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# HEPATITIS B AND THE ADA

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- SETTLEMENTS WITH THE UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY (UMDNJ)
- JOINT AGENCY LETTER TO HEALTH-RELATED SCHOOLS REGARDING STUDENTS AND APPLICANTS WITH HEPATITIS B

# WHAT IS THE ADA?

- Civil rights law
- Equal Opportunity
- To be protected by the ADA one must have a disability

# HOW DOES HEPATITIS B SATISFY THE CRITERIA OF AN ADA-PROTECTED DISABILITY?

- 2008 ADA amendment
- operation of a major bodily function
- functions of the liver is a major bodily function

# HOW DO THE PROTECTIONS OF THE ADA APPLY TO PEOPLE WITH HEPATITIS B?

- prohibits public and private schools of higher education from denying participation to students and applicants with hepatitis B.
- requires schools to make reasonable modifications unless it would fundamentally alter the nature of the program or the services.

# WHEN DO ADA PROTECTIONS NOT APPLY?

- direct threat
- based on current medical evidence

## 2012 CDC UPDATE:

[WWW.CDC.GOV/MMWR/PDF/RR/RR6103.PDF](http://WWW.CDC.GOV/MMWR/PDF/RR/RR6103.PDF)

- No reported transmissions of hepatitis B from a student to a patient since the 1991 CDC Recommendations (21 years).
- Hepatitis B, in itself, should not preclude the study or practice of medicine, surgery, dentistry or allied health professions.
- Medical and dental students with chronic hepatitis B virus infection who do not perform exposure-prone invasive procedures but who practice non- or minimally invasive procedures should not be subject to any restrictions of their activities or study.
- Exposure-prone invasive procedures are not ordinarily required of students in order to graduate from medical or dental schools
- Students may be able to perform those procedures by maintaining a lower viral load level.

# SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY UNDER THE AMERICANS WITH DISABILITIES ACT

[HTTP://WWW.ADA.GOV/UMDNJ\\_SA.HTM](http://www.ada.gov/umdnj_sa.htm)

- DOJ's first ADA hepatitis B enforcement action
- March 5, 2013

# COMPLAINTS

- rescinded offers of admission
- applicants posed a direct threat



# INVESTIGATION

- not required to perform exposure-prone invasive procedures to graduate.
- could not show that the applicants posed a direct threat -- even if exposure-prone invasive procedures had been required.

# RESOLUTION

- violated Title II of the ADA
- UMDNJ was required:
  - to adopt a hepatitis B nondiscrimination policy;
  - to train its employees on the requirements of the ADA;
  - to admit the applicants; and
  - to provide a total of \$75,000 in compensation and tuition credits to the two applicants.

DEPARTMENTS OF JUSTICE, EDUCATION, AND HEALTH AND HUMAN SERVICES JOINT  
LETTER TO HEALTH-RELATED SCHOOLS REGARDING HEPATITIS B DISCRIMINATION

[HTTP://WWW.ADA.GOV/HEPATITIS-B-LETTER.HTM](http://www.ada.gov/hepatitis-b-letter.htm)

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## UP TO 2.2 MILLION PEOPLE IN THE UNITED STATES HAVE HEPATITIS B

DOJ, ED, and HHS share responsibility for protecting the rights of students and applicants with hepatitis B

- dismissed or threatened with dismissal from their surgical practices
- acceptances to medical or dental schools rescinded
- March 2013 DOJ settlement agreement with UMDNJ

## REVIEW POLICIES, PRACTICES, AND PROCEDURES TO ENSURE COMPLIANCE WITH NONDISCRIMINATION OBLIGATIONS

- latest recommendations from CDC
- enrollment decisions result in disability discrimination
- discrimination on the basis of disability, race, color, and national origin.

# QUESTIONS ABOUT THE ADA OR HEPATITIS B?

- The Hepatitis B Foundation (215-489-4900)
- The ADA information line at DOJ (1-800-514-0301/voice; 1-800-514-0383/TTY)
- The ADA website at [www.ada.gov](http://www.ada.gov)
- How to file a complaint online: [https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm), or by mail or fax: <https://www.ada.gov/t2cmpfrm.htm>
- How to file an employment claim: [https://www.ada.gov/filing\\_eeoc\\_complaint.htm](https://www.ada.gov/filing_eeoc_complaint.htm)