

Hepatitis B and the ADA

- Review of Updated CDC Recommendations for the Management of Health-Care Providers and Students with Hepatitis B
- Settlement 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 Hepatitis B?

- Hepatitis B is a contagious liver disease resulting from infection with the hepatitis B virus. It can range in severity from a mild illness lasting a few weeks to a serious, lifelong illness.
- A mother who is infected with hepatitis B can pass the virus to her baby at birth.
- It is estimated that 800,000 to 1.4 million people in the United States have chronic hepatitis B virus infection
- Of that number, 50 percent are of Asian, Native Hawaiian and Pacific Islander descent.

How Does the ADA Apply?

- Titles II and III of the ADA prohibit entities, including schools of higher education, from discriminating against people with disabilities.
- The ADA also requires entities to make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the modifications would fundamentally alter the nature of the program or the services provided.
- An entity may exclude a person with a disability when the individual poses a direct threat to the health or safety of others.
- The decision that an individual poses a direct threat must be based on current medical evidence and may not be based on prejudice, stereotypes or unfounded fears.
- According to the Centers for Disease Control and Prevention, there have been no reported transmissions of hepatitis B from a student to a patient in the past 21 years.
- DOJ believes it is important to pursue this emerging area of discrimination, particularly as it relates to higher education and the health care professions.

2012 CDC Update:

www.cdc.gov/mmwr/pdf/rr/rr6103.pdf.

In July 2012, the CDC released recommendations for health-related schools regarding the education of health-care students who have hepatitis B in its Updated Recommendations for the Management of Health-Care Providers and Students with Hepatitis B.

- The CDC recommendations are based on the most current scientific information, dispel many myths associated with hepatitis B, and provide guidance to hospitals, health care facilities, and health-related schools on managing students and health-care providers with the virus.
- 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 and, even if they were, students may be able to perform those procedures by maintaining a lower viral load level.

Specific management parameters for those with hepatitis B who perform exposure-prone procedures:

CDC recommended specific management parameters for those with hepatitis B who perform exposure prone procedures :

- An expert review panel should be convened, including the providers' and students' personal, occupational or student health physicians, infectious disease specialists, epidemiologists, and ethicists, to provide oversight of the practice while respecting the confidentiality of the providers' or students' hepatitis B status.
- Individuals with hepatitis B can conduct exposure-prone invasive procedures if a low or undetectable hepatitis B viral load is documented by regular testing at least every six months unless higher levels require more frequent testing; for example, as drug therapy is added or modified or testing is repeated to determine if elevations above a threshold are transient.
- DNA serum levels should be relied on, rather than hepatitis B e-antigen status, to monitor infectivity. A hepatitis B viral level of 1,000 IU/ml (5,000 GE/ml) or its equivalent is an appropriate viral load threshold for a review panel to adopt.
- Spontaneous fluctuations (blips) of hepatitis B viral levels and treatment failures might both present as higher-than- threshold (1,000 IU/ml; 5,000 GE/ml) values. This will require an individual with hepatitis B to abstain from performing exposure-prone procedures, while subsequent retesting occurs, and if needed, modifications or additions to the health-care provider's drug therapy and other reasonable steps are taken.

CDC's Definition of Exposure-prone Invasive Procedures

- “Limited to major abdominal, cardiothoracic, and orthopedic surgery, repair of major traumatic injuries, abdominal and vaginal hysterectomy, caesarean section, vaginal deliveries, and major oral or maxillofacial surgery (e.g., fracture reductions). ”
- CDC acknowledges need for individual consideration of procedures, practices, and providers performing potentially exposure-prone procedures.
- CDC cautions against defining exposure-prone procedures too broadly.
- “The great majority of surgical and dental procedures have not been associated with the transmission of HBV.”

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

In 2011, the DOJ received complaints that UMDNJ rescinded offers of admission to two Asian-American applicants after learning that they have hepatitis B.

- UMDNJ admitted that it excluded the applicants because of their hepatitis B - applicants posed a **direct threat** to the health or safety of others:
 - the applicants could infect patients while performing exposure-prone invasive procedures because of the applicants' high viral loads of hepatitis B.
 - such procedures were essential to the curricula, were required for graduation, and could not be modified to accommodate the applicants.
- DOJ's investigation revealed:
 - that students at UMDNJ are not required to perform exposure-prone invasive procedures to graduate.
 - after treatment, the applicants' viral loads were lowered to almost undetectable levels,
 - The department determined that UMDNJ could not show that the applicants posed a direct threat -- even if exposure-prone invasive procedures had been required.
- DOJ concluded that the university's exclusion of the applicants violated Title II of the ADA
- Terms of Settlement Agreement/ University is 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>

- June 12 2013 letter sent to the nation's medical schools, dental schools, nursing schools and other health-related schools regarding hepatitis B discrimination.
- DOJ, ED, and HHS share responsibility for protecting the rights of students and applicants with disabilities, including those with hepatitis B, in schools of higher education by enforcing:
 - titles II and III of the Americans with Disabilities Act
 - Section 504 of the Rehabilitation Act.
 - Title VI of the Civil Rights Act, (prohibits discrimination on the basis of race, color or national origin in programs and activities receiving federal financial assistance, including those of health-related schools)
- some health-related schools may be making enrollment decisions based on incorrect understanding of hepatitis B resulting in discrimination.
- updates schools on the latest recommendations from CDC
- emphasizes schools' obligation to comply with federal laws prohibiting discrimination on the basis of disability, race, color and national origin.
- cites March 2013 settlement agreement with UMDNJ
- Provides information on CDC 's updated recommendations

Federal Agency Statements

- DOJ: “The Justice Department strongly urges health-related schools to review the CDC’s recommendations and to ensure that their policies and practices comply with federal nondiscrimination laws. Applicants and students with hepatitis B should not have to face exclusion on the basis of unfounded fears and stereotypes, and the Justice Department will not tolerate it.”
- ED: “Both public health and civil rights will be promoted when medical schools rely on the most recent scientific information, not overbroad generalizations, in dealing with medical students with hepatitis B.”
- HHS: “The CDC recommendations promote public health and safety while also offering guidance on the management of students with hepatitis B. Our agencies place considerable weight on this guidance in our enforcement of federal civil rights laws.”

Questions About the ADA or Hepatitis B?

- The department engages in a wide range of activities to increase understanding with the ADA.
- The ADA information line (1-800-514-0301/voice; 1-800-514-0383/TTY) helps callers to understand how the ADA applies to them.
- The ADA website at www.ada.gov provides direct access to the department's ADA publications, briefs and settlement agreements, as well as information on how to file a complaint.

Specific Hepatitis B Questions?

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