Diabetes Goes to Work: Helping Your Patients Access the Protections of the Americans with Disabilities Act

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Stephen Orr, a pharmacist living in the Midwest region of the United States, successfully managed his diabetes with insulin and careful lifestyle modifications and never had trouble on the job related to his diabetes—until a new supervisor told him he could no longer take his scheduled lunch break. He tried explaining to his new supervisor that delaying or missing lunch could cause him to become disoriented, lose consciousness, and have seizures. His employer denied him the lunch break, putting Orr in a lose-lose situation: he could obey his supervisor and risk making a medication error or losing consciousness as a result of hypoglycemia, or he could disobey his supervisor, protecting his health but risking his job. Mr. Orr chose to protect his health by taking a break on the job to eat lunch. His supervisor responded by terminating him, admitting, when he did so, that he chose to fire Orr because of diabetes.[1]

The Americans with Disabilities Act (ADA)[2] prohibits discrimination based on disability in employment and other areas and was intended to enable health care professionals to help patients avoid situations like Stephen Orr's. Unfortunately, until recently, the ADA failed to protect many people with diabetes from discrimination. The federal courts that considered Stephen Orr's case, relying on decisions issued by the U.S. Supreme Court, said that his diabetes did not meet the legal definition of disability under the ADA because his condition could be effectively managed with medication; therefore, the court held that he did not have a disability. The ADA only protects people who meet its definition of disability. Because Mr. Orr did not meet that definition, his termination was perfectly legal.[1]

Like others before him, Stephen Orr fought against diabetes discrimination in federal court. But he was unable to convince the court that his diabetes constituted a disability under the law, in large part because of ADA rulings issued by the Supreme Court in 1999 and 2002. The Supreme Court held that courts must consider the effects of medication and other "mitigating" measures (such as prosthetic limbs or hearing aids) when determining whether a person has a disability.[3]

Before these Supreme Court rulings, most lower courts concluded that people with diabetes were covered under the ADA, but with this new guidance, courts often concluded that good diabetes management removed such people from the protection of the ADA. The Supreme Court also directed lower courts to limit ADA coverage to people who were prevented or severely restricted from performing "activities of central importance to most people's lives," such as walking, seeing, and hearing.[4] As a result, the courts focused only on whether Mr. Orr had extreme difficulty doing basic things when his diabetes was well managed.

The court held that Mr. Orr did not have a disability because his diabetes was well controlled and did not interfere with a "major life activity." He appealed, and the federal court of appeals again held that he did not have a disability.[1]

Because Mr. Orr, when allowed to care for himself properly, successfully managed his diabetes and

IN BRIEF

The passage of the Americans with Disabilities Act Amendments Act makes it clearer than ever that people with diabetes are protected from discrimination in a variety of settings, including the workplace. Health care professionals must play a central role in enabling patients with diabetes to assert the right to work free from discrimination and to manage diabetes in the workplace. This article provides concrete guidance to health care professionals on how to document to an employer that a patient with diabetes *1*) is protected by the Americans with Disabilities Act, *2*) is qualified for an employment opportunity, and *3*) requires changes in the workplace to enable the worker to manage his or her diabetes.

Sample Letter

This sample letter from physician to employer explains a patient's need for workplace accommodations. It focuses on specific details of a patient's diabetes and diabetes treatment that are relevant under the ADAAA. The language used is intended to 1) establish that the patient is covered under the law; 2) request accommodations, if needed; 3) describe complications, if relevant; and 4) request accommodations related to those complications, if needed.

My patient Jane Doe has been diagnosed with [type 1/type 2] diabetes mellitus, a lifelong disease that substantially limits endocrine function. Specifically, Ms. Doe's body [does not produce insulin/is not able to effectively use the insulin it produces]. Insulin is necessary to convert glucose, which comes from food, into energy that the body can use. Because Ms. Doe has diabetes, she uses [diet and exercise/oral medication/insulin through self-administration of injections multiple times a day via an insulin pen/insulin syringe/insulin pump] to manage her diabetes. Without these measures, Ms. Doe would [die within days or weeks/experience increased urination, weight loss, kidney failure, diminished vision, and other complications].

Ms. Doe must carefully monitor her blood glucose level to determine whether there is too much or too little glucose in her blood, and she must take action to correct for any high or low blood glucose levels. High blood glucose, or hyperglycemia, can cause Ms. Doe to experience tiredness, weakness, and other symptoms. Low blood glucose, or hypoglycemia, can cause Ms. Doe to feel shaky, confused, have difficulty speaking, and experience other symptoms. To best prevent hyperglycemia and hypoglycemia, Ms. Doe must be able to manage her diabetes at work as she would at home. It is my medical opinion that Ms. Doe needs [*list accommodations needed, such as breaks to check her blood glucose levels, eat, take medication, or go to the bathroom/a place to rest until blood sugar levels become normal/diabetes supplies and food nearby/access to a private area to perform diabetes-care tasks/leave for treatment, recuperation, or training on managing diabetes/a modified work schedule*].

Ms. Doe has [*list diabetes complications, such as neuropathy or retinopathy*], which has caused [nerve damage/vision loss/other limitations] and substantially limits her ability to [walk/see/care for herself/perform other life activities]. As a result, it is my medical opinion that Ms. Doe needs [*list accommodations needed, such as the use of a chair or a large-screen computer monitor*].

With these accommodations, Ms. Doe can safely and fully perform all job duties. Please contact me if you have any questions.

Fig 1. Sample Letter

could avoid the debilitating effects of hypoglycemia and otherwise live his life fully, the court held that he did not have a disability, and the employer could legally fire him for taking a break to manage his diabetes.[1] Stephen Orr was trapped: Taking good care of himself disqualified him under the ADA. If, on the other hand, he had not worked so hard to care for his diabetes and had recurrent diabetic ketoacidosis and severe hypoglycemia, he would have been protected under the ADA—and a lot sicker—but, at the same time, probably unqualified to retain employment as a pharmacist.

Mr. Orr's experience was not unique. Other workers with diabetes were similarly denied ADA protection. Workers with diabetes who did succeed in court did so only with the help of physicians and medical experts who were able to navigate the pitfalls of the ADA.

As the situation became increasingly bleak for workers with diabetes and others with treatable chronic conditions, there was no choice but to fix the law. Various organizations, led by the American Diabetes Association and other organizations, successfully advocated for changes to the ADA to undo the damage, resulting in the passage of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA).

The ADAAA amended the ADA to reverse the problematic Supreme Court decisions and enabled people with diabetes to claim the protections of the ADA at work, school, public places, and elsewhere, as the U.S. Congress originally intended when it passed the original act in 1990. However, people with diabetes still need assistance from health care professionals to exercise their rights under the amended ADA.

This article discusses how the ADAAA changed the ADA as it applies to workers with diabetes and gives practical guidance to health care professionals to help their patients in the employment arena. Specifically, the article gives guidance on how health care professionals can document that a patient is qualified for the employment opportunity and that he or she has a disability within the definition of the ADA. It also discusses how health care professionals can support their patients' requests for necessary changes in workplace policies (accommodations) that can enable them to manage their diabetes and thereby remain healthy and employed.

Definition of Disability

The first hurdle to accessing the legal protections of the ADA is establishing that a person meets the definition

of disability; only then will the court consider whether an employer has discriminated based on disability. A health care professional can provide documentation that shows that a worker with diabetes meets the definition of disability, thereby triggering the protection of the ADA.

To qualify for protection under the ADA, a person must show that he or she has *1*) a disability, *2*) a record of a disability, or *3*) been regarded as having a disability.[5] Disability, under the statute, is defined as "a physical or mental impairment that substantially limits a major life activity."[5] Before the passage of the ADAAA, even with the assistance of health care professionals, workers with diabetes sometimes found this hurdle too high, and the courts dismissed many discrimination claims brought by workers with diabetes.

ADAAA Offers Protections to People With Diabetes

The ADAAA responded to the courts' repeated denials of ADA protection to people with disabilities such as diabetes, AIDS, cancer, epilepsy, multiple sclerosis, and mental illness.[6] It passed both houses of Congress unanimously, was signed into law by President George W. Bush on September 25, 2008, and applies to discrimination that occurs on or after January 1, 2009. The ADAAA's changes are incorporated into the ADA so that the text of the statute now directs the courts to interpret the definition of disability in favor of "broad coverage."[5] People with diabetes still have to show a "substantial limitation in a major life activity," but the law makes this requirement much easier to meet.

Health care professionals, especially physicians, play a primary role in helping their patients with diabetes establish coverage under the law and in protecting their rights—a role that is much more straightforward than in the past, thanks to the changes to the law. Often, all that is required is a letter from the patient's physician describing the individual's diabetes, focusing on specific details now relevant to determine whether a person is protected from discrimination. Discussed below are the specific provisions that will be particularly important to health care professionals in this regard.

The major life activity of endocrine function

First, the ADAAA adds a nonexhaustive list of specific major life activities that can be asserted to establish coverage. Of particular note for people with diabetes, the ADAAA adds "major bodily functions" to the list of covered major life activities, one of which is the "endocrine function."[5] The diagnosis of diabetes, whether type 1 or type 2, means that a person's body does not produce sufficient amounts of insulin or cannot properly use insulin. Because diabetes, by definition, impairs the functioning of the endocrine system in such significant ways, it should not be difficult to prove that the disease causes a substantial limitation in that function. A health care professional can document disability by explaining in a letter to the employer how the patient's diabetes creates a substantial limitation in endocrine function, and can also describe additional substantial limitations in other major life activities, as discussed below.

The benefits of corrective measures cannot be considered

The ADAAA directs the courts to evaluate the person with diabetes without consideration of the benefits of corrective measures such as medication, diet, and exercise.[5] Without insulin, people with type 1 diabetes would die within days or weeks, so they would be substantially limited in all major life activities. Without insulin or oral agents, many people with type 2 diabetes would experience increased urination, weight loss, kidney failure, diminished vision, and a host of other health complications that substantially limit major life activities included in the nonexhaustive list, such as caring for oneself, seeing, and eating. Likewise, the effects of any complications the individual experiences due to diabetes, such as vision loss or neuropathy, must be considered without regard to any medication or treatment employed, and in the absence of any devices or technology the individual uses such as a prosthesis or screen reader software.

Stopping Diabetes Discrimination Requires the Help of Health Care Professionals

Health care professionals play a vital role in protecting and advancing the rights of workers with diabetes. Workers with diabetes often turn to their health care professionals when there is a diabetes-related issue at work and may not be aware that they have legal rights at work related to their diabetes until a knowledgeable health care professional points out this fact. The ADAAA's changes make it easier for workers and health care professionals to establish that a person with diabetes is protected by the ADA.

But what rights does this protection offer? Once a worker with diabetes meets the definition of disability, the ADA protects him or her from discrimination, for example, by prohibiting employers from denying a qualified individual a job opportunity based solely on diabetes. Although the ADAAA did not change the existing ADA substantive rights, it better enabled workers with diabetes to show that they are entitled to exercise them. As a result, health care professionals can play an important role in helping patients

Health Care Professionals Can Help Establish ADA Coverage

The American Diabetes Association provides legal advocacy assistance to health care professionals and patients who are fighting diabetes discrimination at work, school, and elsewhere.

Individuals can call 1-800-DIABETES to find out how to speak with an Association Legal Advocate about a discrimination problem. Read about the Association's Legal Advocacy efforts at www.diabetes.org/discrimination.

The American Diabetes Association needs health care professionals like you to help stop diabetes discrimination at work, school, and elsewhere.

You work hard to help your patients achieve good diabetes management. Yet, the ability for a student or worker with diabetes to manage his or her disease often depends upon permission from school officials or an employer, and without employment, many people cannot afford to take care of their diabetes. Health care professionals can make a difference for a person with diabetes through advocacy.

To learn how you can help by joining the American Diabetes Association's Legal Advocacy Health Care Professionals Network, please write to HCPnetwork@diabetes.org.

prove that they are covered under the ADA, empowering them to exercise their rights under the ADA and thereby ensuring that people with diabetes can be employed and stay healthy.

The strategy of the American Diabetes Association's Legal Advocacy Department, which provides advocacy assistance to individuals battling diabetes discrimination, is to "educate, negotiate, litigate, and legislate."[7] Encapsulated in this motto is the idea that much diabetes discrimination can be overcome with education about diabetes as a first step, followed, if necessary, by negotiation, then litigation. Legislation, the final step exemplified by the passage of the ADAAA, can be used to resolve truly stubborn and systematic discrimination problems. The assistance of health care professionals is a key component in this strategy for ending diabetes discrimination. The box on this page provides information about how health care professionals can become involved in advocacy initiatives.

The ADAAA makes the health care professional's role in establishing coverage straightforward. As a general matter, in responding to concerns expressed by an employer or in helping a worker obtain an accommodation (see discussion below on accommodations), all that may be required is a short letter from the treating physician that explains the diagnosis in clear language. The letter should explain that the patient's diabetes amounts to a substantial limitation in his or her endocrine function because of its impact on insulin production or insulin use. See the box on p. 73 for a sample letter.)

As previously discussed, such a letter can further emphasize the importance of diabetes management by explaining the effects of the condition on the individual without "mitigating measures." For example, the physician can write that, without diabetes care, the patient would become very sick or die. If applicable, the letter can also explain how complications of the patient's diabetes would substantially limit major life activities if the condition were not properly treated (e.g., by explaining that neuropathy would make it difficult for the patient to walk or stand). In some cases there will be limitations even with treatment (e.g., inability to walk due to amputation). Sample letters are available on the American Diabetes Association Web site at www.diabetes.org/discrimination.

Health care professionals counter safety concerns through "individualized assessments"

The role of the health care professional often extends beyond helping a worker establish ADA protection. Employers cannot refuse to hire people with disabilities based on fears and myths, such as unsubstantiated concerns about hypoglycemia. First, employers must assess the actual ability of the individual applicant or employee to do the job in question; this is called an individualized assessment. Health care professionals can help make sure the employer makes an appropriate assessment. For detailed guidance on this issue, review the American Diabetes Association's position statement on Employment and Diabetes.[8] This document provides a general set of guidelines for evaluating individuals with diabetes for employment, including how an assessment should be performed and what accommodations in the workplace may be needed for an individual with diabetes.

Safety has frequently been used as a justification to support one of the great challenges of diabetes discrimination: the blanket ban. A blanket ban is an employer policy, whether official or unofficial, of refusing to hire people with diabetes or a subset of people with diabetes such as all people who use insulin.

For example, Jeff Kapche was a police officer who applied to be a special agent with the Federal Bureau of Investigation (FBI).[9] He was told that his type 1 diabetes would not be an obstacle as long as he was qualified to do the job. Despite his excellent qualifications and the fact that he passed every test given by the FBI, Mr. Kapche was denied a job as a special agent. When he sued, the FBI defended its decision based on an unofficial policy requiring special agents with diabetes to manage the disease with an insulin pump rather than through insulin injections. The FBI, in applying this blanket ban, refused to consider the fact that Mr. Kapche had achieved excellent control of his diabetes through injections. As a result, Mr. Kapche had to go to court to fight the FBI's blanket ban, where he convinced a jury that the ban was not necessary (could not be justified by "business necessity"), thanks in large part to the testimony of several dedicated endocrinologists.[10]

In safety-sensitive jobs, some employers fear that all people with diabetes are a danger in the workplace (a "direct threat") and use this to justify a blanket ban or to reject a particular applicant with diabetes. Other blanket bans are based on the belief that diabetes prevents a person from being qualified to do a job.

Regardless of whether an employer believes that an employee's diabetes makes him or her unqualified or a direct threat, health care professionals can provide the accurate information needed to resolve this concern. For example, a treating physician provided invaluable information in the case of Rudy Rodriguez, a manual laborer with type 2 diabetes who applied for a full-time position at a factory.[11] Although Mr. Rodriguez had worked successfully for several months at the factory, when he was examined in an employment physical, the employer's doctor used a urinalysis (an outmoded way to test blood glucose) to conclude that Mr. Rodriguez could not safely work anywhere "outside of a padded room where he could even then fall and break his neck from dizziness or fainting."[11] As a result, the employer refused to employ Mr. Rodriguez. Mr. Rodriguez's treating physician testified in court that Mr. Rodriguez had never had any diabetes complications, revealing how preposterous the employer's fears were and enabling the court to find in Mr. Rodriguez's favor.

Thus, although not everyone with diabetes can safely do every job, treating physicians and other experts in diabetes are essential to responding to unsubstantiated fears that are often based on a lack of knowledge about diabetes and how it is currently managed. For health care professionals, it is important to distinguish a person's ability to safely perform a job and the patient's ability to manage his or her diabetes. Health care professionals should be careful in the way they note that a patient is not "in control" of diabetes because "control" is a completely separate issue from being a safe worker. Hyperglycemia over a period of years, like smoking, is likely to cause complications, but only if complications occur *and* prevent the individual from safely doing the job should the worker be found to be unqualified or a direct threat. Thus, diabetes and its level of control alone should not disqualify an individual from a job.

For example, an employer may believe that a person whose A1C level exceeds the recommended target is certain to have diabetes complications or to be unable to work. A health care professional can educate the employer that a high A1C level does not guarantee that the person has complications and is not indicative of the person's ability to do the job. The health care professional can then provide expertise on how diabetes actually affects the employee in question.[8]

When approached by a patient or employer to do an individualized assessment, health care professionals should keep in mind that, under the ADA, an individual who can perform the essential functions of the job is qualified, even if he or she could not perform non-essential job functions. For example, a construction worker with mild retinopathy may have difficulty seeing at night. If he or she can perform all essential duties during daylight hours, the individual may be qualified for the job even though he or she would be unable to work at night (provided other workers were available to be assigned to the nighttime duties). In such a case, nighttime work would likely be a marginal, rather than an essential, function of the job, and so the employer would be required to consider the individual for the job. The job description or a list of job duties from the employer can help a health care professional determine what the essential functions of the job are to perform an appropriate evaluation.

The health care professional's role in reasonable accommodation requests

The ADA also entitles qualified people with disabilities to reasonable accommodations. Reasonable accommodations include changes in the workplace, the provision of assistive technology, or other modifications to the way the job is performed that enable a person with a disability to do the job.[12]

Health care professionals, including endocrinologists, certified diabetes educators, nutritionists, podiatrists, and other specialists,

can advise a patient and document to an employer that an employee with diabetes needs reasonable accommodations to do the job in question. For people with diabetes, this may include taking short breaks to test blood glucose, eat, or take medication, as long as these accommodations are not prohibitively expensive or difficult (an "undue burden") for the employer.

Analyzing a worker's ability to perform essential functions should take into account these accommodations. For example, take the situation of a person such as Stephen Orr, who needs to take a lunch break to avoid hypoglycemia on the job. The health care professional can easily point out the importance of such a break and that, assuming such an accommodation is granted, the person would be able to safely perform all essential job functions.

A person may need reasonable accommodations to follow doctor's orders. For example, a treating physician may order a patient to avoid standing for more than 20 minutes so as not to exacerbate neuropathy in his or her feet. If that same patient works as a cashier, following the doctor's orders will be difficult without the reasonable accommodation of being allowed to use a chair while working. Even if the employer has a policy that all cashiers must stand while working, the ADA requires that the employer make an exception to this policy for a person with a disability unless it would be an undue burden on the employer. The treating physician or podiatrist can write a letter explaining why diabetes is a disability and that the cashier needs to be able to sit while working because of neuropathy. Providing this expertise with regard to the needs of the worker and educating employers about diabetes and its complications vastly increases the likelihood that the accommodation process will be successful.

Conclusion

The incidence of diabetes is rising, but advances in medicine and the improved civil rights protections of the ADAAA mean that workers with diabetes can remain in the workforce. The many different health care professionals who assist patients with diabetes must play an active role in establishing disability law coverage, performing individualized assessments, and documenting reasonable accommodation requests. Without such assistance, workers with diabetes face significant challenges staying employed, maintaining health insurance, and managing their condition.

REFERENCES

[1]*Orr v Wal-mart*, 297 F3d 720 (8th Cir 2002)

[2]Section 504 of the Rehabilitation Act of 1973 (Section 504) forbids entities who receive federal funding from discriminating based on disability. While this article refers to the ADA for simplicity, the ADAAA's changes also apply to Section 504.

[3]*Sutton v United Airlines*, 527 US 471, 482-83 (1999)

[4]*Toyota Motor Mfg, Ky Inc v Williams*, 534 US 184, 198 (2002)

[5]The Americans with Disabilities Act. 42 USC §12101, et seq. (2009)

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