

# practical diabetology

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

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

The Americans with Disabilities Act (ADA) (2) prohibits discrimination based on disability in employment and other areas and was intended to help patients avoid situations like that of Stephen Orr. Unfortunately, until recently, the ADA failed to protect many people with diabetes from discrimination. The federal courts that considered Stephen Orr's case, relying on decisions issued by the Supreme Court, said

that his diabetes did not meet the legal definition of disability under the ADA because his condition could be effectively managed with medication, and therefore he was too functional to be considered disabled. The ADA only protects people who meet its definition of disability, and because Orr did not meet the definition, his termination was perfectly legal (1).

As the situation became increasingly bleak for workers with diabetes and other treatable chronic conditions, there was no choice but to fix the law. Various organizations, led by the American Diabetes Association and others, successfully advocated for the passage of the ADA Amendments Act of 2008 (ADAAA). The ADAAA reversed these Supreme Court decisions and now allows people with diabetes to claim the protections of the ADA at work, school, public places, and elsewhere, as Congress originally intended when it passed the act in 1990. (Section 504 of the Rehabilitation Act of 1973 forbids entities who receive federal funding from discriminating based on disability (3). Although this article refers to the ADA for simplicity, the ADAAA's changes also apply to Section 504.)

Despite these legal measures, people with diabetes still need assistance from health-care professionals to exercise their rights under the

ADA. This article discusses recent changes to the ADA as they apply to workers with diabetes and gives practical guidance to health-care professionals to help their patients in the employment arena. Specifically, the article discusses how health-care professionals can document that the patient has a disability within the meaning of the ADA and that he or she is medically qualified for the opportunity (both of which the individual must show to be entitled to protection under the law). It also discusses how health-care professionals can support their patients' requests for necessary changes in workplace policies (accommodations) that can enable them to manage their diabetes and thereby remain healthy and employed.

### The Definition of Disability

The first hurdle to accessing the legal protections of the ADA is establishing that a person meets the definition of disability; only then will the court consider whether the employer has discriminated based on disability. A health-care professional can provide documentation that shows that a worker with diabetes meets the definition of disability, thereby triggering the protection of the ADA.

To qualify for protection under the ADA, a person must show that he or she has a disability, has a record of a disability, or has been regarded as having a disability. Disability, under the statute, is defined as "a physical or mental impairment that substantially limits a major life activity" (2). Before passage of the ADA, and even with the assistance of health-care professionals, workers with diabetes frequently found this hurdle too high, and the courts often dismissed discrimination claims brought by workers with diabetes (1,4).

### Supreme Court Rulings Denied ADA Protection to Many Workers with Diabetes

Like others before him, Stephen Orr fought against diabetes discrimination in federal court, but he faced a "catch-22" when trying to prove disability. In considering whether Mr. Orr was entitled to the protection of the ADA, both the lower court and the appeals court relied on the rulings of the Supreme Court, reached in a series of decisions in 1999 and 2002. The Supreme Court had narrowed the definition of a "substantial limitation on a major life activity" from multiple angles, making it extremely difficult for a person with diabetes to meet the defi-

nition. Specifically, the Supreme Court ruled that lower courts, in determining whether a person's impairment is covered as a disability under the ADA, must consider the effects of medication and other "mitigating" measures (such as prosthetic limbs or hearing aids) on that impairment (5). (Before these Supreme Court rulings, most lower courts had no trouble concluding that persons with diabetes were covered under the ADA and generally found it inappropriate to consider the ameliorative effects of medication or other mitigating measures in making this coverage determination.) Thus, in the majority of cases, good diabetes management removed the person from the protection of the ADA. The Supreme Court also directed lower courts to narrowly interpret "substantial limitation" to mean "prevents or severely restricts" and "major life activity" to mean "activities of central importance to most people's lives" such as walking, seeing, and hearing (6). As a result, the courts focused only on whether Orr had extreme difficulty performing basic activities when his diabetes was well-managed. The court held that Mr. Orr did not have a disability because his diabetes was well-controlled and did not interfere with a "major life activity." He appealed, and the federal court of appeals again held that Mr. Orr did not have a disability (1).

As everyone in the diabetes medical community knows, hypoglycemia should not be ignored, but the Supreme Court's holdings led the lower courts to do exactly that. Even though Stephen Orr had experienced severe hypoglycemia, including "seizures, deteriorated vision, slurred speech, frequent urination, lack of concentration, awareness, coordination, strength, and consciousness," the court considered only whether Mr. Orr was substantially limited in a major life activity in light of his specific ability to take measures to care for his diabetes, including eating as needed (1). Because Orr, when allowed to care for himself properly, successfully managed his diabetes and could avoid the debilitating effects of hypoglycemia and otherwise live his life fully, the court held that he did not have a disability and that his employer could legally fire him for taking a break to manage his diabetes (1). Stephen Orr was trapped. Taking good care of himself disqualified him under the ADA. If, on the other hand, he had not worked so hard to care for his diabetes and had experienced re-

current diabetic ketoacidosis and severe hypoglycemia, he would have been a lot sicker and protected under the ADA, but, at the same time, he would probably be unqualified to retain employment as a pharmacist.

Each time a court considered whether diabetes was a disability and decided that it was not, it became that much harder for the next worker who went to court to fight diabetes discrimination. Another such case involved Janice Nordwall, a woman with Type 1 diabetes who worked as an administrative assistant (4). Although Janice had worked successfully for her employer for many years, a new supervisor greatly increased her job duties, meaning that she could not take breaks to eat and manage her diabetes. She began having almost daily hypoglycemia at work and requested modification of her job duties. The employer refused to help her, suggesting instead that she find another job. When Ms. Nordwall sued her employer, the court did not consider whether the employer's actions constituted discrimination. Instead, the court dismissed her claim, reasoning that because she used insulin to manage her diabetes and only experienced "dizziness" and "blackouts" from hypoglycemia, she did not have a disability (4). Taking the Supreme Court's restrictive reading of disability to an extreme, the lower courts often failed to reach the question of discrimination and instead dismissed claims brought by people with diabetes on the grounds that diabetes was not a disability (1,4). Workers with diabetes who did succeed in court did so only with the help of physicians and medical experts who were able to navigate around the pitfalls of the ADA. Now, the ADA enables people with diabetes to more easily challenge discriminatory actions by employers in court.

### **The ADAAA Offers Protections to People with Diabetes**

The ADAAA responded to the courts' repeated denials of ADA protection to people with disabilities such as diabetes, acquired immunodeficiency syndrome, cancer, epilepsy, multiple sclerosis, and mental illness (7). It passed both houses of Congress unanimously and was signed into law by President George W. Bush on September 25, 2008. The ADAAA provides a legislative fix for the Supreme Court's restrictive holdings and applies to discrimination that occurs on or after January 1, 2009. As a result

of the ADAAA, the ADA now directs the courts to interpret the definition of disability in favor of "broad coverage" (2). The amended law also states that "the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis" (2). People with diabetes still have to show a "substantial limitation in a major life activity," but the law makes this requirement much easier to meet. Regulations will be issued that will clarify the application of the amended ADA to various conditions, and the courts will be weighing in on this question as well. Proposed regulations (which are subject to change when issued in final form) published by the Equal Employment Opportunity Commission (EEOC) state that diabetes invariably will be found to be a covered disability under the ADA. The proposed regulations state that, in the case of diabetes (and certain other specified conditions), the individualized assessment of the limitations on a person, which is necessary under the ADA to show one has a covered disability, can be conducted quickly and easily and will consistently result in a determination that the person is substantially limited in a major life activity (and thus meets the definition of disability).

Health-care professionals will need to play a primary role in helping their patients with diabetes establish coverage under the law and protect their rights—a role that is much more straightforward now than in the past, thanks to the ADAAA. All that is required in most situations is a letter from the health-care professional describing the individual's diabetes, focusing on specific details relevant under the ADAAA. With their health-care providers' help, people with diabetes will now be able to exercise their right under the ADA to work free of discrimination. Discussed below are the specific provisions of the ADAAA that are particularly relevant to health-care professionals in this regard.

**The major life activity of endocrine function.** The ADAAA adds a nonexhaustive list of specific major life activities that can be asserted to establish coverage. Of particular note for people with diabetes, the ADAAA adds "major bodily functions" to the list of covered major life activities, and one of these is the "endocrine function" (2). The diagnosis of diabetes, whether Type 1 or Type 2, means that a person's body does not produce sufficient amounts of insulin or cannot properly use insulin. Because diabetes, by definition, impairs the functioning of

**TABLE 1.****HOW YOU CAN HELP YOUR PATIENT BE TREATED FAIRLY AT WORK**

| Your patient says:  | How the federal law applies:   | What you can do:  |
|---|--|---|
| "I wasn't hired because I have diabetes."                   | A refusal to hire anyone with diabetes (a blanket ban) is illegal under the Americans with Disabilities Act (ADA) and/or the Rehabilitation Act. An employer can refuse to hire a person with a disability if that person is unable to do the job or if that person is a safety threat ("direct threat"), as determined by a careful assessment of the person. | Perform an individualized assessment to protect employees from discrimination.  |
| "My boss says I can't test my blood glucose in the office." | Under the ADA, employers are required to provide reasonable accommodations, such as allowing a person with diabetes to test his or her blood glucose at work.  | Document a patient's need to manage his or her diabetes at work, thereby triggering the employer's responsibility to accommodate. |

the endocrine system in such significant ways, it should not be difficult to prove that the disease causes a substantial limitation in that function. Indeed, the proposed regulations from the EEOC say as much: "An individual with diabetes will meet the definition of disability because he is substantially limited in functions of the endocrine system." (8) A health-care professional can document disability by explaining in a letter to the employer how the patient's diabetes creates a substantial limitation in endocrine function, and can also describe additional substantial limitations in other major life activities, as discussed below.

**The benefits of mitigating measures cannot be considered.** The ADAAA directs the courts to evaluate the person with diabetes without considering the "ameliorative effects" of corrective measures such as medication, diet, and exercise (2). Without insulin, people with Type 1 diabetes would die within days or weeks, so they would be substantially limited in all major life activities. Without insulin or oral agents, many people with Type 2 diabetes would experience increased urination, weight loss, kidney failure, diminished vision, and a host of other health complications that substantially limit major life activities included in the ADA's amended nonexhaustive list, such as caring for oneself, seeing, and eating. Likewise, the effects of any complications the individual experiences because of diabetes, such as vision loss or neuropathy, must be considered with-

out regard to any medication or treatment and in the absence of any devices or technology the individual uses, such as a prosthesis or screen-reader software.

Although both the negative side effects of corrective measures and any periodic manifestations of the condition (such as episodes of hyperglycemia) would also be relevant to the determination of coverage under the ADA, a health-care provider need not raise these issues in most cases. As discussed above, the patient's coverage under the ADA can be established clearly by showing the impact of diabetes on endocrine-system functioning and by describing outcomes for the patient without medication or other mitigating measures. Moreover, discussion of these issues may raise unnecessary concerns in the mind of the employer about the patient's ability to safely perform the job in question. However, it may be appropriate to address these concerns if a dispute arises and the parties are forced to go to court; in such a case, health-care providers can give the patient's lawyer this type of information.

### Stopping Diabetes Discrimination Requires the Help of Health-Care Professionals

Health-care professionals play a vital role in protecting and advancing the rights of workers with diabetes (Table 1). The ADAAA makes it easier for workers and health-care professionals to establish that a person with diabetes is protected by the ADA. But what rights does

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## FIGURE 1.

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### THE AMERICAN DIABETES ASSOCIATION LEGAL ADVOCACY NETWORK

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The American Diabetes Association provides legal advocacy assistance to health-care professionals and patients who are fighting diabetes discrimination at work, school, and elsewhere. Many opportunities exist for health-care professionals to make a difference for a person with diabetes through advocacy. You can help by joining the American Diabetes Association's Legal Advocacy Health Care Professionals Network. To learn more, please send an e-mail to [HCPnetwork@diabetes.org](mailto:HCPnetwork@diabetes.org).

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this protection offer? Once a worker with diabetes meets the definition of disability, the ADA protects him or her from discrimination; for example, by prohibiting employers from denying a job opportunity based on diabetes before fair consideration is given to whether the individual is qualified for such an opportunity. Although the ADAAA does not change these substantive rights, it better enables workers with diabetes to show that they are entitled to exercise them. Health-care professionals can help patients prove coverage and empower them to exercise their substantive rights under the ADA, thereby ensuring that people with diabetes can be employed and stay healthy.

The American Diabetes Association's Legal Advocacy Network provides advocacy assistance to individuals battling diabetes discrimination; its strategy is to "educate, negotiate, litigate, and legislate" (9). Encapsulated in this motto is the idea that much diabetes discrimination can be overcome with education about diabetes as a first step, followed, if necessary, by negotiation, then litigation. Legislation, the final step, exemplified by the passage of the ADAAA, can be used to resolve truly stubborn and systematic discrimination problems. The assistance of health-care professionals is a key component in this strategy for ending diabetes discrimination (Figure 1).

**Health-care professionals can help establish ADA coverage.** The ADAAA makes the health-care professional's role in establishing coverage straightforward. As a general matter, in responding to concerns expressed by an employer or in helping a worker obtain an ac-

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## FIGURE 2.

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### ADDITIONAL RESOURCES ABOUT ADA PROTECTIONS FOR WORKERS WITH DIABETES

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n U.S. Department of Justice: Americans with Disabilities Act ADA Home Page. Available at: [www.ada.gov](http://www.ada.gov).

n American Diabetes Association: Diabetes and employment [position statement]. *Diabetes Care* 32(Suppl 1):S80–S84, 2009. Available at: [http://care.diabetesjournals.org/content/32/Supplement\\_1/S80](http://care.diabetesjournals.org/content/32/Supplement_1/S80).

n American Diabetes Association legal advocacy assistance: Individuals can call (800) DIABETES (342-2383) to find out how to speak with an Association Legal Advocate about a discrimination problem.

n American Diabetes Association: Discrimination based on diabetes. [www.diabetes.org/discrimination](http://www.diabetes.org/discrimination). (Article provides information about the Association's Legal Advocacy efforts as well as sample letters for health-care professionals.)

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commodation (see discussion below on accommodations), all that is required is a short letter from the treating physician that explains the diagnosis in clear language. The letter should explain that the patient's diabetes creates a substantial limitation in his or her endocrine function because of its impact on insulin production or insulin use. As discussed previously, such a note can further emphasize the importance of diabetes management by explaining the effects of the condition on the individual in the absence of "mitigating measures." For example, the health-care professional can write that without diabetes care, the patient would become very sick or die. Where applicable to the patient, the note can also explain how improper treatment of diabetes would lead to complications that would substantially limit major life activities; for example, neuropathy would make it difficult for the patient to walk or stand. In some cases, there will be limitations even with treatment (e.g., inability to walk because of amputation). For a sample letter, see Figure 3. Additional sample letters are available on the American Diabetes Association Website at [www.diabetes.org/discrimination](http://www.diabetes.org/discrimination). For more information on this and other resources, see Figure 2.

**Health-care professionals can counter safety concerns through “individualized assessments.”** The role of the health-care professional often extends beyond helping a worker establish ADA protection. Employers cannot refuse to hire people with disabilities based on fears and myths, such as unsubstantiated concerns about hypoglycemia. Employers must assess the actual ability of the individual applicant or employee to do the job in question; this is called an “individualized assessment.” Health-care professionals can help make sure the employer makes an appropriate assessment. For detailed guidance on this issue, health-care professionals should review the American Diabetes Association’s position statement on employment and diabetes (10). This document provides a general set of guidelines for evaluating potential employees with diabetes, including how an assessment should be performed and what accommodations in the workplace may be needed.

Safety has frequently been used as a justification to support one of the greatest challenges of diabetes discrimination, the blanket ban. A blanket ban is an employer policy, whether official or unofficial, of refusing to hire people with diabetes or a subset of people with diabetes, such as all people who use insulin. For example, Jeff Kapche was a police officer who applied to be a special agent with the FBI (11). He was told that his Type 1 diabetes would not be an obstacle as long as he was qualified to do the job. Despite his excellent qualifications and the fact that he passed every single test given by the FBI, Mr. Kapche was denied a job as a special agent. When he sued the FBI, the Bureau defended its decision based on an unofficial policy requiring special agents with diabetes to manage the disease with an insulin pump, rather than through injections. The FBI, in applying this blanket ban, refused to consider the fact that Mr. Kapche had achieved excellent control of his diabetes through injections. As a result, Mr. Kapche had to go to court to fight the FBI’s blanket ban, where he convinced a jury that the ban was not necessary (could not be justified by “business necessity”), thanks in large part to the testimony of several dedicated endocrinologists (12).

In safety-sensitive jobs, some employers fear that all people with diabetes are a danger in the workplace (“direct threat”) and use this to justify a blanket ban or to reject a particular

applicant with diabetes. Other blanket bans are based on the belief that diabetes prevents a person from being qualified to do a job. Regardless of whether an employer believes that an employee’s diabetes makes him or her “unqualified” or a “direct threat,” health-care professionals can provide the accurate information needed to resolve this concern. For example, a treating physician provided invaluable information in the case of Rudy Rodriguez, a manual laborer with Type 2 diabetes who applied for a full-time position at a factory (13). Although Mr. Rodriguez had worked successfully for several months at the factory, the employer’s doctor used a urinalysis (an outmoded way to test blood glucose) during his employment physical and concluded that Rodriguez could not safely work anywhere “outside of a padded room where he could even then fall and break his neck from dizziness or fainting” (13). As a result, the employer refused to hire Rodriguez in any position. However, when the case went to court, Mr. Rodriguez’s treating physician testified that Rodriguez had never had any diabetes complications, revealing how preposterous the employer’s fears were and enabling the court to find in Rodriguez’s favor.

Thus, although not everyone with diabetes can safely do every job, treating physicians and other experts in diabetes are essential to respond to unsubstantiated fears, which are often based on a lack of knowledge about diabetes and its current management. For example, an employer may believe that if a person’s glycosylated hemoglobin (HbA<sub>1c</sub>) level exceeds the recommended amount, he or she is certain to have diabetes complications or be unable to work. A health-care professional can educate the employer that a high HbA<sub>1c</sub> level does not guarantee that the person has complications and does not indicate the person’s ability to do the job, and can also explain how diabetes affects the employee in question (10).

Health-care professionals should distinguish between a person’s ability to safely perform a job and the patient’s ability to manage his or her diabetes. For example, some patients will have periods of time when the HbA<sub>1c</sub> is high. This should not be equated to a direct threat. Physicians should be careful in the way they note that a patient is not “in control” of diabetes because “control” is a completely separate issue from being a safe worker. Hypergly-

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**FIGURE 3.**

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**SAMPLE LETTER FROM PHYSICIAN TO EMPLOYER  
EXPLAINING PATIENT'S NEED FOR WORKPLACE ACCOMMODATION\***

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

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

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

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

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\*This sample letter focuses on specific details of a patient's diabetes and diabetes treatment that are relevant under the ADA. The language used is intended to (1) establish that the patient is covered under the law; (2) request accommodations, if needed; (3) describe complications, if relevant; and (4) request accommodations related to those complications, if needed.

cemia over a period of years, like smoking, is likely to cause complications, but hyperglycemia has nothing to do with whether a worker should be fired from his or her job. Only if complications occur *and* they prevent the individual from safely doing the job should the worker be found unqualified or a direct threat. Thus, diabetes and its level of control should not disqualify an individual from a job.

When approached by a patient or employer to do an individualized assessment, health-care professionals should keep in mind that under the ADA, an individual who can perform the essential functions of the job is qualified, even if he or she could not perform nonessen-

tial job functions. For example, a construction worker with mild retinopathy may have difficulty seeing at night. If he or she can perform all essential duties during daylight hours, the individual may be qualified for the job even though he or she would be unable to work at night (provided that other workers were available to be assigned to the nighttime duties). In such a case, nighttime work would likely be a marginal, rather than an essential, function of the job, and the employer would be required to consider the individual for the job. The job description or a list of job duties from the employer can help a health-care professional determine what the essential functions of the job

are in order to perform the evaluation.

**Health-care professionals can facilitate reasonable accommodation requests.** The ADA also entitles qualified people with disabilities to reasonable accommodations. Reasonable accommodations include changes in the workplace, the provision of assistive technology, or other modifications to the way the job is performed that enable a person with a disability to do the job (14). Health-care professionals, including endocrinologists, certified diabetes educators, nutritionists, podiatrists, and other specialists, can advise a patient and document for the employer that an employee with diabetes needs reasonable accommodations to perform the job in question. For people with diabetes, these may include taking short breaks to test blood glucose, eat, or take medication, or accommodations necessitated by long-term complications, as long as these accommodations are not prohibitively expensive or difficult (an “undue burden”) for the employer. Analyzing a worker’s ability to perform essential functions should take into account these accommodations. For example, a person such as Stephen Orr needs to take a break to eat lunch to avoid hypoglycemia on the job. The health-care professional can easily point out the importance of such a break and explain that, assuming such an accommodation is granted, the patient would be able to safely perform all essential job functions.

A patient may need reasonable accommodations to follow doctor’s orders. For example, a treating physician may order his or her patient not to stand for more than 20 minutes at a time to avoid exacerbating neuropathy in the feet. If that patient works as a cashier, following doctor’s orders will be difficult without the reasonable accommodation of being allowed to use a chair while working. Even if the employer has a policy that all cashiers must stand while working, the ADA requires that the employer make an exception to this policy for a person with a disability unless it would be an undue burden on the employer. The treating physician can write a note explaining why diabetes is a disability and that the cashier needs to be able to sit while working because of neuropathy (Figure 3). Providing this expertise concerning the needs of the worker and educating employers about diabetes and its complications vastly increase the likelihood that the accommodation process will be successful.

## Conclusion

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

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