AMERICAN ASSOCATION OF DIABETES EDUCATORS
AND AMERICAN DIABETES ASSOCIATION
WEBINAR/"DIABETES GOES TO WORK"
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https://www.diabeteseducator.org/ProfessionalResources/products/webcasts/webc042711.html

1.
OPERATOR: Hello and thank you for joining us in today's Webinar entitled, "Diabetes Goes to Work -- Helping Your Patients Fight Discrimination. I would now like to introduce today's faculty.

2.
Daniel Lorber, MD, FACP, CDE is a practicing endocrinologist, director of endocrinology and associate director of the Lang Center for Research and Education at the New York Hospital of Queens in Flushing. He is also a clinical associate professor of medicine at Weil Medical College of Cornell University in New York City and a member of the Legal Advocacy Subcommittee of the American Diabetes Association.

Katharine Gordon, JD, is an ADA Novo Nordisk legal advocacy staff attorney at the American Diabetes Association in Alexandria, Virginia. She provides direct assistance and referrals to employees, students, parents, and prisoners discriminated against because of their diabetes and technical assistance to attorneys taking on diabetes discrimination cases.

3.
A copy of the disclaimer for this Webinar is in your handouts and on the screen. As a reminder, there will be a live Q&A session at the end of the presentation so you can type your questions directly into the chat Q&A box on your screen at any time or wait to ask your questions over the phone. I would now like to turn the presentation over to Katharine to begin.

4.
KATHARINE GORDON: Well, thank you all for joining us today. We hope that this Webinar will be useful to you as you learn how to help your patients be treated more fairly at work.

We have three goals for our discussion this afternoon. The first is we want to provide background information on the legal landscape that your patients face in presenting or fighting discrimination at the workplace. We want to describe the role that health care professionals play in stopping discrimination, and we also want to describe the efforts of the American Diabetes Association to end discrimination against people with diabetes.

5.
Our objectives for the day will be to describe the purpose of the Americans with Disabilities Act, explain how this law offers protection to people with diabetes, and identify at least three interventions that health care professionals can implement to address workplace discrimination against persons with diabetes.

6.
And we, first of all, wanted to get started by seeing a little bit about your experience with diabetes discrimination. So we have a question for you, and we'd love to hear your responses: What kind of discrimination have your patients experienced because of their diabetes? And you can just type in experiences that you may have had.

And so we are seeing a lot of very common patterns emerging. A few of the things that we have are people not being allowed to get breaks for meals, people losing their job as a school bus driver due to insulin use, not receiving breaks at work, being disciplined for having hypoglycemia. There are certain people who cannot do a certain profession because of their diabetes, and, again, many experiences of people having problems with getting breaks and having problems with presenting hypoglycemia in the workplace. And we will talk about some of those more later. So I think that's a good prospective of many of the issues we deal with.

7.
To begin with, I'd like to introduce some of the major advocacy concerns of the American Diabetes Association. So the mission of the American Diabetes Association is first, to increase federal and state funding for diabetes prevention, treatments, and research. Next, it is to prevent diabetes and improve the availability of accessible, adequate and affordable health care. And what we'll be focusing on today is to eliminate discrimination against people with diabetes at school, work, and elsewhere in their lives.

8.
Some of the basic principles that we use and see are that we believe that discrimination against people with diabetes presents often insurmountable barriers to effective diabetes management. If a person is not able to get the breaks that they need at work, their diabetes care will be impacted, and also if they lose their job because of diabetes, they may lose access to health care. Without advocacy from the diabetes health care community, the legal rights of people with diabetes cannot be successfully defended. Through a teamwork approach of the individual, of health care professionals, advocates and other attorneys, this teamwork is the way we need to go about things.

9.

We have a four-step approach to responding to employment discrimination which is educate, negotiate, litigate, and legislate. And this essentially means that we want to solve the problem at the most basic level. We recognize that sometimes the issue is ignorance, that a person simply does not understand diabetes. In this case, education is the key and can solve problems.

Sometimes, we need to do more and through negotiation with the employee and the employer and sometimes, with the involvement of the health care professional, a resolution can be agree to. Sometimes, it will be necessary to go to court to fight for a person who may have been fired, had not been hired because they have diabetes, sometimes simply because they have a diagnosis of diabetes. And sometimes we find that the law itself is a barrier to fair treatment. And in those cases, we need to work with everybody in the diabetes community to make sure that laws are changed and regulations are changed so that everyone is treated fairly.

10.

To give you a sense of the overall scope of the areas in which there is a lot of diabetes discrimination, we work in several areas. One is schools and daycare centers. Our main focus there is to make sure that children are allowed to get the care that they need at school. For example, getting insulin that they need, Glucagon in case of an emergency, and any other diabetes care they may need, also that parents are not forced to lose their jobs in order to provide diabetes care at school, and children can fully participate in extracurriculars and the whole educational program.

We'll be focusing today on employment so we'll be talking about more of that later. We also work on correctional institutions to make sure that anybody who is in custody receives basic and adequate care for their diabetes.

We also work in public accommodations and government services, and these would be a wide range of things including being able to take diabetes supplies with you to a concert, or if you're serving on a jury to be able to bring your insulin pump with you to the jury room. And a key area we have worked on a lot is Transportation Security Administration advocacy because we want to balance the right of people with diabetes to be treated with respect and dignity and to know what to expect when they travel and also to work with TSA to make sure that security concerns are always at the forefront as well. And, again, we do this through an approach of trying to solve the problem at the most basic level through education, negotiation, litigation, and legislation.

We also want to spread knowledge about diabetes discrimination and how to confront it as widely as possible. So for that reason, we have extensive training and resources for lawyers,

health care professionals, and advocates of all kinds. And in this way, we provide tools to prevent discrimination or to stop ongoing discrimination.

11.
DANIEL LORBER: If we're going to talk about discrimination, it's reasonable to hear about some people. These are three men who have faced employment discrimination at one time or another. Stephen Orr is a pharmacist who used to work for Wal-Mart. He lost his job because he chose to take better care of his diabetes. Jeff Kapche is kind of a poster child though a really fine police officer who actually was involved in two cases that Katharine will tell you about a little bit later. Gilberto Wise is a court officer who also lost his job because of an inappropriate approach to diabetes by the employer.

12.
John Steigauf is a mechanic for United Parcel Service who lost his job because of inappropriate standards for his care. Gary Branham –- interesting gentleman with Type I diabetes on an insulin pump who was denied a position. He was working at a desk job for the Department of the Treasury. He wanted to move to an enforcement job but was told because he was taking insulin that he would not be allowed move to an enforcement job.

13.
KATHARINE GORDON: And Dan has shared the stories of five people who have fought against discrimination, but the scope of this problem is greater. Just at the American Diabetes Association alone, we receive about 250 discrimination-related requests to 1-800-DIABETES each and every month. And one of the primary things that I do in my job is to respond to these callers to help them advocate for themselves and to connect them to lawyers and to help with litigation when necessary. And in that experience, I have talked with people from every single state and in every kind of environment from federal employees, state employees, nonprofit, and corporate, and so this is something that does impact, as you know, every area of our work.

14.
We have some very specific goals regarding employment of people with diabetes. First, we want to ensure that all people with diabetes can hold any jobs for which they are qualified. An example is Jeff Kapche, a person who is the exact kind of person you would want to be in the FBI protecting you.

Another thing we do is to advocate for reasonable accommodations necessary to protect health and to promote effective job performance. Another thing we work on is to develop fair standards on employment in private and public sectors. An example of this is working with the National Fire Protection Association to make sure that some people with diabetes can now work as firefighters.

And finally, we work to create good case law. What this means in practice is when we get a court victory, we hope that eventually, this will allow employers to understand their obligations towards people with diabetes. And so instead of a drawn out dispute, there can be a simple understanding of how to treat people with diabetes fairly in the workplace.

15.
The main law that we use to protect people with diabetes is the Americans with Disabilities Act. This law was enacted in 1990 so a bit over 20 years ago, and it was intended to provide comprehensive protection against discrimination against qualified individuals with disabilities. And what a qualified individual means is the person has the qualifications to do the job, for example, has the right degree or can run a mile in a certain time so that in every other way, they're qualified. It applies to employers with 15 or more employees on the federal level, but some states do allow coverage under similar laws for employers who have less. For example, New York has four employees to get coverage.

16.
Some of the requirements of the ADA are that it prohibits discriminating against a qualified individual with a disability who is an employee or an applicant. And discrimination includes taking an adverse action because of disabilities such as failing to hire or firing, reducing pay or working hours, providing fewer fringe benefits, failing to promote, or failure to provide reasonable accommodations.

17.
DANIEL LORBER: So let's answer the question when patients say, "wait a minute, I'm not disabled from my diabetes." What does that mean? Alright so disability is a legal definition–-I think this is important to explain to a patient. First of all, the individual must have an impairment. Diabetes must be an impairment that substantially limits a major life activity.

Well, there's no argument that diabetes is a diagnosed physical impairment. And it does limit major life activities if one includes functioning of major bodily systems like the endocrine system. By definition, diabetes is a dysfunction, limitation in the function of a major bodily system. And, obviously, it can also limit other major life –-life activities, particularly eating, self-care behaviors, and some of the results of complications such as walking, seeing, and standing.

18.
Is diabetes a disability? Well, the Supreme Court, in its infinite wisdom a couple of years ago, said that people who control their condition, including diabetes, with medication do not have a

disability, are not protected by the Americans with Disabilities Act and that the condition must severely restrict life activities to be a disability.

What this led to is one of the worst cases out there for us which is Steve Orr. Steve Orr was a pharmacist for Wal-Mart, Type I diabetes on a pump, needed lunch breaks and was told, “No, you can’t have lunch breaks. We have to work through lunch.” Steve, obviously, was concerned about getting hypoglycemic in that setting and so, therefore, had to choose between disobeying his supervisor and disobeying his body. He chose to disobey his supervisor and was fired. And so he sued under the Americans with Disabilities Act, but because he had excellent control of his diabetes, the court decided that he did not have a disability a defined by the Americans with Disabilities Act.

19.
So as a result of intense lobbying from the American Diabetes Association and a number of other related organizations, we managed to get a law through the Congress in 2008, the ADAAA. The Americans with Disabilities Amendments Amendments Act of 2008 made it clear that people with diabetes are protected from discrimination. Under the new law, when determining a disability, the effects of medication or other mitigating measures, measures that make things better, may not be considered. So, effectively, insulin, diet, exercise for people with diabetes, hearing aids, glasses, that kind of thing.

20.
Congress then directed the Equal Employment Opportunity Commission to issue specific rules for interpretation of the Americans with Disabilities Act Amendments Act. The final rules were issued last month and concluded that diabetes, specifically, is covered with the following statement: “It should easily be concluded that the following types of impairments will substantially limit the life activities indicated...Diabetes substantially limits endocrine function.” That’s pretty clear.

21.
Now, what does this mean to us? Well, one is we can certainly play a greater role in securing the rights of our patients before litigation becomes necessary. We can help our patients establish coverage by providing documentation that the patient’s endocrine function or function of the endocrine system is substantially limited. And health care professional advocacy really gives us an opportunity to help our patients treat their diabetes at work, keep their jobs and health insurance, and improve their overall health outcomes.

22.
Now, when we're looking at the Americans with Disabilities Act, there are basically three major issues: reasonable accommodation –- we’ll define these one by one as we go through.

Reasonable accommodations does not mean a nice hotel room, qualification standards, and safety assessments.

23.
Let's start with reasonable accommodations. What is a reasonable accommodation for someone with diabetes?

24.
Well, in daily care issues, it might be breaks to check blood glucose or to treat blood sugar by either administering insulin or eating something, a place which typically would be the patient's workstation for blood glucose testing and/or treatment if necessary, the ability to keep diabetes supplies and food nearby, or to leave for treatment, recuperation, training, and diabetes health management education. All of these seem pretty simple and pretty obvious to you and me, but you would be amazed how often –- and actually just looking at all the answers that happened before, I think a number of you have seen that things as simple as checking blood glucose, are frequently a major barrier.

Last but not least is those of you who have patients who are doing swing shifts or changing from shift to shift every couple of weeks, find that blood sugar control is extremely difficult in that situation. I've had a number of patients where I have had to write a letter saying the person has to be on a straight shift, preferably days, but certainly not changing from shift to shift.

25.
Other accommodations might involve responding to chronic complications with diabetes, for example, for somebody with significant retinopathy a larger, brighter computer screen or brighter workspace, for somebody with significant problems with peripheral neuropathy or with amputations a chair or stool, avoiding walking long distances, or modified work schedules.

26.
And if a patient is covered by having a disability under the Americans with Disabilities Act -- which means diabetes by definition -- the employer must make reasonable accommodations. These typically can be provided at little or no cost, as you can see from the things on the prior slides. And to obtain a reasonable accommodation, the employee must make the request. It doesn't need to be in writing, but it's a good idea to have the documentation. Do it in writing if necessary, and if the need for an accommodation is not obvious, the employer legally and legitimately can ask for reasonable medical documentation. It doesn't have to be the entire medical or mental health history. As a matter of fact, that is very specifically a privacy invasion, but it should be reasonable documentation about why the person needs to have this accommodation made.

27.
So employees should submit only written requests. In support, we should write a letter that one, describes diabetes to establish the coverage; two, counters safety concerns with individualized assessments; three, avoids danger words, and we'll come back to that in a minute; four, documents the needed accommodations; and, five, emphasizes that the employee can successfully perform the job for which he or she is otherwise qualified for, and that the diabetes does net get in the way.

28.
The employee's request should be in writing, ideally. Normally, it's submitted to human resources, and there's a sample request that is available at diabetes.org. There is a link at the bottom on the slide here: http://www.diabetes.org/assets/pdfs/know-your-rights/employment/sample-request-for-accommodations.pdf.

29.
Our letter. One, explain how diabetes substantially limits the endocrine system. Do not emphasize the most severe complications of the disease, including seizure and death, because otherwise you've unnecessarily raised safety concerns that may obstruct the person from being able to do their job. If you've got secondary complications, describe the major bodily functions, obviously vision for retinopathy, neuropathy, a wide variety of things from difficulty walking to difficulty tolerating hot or cold environments, and then amputation obviously, walking or standing.

30.
Here are the danger words. When you're writing the letter, avoid these words. Avoid, please avoid "noncompliant." All right? I can't tell you how often we've had to fight the battle of getting people to keep their jobs in spite of the fact the doctor or health care professional writing the letter says that they were not compliant with their diabetes management. It's a death knell for that job.

Don't say uncontrolled or poorly controlled, same issue. And don't say brittle diabetes. First of all, I'm not sure what brittle diabetes really is. Second of all, once again, it gives the employer a ready opening. All three of these give the employer a ready opening to say that there's a safety issue and the person is not safe working in this environment. All right?

31.
So when you document the needed accommodations, identify each needed accommodation. Explain why the modifications are directly connected to the diabetes, and then emphasize the employee's ability to perform their job.

32.
Explain that with the needed accommodations, the employee can fully and safely perform all job functions. If there's no cost involved, as is often the case, make that point. Emphasizing the employee's qualifications with appropriate accommodations is really critical to preventing a letter from being used against him or her in the future. Katharine, I think this is yours.

33.
KATHARINE GORDON: And one of the things that we have done in order to facilitate this is to provide some guides so that you can take our sample letter and modify it to the individual needs and situations of your patient. We have an article that explains all of this in “Practical Diabetology.” We have a sample doctor or health care professional letter that you can use, and we also have a request letter from an employee, him or herself, and you can always access this, and this is a great way to get started on that process:

- http://www.diabetes.org/assets/pdfs/know-your-rights/employment/reasonable-accommodation/practical-diabetology.pdf
- http://www.diabetes.org/assets/pdfs/know-your-rights/employment/sample-doctor-letter-from-practical-diabetology.doc
- http://www.diabetes.org/assets/pdfs/know-your-rights/employment/sample-request-for-accommodations.pdf

34.
And so now that we have talked a lot about reasonable accommodations, we wanted to just throw out a question for you for a scenario that maybe some of you have seen. This is what would you do if your patient is having trouble getting time off for her appointments and is getting into trouble for missing work because of her diabetes? If you want to put in your answers for what you might suggest, that would be great, and we can talk about that in a few seconds.

Okay. And we're getting good responses here. A lot of them are around the issue of providing documentation for the employee to give to the employer, and that is definitely going to be a correct response. And, of course, we can provide information on that through going to our Web site or other places. However, some of you are actually talking about intermittent FMLA and different types of ways in which a person may have a legal right to time off.

So I wonder if, Dan, maybe you wanted to talk a bit about that.

DANIEL LORBER: Sure. There are -- the Family Medical Leave Act actually covers issues related to people taking time off, part-time, and so actually your patients, in many ways, are double-protected here. They’re protected by the Americans with Disabilities Act because one of the reasonable accommodations that we saw back a few slides was part-time or modified

working schedules or one labeled Leave for Treatment, Recuperation or Training on Diabetes Management. I'm not sure if I can scoot back to that one quickly. Let's see if I can find it for you. Wow! A lot of clicks. Almost there. Here we go. The last one on this slide, the last one there on this slide now. Basically that is part of what's covered under the Americans with Disabilities Act Amendments Act and also covered under the Family Medical Leave Act, although I'll tell you from personal experience, the FMLA forms are somewhat difficult to fill out for intermittent so, Katharine, if you've got any tricks on that, that would be great while I scoot forward to the –- the next slide.

KATHARINE GORDON: I think one of the things that you can do is talk with your patient about what is their typical absence schedule is. You can write in the form that you don't know exactly but, for example, if your patient has been missing two to three days of work per quarter, you can put that in. You can also at any time reevaluate and provide new information so don't be scared off because it isn't an exact science. You could also explain the regular schedules that the person has in terms of how many times they have an appointment. You can explain how many times the person may experience hypoglycemia in the morning, which might impact their ability to get in to work. So I think the key is to really understand your patient individually and then don't be afraid to indicate that.

35.

DANIEL LORBER: Okay. So let's go forward. The second of the key issues under the Americans with Disabilities Act is what are called qualification standards, right?

36.

These are arbitrary requirements that are unrelated to job performance and they're illegal under the Americans with Disabilities Act. For example, what I call the magic number 8, A1C cutoffs. I am dealing with a local bus company that insists that if your hemoglobin A1C is above 7, you should go -- you can't drive. I'm dealing with the firefighters, National Fire Protection Agency that says if hemoglobin A1C is eight or above, you cannot be a firefighter. You'll see another case in a minute that Katharine will tell us about with John Steigauf, with Gilberto Wise and a similar kind of phenomenon. It's really an inappropriate use since the major concern is hypoglycemia. It's an inappropriate use of this standard.

37.

The other standard which Katharine will come back to in a minute is there are a number of rules developed for commercial drivers, interstate drivers, and they're misapplied to local drivers. So the A1C cutoff -- here's the problem we deal with. The American Diabetes Association recommends that most individuals maintain an A1C of less than 7, and that fact that we have been pushing for that for the past couple decades has dramatically reduced the rate of long-term diabetes complications in this country. However, an elevated A1C does not

provide useful information about an individual's ability to perform his or her job. I have some difficult-to-deal-with patients who run A1Cs in the 11 and 12s for years and are perfectly capable of doing fairly complex jobs. Drives me nuts that I can't get them to get their control any tighter, but they are able to do their job. Therefore, the ADA specifically says in our position statement on employment that A1C values should never be used as a determining factor in employment decisions.

38.

So our A1C cutoff case is Gilberto Wise vs. AKS Security, the case in Texas in 2006, all kinds of things happen in Texas. Gilberto Wise was removed from his position as a court security officer by the U.S. Marshal Service because they thought his hemoglobin A1C was too high, brought suit with support from the American Diabetes Association. The case was settled. The marshal service changed the way they evaluated people with diabetes. Now before it disqualifies a person because of A1C, it must now submit the case to an expert endocrinologist.

When we were working with the American College of Occupational and Environmental Medicine, police doctors, the cop docs, they had something similar in their initial guidelines about an A1C above eight. They've modified their standard now so now what they're saying is if the A1C is above 8, the person should see their doctor to evaluate what's going on with their diabetes. But it is not at all an automatic out. So a significant change for all police officers, and gun-carrying peace officers and for Mr. Wise. Katharine, I think we are back to you.

39.

KATHARINE GORDON: The next qualification standard that we have difficulty with is commercial driving. As a bit of background on that, until 2003, individuals who treated their diabetes with insulin were barred from being interstate commercial drivers. And so that meant that a person with Type I could never envision taking on a whole range of professions because of that, and also people who had Type II, developed Type II diabetes and perhaps started out with diet and exercise or with medication and then at some point needed to go to insulin found themselves losing their livelihood. And they were put into a really horrible Catch-22 where they either used insulin to take care of themselves so they could be healthy and lose their job, or continue without insulin and suffer some pretty grave health effects. So as a result of that, we worked very hard to lobby to make a change in that.

Starting in 2003, and now today, there's an exemption program available for interstate commercial drivers. It isn't very well publicized so you may actually hear from many, many of your patients or even from occupational medicine doctors or a wide variety of people that there still is this ban. That isn't true. There is a program, the exception program, where you can go to www.diabetes.org/cdl and you can find out all about that there.

And next, another thing that we deal with, which is beyond commercial driving, is that sometimes employers try to force individuals with diabetes to comply with regulations that do not apply to them. This can really often violate the ADA, and there are several ways in which this can happen. For example, a person may not even be driving a vehicle that could in any way be considered the kind of vehicle that the Department of Transportation regulates. We've had situations of a pickup truck, of a normal sedan like a Toyota Corolla, a Chevy Suburban, even -- there is a published case of a forklift where a company said that the person had to have a DOT certification to use a forklift. And these kinds of things violate the ADA and are frequent.

40.

So one of the stories of this is, as Dan mentioned earlier, John Steigauf. UPS had a policy of requiring all mechanics to obtain medical certification, that they meet DOT medical guidelines for commercial drivers, even though they rarely if ever drive vehicles commercially. So John uses insulin but his job was really working in the shop working as a mechanic in the parking lot. The furthest he would go would be to the UPS parking lot so he really did not really have a driving job. And so he sued claiming that the medical certification was not an essential job function and that UPS failed to accommodate his disability. And in that case he was actually able to settle successfully.

41.

And so we have one more question for you of what you might do in a situation like this. Let's say that your patient drives a semi truck, and you think he needs to go on insulin for his health. He says he'll lose his job if he goes on insulin and so what would you tell him to do?

Okay. So we have several responses here. Many of you have spoken about directing him to us for advocacy assistance and we're certainly happy to help any patient who wants to contact us.

One of the other things that you mentioned is that you can see whether there is a different alternative, if medications can be used in a different way and that can also be appropriate. One thing that can be a challenge right now is that we have an exemption program that is better than not having one but still until the person has the exemption in his hand or in her hand, she's not allowed to be a commercial driver. So there is going to be a period of time often where the person is taking insulin and is not able to drive commercially. However, in that case, the person should not just give in but recognize that they may be entitled to Family and Medical Leave Act time. They may be entitled to accommodations under the Americans with Disabilities Act, which might include even job reassignment or a change to an open position for the time being. So there are a number of things that the person might do and so part of what would be wonderful for you to do is to identify, talk with your patient and let them know that

there really are options that they can explore and that there are resources and help for them to do that.

42.
And we now have one additional question which is: Your patient had an insulin reaction at work and now the company is trying to get rid of her by saying she's not safe to work there anymore. Is that legal?

The responses here are very strong that that this can't just be an absolute, one time you have hypoglycemia and you're out. Really, the answer is it needs to be looked at in an individual context. Were there real risks? What was the extent of the insulin reaction? Was it that the person felt a little bit low and drank some orange juice, or did the person need more of an intervention? So in each case, it really does depend on the circumstances and the individual, and we'll actually go more into safety assessments in our next section.

43.
So we'll come next to the next issue under the ADA. We've talked about reasonable accommodations. We've talked about qualification standards, and now, the last one we'll focus on is safety assessments.

44.
To exclude someone on safety grounds requires proof of direct threat that the worker poses a significant risk of substantial harm to himself or herself or others. And this is a kind of threat that is objective and based on the actual individual. It can't be just a theoretical or stereotypical view of people with diabetes. It's true that everybody who uses insulin may experience severe hypoglycemia, but just that by itself is not going to be legal under the Americans with Disabilities Act. A person has to look at the actual situation of the person. Has the person ever experienced severe hypoglycemia? Sometimes people are excluded under safety considerations when they take metformin and are not really even at risk of hypoglycemia. Another thing to look at when there are more serious indications that there might be a safety risk, you also have to look at whether or not a reasonable accommodation can be made to avoid this in the future. For example, if a person experiences severe hypoglycemia and experiences a seizure at work, if that was connected to the person being prevented from taking a break to eat, then the real issue there is not a safety threat. The issue is a denial of reasonable accommodation, and that needs to be addressed.

These assessments do need to be based on reasonable medical judgment, relying on the most current medical knowledge or best available objective evidence. And this is an area in which health care professionals like yourselves can play a critical role because you have the expertise to understand how to properly evaluate and understand the person with diabetes.

That’s why our reliance on medical professionals of all types has been a key part in fighting discrimination for people with diabetes.

45.
In terms of how safety assessments work, particularly in diabetes, one of the first questions that you should ask is what type of a job does the person have? For a non-safety-sensitive job, there’s really no reason to believe one's diabetes will present a health or safety risk. If a person is working in an office most of the day and does experience, for example, hypoglycemia, it may be disruptive to the workplace. It is not the ideal situation, but it would be very, very unlikely that there would be anything that would rise to the level of a safety risk or any kind of direct threat. So that’s for non-safety-sensitive jobs.

In safety-sensitive jobs, again, the only really legitimate concern would be as to whether one would become suddenly disoriented or incapacitated due to severe hypoglycemia, and we see situations like this, particularly with police officers, with firefighters, and with commercial drivers. And you can understand in a situation like that, at each moment the person does need to be aware and alert, and if that individual has problems with severe hypoglycemia, that may be a warning that there is a real safety issue.

46.
So we're going to talk now about Jeff Kapche again -- who Dan spoke of a little bit earlier. Jeff was diagnosed with diabetes as a teenager and he knew that he wanted to be a Police officer. So he applied to be a police officer with the San Antonio police Department. However, they rejected him because he used insulin and they said that he couldn’t be a police officer in a safe manner because of his insulin use. Jeff didn't think this was right so he filed suit, and in the meantime, he got a job as a police officer in the neighboring police department and did a spectacular job for many years until he won his case.

And in this case, the court struck down the policy of rejecting police officers based solely on insulin use, and they focused on the requirements of an individualized assessment of the applicant's ability to safely perform the essential functions of a given position. And in this case, it was the San Antonio police officer finding that this was required by the Americans with Disabilities Act.

And so after a while, Jeff realized that had been working quite often with F.B.I. agents and thought that he, too, might like to become a F.B.I. special agent. He contacted the F.B.I. and the F.B.I. said, “Sure, you can come. Diabetes won't be an issue for you.” He got through almost every step, but a doctor at the last step found that he would be a safety threat because he used injectable insulin, instead of a diabetes pump, insulin pump, and for that reason he was rejected.

However, Jeff again challenged this and when it came to trial, the jury found that the F.B.I. had violated the Rehabilitation Act (which is like the Americans with Disabilities Act but applies to federal employees) when rejecting special agents because of the kind of way he injected insulin through a syringe, rather than an insulin pump. Dan, you're next.

47.

DANIEL LORBER: I think it's important for us to start with asking more about the job so we have a sense of exactly what this person is being asked to do. For all these safety assessments, though, really the major concern is whether the patient is likely to experience hypoglycemia or enough hypoglycemia to interfere with their ability to function clearly. If a patient has no history of severe hypoglycemia, our letter should emphasize that. I had that issue recently. I had somebody who was applying for a job with the State Department, and they were concerned that if she became hypoglycemic in the boondocks north of Kandahar some place that they wouldn't be able to treat her properly. She hadn't had a hypoglycemic episode in 30 some odd years. And so in the absence of actual problems with hypoglycemia, do not stress the employee's failure to meet all of our arbitrary treatment goals. I've never met a perfect patient with anything, not just diabetes. And so the focus really needs to be considerations about hypoglycemia. That's the only consideration that provides useful information about safety.

48.

So if we're going to assess somebody for safety, one is the American Diabetes Association insists, and in cases that we've participated in, we insist that it's conducted by a health care professional with expertise in diabetes. We should evaluate all available data to determine if the individual can safely perform the job, and if there is concern about severe hypoglycemia, the health care professional should determine the cause of hypoglycemia and whether adjustments like modifying insulin dose or administration may limit further recurrence. For example, changing the type of insulin, to avoid specific peaks, changing the administration of insulin, switching to basal/bolus or a pump and/or obviously more frequent blood glucose checks are particularly important. That's the one we use with firefighters the most. They check their sugar fairly frequently and allow themselves to run a little higher before they're heading off to a fire. And again, using cutoff scores for glucose or for A1C without individual assessment usually violates the law.

49.
So our response, again, we talked about educate, negotiate, litigate, and legislate.

50.
Let's focus on educate. All right. And we're educators. That's our job. One, we educate employers about diabetes, current methods of diabetes management, and how diabetes may affect that individual patient. Two, we educate people with diabetes and their employers about the legal rights of people with diabetes. Three, especially with reasonable accommodations, education may be the only step that is needed.

51.
When we educate patients, we educate employers, through provision of accommodations letters and medical evaluations, and it was nice to see on the previous -- the previous question, so many of you talked about how to educate the patients and how to deal with this. Educate employers, and we educate other health care professionals. So, for example, we have worked very closely with the American College of Occupational and Environmental Medicine, modifying the standards of care and standards for employment for police officers in particular. All right, and we educate government agencies, the Transportation Security Administration, Department of Transportation. We've worked with the State Department currently, a number of different agencies. We're working with the motor vehicle administrators of a number of different states now as well. These are all areas where we can play a significant role as educators.

52.
In the clinical setting, CDEs are really in the unique position to identify possible employment discrimination problems and to inform patients of their rights and the kind of things that you look for might be unexplained high or low blood sugar levels, lack of regular blood glucose testing. If somebody -- if you see lots of tests up to 9:00 and after 5:00, that should be a hint. All right? If you see tests Monday through Friday but no tests Saturday, Sunday, or lots of tests, it's a hint. The other important thing, another important opportunity that we have in taking a careful history from our patients, all right, is that we can ask them directly: Is there a problem with your diabetes at work? Are you able to test when you need to test? And can you take care of either high or low sugars as you need to? Obviously, if somebody is taking more sick days, you want to start to focus on that and ask why. And the most obvious: somebody's lost their job and you feel that it's related to diabetes, for example, a bus driver starting insulin.

53.
ADA has as a wide variety of resources at www.diabetes.org/discrimination. There's a very nice packet of information, "Your Job, Your Rights," which is a good educational piece for your patients. Okay.

54.
Second item. Let's talk a little bit now about negotiation and how negotiation plays a role here.

55.
Negotiation tools. One is really understanding the law. Two is us using medical professionals. Three, our partnership with attorneys, this is why Katharine and I are doing this together. A way that government officials and government agencies can be extremely helpful in this area, we're working our firefighter case involving the armed services that we think is going to have a significant impact on further decisions involving private fire companies. And then, obviously, media placement can be extremely helpful, extremely significant.

56.
Our role in negotiation is, once again, to be advocates for patients to receive appropriate accommodations or individualized assessment. The real important buzzword is individualized assessment. We have a health care network, health care professionals network. It's a resource to the Americans with Disabilities Act, staff and the volunteer lawyers in individual cases, and to develop and advance American Diabetes Association policies for issues related to employment.

57.
And we do joint working groups to develop standards. When I started working on legal advocacy, my first assignment was to be the ADA's representative to the National Commission on Correctional Health Care. A prisoner in jail -- health care in this country is really kind of abysmal anyway, and with diabetes, it's even worse, and so what I did is working together with a group of health care professionals from prison and health care professionals from the American Diabetes Association, doctors, nurses, dieticians from both groups helped develop the American Diabetes Association standards of care for people with diabetes in correctional institutions, and it is available on the Web site and it's available in the supplement to every January's issue of "Diabetes Care."

We've met with the National Fire Protection Agency to get them -- used to be up to five years ago that if you were on insulin, you could not become -- be a firefighter, period. Blanket ban. Blanket bans are illegal. And with extensive negotiation in a number of meetings with the National Fire Protection Agency in a number of inconvenient places to go for meetings, Katie Hathaway, one of the attorneys with the legal advocacy group, and I have managed to get them to modify their standards somewhat so now that people with diabetes on insulin without significant hypoglycemia with reasonable control are able to be firefighters. Unfortunately, they're still using the magic number of eight, and we haven't fixed that yet which we're trying.

We worked with several staff members from ADA with the Public Safety Committee of the American College of Occupational and Environmental Medicine and to develop the ACOEM standards for people with diabetes working as police officers. We've had repeated meetings as medical advisors to the Department of Transportation Medical Review Board, particularly with issues related to commercial motor vehicles, but also more recently with issues related to driver's license -- private driver's licenses.

Then, when all else fails with education and negotiation, we turn back to the lawyers and say, Katharine, fix it, please!

58.
KATHARINE GORDON: Exactly. And so sometimes the education and negotiation is not going to work and so we do need to use litigation as a tool. And sometimes litigation can be very effective. For example, some of the cases we've talked about, Jeff Kapche has opened up doors for other people.

How a health care professional can be involved in litigation, there really are a few different ways. One is that health care professionals can help our attorney network and our staff to decide if a case is worth fighting. Essentially, we have the legal knowledge. The lawyers have the legal knowledge, but you all have the medical and health care knowledge and so while I think I have a basic understanding of diabetes, I don't have the clinical perspective that you do, so I remember just a little while ago, I actually called up Dan because we were looking at a case where an individual wanted an accommodation of not having to work a night shift, and so I wanted to talk with Dan about what are the medical considerations of that? Does that make sense? And we decided that it was a factually complicated issue, but it was very helpful to have people across the country who can give us that medical perspective so we can understand if what we're asking for makes sense.

59.
Another key area is when the case actually comes to trial. Expert witnesses become absolutely essential. A person who really knows diabetes can explain why the assessment of the employer or of the agency or of the employer's doctor is off. And in that case, in that case, that can be a critical, critical component of victory. And so some of those examples would be Jeff Kapche's situation -- we have used expert witnesses who have actually volunteered their time to explain what diabetes is and to refute the kind of weird arguments, for example, with him against the F.B.I. of thinking that insulin injections weren't safe but an insulin pump was. We were also able to help with defeating a ban on firefighters in New York through use of expert witnesses, as well with the I.R.S. Again, expert witnesses were critical. And sometimes, expert witnesses can debunk some of the most basic misconceptions.

In a case that we haven't talked about before, a man named Rudy Rodriguez, was going to be working just on an assembly line, essentially, at a packing plant. He was ready to take the job, but they did a urine glucose test and disqualified him because of his urine glucose test, and I think as all of you know in clinical practice, that isn't an appropriate assessment. It isn't a really appropriate clinical tool at this point because of so many better options. So those are some ways in which health care professionals are very critical.

60.

And we have some resources here that we'd like to point out to you that can be actually helpful, both in the education and in the negotiation and also in the litigation context. Dan and a former colleague of mine have published an article, "Diabetes goes to Work: Helping Your Patients Access the Protections of the Americans with Disabilities Act" which we think is a great resource for yourself or also if you'd like to educate your other colleagues, if they'd like to know more about how they can help their patients. It's available here: http://clinical.diabetesjournals.org/content/28/2/72.full.pdf. Dan also mentioned earlier the position statement we have on diabetes and employment, and this is a document that was written by medical experts, by diabetes experts, who can relate the concerns that we have of people with diabetes being treated fairly with why does that make medical sense. It is available here: http://care.diabetesjournals.org/content/34/Supplement_1/S82.full.pdf+html. So that's another helpful resource, and we also have more extensive resources at www.diabetes.org/employmentdiscrimination.

61.

And finally, we find ourselves in some situations having to do more than these steps when the law just is not working in the way it needs to. So an example of this is the Americans with Disabilities Act Amendments Act of 2008. It got to the point where the law was no longer protecting people with diabetes, and this meant that no matter where we litigated, a lot of times we were faced with huge obstacles so it was determined that the law needed to be changed. And here, actually, the story of Stephen Orr, I'd like to bring up again. Stephen, as we said, was a pharmacist, so he's a health care professional who has spent much of his time educating people with diabetes at the same time as he took care of diabetes himself.

He actually came to Washington to testify to explain about the absurdity of the law that because he took care of himself well, he was somehow not disabled. So his testimony really was helpful in showing the Congress that they needed to change the law, and, actually, the law was passed unanimously by the House and the Senate, and we can't really think of a time when that's happened except with this bill. So that's how health care professionals can be involved in legislation.

62.
And there are also some more specific ways health care professionals can work by testifying before legislatures and regulatory boards to highlight the serious nature of problems. Also they can work in lobbying because of your expertise in these issues. And also in the case when the government or the agency or the legislature is thinking about doing the right thing, health care professionals can play a critical role in making sure that the law or the statute or the regulations have a correct understanding of what diabetes is. And so your role in that can be very essential, which is somewhat similar to how we've worked with agencies of providing diabetes employment standards.

63.
DANIEL LORBER: Actually one of the most effective lobbyists I know for diabetes-related issues is Gina Gavlak who is the vice-chair of the American Diabetes Association Advocacy Committee and I think is on first-name basis with every single elected official in Ohio, both local and in Washington. So here's the pitch: Come join us, all right. This is a fun group of people to work with. It's an exciting area to learn about. It's a very, very different area to learn about. Become part of the health care professionals' legal advocacy network and help us fight discrimination throughout the country. Contribute your specialized skills and expertise because there's a lot out there and this list of people that I see signed up today, all right. Serve as a local resource as Gina does but also for your patients and for other people's patients, all right. And all you gotta do is fill out that attached survey and e-mail it to hcpnetwork@diabetes.org. Whatever questions you've got on this, www.diabetes.org/discrimination frequently has the answers for you.

64.
KATHARINE GORDON: And some of the more specific resources that we have include our ADA health care professionals listserv which you can join by just contacting hcpnetwork@diabetes.org. This is a listserv for health care professionals interested in all sorts of diabetes advocacy issues. For example, if you have a patient and you're not sure if what the patient is asking for makes sense, you can ask for feedback from other health care professionals, or if you're interested in a legislative change, or if you are interested in anything related to advocacy, this is an opportunity for you to ask questions and hear from people who are very happy to share their knowledge with you.

And the other thing that is a resource for all of you is to contact our legal advocacy staff attorneys, anytime by calling 1-800-DIABETES or by e-mailing us at legaladvocate@diabetes.org. A few things that we can help with are reasonable accommodations requests. If you have a question on how to fill out a form or about how to state something in a letter or fill out a form, an FMLA form whatever, feel free to contact us. If you have a question of whether a patient is experiencing discrimination, you can call and we'll

be happy to talk with you about it. And, again, there are situations in which people have very legitimate concerns and are not being treated fairly at work and other situations where it may not be discrimination. So we can talk with you about that as well. We also have a lot of educational resources that we can provide to you that you can use, that you can use to share with other health care professionals and that you can provide to your patients.

65.

And then finally, we wanted to just do a bit of an additional pitch of the wide range and wide issues and where health care professionals can be involved. We've talked about employment today, but one of our other major areas is Safe at School. That's an area where CDEs especially have been critical helping us in every single state making sure that children with diabetes are treated fairly at school. Some of the main goals we have for Safe at School are that students are medically safe at school, and that basically means that they -- somebody will provide them insulin, there's Glucagon accessible, and any other care can be provided and that students don't have to change their medical regimen at the convenience of the school. So we work to get care for students in school. We also want to make sure that kids with diabetes have the same access to educational opportunities as all other students. These include extracurricular activities, field trips, athletics, or, for example, not being forced to take an exam when they are out of target range so that the child's abilities are tested and not their blood glucose level. And then finally, we also work in -- which is a goal which is shared with everybody involved with children with diabetes -- helping them transition to independence. What a five-year-old may need in school is very different than what a senior who's about to graduate is needs. So that's a part of our work, and we wanted to highlight this because, again, we've talked about employment but we work in in all areas of employment, of education, of public accommodations, prison, police response. All of those areas are places where working in collaboration with health care professionals, we find we can help many more people with diabetes. And you can see more about that at www.diabetes.org/safeatschool.

DANIEL LORBER: I think it's important to just accent what Katharine said there, that this is very much a collaborative effort. You know, I see the comments and questions in there, particularly from Mr. Bernstein, about us being somewhat one-sided, and I think it's important to remember that the American Diabetes Association is an advocacy organization for people with diabetes. That's our major role. But that doesn't mean that we -- that we look at this from a one-sided perspective, and when we've developed these guidelines and these approaches, we worked very closely with physicians and administrators from both sides of the question, whether it's school-related, employment-related, jails- and prison-related, whether it's firefighters or police officer doctors, because we have another responsibility which is to make sure that our patients are not doing a job which puts them or others at danger. But the important issue is that we make sure that any job for which they're otherwise qualified, that the diabetes not stand in their way because that's not just our feeling. That's the law of the land

right now, that people are entitled to jobs for which they are otherwise qualified. People are entitled to school situations that do not interfere with their ability to learn. People are entitled to good health care, even for the least among us in prisons and in jails. So with that, I think we'll go to see if there are any more questions but also to -- to point out come join us. Work with us on this. We'd be happy to have more and more people involved. And thank you all for listening.

KATHARINE GORDON: Yes, thank you.

DANIEL LORBER: Chris, I think we're back to you to run it.

66.

OPERATOR: At this time, if you have questions, you're free to either type them into the chat Q and A box on your screen, or if you'd like to ask a question over the phone, simply press the star pound button on your phone to be entered into the queue. If, at any time, you would like to withdraw your question and leave the queue, just press star pound again.

And our first question: Can a HCP legally take a person's driver's license away because of an accident caused by a low blood glucose episode?

DANIEL LORBER: That varies state to state actually so can we physically -- can we pull the license? No. But in most states, we have the right to notify the the motor vehicle administration that the person has had a hypoglycemic episode causing an accident. In New York State, or at least where I work, it's been the other way around. When somebody has a hypoglycemic accident, their license may be suspended pending my report saying it's okay for them to have their license.

But you have to know your individual state guidelines, and they're in flux somewhat. This is actually one of the areas, looking back again at Mr. Bernstein's comments, this is one of the areas in which physicians need to be careful and think about this because this is not just a blanket okay for everybody with diabetes to do everything either. It's things for which they are otherwise qualified, and if they have complications, severe or recurrent hypoglycemia, auto accidents from hypoglycemia, related things, if they've got complications like acute or chronic complications that interfere with their ability to do a job or drive a car safely, the answer I have for my patients who drive is, you know, my wife and daughter are on those roads, too. And if you're a danger, I'm going to report that to the state.

OPERATOR: Thank you. Our next question: At the other extreme, how do you gently educate those few so that they now have been diagnosed with diabetes and now want to be considered disabled so they can qualify for disability monies and benefits and quit their jobs?

DANIEL LORBER: Katharine, that's yours.

KATHARINE GORDON: I think that that's a good question because we throw around the term "disability," and it means very different things in different contexts. Under the Americans with Disabilities Act, it means one specific thing of substantial limitation of the major life activity of endocrine function, but the assumption is that the person can still work and is qualified to work. So because they have a disability under the Americans with Disabilities Act does not mean that they have a disability for Social Security purposes, and that actually can be a dangerous road to go down because the standards for proving disability under the Social Security Administration are very, very strenuous. Usually, there have to be serious outside complications of neuropathy or retinopathy, amputations, so usually most people will either -- will either find protection under the Americans with Disabilities Act or will get benefits under Social Security but not both.

KATHARINE GORDON: One of the things there is, again, you do need to comply with HIPAA. However, the ADA does allow, for example, an employer to request certain information. One of the key parts of the Americans with Disabilities Act is that only the information necessary should be provided to the employer, and also the employer should not disclose the disability of the individual to anybody else in the workplace, except if that person has a real need to know. So, for example, a shift supervisor might need to know but all the co-workers would not, so even though there is going to be more interchange of sensitive information, it really has to be limited and also tightly controlled. And, again, if you have more specific questions on HIPAA and the ADA, you can contact us.

OPERATOR: And, again, if you would like to ask a question over the phone, just press star pound on your phone. Our next question: Can an employer be compelled to allow Glucagon availability and training for someone at work?

KATHARINE GORDON: I guess I would take this as saying an employer probably cannot be compelled to do so. An employer does not necessarily have the obligation to provide training and to make sure that there are people at work who can provide Glucagon. However, we don't think that it should be prohibited so that, I guess, would be the difference. It wouldn't be appropriate for an employer to, for example, take away the Glucagon or tell a co-worker who has been trained and wants to help the co-worker with diabetes to tell them, no, you aren’t allowed to help. That would be a problem. However, the employer probably doesn't have an obligation to actually provide that service if that makes sense.

DANIEL LORBER: I think there's a different issue with schools, and this is one of the areas that the regulations have been working on. The American Diabetes Association strongly

advocates for someone at the school to be knowledgeable and capable of giving Glucagon injections. Actually, in New York State, at least, there's a specific law supporting that.

OPERATOR: Who can write the HCP letter?

DANIEL LORBER: Any HCP. There are situations in which you want it to be a doctor, particularly on some of the legal consulting stuff because the other side will frequently have a doctor and so you kind of need to fight fire with fire. And ideally, it should be through a doctor with particular expertise in diabetes and ideally the patient's treating physician. But our point has always been the same, that since there are many situations in which there are not endocrinologists available but there are quite knowledgeable diabetes educators available, the American Diabetes Association position has always been that -- that the final assessment and information should come -- can come from a health care professional with expertise in diabetes. That sounds to me like everybody on this phone.

OPERATOR: Do the laws apply for those who wish to join the military?

KATHARINE GORDON: That is a tough issue. Right now, the military is about the only institution that has an outright ban on people with diabetes. So for a person who wants to enter the military, now there’s a ban and people are not allowed to join, not allowed to join the reserve or any of the branches of the military. However, in some cases, soldiers have had success staying in the military, and especially that's the case when they’ve shown their commitment and skills and have received such specialized training, and their supervisors are going to bat for them. So sometimes the person can stay in. Also, while the laws do not apply directly to uniformed members of the service, they do apply to civilian employees and contractors. So if you are a civilian doing a job alongside an active duty person, you may have rights under the Americans with Disabilities Act and the Rehabilitation Act which applies to federal employees, but the person who is working next to you in the military, that person would not. And that's one of our continuing frustrations because we would really love to see people able to serve in that way.

OPERATOR: As a reminder, if you’d like to ask a question over the phone, press star pound. Are low blood glucoses reportable to the DMV?

DANIEL LORBER: That's state by state. As a matter of fact, there's a recent regulation in Pennsylvania that says that physicians are required to report any significant -- any severe hypoglycemic reaction to DMV. That's caused a great furor in Pennsylvania for obvious reasons. But it's very much a state-by-state -- in most places, though, it's that we’re not required to but we can. Actually, Katharine, do you have any more detail on that?

KATHARINE GORDON: I think what you said is accurate.

OPERATOR: Do you have a specific direction to educate an MD who does employment physicals? There was no evaluation of the diabetes, just said no, could not do the job.

KATHARINE GORDON: So this was a situation in which a person -- a person doing an employment physical found out the person had diabetes and said the person couldn't do the job? I think again there that's the area where getting the treating health care professional involved can be helpful because oftentimes the evaluations that are done in these employment physicals are done by people who don't have a very comprehensive understanding of diabetes. This is a case where education from your treating health care professional will be essential. Dan, do you have anything to add?

DANIEL LORBER: No, that's -- that's -- that covers it very well.

OPERATOR: Assuming reasonable accommodations have been made, what responsibilities does the employee have regarding managing diabetes at work?

KATHARINE GORDON: Again, the employee needs to be able to do the essential functions -- to be able to do the functions of the job. For example, one case which we sometimes see is conduct -- conduct rules. An employee who has a disability might act in a different way because they have the disability and might be tired or might be agitated and not treat somebody very nicely, but if that breaks a conduct rule, that doesn't excuse their behavior so the employee does always have the obligation to meet the expectations and conduct rules that there may be in the place of work. But again, it is not the employer's position to monitor whether or not the employee is taking care of himself or herself. The employer should not be checking to make sure that the person is taking their medication exactly when they should be and such. Employees have a responsibility to take care of themselves. And if they don't, that may impact their ability to do their job.

OPERATOR: Our last question: Any comments regarding pilots who obtain diabetes management off the record in order to fly?

DANIEL LORBER: Well, there's a couple things on that. One is that actually, you can get a private pilot's license now in the United States. The FAA changed those rules a number of years ago. If you live in Canada, you can get a commercial driver's license -- a pilot's license. In the United States, realistically considering the intense mental/physical evaluation, physical exam including laboratory tests that commercial pilots go through, I suspect it's not an issue.

67.

OPERATOR: Thank you for participating in today's Webinar. Detailed instructions for completing evaluations and receiving CE credit for today’s live Webinar can be found on page four of your handouts and also in the e-mail that contains the log-in information for today's Webinar. We ask that off-site registrants share this information with participants at your facility. Additionally, be sure to check our Web site to view our entire 2011 Webinar lineup and register today to keep you and your colleagues up to date on the latest trends and topics in diabetes education. This concludes today's presentation. Thank you.