

INTERPRETERS CLAIMS SCENARIO

[This claim scenario is based on an actual claim, but certain facts and events have been modified to highlight the issues and avoid identifying those involved]

AAA Interpretation Company performed sign language interpretation services on an assignment-by-assignment basis for a local medical practice specializing in fertility treatments. A patient was hearing impaired and required interpretation of American Sign Language (“ASL”) during a consultation session with her husband as to certain infertility treatments. AAA provided such an interpreter, who was an independent contractor and who had represented to AAA that she had appropriate credentials and certification to interpret ASL. In fact, AAA, in its website and in promotional material to its clients, stated that it employed and used interpreters that were properly certified in ASL. During the session, however, the patient complained that the independent contractor had performed so poorly as to require the husband to play a role in the interpretation; had acted unprofessionally by expressing her own emotional reactions and comments to the interpreted discussion; and was not properly certified in ASL. As a result, the patient asserted she had incurred damage due to an inability to communicate properly, lengthening the treatment process, as well as incurring emotional distress. AAA reported the matter to its insurer, but the independent contractor did not have any insurance coverage. Ultimately, the patient sued AAA.

Discovery during the litigation revealed that an issue existed regarding whether the independent contractor was properly certified and licensed as to ASL at the time of the session. Further, it was difficult to confirm whether there was “emotionalization” or “editorializing” in the interpretation done by the independent contractor, as there was no transcript of the session. In view of the projected costs of defending the litigation and the possibility of an award of damages, a settlement was reached in the amount of \$50,000, paid by the insurer, and certain non-monetary relief regarding changing the promotional materials and website information as to the credentials of the interpreters AAA used.

The lessons to be learned from this scenario are that the insured can and will be held responsible for the work performed for the insured by independent contractors. Additionally, it

is prudent as a preventative measure to do thorough checking of credentials, including possible consultation with appropriate licensing or credentialing bodies, or legal counsel as to legal requirements for performing certain services. It is also suggested that, where possible, consideration should be given to asking or requiring that the independent contractors have their own insurance coverage for errors and omissions, with the possible naming of the insured as an Additional Insured on such policies for work done on behalf of the insured.