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## 12 Deaf Plaintiffs Sue Banner Health for Lack of ASL Interpreters and Lack of Auxiliary Communication Aids

**Legal Update**

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Twelve deaf individuals filed a complaint in Federal District Court in Arizona on March 13 against Banner Health, which operates hospitals, surgery centers and urgent care centers in Arizona, Alaska, California, Colorado, Nebraska, Nevada and Wyoming. (*Cook et al v. Banner Health*, U.S. Dist. Ct., Arizona, Filed 03/13/2017, Case # 2:17-cv-00758-JJT.)

### Allegation: Failure to Provide ASL Interpreters and Communication Aids

The complaint alleges that Banner Health "discriminated against plaintiffs by failing to provide on-site ASL interpreters when necessary, by providing malfunctioning Video Remote Interpreting (VRI) systems, by failing to adequately train its personnel in the use of VRI systems, and by requiring the plaintiffs to rely upon other means of communication, including passing of notes and/or lip reading, that are inadequate for the medical treatment required by the Plaintiffs and the services required by their companions."

### Claims: ADA, Rehabilitation Act, §1557 of ACA and Common Law "Battery"

The complaint alleges that Banner Health's failure to provide ASL interpreters and other communication assistance violates: (1) The anti-discrimination clause of Title III of the Americans with Disabilities Act (ADA); (2) Section 504 of the Rehabilitation Act which prohibits discrimination against disabled persons by entities receiving federal funds such as Medicaid reimbursements; (3) the prohibitions on both disability and limited English proficiency discrimination within Section 1557 of the Affordable Care Act (ACA), which also prohibits discrimination under health programs or activities receiving federal funds; (4) the Arizonans with Disabilities Act; (5) the common law prohibition against "battery" as the alleged lack of effective communication resulted in a lack of informed consent for medical treatment.

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## Relief Sought

The complaint seeks a range of relief and remedies including an Order to require Banner Health to adopt policies and procedures to provide a range of assistive communication tools including a high-quality VRI system, provide staff qualified to operate the VRI system, enhance availability of American Sign Language interpreters, train staff in legal requirements, and award applicable actual, compensatory and punitive damages, as well as attorney fees.

## Trend: Dramatic Increase in Accessibility and Communication Litigation

Multiple similar lawsuits by deaf or hearing impaired individuals have been filed against hospitals around the country in recent weeks. The increase in litigation may also be linked to the hundreds of lawsuits filed in the past two years related to allegedly "inaccessible" websites in violation of the ADA. For more information, read "Healthcare Sector is Newest Target for Website Accessibility Lawsuits."

## Prediction

The volume of technology and communication related ADA litigation will continue to grow throughout 2017 and the issue will continue to receive media and public attention.