



Access to Healthcare and the ADA – A Review of the Case Law

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Outline of today's presentation

- Which law applies?
- Is facility a healthcare provider?
- Legal standing to bring ADA cases against healthcare providers
- DOJ and access to healthcare
- Effective communication in the healthcare setting
- Access to healthcare for people living with HIV
- Access to healthcare for people with service animals
- Accessible medical facilities and equipment
- Administration and use of medication

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Info related to ADA issues arising for healthcare workers

- Today's presentation does *not* address ADA issues for healthcare workers with disabilities. (Title I of the ADA)
- However, Equip for Equality has developed a legal brief through a grant with the Great Lakes ADA Center that addresses a number of employment-related issues impacting healthcare workers, including essential job functions, reasonable accommodations, undue hardship, direct threat, confidentiality, wellness plans, and doctors as independent contractors.
- That brief can be found at: www.equipforequality.org/wp-content/uploads/2018/09/ADA-and-Healthcare-Workers-with-Disabilities.pdf

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Which Law Applies? Titles II, III or Rehab Act?

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Which law applies? Titles II, III or Rehab Act?

- Almost all healthcare organizations are covered by either Title II or Title III of the ADA, as well as Section 504 of the Rehabilitation Act.
- Which law depends on whether healthcare provider is public or private, and whether it receives federal funding.
- **Title II** – Applies to *public* healthcare providers
- **Title III** – Applies to *private* healthcare providers (In Title III's listing of public accommodations, "healthcare provider" and "hospital" are specifically listed)
- **Rehabilitation Act** – Applies to hospitals that are *recipients of federal funding*

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ADA v. Rehab Act

- **General Rule:** What is prohibited by Titles II or III of the ADA is also prohibited by the Section 504
- **Differences:**
 - ❖ **Regulations:** HHS issues regulations for Section 504, but DOJ issues regulations for Titles II and III of the ADA
 - ❖ **Compensatory Damages:**
 - Section 504 - compensatory damages available because healthcare provider waived defense of sovereign immunity when it accepted the federal funds.
 - Title III of the ADA – no compensatory damages permitted in statute
 - Title II of the ADA - compensatory damages statutorily permitted, and recoverable for intentional discrimination

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Are Religious Healthcare Providers Subject to the ADA or Rehab Act?

Reed v. Columbia St. Mary's Hospital,
915 F.3d 473 (7th Cir. 2019)

- **Background:** Patient with tardive dyskinesia filed Title III suit alleging hospital deliberately withheld from her the device she used to speak and put her in a “seclusion” room as punishment
- **Hospital:** Covered by ADA’s religious exemption
- **7th Circuit:** Religious exemption is an affirmative defense and hospital waived that defense by not raising it in its Answer

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Are Religious Healthcare Providers Subject to the ADA or Rehab Act?

- ***But see Cole v. Saint Francis Medical Center, 2016 WL 7474988 (E.D. Mo. Dec. 29, 2016)*** - religious exemption properly raised and hospital was under jurisdiction of the Bishop of the Roman Catholic Dioceses, not ADA
- **Remember** – Even if religious exemption applies, healthcare provider may be liable under Rehab Act if entity receives federal funding

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Is Facility a Healthcare Provider?

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Is facility a place of public accommodation under Title III?

- **General Rule:** Traditional healthcare providers covered by Title III, but less clear with non-traditional healthcare providers
Silguero v. CSL Plasma, Inc.
907 F.3d 323 (5th Cir. 2018)
- CSL Plasma is a plasma collection center
 - ✦ Pays anyone who passes screening test to donate plasma
- 2 people excluded due to mobility disabilities and service animal
- **Issue:** Is CSL Plasma a place of public accommodation?
- **5th Cir:** No. Affirmed MSJ – not a “service establishment”
 - ✦ “Service” implies benefit to customers and no benefit here
 - ✦ Service establishment doesn’t pay customer
- **But see ,*Matheis v. CSL Plasma*, 2019 WL 4125222 (10th Cir. Aug. 30, 2016)** (finding plasma center a “service establishment”)

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ADA Coverage for Healthcare Providers

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Legal standing to bring ADA suit against healthcare providers

General Standing Requirements - Constitution

- Plaintiff must suffer a personalized and concrete injury-in-fact of a legally cognizable interest
- The injury must be traceable to the defendant's conduct
- It must be likely, rather than speculative, that the injury can be redressed through a favorable court decision

Standing Requirements – Title III of the ADA

- Plaintiff must show harm from lack of ADA compliance
- Accessibility issues must relate to the plaintiff's disability
- Must show a likelihood of future harm – ***this is the most common issue in Title III legal standing challenges***

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Standing to sue – allegation of future harm

- Many courts have adopted the following 4 factors for demonstrating likelihood of future harm:
 - ❖ Proximity of the business to the plaintiff's home,
 - ❖ Plaintiff's past patronage of the defendant's business,
 - ❖ Definiteness of the plaintiff's plans to return, and
 - ❖ Frequency of travel near the business.
- Many people with disabilities unable to pursue healthcare discrimination case because of a finding of lack of standing.

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Legal standing found in case against healthcare providers

Alexander v. Kujok,

158 F.Supp.3d 1012 (E.D. Ca. 2016)

- Deaf man denied interpreter by 6 in-network doctors
- Out-of-network doctor provided interpreter - but more expensive
- ADA suit filed against 6 doctors' offices - they argued no standing because could not show likelihood of future harm
- **Court:** Plaintiff had standing because he alleged that he would return to in-network physician if accommodation was provided because of higher expense of out-of-network dr.
- Plaintiff does not have to engage in "futile gesture" if he already knows accommodation won't be provided.

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Legal standing not found in case against healthcare provider

Juech v. Children's Hosp. & Health Sys., Inc.,
2018 WL 5775918 (E.D. Wis. 2018)

- Woman who is deaf brought her daughter to ER – video remote interpreting service malfunctioned; staff not trained
- She filed ADA suit against hospital
- **Court:** Dismissed case – no legal standing.
 - Plaintiff failed to allege a real and immediate threat of violations of her legal rights.
 - There were six closer hospitals – so unlikely she would return to this hospital.
 - No one ever intends to return to an emergency room and that plaintiff had not returned since the initial incident.

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DOJ Efforts to Enforce Access to Healthcare

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DOJ – Barrier-Free Healthcare Initiative

- In 2012, the U.S. Department of Justice launched its Barrier-Free Healthcare Initiative, a partnership between U.S. Attorneys and DOJ's Civil Rights Division.
- More info about the Barrier-Free Healthcare Initiative can be found at www.ada.gov/usao-agreements.htm
- Over 50 Settlements are listed on DOJ's website
- **Common elements of DOJ settlement agreements:**
 - ❖ Policy revisions to ensure the provision of the appropriate auxiliary aids and services, including sign language interpreters and materials in alternate formats

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DOJ – Barrier-Free Healthcare Initiative

- **Common elements of DOJ settlement agreements:**
 - ❖ Perform communication assessment, requiring consulting with the patient and documenting the decision in the patient's chart
 - ❖ Signage about available auxiliary aids/services
 - ❖ Training requirements
- **Recent settlements**
 - ❖ Pro-Medica Health System (8/29/19) www.ada.gov/promedica_health_systems_sa.html
 - ❖ Lincare, Inc. (7/3/19) www.ada.gov/lincare_sa.html
 - ❖ Hazelden Betty Ford Foundation (6/28/19) www.ada.gov/hazelden_betty_ford_sa.html

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ADA and Effective Communication in the Healthcare Setting

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In-person American Sign Language interpreters

By far, the most common access to healthcare ADA cases involve effective communication

- **DOJ guidance:** Interpreters v. exchange of written notes - [28 C.F.R. Pt. 35, App. A.](#)
 - ❖ Written notes may be OK when conversation is minimal (routine lab tests or regular allergy shots)
 - ❖ Interpreters should be used when communication is more complex (medical history, diagnoses, procedures, treatment decisions, and communications regarding at-home care)
- **Courts:** Most courts have found when deaf individual who uses ASL needs to communicate about a complicated medical procedure, especially a surgery, the exchange of written notes is an inadequate way to achieve effective communication

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In-person American Sign Language interpreters

Liese v. Indian River County Hospital District 701 F.3d 334 (11th Cir. 2012)

- Discrimination claim brought by husband and wife who are both deaf
- Wife had emergency procedure to remove her gallbladder
- Despite requesting an interpreter, communication about procedure only done by mouthing words, writing notes, and pantomiming.
- **Trial Court:** Found in favor of hospital
- **11th Cir:** Sufficient evidence that limited auxiliary aids provided were ineffective; reversed decision granting summary judgment
- **See also,** more recent DOJ settlement with **Overlake Hospital** - www.ada.gov/overlake_sa.html, in which hospital failed to provide interpreter during deaf woman's childbirth and her mother was forced to interpret, meaning dad couldn't participate in the birth.

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Case finding interpreter not required

Martin v. Halifax Healthcare Sys., Inc. 2015 WL 4591796 (11th Cir. July 31, 2015)

- Deaf patient had a brief emergency room visit for a "bump on the head" – not provided with an interpreter
- **11th Cir:** Affirmed summary judgment for hospital
 - ✦ Interpreter was not necessary because plaintiff received typed instructions, which the patient, who is able to read and write English, indicated he understood

Note: ASL and English are not the same, so some deaf people may be fluent in ASL but unable to read English, making passing notes ineffective even for communications that are not complex

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Access to healthcare: ASL interpreter access – Title II

U.S. v. Washington State Healthcare Authority

www.ada.gov/wshca_sa.html

- Healthcare Authority (HCA) administers Washington State's Medicaid program
- HCA claimed it provided ASL interpreters for Medicaid recipients' medical appointments, but in actuality, interpreters often not available
- As a result, people needing interpreters had to cancel or re-schedule medical appointments or proceed without an interpreter
- **Settlement:**
 - HCA will enter into contract with Interpreter Services Provider that has at least 100 qualified interpreters covering the geographic regions of the entire state
 - Must meet at least 90% of ASL interpreter requests
 - Must meet technical standards if using Video Remote Interpreting

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Effective communication in healthcare not limited to deaf patients

- Vast majority of healthcare ADA effective communication cases involve patients who are deaf
- However, requirement to provide effective communication extends to all disabilities

Reed v. Columbia Saint Mary's Hospital

782 F.3d 331 (7th Cir. 2015)

- Reed has tardive dyskinesia which limits her ability to speak – uses a communication device to communicate
- During a hospital visit for mental health issues, she was denied access to her communication device
- **Court:** Viable ADA complaint that healthcare provider failed to provide effective communication

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VRI vs. In-person interpreters

DOJ Regulations include Video Remote Interpreting (VRI)

- **VRI:** Connects an off-site interpreter through the use of a video conferencing system to facilitate communication
- **Performance standards:** 28 C.F.R. § 36.303(f); 28 C.F.R. § 35.160(d)
 - ❖ Must have high-speed, wide-bandwidth video connection required to prevent low-quality video images
 - ❖ Must provide adequate staff training to ensure quick set-up and operation of the machine
- For a sample DOJ agreement applying these performance standards, see DOJ Agreement with Mountain States Health Systems at www.ada.gov/mountain_state_sa.html

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VRI vs. In-person interpreters

- **Potential problems:**

- ❖ DOJ: When individual cannot access screen because of vision loss or because of positioning due to injury - www.ada.gov/effective-comm.htm
- ❖ NAD: Concerned about overreliance, technological problems, lack of adequate training – www.nad.org/issues/technology/vri/position-statement-hospitals

Shaika v. Gaden Huetten Memorial Hospital
2015 WL 4092390 (M.D. Pa. July 7, 2015)

- The Hospital's VRI did not work, so staff used written notes to communicate to the plaintiff that her daughter had passed away
- **Court:** Denied motion to dismiss with respect to whether the hospital had acted with deliberate indifference to the plaintiff's rights, *but see* [Horan v. Univ. Hosp.](http://www.ada.gov/horan_v_univ_hosp_2019_wl_1767063), 2019 WL 1767063 (N.D. Ohio Apr. 22, 2019)

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VRI vs. In-person interpreters

Silva v. Baptist Health South Florida

856 F.3d 824 (11th Cir. 2017)

- Plaintiffs alleged that Hospital's persistent use of VRI violated the ADA because of technical difficulties or practical limitations
 - ❖ Ex: Machine was inoperable or unusable, picture would be blocked, frozen or degraded, staff don't know how to use it
- **District Court:** Hospital provided effective communication
 - ❖ No evidence of misdiagnosis or improper medical treatment
 - ❖ Plaintiffs failed to identify what they failed to understand
 - ❖ Plaintiffs lacked standing to seek injunctive relief
- **Appeal:** DOJ amicus brief
www.justice.gov/crt/file/870846/download
- **11th Cir:** Found for plaintiffs (reversed/remanded MSJ)

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VRI vs. In-person interpreters

- ADA/Rehab Act claims are not the same as medical malpractice
 - ❖ Focus is on **communication** itself – not the **consequences** of the failed communication
 - ❖ **Question:** Did patient experience a real hindrance, due to her disability, affecting her ability to exchange material medical information with her health care professionals?
- Here, Plaintiffs provided evidence that they were “hindered” due to issues with VRI and lack of in-person interpreters
- Plaintiffs are not required to identify exactly what information they were unable to understand or convey
- Cites DOJ regulations re: VRI
- Plaintiffs had **standing** because they regularly used the Hospital, lived nearby and were likely to return

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Video Remote Interpreting (VRI)

Morales v. Saint Barnabas Medical Center

13-cv-06363 (D.N.J. Consent Order - 2017)

- For VRI, must meet **DOJ regulatory requirements** – examples:
 - ❖ High quality video images; sharp and large image
- VRI **shall not be used** when it is **ineffective** – examples:
 - ❖ Inability to see, move head/hands/arm, limited cognition, or pain
 - ❖ Information exchanged is highly complex
 - ❖ Area without a designated high speed Internet line
 - ❖ Space restrictions in room where patient is treated
- **Time limit:** VRI not operational after staff try for 45 minutes
- If VRI is not effective, must provide onsite interpreter
- If VRI is used, will confirm it is meeting individual's needs

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Coverage of companions

- It is well settled that the ADA's effective communication obligations extend to *companions* with disabilities
- **Definition of companion:**
 - ❖ "[A] family member, friend, or associate of an individual" accessing either the public entity or place of public accommodation, "who, along with such individual, is an appropriate person with whom the [public entity or public accommodation] should communicate"

[28 C.F.R. § 35.160\(a\)\(1\) \(Title II\)](#)
[28 C.F.R. § 36.303\(c\)\(1\)\(i\)\(Title III\)](#)
- **Note:** There has not been significant litigation disputing whether an individual qualifies as a companion, perhaps because of the broad definition of the term "companion"

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Coverage of companions

Most cases accept that the individual is a companion, and then determine whether the communication provided was effective.

Perez v. Doctors Hosp. at Renaissance, Ltd.,
2015 WL 5085775 (5th Cir. Aug. 28, 2015)

- Parents, who are deaf and required sign language interpreters for effective communication, were entitled to protection of Section 504, at hospital where their son was a patient.

DOJ Settlement: Fairfax Nursing Center, Inc

- **Complainants:** 83-year-old resident's daughter and granddaughter requested ASL interpreters, but the request was denied
- **Settlement:** Nursing Center agreed to provide appropriate auxiliary aids and services to both patients and their companions

http://www.ada.gov/fairfax_nursing_ctr_sa.html

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Companions v. association discrimination

Issue: Can a *non-disabled* family member bring a claim for discrimination under the ADA for association discrimination?

Loeffler v. Staten Island University Hospital
582 F.3d 268 (2d Cir. 2009)

- Hearing children of deaf patient and patient's wife forced to interpret during their father's hospital stay
- **Court:** Children suffered an independent injury related to hospital's failure to provide interpreter for their parents
- **But see, *McCullum v. Orlando Regional Healthcare System, Inc.*** 768 F.3d 1135 (11th Cir. 2014), no discrimination claim for non-disabled family members who interpreted for deaf patient. Non-disabled persons could show no independent injury (distinguished from *Loeffler* where kids missed school to interpret for parents)

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DOJ regulations on family member interpreting

DOJ regs (effective 2011): 28 C.F.R. § 36.303(c)(4); 28 C.F.R. § 35.160(c)

- Cannot use an adult to interpret/facilitate communication except
 - ❖ “emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available” OR
 - ❖ individual specifically requests that accompanying adult provide the interpretation, adult agrees, and reliance is appropriate
- Cannot use a minor child to interpret/facilitate communication except
 - ❖ emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available

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“Talking” prescription containers

Structured Negotiation with CVS/Pharmacy

- Structured negotiations with the American Foundation for the Blind, American Council of the Blind, and California Council
- CVS/pharmacy provides ScripTalk talking prescription labels for Rx
- Great demonstration of the various types of auxiliary aids and services that can lead to effective communication, especially with the advance of new technologies

www.lflegal.com/2014/03/cvs-prescription-agreement

- Other similar talking prescription container settlements can be found at:

www.lflegal.com/category/settlements/accessible-health-care-settlements/

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Access to healthcare: alternative formats

Figuroa v. Azar (HHS/CMS)

16-cv-30027 (D. Mass. settlement reached April 2019)

- Alleges HHS violated Section 504 by denying blind Medicare beneficiaries meaningful/equally effective access to Medicare info
 - **Settlement – CMS will:**
 - Ensure communications/notices from Medicare are available in accessible formats (ex: large print, Braille, audio, electronic)
 - Provide accessible, fill-able forms on Medicare.gov
 - Issue best practices to Medicare Health/Drug Plans
 - Implement a policy that extends the time a beneficiary must answer time-sensitive communications to account for the time it takes to process requests for alternate formats
 - Promote the availability of accessible materials to beneficiaries
- www.browngold.com/medicare-information-accessible-blind-beneficiaries

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Effective communication – digital information

- Access to healthcare is not limited to the physical facilities of healthcare providers and direct personal interactions with their representatives, but also applies to healthcare providers' digital communications
- Numerous settlements – see for example:
 - ❖ [Massachusetts Eye and Ear Institute Agreement - www.lflegal.com/2017/01/meei-agt](http://www.lflegal.com/2017/01/meei-agt)
 - ❖ [WellPoint Accessible Information Agreement – www.lflegal.com/2014/02/wellpoint-agreement/](http://www.lflegal.com/2014/02/wellpoint-agreement/)

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Digital health information - recent cases filed

Mazrui v. U.S. Office of Personnel Management,

1:19-cv-6249 (N.D. Ill. filed Sept. 19, 2019)

- Retired blind federal employee and NFB sued U.S. OPM and Blue Cross Blue Shield for refusing to ensure that digital health benefits information under the Federal Employee Program is accessible to blind people.

Meyer v. Walthall,

1:19-cv-3311 (S.D. Ind. filed Aug. 6, 2019)

- Lawsuit alleging the Indiana Division of Family Resources (that handles SNAP and Medicaid applications) is inaccessible and the state is failing to provide effective communication to people who are blind or low vision, including an inaccessible internet portal.

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Access to Healthcare for People Living with HIV/AIDS

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Direct threat and HIV – Supreme Court sets standard

- Historically, people living with HIV/AIDS have faced significant stigma and discrimination, including in the healthcare context. Discrimination continue today.
Bragdon v. Abbott, 524 U.S. 624 (1998)
- A dentist refused to treat a patient with HIV – alleged patient posed a direct threat to the dentist’s safety
- **Supreme Court:** In determining direct threat, healthcare providers must make an individualized inquiry as to the circumstances of the particular plaintiff, and rely only on most recent objective medical evidence, “without deferring to individual subjective judgments”

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HIV discrimination in healthcare still prevalent

United States v. Asare,

2017 WL 6547900 (S.D.N.Y. Dec. 20, 2017)

- Cosmetic surgeon excluded patients with HIV and/or on meds
- **Court:** Found for plaintiffs (granted motion for summary judgment)
 - ❖ Eligibility criteria that screens out people with disabilities and is not necessary
 - Defendant’s burden to show exclusion is necessary – can’t meet burden because he “automatically reject[s]” patients
 - ❖ Even if risk, failed to make reasonable modifications
 - Plaintiff proposed adjusting sedative protocol, hiring anesthesiologist to monitor/assist, etc.
 - Fundamental alteration fails – no individualized inquiry

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HIV discrimination in healthcare still prevalent

- **DOJ:** In recent years, DOJ has entered into numerous settlements with healthcare providers who discriminated against people with HIV. For example, see: *Woodlawn Family Dentistry*: www.ada.gov/woodlawn_fmly_dnst.htm
- DOJ's work in this area can be found at: www.ada.gov/hiv/index.htm
- **Typical provisions of settlement agreements:**
 - ❖ Adopt and implement a non-discrimination policy
 - ❖ Ongoing monitoring by DOJ
 - ❖ ADA training for staff and administrators.
 - ❖ Financial settlements for aggrieved parties involved

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Links to additional DOJ agreements related to HIV and healthcare

- ❖ *Advanced Plastic Surgery Solutions*
www.ada.gov/adv_plastic_surgery_sa.html
- ❖ *Pain Management Care*
www.ada.gov/pmc/pain_mgmt_care_cd.html
- ❖ *North Florida OB/GYN Associates*
www.ada.gov/north_florida_sa.html
- ❖ *Dentex Dental Mobile*
www.ada.gov/north_florida_sa.html
- ❖ *Genesis Healthcare System*
www.ada.gov/genesis_healthcare_sa.htm
- ❖ *Glenbeigh Alcohol Treatment Center*
www.ada.gov/glenbeigh.htm
- ❖ *Fayetteville Pain Center*
www.ada.gov/fayetteville_pain_ctr_settle.htm

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Access to Healthcare for People with Service Animals

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ADA and service animals in the healthcare context

- **DOJ Guidance on service animals references healthcare facilities:**

- ❖ in a hospital it would be **inappropriate to exclude** a service animal from areas such as patient rooms, clinics, cafeterias, examination rooms, and all other areas of the facility where healthcare personnel, patients, and visitors are permitted without taking added precautions.
- ❖ may be **appropriate** to exclude a service animal from operating rooms or burn units where the animal's presence may **compromise a sterile environment**
- ❖ providers **may not impose blanket bans** against service animals without engaging in the **interactive process** in an earnest effort to **identify potential reasonable accommodations**

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www.ada.gov/service_animals_2010.htm

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ADA and service animals in the healthcare context - litigation

Tamara v. El Camino Hospital

964 F. Supp. 2d 1077 (N.D. Cal. 2013)

- Psychiatric patient denied service animal while hospitalized
- Hospital argued service animal in a psych unit would pose a direct threat – anticipated harness could be used as a weapon and presence of the animal might upset other patients
- **Court:** Potential risks were merely speculative – no individualized assessment conducted by hospital that showed plaintiff or her service animal actually posed the anticipated risks.
- Even if the hospital's perceived risks were real – no reasonable accommodation analysis was conducted to ameliorate the risks

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ADA and service animals in the healthcare context - litigation

Roe v. Providence Health System-Oregon,

655 F. Supp. 2d 1164 (D. Oregon 2009)

- **Court:** Direct threat for a hospital patient to use a service dog with a “putrid odor” that resulted in patient transfers.
- The dog's size and growling response made it difficult for staff to treat patient and a handler was not always available. Dog may have had an infection as well.
- Hospital offered a compromise by requesting that patient close her door when the dog was present and offered to provide a HEPA filter. Plaintiff refused offer.
- Court dismissed case, and enjoined her from bringing any service animal to the hospital if she returned. Court noted that the hospital had a history of accommodating service animals.

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ADA and service animals in the healthcare context - ambulances

Hardin County Emergency Medical Services

- **Complaint filed with DOJ:** Service animal not permitted to accompany man in Hardin Co. ambulance
- **Settlement :** www.ada.gov/hardin_ems_sa.html
 - ❖ hire ADA Coordinator
 - ❖ permit service animals to accompany owners in ambulance unless animal out of control or not house broken
 - ❖ no surcharge will be assessed for service animals
 - ❖ only permissible questions about service animals will be asked
 - ❖ ADA training for personnel

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Service animals – companions and mootness

Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173 (7th Cir. 2007)

- Medical facility violated the ADA by preventing blind mom from bringing service dog into MRI suite during son's appointment
- Court rejected that companions aren't covered by Title III just because they aren't the patient and don't receive a benefit from the public accommodation.
- MRI facility modified its no-animal policy soon afterwards
- However, court held that plaintiff's ADA suit was not mooted by new policy – unclear that wrongful behavior wouldn't recur
- *See also, Hurley v. Loma Linda University Medical Center, 2014 WL 580202 (C.D. Cal. Feb. 12, 2014)* – ADA protects companions with service animals at healthcare facilities

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Accessible Medical Facilities and Equipment

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Federal guidance on accessible medical facilities and equipment

- **DOJ Guidance:**
 - ❖ 2010 DOJ published guidance health care providers
 - ❖ Sets forth responsibilities of health care providers to make their services and facilities accessible to individuals with mobility disabilities and provide reasonable modifications
 - ❖ www.ada.gov/medcare_mobility_ta/medcare_ta.htm
- **Access Board Standards:**
 - ❖ 2017 Access Board issued Standards for Accessible Medical Diagnostic Equipment
 - ❖ Don't have force of law until fed agency adopts in own regs
 - ❖ However, important guidance for healthcare providers on how to make equipment accessible
 - ❖ www.adatitleiii.com/2017/01/u-s-access-board-issues-standards-for-medical-diagnostic-equipment/

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DOJ settlements on accessible healthcare facilities and equipment

Beth Israel Deaconess Medical Center

- **Allegations:**
 - ❖ inaccessible inpatient rooms and bathrooms
 - ❖ insufficient inaccessible exam tables and medical equipment
 - ❖ inaccessible routes and maneuvering space for patients in wheelchairs
- **Settlement** - www.ada.gov/bidmsa.htm
 - ❖ hire ADA compliance officer
 - ❖ ensure that 10% of patient rooms are accessible
 - ❖ ensure that 10% of examination and treatment equipment is accessible
 - ❖ each building must have at least one accessible entrance

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Accessible medical facilities and equipment through structured negotiations and private settlements

- **Structured Negotiations:** Non-litigation strategy has been successful in making medical facilities and medical equipment accessible to people with disabilities. For ex:
 - UCSF Medical Center***
<http://www.lflegal.com/2008/09/ucsf-settlement-agreement/>
 - Massachusetts General Hospital and Brigham and Women's Hospital***
<http://www.lflegal.com/2009/06/boston-press/>
- **Private Settlement Example:** *Metzler v. Kaiser*, one of the first comprehensive ADA settlements with major healthcare provider, www.equipforequality.org/wp-content/uploads/2018/09/Kaiser-Settlement.pdf

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ADA litigation focusing on accessible facilities and equipment

Luna v. America's Best Contacts and Eyeglasses, Inc., 1:11-cv-01783 (N.D. Ill. Complaint filed Mar. 15, 2011)

- Class action by wheelchair users unable to receive eye exam due to inaccessible exam rooms and equipment at 337 stores
- **Settlement Terms:**
 - ❖ Retain ADA Consultant to perform accessibility surveys and monitor remediation efforts
 - ❖ ADA training for all personnel
 - ❖ Updated policies and procedures for treating pwds
 - ❖ Each store must have: a chair glide, accessible eyeglass and contacts fitting locations, and accessible exam room
 - ❖ www.equipforequality.org/wp-content/uploads/2018/09/Americas-Best-Stipulation-and-Class-Settlement-Agreement.pdf

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Administration or Use of Medication

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Administration of medication

- In recent years, DOJ has undertaken numerous enforcement actions on behalf of children with insulin-dependent diabetes and other disabilities to help ensure that those children enjoy equal access to places of public accommodation
- Children with insulin-dependent diabetes have found themselves effectively excluded by institutions that were unwilling to modify their policies in order to provide basic diabetes management care. The needs of children with diabetes differ, but these children generally need assistance with blood glucose monitoring and with the administration of insulin and emergency medication.

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Administration of medication

DOJ Agreement with Kindercare

www.ada.gov/kinder_care_sa.html (Sept. 2018)

- Kindercare operates 1,800 facilities for child care and camp
- Kindercare refused help administer insulin via syringe/pen
- **Settlement Agreement:** Kindercare will:
 - ❖ evaluate reasonable modification requests on an individualized basis using objective evidence and current medical standards
 - ❖ Agree that where a parent/guardian & physician/health care professional say OK for child to be assisted by a layperson, training child care staff to help with routine care (including insulin by pen, syringe or pump) is generally reasonable
 - ❖ Contact all families who were denied this request in past year
 - ❖ Revise/publicize new policy, including sample diabetes plan
 - ❖ Provide range of training (managers, teachers, child-specific)
 - ❖ \$8,000 to each aggrieved family (3 families)

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Administration of medication

DOJ Settlement with Camp Bravo (June 2015)

- Camp refused to admit camper with epilepsy who required emergency medication for seizures
- **Settlement:** Camp will train staff to administer Diastat
 - ❖ Adopt Seizure Emergency Action Plan and Physician's Order for the administration of Diastat so that it has individual instructions
 - ❖ Provide training to staff responsible for camper with epilepsy
- **DOJ:** "It is the United States' position that it generally will be a reasonable modification by title III of the ADA for certain public accommodations, such as camps and child care service providers, to train laypersons to administer Diastat."

www.ada.gov/camp_bravo_sa.html

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- But see, *U.S. v. NISRA*, 168 F.Supp.3d 1082 (N.D. Ill. 2016)

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Opioid use

DOJ Agreement with Selma Medical Associates

www.ada.gov/selma_medical_sa.html

- Complainant uses Suboxone to treat opioid use disorder (OUD)
- Tried to schedule an appointment at this family practice
- Selma Medical turned him away due to Suboxone use; informed complainant that this was per policy
- **DOJ conclusions:**
 - Complainant is a person with a disability because he has OUD
 - Discriminated against solely due to use of Suboxone
 - Policy imposed eligibility criteria; no policy modifications
- **Settlement (Dec. 2018)**
 - \$30,000 damages; \$10,000 civil penalty
 - Revise policy; publicize on website, in reception, to employees
 - Train its managers and employees who interact with patients

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QUESTIONS?