

Linguistic Differences Between Legal and Medical Translation

Naomi James Sutcliffe de Moraes

ABSTRACT

All technical translation, defined here as non-literary translation, requires the translator to have some knowledge of the subject area being translated. Assuming that the translator has this basic knowledge of the area, not all areas are created equally. In this article I discuss a difficulty particular to medical translation, namely register, and the problems it entails. I then discuss legal translation and the complications caused due to lack of equivalence between the underlying legal systems of the source and target languages.

TECHNICAL VERSUS LITERARY TRANSLATION

Much research classifies translation as either literary or technical, with no differentiation between the different types of technical translation. Technical translation includes medical, scientific, engineering, legal, financial and other non-literary areas. For a literary translator, the obvious hurdle in attempting a technical translation would be the specialized vocabulary, and each area has its own.

What is not well known is that different areas of technical translation have specific difficulties and these must be emphasized when teaching translation and made broadly known so self-taught translators are made aware of the differences.

Some difficulties are common to translation in all areas, but some apply more to specific areas. These include special collocations, connotation, idiomatic expressions, register, structure, style, syntax and terminology.

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

Mona Baker, in her book "In Other Words," describes translation equivalence, and lack thereof, at a variety of levels and in various ways. She outlines translation problems at the word level and above, such as grammatical equivalence, textual equivalence and pragmatic equivalence (Baker 1992). I will focus on equivalence at the word level, as both medical and legal texts clearly have equivalence problems at this level that must be dealt with before problems at other levels can be tackled.

Baker defines the lexical meaning of a word as its meaning in a language as developed through use. Citing models developed by others, she contrasts propositional meaning with expressive meaning, presupposed meaning and evoked meaning. The propositional meaning is the straight-forward meaning on which we can determine if a statement is true or false. The expressive meaning, or connotation, is that which provides shades of meaning in addition to the propositional meaning (Baker 1992, 12–13). One example would be smell (to give off a foul odor) compared with reek. They have the same propositional meaning, but different expressive meanings. The presupposed meaning is related to collocation. An example would be how the adjective "sturdy" is more often applied to plants, animals and inanimate objects than people. Evoked meaning is related to dialect or register. A register is a type of language suited to a particular situation or interaction, such as an adult talking to a child. According to Baker, lack of translational equivalence at word level can be caused by mismatches in any of the four types of meanings (Baker 1992, 17).

A large problem with legal translation is the lack of equivalence at the word level due to mismatches in propositional meaning because of the differences in the legal systems underlying the two languages.

Medical translation does not have this problem with medical terminology *per se* because the underlying systems (the human body and its diseases) are the basically the same the world

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

over, with the exception of some diseases present only in very small regions. Medical translation does, however, involve lack of equivalence of evoked meaning due to word registers not being consistent across languages. Legal texts usually assume both writer and reader are versed in the law (even when the reader is not!), so register is not usually an issue.

Medical and legal translation problems involve expressive meaning to the same or a lesser extent than other types of translation, as they rarely have literary overtones. Legal translation and medical translation both involve some presupposed meaning difficulties due to collocations. Legal translation has many more fixed phraseologies, which would be above the word level of equivalence and therefore outside the scope of this paper.

MEDICAL TRANSLATION

The main difficulty that sets medical translation apart from other types of technical translation is its multiple registers. This might not be apparent at first, but in practice many diseases and body parts have one name in a higher (medical) register and another in a lower (general) register. Examples would be pertussis versus whooping cough, and thorax versus chest. According to Newmark this is for historical reasons, and because different areas of medicine developed separately:

"The medical language register in European languages is a jungle of synonyms -- different words being applied to the same condition, depending sometimes on whether the point of view is anatomical, clinical, or pathological, and sometimes on when and where the expression is used. Thus brucellosis has at least 25 (linguistic) synonyms in English alone (6-12 in other European languages (Newmark 1979, 1405)."

Medical translation is often considered more difficult than other types of technical translation because the translator needs to have some knowledge of how the body works and how a given disease progresses, etc. However, a translator translating an electrical engineering text on

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

power transmission systems also needs to understand how that system works, and similarly for a mechanical engineering text on a power plant cooling system. The difference is that in engineering, while just about any part can be called a "thingamabob" in a lower register, all texts for any reader would use the same terms for the names of parts and systems. Texts for a more general reader would simply provide less detail.

The existence of two registers would not be so difficult if not for the fact that some languages have only one word for both registers, while others have two or more words. When translating a term from a language with one option into a language with two or more possibilities, the register and text type must be taken into consideration. The table below shows some examples, with some taken from an earlier article (Moraes 2003, 187):

American English Medical Register	American English General Register	Brazilian Portuguese Medical Register	Brazilian Portuguese General Register
thrombus	blood clot	trombo	coágulo
conjunctivitis	pink eye	conjuntivite	
candidiasis	yeast infection / thrush	candidíase	
mumps, infectious parotitis/parotiditis, epidemic parotitis/parotiditis	mumps	parotidite epidêmica	caxumba

In medical texts, the reader's assumed level of knowledge depends on the communication type, or put another way, on the two parties to the communication. There have been many attempts to list the different communication types. Heret and Alegre describe a classification scheme suggested by Löning. The four categories are professional to professional (doctor to doctor), professional to semi-professional (doctor to nurse or medical student), professional to non-professional (doctor to patient) and non-professional to non-professional (journalist to reader) (Herget and Alegre 2009). Friedbichler and Friedbichler mention three registers used in medical

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

translation, namely that used by laypersons, professional jargon and clinical expressions (Friedbichler and Friedbichler 2009, 64). Moraes cites three registers: doctor-to-doctor, doctor-to-patient and patient-to-patient. The last refers to texts written by laypersons for others like themselves who are suffering from a given disease (Moraes 2003, 186).

After analyzing texts of different types containing concrete examples of use of the terms in the table above, I came to the conclusion that whatever the level of communication, there are three basic possibilities for a given concept:

1. medical register (e.g. candidiasis)
2. general register (e.g. yeast infection)
3. mixed (e.g. yeast infection (candidiasis) or candidiasis (yeast infection))

The complication is to determine, for each concept, which of the three (or more) possible translations map into each of the 3-5 communication situations described above. The translation which will sound most correct to a native ear often depends on the area of medicine. For example, I found the following sentence in an article on vaccinations in the New England Journal of Medicine:

"We have launched a vaccination campaign to protect the refugees from diphtheria, measles, mumps, pertussis, rubella, and tetanus."

This sentence uses what would probably be considered a mixture of medical (pertussis) and general (mumps) register terms, but the terms used are appropriate when writing about vaccinations.

While thrombus is the normal medical register term corresponding to blood clot, I came across blot clot in academic articles on clinical medicine when searching the New England Journal of Medicine. The example below shows the term used in a sentence clearly written in the medical register:

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

"In this patient, the CT finding of a bright linear signal in the region of the right middle cerebral artery suggests the presence of a blood clot, and the subtle early ischemic changes in the territory served by this artery reinforce the diagnosis of evolving infarction."

Dictionaries can only take us half way to a solution. Newmark comments "Never accept a bilingual or multilingual dictionary as an authority. It often contains too many synonyms without their context, obsolete words or 'dictionary' words (that is, those that are found only in dictionaries)" (Newmark 1979, 1406).

Examples of entries from two medical dictionaries show the difficulty in knowing which term to choose as the correct translation.

caxumba - ver parotidite epidêmica (Rey 1999, 127)

parotidite epidêmica - mumps, epidemic parotitis (or parotiditis) (Rey 1999, 581)

caxumba - mumps. See parotidite (Gontijo 2004, 25).

parotidite - parotiditis, parotitis. O mesmo que caxumba (Gontijo 2004, 71)

and in the opposite direction:

mumps - caxumba, parotidite. Same as parotitis (Gontijo 2004, 155)

parotitis - parotidite, caxumba. Same as parotiditis, mumps (Gontijo 2004, 167).

Neither provides full register information, and it would be hard to do so accurately. A monolingual medical dictionary for non-professionals and semi-professionals sheds some light on the subject with its definition:

mumps - a common virus infection mainly affecting school-age children. (...) Medical name: infectious parotitis (Martin 2002, 446)

The medical register term, infectious parotitis, did not have its own entry in the dictionary.

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

Clearly, if a translator only translates medical journal articles in specific area, register will not be as large a problem. I do not have data on how much material is translated for each register, but there is clearly a lot of information translated for non-medical professionals by international drug companies and NGOs. Many medical articles are also translated, but a significant number are written directly in English because many physicians and medical researchers have strong English skills. Most medical translators will have to translate a variety of registers.

LEGAL TRANSLATION

The largest difficulty in legal translation is the difference between the underlying legal systems, assuming that the translator has a basic understanding of law in general similar to the knowledge a medical translator would need to have of medicine. Compared with medical translation, legal translation would be like translating a medical text into a veterinary text. All countries have laws that apply to criminal conduct, but beyond that the crimes, punishments and laws are different.

Cao cites three categories of lexical difficulties in legal translation: 1) terms with one meaning in legal language and another in everyday language, like "consideration"; 2) terms without an equivalent in the target language due to differences in legal language, such as most terms related to equity; and 3) terms with multiple meanings depending on the context (Cao 2002, 330). The first and third categories should not be insurmountable for a translator with sufficient legal knowledge, but a lack of equivalence may be impossible to overcome completely. Legal terms have little meaning outside the context of their legal systems (Cao 2002, 338).

Moraes separates translation difficulties into two categories, referential (extra-linguistic) and stylistic cultural markers. Referential cultural markers include legal concepts, bodies, institutions, processes, etc. Stylistic cultural markers are the manners of speaking, frequently

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

due to older practices still in use" (Moraes 2007, 20). Examples of stylistic markers are expressions such as "in witness whereof" and "hereinafter."

Kocbek cites de Groot, who says the first step is to understand the source term in the source legal system, then seek a term with the same meaning in the target legal system, through comparative law. If no comparable term can be found due to various reasons, the translator must: use the source-language term in original language or transcribed (loan) or use a paraphrase or create a neologism (use a term in the target language that is not used in the target legal system, perhaps with a note) (Kocbek 2008, 55). But is this actually done by legal translators?

Moraes' corpus analysis results show that legal translators often use partial equivalents when full equivalents are not available due to mismatches in legal systems. Three types of legal equivalences are defined: functional, operational and cultural (Moraes 2007, 87). When two terms are equivalent in one respect (e.g. functional) they are usually not equivalent in the other two respects.

- Cultural equivalence is when a culturally marked term is translated using a term that is also culturally marked in the target language (Moraes 2007, 95). An example would be the translation of Driver's License (the main form of ID in the United States) as RG (the main form of ID in Brazil) (Moraes 2007, 194).
- Operational equivalence is when an object, concept or entity in the translation operates in a manner similar to that in the source document. This is a referential equivalence and the object, concept or entity exists outside the translated text (Moraes 2007, 95). An example is the translation of *sociedade limitada* as limited liability company (Moraes 2007, 139)

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

- Functional equivalence is when a term that is not culturally marked is used in the target language to describe the function of a culturally marked term in the source language, a type of paraphrase (Moraes 2007, 94). An example would be to translate *comarca* as administrative district rather than as county (a cultural equivalent) or as district (an operational equivalent) (Moraes 2007, 101).

The degree of equivalence depends on how related the legal systems are. Sometimes the concept was imported from the other legal system or both systems imported the concept from a third system.

Even in cases where two terms are commonly thought of as equivalents, some subtleties may exist. Cao mentions that the English term good faith is usually translated by its counterpart in civil law countries (which she refers to as *bona fides*), but there are some basic differences between the interpretation of this concept in the civil and common law systems. For example, good faith excludes negligence, whereas *bona fides* could treat gross negligence as evidence of a lack of good faith (Cao 2007, 76).

Geeroms broadly agrees with de Groot:

"It will become clear that the relationship between word and concept is often not identical in the different legal languages: for instance, the Cour de Cassation can hardly be called a supreme court in the American sense. According to Professor Sacco, a scholar faced with translation difficulties may prefer not to translate, a solution which Sacco himself prefers at a macro-comparative level. Alternatively, he can choose the closest term available to him in his own language, provided the differences are not relevant for the studied problem. A

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

second option consists in the creation of neologisms in his own language" (Geeroms 2002, 202).

While these options are appropriate for academic works and comparative law, to what extent do they apply to commercial legal translations? The key is in the context: "provided the differences are not relevant." The differences may be critically relevant in a commercial translation, or they may be irrelevant in the specific context, but this must always be analyzed.

What about the other translation difficulties mentioned in the first section? Register, so complicated in medical translation, is rarely a problem in legal translation. The text of legislation is more formal than that of contracts, but the terminology does not change, since words in contracts and other commercial documents must match legislation (and case law) in order to facilitate interpretation by the courts.

One would think that bilingual countries like Canada and Belgium could avoid this problem, since their laws are published in two languages, but the meaning of a given law should be identical in both versions. Unfortunately, this not always the case because terms in English and French have the weight of their English and French legal system origins. Cao mentions a Canadian case in which the English version of the statute used the term "acts of God", while the French version used the terms "cas fortuit." Acts of God would not normally include negligence by third parties, but cas fortuit does, and the courts chose the broader meaning of cas fortuit (Cao 2007, 76).

CONCLUSIONS

In this article I have attempted to show that, while all areas of technical translation have some basic similarities such as special terminology and a need to understand how the systems described work, medical translation and legal translation each have their own special difficulties that set them apart from the others and from each other.

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

Each medical text must be analyzed to determine its register, and each term used in the target text must be in the register appropriate for the target reader. This can be difficult when only one term exists in either the source or target language, while multiple terms exist in the other language.

Legal translation necessarily requires some comparative law research by the translator, either in good dictionaries or in primary or secondary legal sources. The translator must be familiar with both legal systems in order to recognize when a concept or entity does not have an equivalent in the target language.

BIBLIOGRAPHY

Baker, Mona. *In Other Words: A Coursebook on Translation*. London; New York: Routledge, 1992.

Cao, Deborah. "Finding the Elusive Equivalents in Chinese/English Legal Translation." *Babel* 48, no. 4 (2002): 330–41.

Cao, Deborah. "Inter-Lingual Uncertainty in Bilingual and Multilingual Law." *Journal of Pragmatics* 39 (2007): 69–83.

Friedbichler, Michael, and Ingrid Friedbichler. "The Promise of 'KWIC-Web'." *The Write Stuff - The Journal of the European Medical Writers Association* 18, no. 1 (2009): 62–65.

Geeroms, Sofie M. F. "Comparative Law and Legal Translation: Why the Terms Cassation, Revision and Appeal should not be Translated." *American Journal of Comparative Law* 50 (2002): 201–28.

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. *In*: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.

- Gontijo, Suzana. *Vocabulário para Medicina Geral - Diagnóstico e Tratamento, Português/Inglês e Inglês/Português*. São Paulo: SBS - Special Book Services, 2004.
- Herget, Katrin, and Teresa Alegre. "Translation of Medical Terms." *Translation Journal*, 2009.
- Kocbek, Alenka. "The Cultural Embeddedness of Legal Texts." *Journal of Language & Translation* 9, no. 2 (2008): 49–70.
- Martin, Elizabeth A., ed. *Concise Medical Dictionary, 6th Ed.* Oxford Paperback Reference. Oxford; New York: Oxford University Press, 2002.
- Moraes, Naomi James Sutcliffe de. "Techniques for Teaching Medical Translation Into English." In *Proceedings of the 44th Annual Conference of the American Translators Association*, 185–94. Alexandria, VA: American Translators Association, 2003.
- Moraes, Naomi James Sutcliffe de. "Uma Análise Qualitativa de Marcadores Culturais Em Dois Corpora Paralelos de Traduções Jurídicas de Direito Privado de Português para Inglês e de Inglês para Português." PhD Dissertation. São Paulo: Universidade de São Paulo, 2007.
- Newmark, Peter. "A Layman's View of Medical Translation." *British Medical Journal*, 1 December 1979, 1405–07A *Layman's View of Medical Translation*.
- Rey, Luís. *Dicionário de Termos Técnicos de Medicina e Saúde*. Rio de Janeiro: Ed. Guanabara Koogan, 1999.

Cite as: Moraes, Naomi J. Sutcliffe de; Linguistic Differences Between Legal and Medical Translation, with Some Examples in English/Portuguese. In: Proceedings of the Tenth international Conference of the Brazilian Studies Association, July 22-24, 2010, Brasília, www.Brasa.org, 2010, pp 1-12.