

Informed consent for foreign-educated health professionals

By Leah Curtin, RN, ScD(h), FAAN

DIVINA GUINTO* was the first in her family to graduate from college, and now it was her turn to help her loved ones. She decided to emigrate to the United States, where she would work as a registered nurse and send money home so her siblings could also go to school. She sought out a U.S. recruiting firm that promised a good job in a hospital. Divina didn't understand a lot of the contract. When the recruiter told her not to worry, she was naïve enough to sign it.

The recruiter told Divina she would be working in a hospital in California, but instead she worked as a per diem in facilities in New Jersey. The recruiting company kept her green card (for safety reasons, she was told) and 60% of her paycheck until she had repaid the money spent to place her in the job. Divina heard about other, better jobs and asked for her paperwork so she could apply. The recruiters refused. When she insisted, they threatened her, so she resigned her job. After resigning, Divina received a letter telling her she must pay the recruiters \$45,000 for expenses associated with her coming to the United States and to compensate them for profits they would have made from her continued employment. It was all in the contract, which the recruiter kept (again, for safety reasons).

Analysis of the situation

English common law recognizes incapacity on different levels, and requires someone to be bound by a contract (contractual capacity) only if they're competent to make one. Common law recognizes two groups as having insufficient capacity to be bound by a contract:

- **Minors:** In virtually all states, contracts entered by minors are generally voidable by the minor.
- **Mentally impaired or incompetent persons:** Contracts entered by persons who are, at the time of contracting, impaired (voluntarily or not) or mentally incompetent are generally voidable.



Dictionary.com defines naïveté as "innocence...unworldliness...gullibility." At the very least, Divina was unavoidably naïve. In other words, her contractual capacity is questionable because of her limited English. Exposure to a second language rarely includes legalese (the formal and technical language of legal documents that's often hard to understand), so we can safely assume that Divina wouldn't understand contractual

language. Given her age, naïveté, and vulnerability, the recruiters have a duty to ensure that she understands the terms and obligations imposed on her. The remedy is simple: provide an advocate who's qualified to explain the meaning of the contract and its obligations.

Legally, ethically

The law establishes standards, maintains order, resolves disputes, and protects liberties and rights. According to Capitalism.org, a rule of law "has only one purpose: to protect the rights of the smallest minority that has ever existed—the individual." Surely, contractual capacity is broad enough to include people who are operating in a second language and who can't—and can't be expected to—fully understand the content of a contract they're required to sign.

From the standpoint of ethics, providing an advocate who is qualified to explain a contract in a person's native language is simply the right (fair, reasonable) thing to do. Certainly, Divina should fulfill her contractual obligations, but she also has a right to know what obligations she's assuming.

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