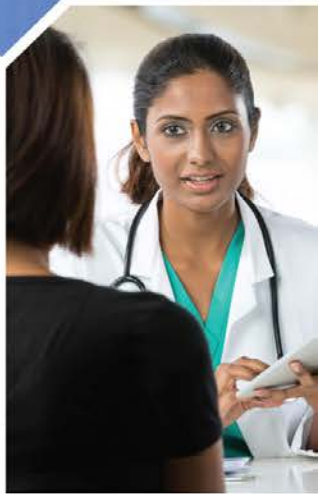




**UC DAVIS
HEALTH**



Legal Issues and Reporting Requirements for Staff Healthcare Interpreters

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ATA Conference - 2018

Medical Interpreting Services @ UC Davis Health

- 20 languages in-house;
- 51 staff (full- & part-time);
- Onsite, video, telephone;
- 55K+ encounters per year;
- Written translations unit;
- 3 ATA-certified languages;
- Annual 40 hour training;
- 2 externship programs;
- Clinician language testing launched in 2018.



Today's Objectives

- Review the following:
 - the role of a mandated reporter;
 - legal aspects of video/audio recording in healthcare setting;
 - interpreting for consents;
 - interpreting for police;
 - interpreters' role in error prevention;
- Discuss examples;
- Review laws that took effect in California in 2016 specifically related to Language Access Services in healthcare.



Legal Requirements Start with the Job Description



All health practitioners have mandatory reporting responsibilities when an adult (or a minor who meets special circumstances as described in UCDMC Hospital P&P 1408) presents at UCDH as an outpatient or inpatient from any source, and

- if a person presents for treatment of injuries related to domestic violence;
- or if one has knowledge of or observes a child who one knows or reasonably suspects is the victim of child abuse;
- or if one has knowledge of, or reasonably suspects that an elder or a dependent adult is the victim of elder/dependent adult abuse.

Non-health practitioners, who suspect that an individual is a victim of abuse as outlined above, are **required to report their suspicions to a health practitioner.**

All employees have a mandatory responsibility for knowing and complying with the Code of Conduct standards and the Compliance Program.



Who is a “mandated reporter”?

- A person who has regular contacts with vulnerable people and is legally required to ensure a report is made when abuse is observed or suspected.



- Public or private?
- What professions can be examples?
- How can you report?

What do the CHIA Standards say?

In cases where interpreters are privy to information regarding suicidal/homicidal intent, child/senior abuse, or domestic violence, interpreters act **on the moral, if not legal, obligation** to transmit such information **to the provider**, in keeping with institutional policies, interpreting standards of practice and code of ethics, and the law.



*While California interpreters **are not specifically identified as legally obligated** to report a potentially harmful situation to their supervisor, interpreters must become familiar with the policies and requirements of healthcare or other organizations that employ their services.*

National standards – What do they say?

NCIH – Standards of Practice

ADVOCACY

OBJECTIVE:

To prevent harm to parties that the interpreter serves.

Related ethical principle:

When the patient's health, well-being or dignity is at risk, an interpreter may be justified in acting as an advocate.

- 31. The interpreter may speak out to protect an individual from serious harm.**

For example, an interpreter may intervene on behalf of a patient with a life-threatening allergy, if the condition has been overlooked.

- 32. The interpreter may advocate on behalf of a party or group to correct mistreatment or abuse.**

For example, an interpreter may alert his or her supervisor to patterns of disrespect towards patients.

Discussion:

- What types of other incidents can and should a medical interpreter report?
- Does this mean an interpreter takes on a role of the advocate?
- To whom does the interpreter report (staff vs freelancer)?



Video or Audio Recording an Encounter

Now that many people have smart phones and can video record, medical professionals need to be aware of the laws in their state & policies of their medical facilities related to video recording or taking pictures.

Can a patient or their relative video record an encounter at the hospital/clinic?



Know Your State Law!

California is an All-Party Consent State

- California's wiretapping law is a "**two-party consent**" law. California makes it a crime to record or eavesdrop on any confidential communication, including a private conversation or telephone call, without the consent of **all parties to the conversation**. See Cal. Penal Code § 632.
- The statute applies to "confidential communications" -- i.e., conversations in which **one of the parties has an objectively reasonable expectation that no one is listening in or overhearing the conversation**.





Eleven states require the **consent of every party** to a phone call or conversation in order to make the recording lawful. These "two-party consent" laws have been adopted in California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Montana, New Hampshire, Pennsylvania and Washington.

If you are operating in California, you should **always get the consent of all parties** before recording any conversation that common sense tells you might be "private" or "confidential." In addition to subjecting you to criminal prosecution, violating the California wiretapping law can expose you to a civil lawsuit for damages by an injured party. See Cal. Penal Code § 637.2.

Discussion:

- Can a patient record you interpreting?
- Can a doctor record you interpreting for her research project?
- Can your boss record a meeting with you?



Interpreting for Consents

What type of consent form needs to be given to patients printed in their primary languages?

16. I have read and understand the above consent. I acknowledge the risks, benefits and alternatives associated with the operation(s) or procedure(s). The likelihood of achieving the goals of the operation(s) or procedure(s) and the potential problems with recuperation have been explained to me and I wish to proceed with the operation(s) or procedure(s) described above.

DATE TIME PATIENT OR PATIENT'S REPRESENTATIVE

RELATIONSHIP OF REPRESENTATIVE TO PATIENT (if applicable)

DATE TIME PHYSICIAN / PROVIDER PI NUMBER

INTERPRETER (if applicable)

Unforeseen circumstances require changing the individual practitioners involved in conducting the surgery or a change in the operation(s) or procedure(s) listed above. Please identify: _____

DATE TIME PATIENT OR PATIENT'S REPRESENTATIVE

PHYSICIAN / PROVIDER PI NUMBER

CONSENT TO OPERATION, PROCEDURES, BLOOD TRANSFUSION

Interpreting for Consents

What type of consent can be given to patients printed in English, as long as services of a trained medical interpreter were utilized?

This authorization shall remain effective until _____,
20_____, unless sooner revoked in writing delivered to said agent(s).

(Date)

(Father)

(Witness)

(Mother)

(Witness)

(Legal Guardian)

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CONSENT TO TREATMENT OF MINOR



Interpreting for Consents

Discussion:

- Should you sign the consent as an interpreter when the provider spoke to the patient in his/her native language & you were not present during that time?
- What if the form says “translator”?



- Can an interpreter sign the consent as a witness?
- Can you sign as an interpreter & as a witness?
- Should you sign a patient's advance directive?

Interpreting for Police

At the Emergency Department, a medical interpreter is providing services to a patient and her medical provider. A police officer arrives and asks the interpreter to assist him in speaking with this patient. What should the interpreter do?

- If yes – what are the reasons?
- If no – what are the reasons?



Interpreting for Police

- Interpreter is a part of the medical team: interpreting for police can be seen as switching roles (from support to interrogation) & can be confusing to patients;
- Does the interpreter have the necessary level of proficiency in legal terminology & can he/she predict how this encounter will evolve?
- Can the interpreter be subpoenaed?
- UCDH rule: OK to interpret for providers when police is in the room, not OK to interpret for police alone.



Interpreter's Role in Preventing Errors

- Prevention of medical errors (patient safety) is monitored on both federal and state levels.
- Medicare Website "Hospital Compare" – hospital rating
<https://www.medicare.gov/hospitalcompare/search.html?>
- CA website "Cal Hospital Compare"
<http://calhospitalcompare.org/>

MEDICAL ERRORS NATION'S THIRD BIGGEST KILLER IN 2013



Source: Martin Makary, Michael Daniel study at Johns Hopkins University School of Medicine

Jim Sergent, USA TODAY



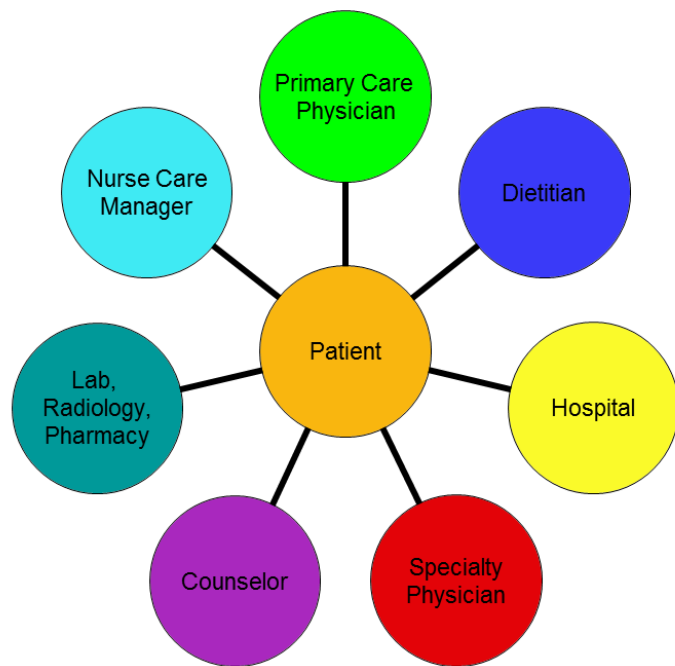
Interpreter's Role in Preventing Errors

Hospital measures to prevent errors:

- Surgical checklists and safety protocols;
- Fall prevention & monitoring programs;
- Discharge follow up phone call programs;
- "Speak Up" programs;
- Education of doctors & continued review of most current research on patient safety;
- Regular self-monitoring;
- Hand hygiene requirements;
- Continued reviews of error cases, etc.



Interpreter's Role in Preventing Errors



- Staff interpreters often have a more global view of any particular patient's care, as they work with the same patient through different encounters with providers, in both the in-patient and out-patient settings.
- Should the interpreter speak up if he/she sees a potential error?
- What kinds of errors are interpreters able to prevent?

Discussion of examples.

New Laws in CA Related to Medical Interpreting

- AB 1073 Prescription Drug Labels (All Pharmacies)
 - effective 1/1/16;
- End of Life Act – effective 6/9/16;
- SB 675 Hospitals: Family Caregivers – effective 1/1/16;
- AB 389 Hospitals: MIS Policy to be Posted on the Website – effective 7/1/16.



Resources

<http://mandatedreporter.ca.com/>

<http://www.dmlp.org/legal-guide/california-recording-law>

<https://www.hhs.gov/ohrp/regulations-and-policy/guidance/obtaining-and-documenting-informed-consent-non-english-speakers/index.html>

http://www.massgeneral.org/interpreters/documents/Newsletter/Vol_5_Issue_1.pdf



Bonus Activity:

from the California Hospital Association Manual – what erroneous assumptions can you find?



E. Consent Forms

If the patient or the patient's legal representative's primary language is not one for which a consent form has been prepared, an interpreter who is fluent in that language should prepare a written translation of the form that the patient can be given. If time does not permit this, the interpreter should orally translate the form for the patient, and ask the patient to sign the English form if the patient agrees to the terms and conditions that the interpreter orally stated. If the patient or the legal representative agrees, the interpreter should write on the form the statement that:

I have accurately and completely read the foregoing document to [insert patient's or legal representative's name] in [identify language], the patient's or legal representative's primary language. (He/she) understood all of the terms and conditions and acknowledged (his/her) agreement thereto by signing the document in my presence.

This statement should be signed and dated by the interpreter.