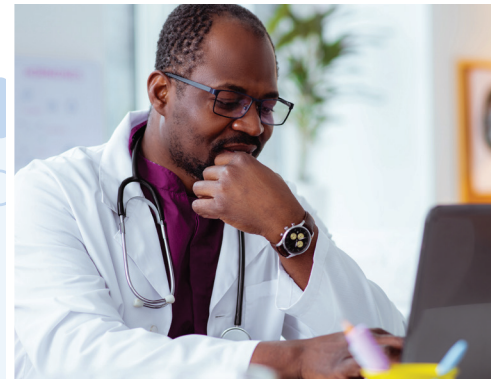
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DOCTORS RX

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**LOST IN TRANSLATION:
 CARING FOR NON-ENGLISH/
 LIMITED ENGLISH PROFICIENT
 PATIENTS**

Picture this . . .

It is Friday afternoon, after a long week, and you are looking forward to some rest and relaxation. As you leave your office for the day, you are handed a packet of papers and asked to confirm your name. While looking through the packet, you discover that it contains lawsuit papers. You have been sued in a medical malpractice case. Your care and treatment are at issue.

Here is a summary of the claim against you:

The plaintiff, a patient you treated once, alleges that you breached the standard of care by failing to properly evaluate and diagnose a vertebral artery dissection. According to your medical records, the patient presented to you complaining of an acute onset of headache and dizziness. The patient spoke limited English, which created a communication barrier. An interpreter service was not used. Rather, the patient's friend was present and acted as an interpreter during the encounter.

Recalling the encounter, you were comfortable relying on the friend to help you communicate with the patient because: (1) you had no contact information for an interpreter; (2) you did not want to delay patient care to retain an interpreter; and (3) the friend was pleasant and seemed willing to assist you in communicating with the patient. For these reasons, you moved forward with your exam.

Following the exam, you diagnosed the patient with vertigo and encouraged the patient to go home and rest. The next day, the patient was transported to a local hospital and diagnosed with a left cerebellar infarction.

The plaintiff contends that the standard of care required you to remove the communication barrier between you and the patient. The lawsuit alleges that, because you did not take steps to mitigate the communication barrier, the patient's critical complaint of left-sided neck pain was not recognized and the tests necessary to make a proper diagnosis were not ordered. The lawsuit claims that, because of this alleged negligence, the vertebral artery dissection progressed to a left cerebellar stroke, causing permanent injuries.

After reading the complaint, you think to yourself: Could I have done anything differently? Are there ways to reduce the risk of a lawsuit like this one?

The Answers: Yes, and Yes.

Effective communication can be complicated, particularly in health care settings. When a health care provider and patient do not speak the same language, a communication barrier can lead to a loss in the exchange of vital information. The patient may not appreciate the questions the health care provider is asking or the medical advice being provided, resulting in the health care provider missing important information about the patient's condition.



Erica Mudd, Esq. is a partner and shareholder with Armstrong, Donohue, Ceppos, Vaughan and Rhoades. Her practice involves defending Maryland and District of Columbia Physicians in complex medical malpractice cases as well as representing them before professional licensing boards.



Consider

Productive communication can be difficult. Sometimes it requires more than relying on a family member or friend to serve as an interpreter.

Complete information may prompt more questions leading to additional or alternative testing that ultimately may yield a different diagnosis. The bottom line: productive communication can eliminate a barrier to appropriate patient care. It can positively change a patient's course and mitigate the risk of a claim against you.

WHAT DO YOU DO?

Here are some recommendations and suggestions to support effective communication when a language barrier exists:

1. Develop a plan

Inadequate communication with a patient who has limited or no English proficiency (LEP), can significantly impact the quality of care that you provide. When you do not have interpreter services or a plan in place to ensure proper communication with a patient, you are increasing your chance of being sued for negligence and/or lack of informed consent. It is important to have and follow a plan that is designed to identify and assist patients who need interpreter services.



A plan should start prior to the initial patient encounter, with front office staff reviewing upcoming patient appointments to determine whether any patients may need interpreters. Staff should ask patients for their preferred language when they call with appointment reminders. If you send automated appointment reminders via text or email, consider adding a sentence asking patients to let the office know in advance if they require an interpreter. You may want to include the sentence about interpreters in the languages that are commonly spoken among your patient population. If new patient forms need to be submitted prior to an appointment, the forms should ask about language proficiency and preference. Also, you may consider instructing your front office

staff to ask open-ended questions of patients during sign-in to identify communication barriers that may require accommodation.

Incorporating these practices into your plan will allow your staff to make appropriate arrangements in advance of seeing patients who need interpreter services.

2. Obtain access to a qualified medical interpreter

According to the American Medical Association (AMA), a qualified medical interpreter is an individual who is trained and able to interpret effectively, accurately and impartially – both receptively and expressively – and is adept at using medical terms and vocabulary. The role of a qualified medical interpreter is to properly bridge the patient-provider communication gap, as patients with limited or no English proficiency have a right to access health care in their preferred language. This topic and the role of the qualified medical interpreter is thoroughly addressed in the article: "Clinicians' Obligations to Use Qualified Medical Interpreters When Caring for Patients with Limited English Proficiency. See *AMA J Ethics*. 2017;19(3):245-252.

There are a number of services through which a health care provider can access 24/7 qualified medical interpreters. Many of these services provide remote video and over-the-phone interpreting, onsite interpreting, as well as translation services. You should consider aligning your practice with one or more of these services, which you can access for scheduled visits and when otherwise needed, with little or no notice. For example, the National Board of Certification for Medical Interpreters (NBCMI) at www.certifiedmedicalinterpreters.org includes a registry of qualified medical interpreters/services in your area. The NBCMI registry is available to the public, and any provider can search by language, state, certification type, name or registry/certification number.

Find an interpreter today



ANY PROVIDER CAN SEARCH BY LANGUAGE, STATE, CERTIFICATION TYPE, NAME OR REGISTRY/ CERTIFICATION NUMBER.

WWW.CERTIFIEDMEDICALINTERPRETERS.ORG



3. Relying on Family Members or Friends

Productive communication can be difficult. The fact that a family member or friend can speak and understand both English and the patient's primary language may not always make that person an appropriate interpreter. When you rely on a family member or friend to communicate, you must consider whether information is being accurately interpreted and conveyed. Therefore, if you are using family or a friend as an interpreter, it is best to err on the side of caution and use proper techniques to ensure information is being conveyed to the patient.



According to the American Association of Medical Colleges (AAMC), if family or a friend is used for interpretation, you must first assess the interpreter's English language proficiency by:

- Asking the interpreter if he is comfortable with the situation in which he will serve as an interpreter.
- Testing the interpreter's proficiency with a basic conversation (e.g., Where are you from? How long have you been in the U.S.?).

- Based on the type of patient appointment, asking if the interpreter can describe specific anatomy or body functions relevant to the interaction.¹

There are additional factors to consider when determining if a family member or a friend can serve as an interpreter. According to the Department of Health and Human Services (HHS), a family member or friend may have a motivation to misrepresent what is being said, such as when domestic abuse is the cause of the medical visit. Additionally, an interpreter who is a minor may not be able to communicate important information relayed by the patient, or the patient may be uncomfortable sharing her complaints and reason for presenting to you.

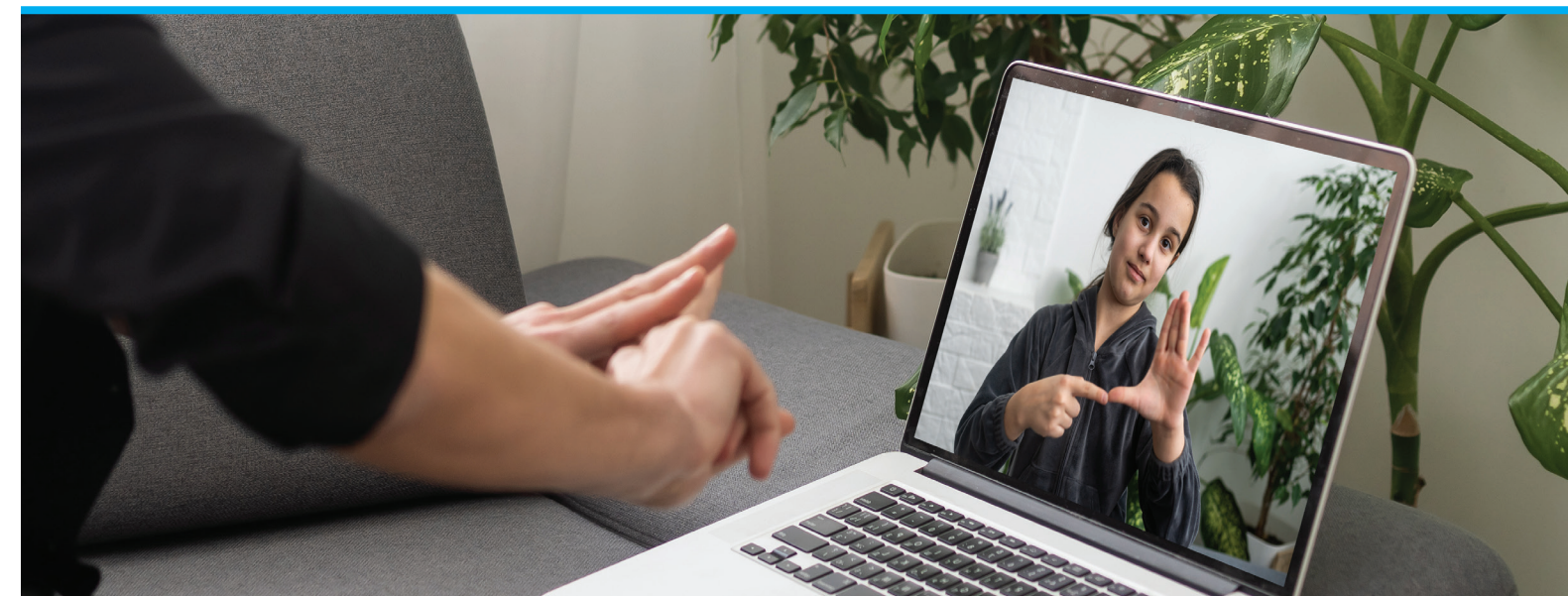
According to the AAMC, before you determine that a family member or friend can be used as an interpreter, these additional steps should be considered:

- Respect the patient's desire to use an interpreter of her own choosing and document the request/agreement.
- Only use a minor in emergency situations.
- The use of a family member or friend to interpret for a person with LEP cannot be required.
- The family member or friend should not control the interaction between you and the patient.
- Continue to talk with the family member or friend to assess his language ability and give very clear instructions on how the interaction should progress²



Note

There are a number of services through which you can access 24/7 qualified medical interpreters.



Consider

It is important to err on the side of caution. You should ask the patient whether they understand you, and your questions and instructions.

Finally, if a patient declines a qualified medical interpreter, you should document this and have the patient sign an agreement indicating she has declined interpreter services. If a patient chooses to use a family member or friend to serve as an interpreter, it is best to document the patient's decision and note in the medical record the patient's relationship with the family member (e.g., spouse, child), or that the patient is using a friend.

4. Best practices for using an interpreter

Whether using a qualified medical interpreter or a family member or friend, the American Academy of Family Physicians (AAFP), suggests incorporating the following steps into the patient visit:

- Build in additional time to allow for proper communication among you, the interpreter and the patient.
- Meet with the interpreter first to build a rapport.
- Document the interpreter's name in the progress note.
- Most patients understand some English. Do not make comments that might be taken out of context.
- Seat the interpreter near the patient.
- Speak to the patient, not the interpreter — avoid saying, "he said" or "tell her."
- Don't use idioms, acronyms, jargon or humor.
- Insist on sentence-by-sentence interpretation to avoid over-lapping conversations.
- If seeing multiple patients who need

interpreters, allow for 10-minute breaks for every hour of interpretation.

- Use the "teach back" or "show me" technique to make sure the patient understands.
- If necessary, have a post-session discussion with the interpreter to get further details and ensure accurate documentation.³

5. Remember HIPAA and PHI

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule applies to interpreters. They are considered Business Associates and must protect patient data (i.e., protected health information or PHI). When aligning with a qualified medical interpreter or service, it is important to maintain a Business Associate Agreement (BAA) and to confirm that the qualified medical interpreter maintains the privacy of PHI and secures all devices containing PHI. Sample BAAs can be found on www.HHS.gov.⁴ As noted above, patients also should sign a form agreeing to the use of a qualified medical interpreter and disclosure of their PHI to you and your staff through the interpreter/interpreter service. Additionally, if a family member or friend is used as an interpreter, the interpreter's name should be listed on the HIPAA disclosure form as someone with whom the patient has agreed to share PHI.

6. Additional Points

During the course of your practice, you may have patient encounters in which you do

not immediately appreciate the need for an interpreter. Likewise, you may find yourself in situations where you are unsure whether you are effectively communicating with a patient, or a patient may be signaling that she does not understand your questions or instructions. If this occurs, you should ask the patient whether she understands you, your questions and your instructions. You may ask the patient to repeat your instructions or her understanding of the instructions. Ask open-ended questions as well as questions that call for detailed responses — more than just a "yes," "no" or a few words.

If you are concerned that there may be a communication gap, engage an on-call qualified medical interpreter. If one is not available and it is appropriate to do so, reschedule the visit and ensure a qualified medical interpreter is available to facilitate communication. According to the National Council on Interpreting in Health Care, patients are under no obligation to pay for these services. However, if you participate in Medicaid and practice in Virginia or the District of Columbia, you may be entitled to reimbursement for this service.⁵



If you have privileges at a hospital, ambulatory surgery center or other health care facility, or if you are employed by a practice, interpreter policies already may exist. If so, it is important to be aware of these policies, to stay on top of policy updates and most importantly, to follow these policies.

WHAT ABOUT THE AMERICANS WITH DISABILITIES ACT?

In addition to LEP patients, you may encounter patients with a hearing disability. There are differences in using interpreters for patients who require sign language as a form of communication. The Americans with Disabilities Act (ADA) requires that state and local governments, as well as businesses and non-profit organizations that serve the public (i.e., covered entities), comply with rules to communicate effectively with people who have communication disabilities. The purpose of these rules is to ensure that individuals with a vision, hearing or speech disability can communicate with, receive information from and convey information to, the covered entity. To achieve effective communication, covered entities are required to provide auxiliary aids and services to people who have such disabilities. Examples include real-time captioning, telecommunications relay service, video relay service and video remote interpreting. For more details, we recommend reviewing information available through the Registry of Interpreters for the Deaf (RID) at www.rid.org. HIPAA compliance with these



Remember

Whether you are managing a patient who speaks a different language or a patient with a communication disability, the goal is the same — to ensure productive and equally effective communication.



Remember

It is important to remember that the goal is effective communication for you and the patient.

services is required as well – if you engage these types of service companies, be sure to enter into a BAA. Since PHI will be shared, you also should obtain written consent from the patient to use a sign language interpreter.

To ensure that ALL individuals can receive effective communication, the ADA requires covered entities to provide:

- Real-time captioning
- Telecommunications relay service
- Video relay service
- Video remote interpreting

For more information visit www.rid.org

Whether you are managing a patient who speaks a different language or a patient with a communication disability, the goal is the same – to ensure productive and equally effective communication. Doing this protects both you and the patient.

IN SUMMARY

When you are faced with a patient who has a language barrier or needs ADA interpretation services it is best to remember the following:

1. **Have a Plan:** Evaluate the situation and stick to your plan when determining whether a qualified medical interpreter is necessary. Remember, a patient can always decline the use of an interpreter – if that occurs, make sure it's documented to avoid exposing yourself to a potential lawsuit.
2. **Have Access to a Qualified Medical Interpreter:** If you do not currently have access to a qualified medical interpreter, the NBCMI website may be a helpful resource to locate one in your area. Be prepared and know when a communication barrier may affect a patient visit so that you can determine if an interpreter is necessary. Also, follow any existing policies pertaining to the use of foreign language interpreters. If you need to use a qualified medical interpreter, follow the instructions above on how to best incorporate these services into the patient visit.

3. **HIPAA and ADA Compliance:** Qualified medical interpreters should be treated as Business Associates under HIPAA. Make sure that your patient has consented to using an interpreter. If a patient uses a family member or friend, document this and list that person on the patient's HIPAA form. Also, keep in mind that ADA requirements for patients who have communication-related disabilities also may require the use of qualified medical interpreters.

RETURNING TO THE OPENING CASE

This was likely an encounter that called for additional evaluation of the patient's friend to determine if the friend could effectively act as an interpreter or whether it was necessary to engage a qualified medical interpreter. Qualified medical interpreters are trained to bridge the communication gap between patients and providers and are an effective option for patients who require enhanced interpretation services. If the patient prefers using a family member or friend, they can be helpful as well. It is important to remember that the goal is effective communication for you and the patient. An interpreter's presence and involvement in patient-provider communication can help improve the quality of care and minimize the risk of having important information lost in translation during a patient encounter.

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⁵Niven, A. (n.d.). OD faqs-healthcare professionals. OD FAQs-Healthcare Professionals. Retrieved April 21, 2023, from <https://www.ncihc.org/faq-healthcare-professionals>

CME TEST QUESTIONS

1. Inadequate communication with a patient who has limited or no English proficiency can significantly impact the quality of care you provide.
 - A. True
 - B. False
2. If a patient declines a qualified medical interpreter, you do not need to document that in the chart.
 - A. True
 - B. False
3. The role of a qualified medical interpreter is to properly bridge the patient-provider communication gap.
 - A. True
 - B. False
4. If using an interpreter, one step to follow is to build extra time into the patient visit to allow for proper communication among you, the interpreter and the patient.
 - A. True
 - B. False
5. If using a qualified medical interpreter, it is not important to maintain a business associate agreement with them.
 - A. True
 - B. False
6. It is best to avoid using a minor as an interpreter unless faced with an emergency situation.
 - A. True
 - B. False
7. It is best to err on the side of caution when determining if you should use a qualified medical interpreter.
 - A. True
 - B. False
8. If you are employed at a hospital, ambulatory surgical center or other health care facility, translator services and protocols probably already exist.
 - A. True
 - B. False
9. If a family member is used as an interpreter, a business associate agreement should be signed.
 - A. True
 - B. False
10. When a family member is used as an interpreter, it is appropriate to list their name in the medical chart as being used as the patient's interpreter.
 - A. True
 - B. False

Instructions – to receive credit, please follow these steps:

Read the articles contained in the newsletter and then answer the test questions.

1. Mail or fax your completed answers for grading:

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2. One of our goals is to assess the continuing educational needs of our readers so we may enhance the educational effectiveness of the *Doctors RX*. To achieve this goal, we need your help. You must complete the CME evaluation form to receive credit.
3. Completion Deadline: October 31, 2023
4. Upon completion of the test and evaluation form, a certificate of credit will be mailed to you.

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CME EVALUATION FORM

Statement of Educational Purpose

Doctors RX is a newsletter sent twice each year to the insured Physicians of MEDICAL MUTUAL/Professionals Advocate.® Its mission and educational purpose is to identify current health care-related risk management issues and provide Physicians with educational information that will enable them to reduce their malpractice liability risk.

Readers of the newsletter should be able to obtain the following educational objectives:

- 1) Gain information on topics of particular importance to them as Physicians
- 2) Assess the newsletter's value to them as practicing Physicians
- 3) Assess how this information may influence their own practices

CME Objectives for "Lost in Translation: Caring for Non-English/Limited English Proficient Patients"

Educational Objectives: Upon completion of this enduring material, participants will be better able to:

- 1) Determine the need for a foreign language interpreter for patients with limited English proficiency (LEP).
- 2) Properly incorporate the interpreter into the patient visit.
- 3) Communicate with patients with limited English proficiency through the use of an interpreter.

	Strongly Agree				Strongly Disagree
Part 1. Educational Value:	5	4	3	2	1
I learned something new that was important.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I verified some important information.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I plan to seek more information on this topic.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
This information is likely to have an impact on my practice.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Part 2. Commitment to Change: What change(s) (if any) do you plan to make in your practice as a result of reading this newsletter?

Part 3. Statement of Completion: I attest to having completed the CME activity.

Signature: _____ Date: _____

Part 4. Identifying Information: Please PRINT legibly or type the following:

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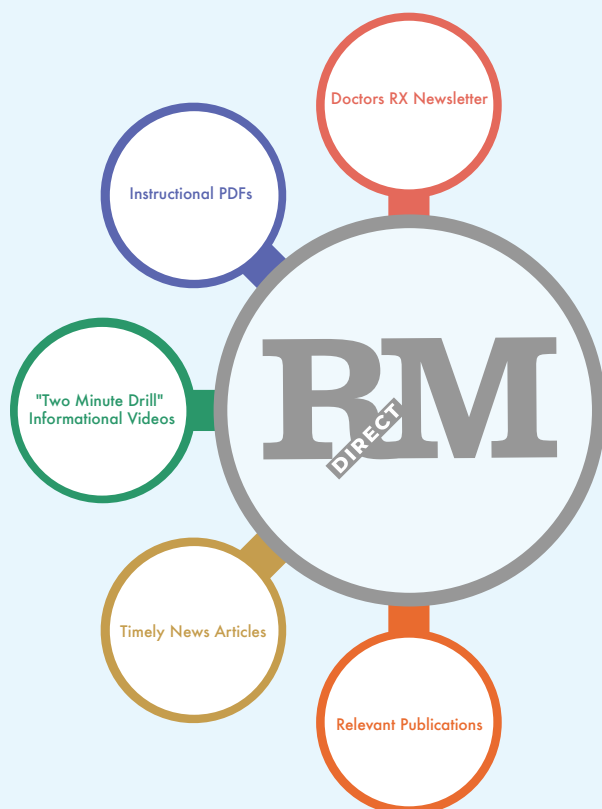
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