

CHAPTER 4

Legal Aspects of Accommodations for Students with Disabilities in Nursing Education

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Background

When Congress enacted the Americans with Disabilities Act (ADA) in 1990, it articulated four goals for public policy regarding people with disabilities: equality of opportunity, full participation, independent living, and economic self-sufficiency. Today, more than twelve years later, our nation has made progress toward reaching those goals, but there is still plenty of room for improvement. For example, among working-age adults with significant disabilities, only about one in three is working, notwithstanding the fact that a majority of these individuals want to work.

Among disability advocates, there is increasing recognition of the important role of higher education in facilitating the right of people with disabilities to make choices, pursue meaningful careers, and

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contribute to their communities. According to a 2002 survey from the National Organization on Disability, only about 12 percent of adults with disabilities have graduated from college, compared with about 23 percent of the general public. Importantly, according to a 1999 study from the National Center for Education Statistics, for those individuals with disabilities who do graduate from college, outcomes in terms of early labor market participation and graduate school enrollment are the same as for those without disabilities. Accordingly, if we are able to close the education gap, we will have a much better chance to close the employment gap.

The percentage of students with disabilities participating in higher education has grown from 2.6 percent in 1978 to 9.0 percent in 1998, according to the National Clearinghouse on Post-secondary Education for Individuals with Disabilities. Notwithstanding this growth, many faculty members and administrators have indicated in surveys that they do not feel they have received adequate training in how to accommodate disabled students. In 1999, the American Association of Colleges of Nursing surveyed its member schools regarding their experience with the ADA. Eighty-seven percent of the respondents indicated that they have had experience with students having either physical or mental disabilities or both. Clearly, accommodating students with disabilities has become a real issue in colleges of nursing.

Legal Issues

Under the ADA and Section 504 of the Rehabilitation Act, colleges and universities are prohibited from discriminating against students with disabilities pursuing higher education. These laws define an individual with a disability as a person with a physical or mental impairment that substantially limits at least one major life activity, a person with a history of such an impairment, or a person who is regarded by others or perceived as having such an impairment. For a student who meets this broad definition, institutions of higher education are required to take whatever steps are necessary to ensure that a qualified disabled student is not denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in the education programs or activities operated by the institution. This includes not just academic programs but also extracurricular

programs, university-sponsored housing, and other activities conducted by the educational institution.

When a student with a disability discloses the existence of the disability and requests an accommodation or academic adjustment, the college may request reasonable documentation of the existence of the disability and the need for an adjustment. Once the documentation has been provided, the college is required to make an accommodation that will be effective in ensuring that the student has equal access to the program. Academic adjustments include modifications to academic requirements and auxiliary aids and services. Examples of modifications to academic requirements include arranging for priority registration, reducing a course load, substituting one course for another, and moving a course from an inaccessible building or classroom to an accessible one. Examples of auxiliary aids and services include providing note-takers, recording devices, readers, qualified sign language interpreters, extended time for testing, TTY telephones, or adaptive software or hardware for school computers.

In providing an academic adjustment, colleges are not required to lower or effect substantial modifications to essential requirements. Although a school may be required to provide extended time on a test, for example, it is not required to change the substantive content of the test. Also, colleges are not required to make modifications that would fundamentally alter the nature of a service, program, or activity or would result in undue financial or administrative burdens. Finally, colleges are not required to provide personal care attendant services, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature, such as tutoring or typing.

In assessing the best way to accommodate an individual student, it is important for colleges to work with the student in an individualized manner to develop an accommodation that is effective. The school is not required to provide the exact accommodation that a student requests if another effective accommodation is available, but it is always a good idea to work with the student to gauge the effectiveness of various alternatives for that student. There is a great deal of variation within different disability categories, and for this reason colleges should avoid assuming that an accommodation that worked for a student with a particular disability will work for the next

student with that disability. Also, the nature of an individual student's disability can change over time, leading to a need to reassess the ongoing effectiveness of a particular accommodation.

One key category of accommodations for disabled students is auxiliary aids and services. The regulations interpreting the ADA require that colleges and other public entities provide such aids and services "where necessary to afford an individual with a disability equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." Under Section 504 of the Rehabilitation Act, a college receiving federal funds may not provide a disabled student "with an aid, benefit, or service that is not as effective as that provided to others." The Section 504 regulation states:

[A]ids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and non-handicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

In a 1998 primer on auxiliary aids and services for post-secondary students with disabilities, the U.S. Department of Education's Office for Civil Rights emphasizes the importance of looking at the appropriateness of a particular aid or service in a specific context. The guidance uses the example of a student who is hard of hearing, and notes that the type of assistance that student needs will vary depending on whether the class is being offered in a large lecture hall or a seminar. Noting that whereas the service of a note-taker may be adequate for a lecture hall, where the communication is usually one-way, the guidance points out that in the context of a seminar, an interpreter may be required to facilitate two-way communication.

Beyond Compliance

To truly open the doors of opportunity for people with disabilities to pursue nursing as a profession, it will be important for colleges of nursing to look for ways to incorporate affirmative strategies to

integrate applicants and students with disabilities into broader efforts to ensure a diverse student body and a diverse nursing profession. Rather than simply responding to accommodation requests from disabled students who find their way to nursing, colleges should reach out to local, state and national disability groups and make it known that they are affirmatively interested in increasing their enrollment of disabled students. An important component of a successful outreach strategy might involve identifying nurses with disabilities who can serve as mentors and ambassadors to help with outreach, including by making presentations at high schools, colleges, state vocational rehabilitation agencies, and disability conferences.

Oftentimes, the biggest barrier to equal opportunity for disabled students is not a physical or communications barrier, but instead an attitudinal barrier. A college might have great written policies on accommodations, but if the faculty does not embrace these policies and approach accommodations with a genuine desire to find a solution, there is a real danger that students will encounter unnecessary friction when they seek to assert their rights. To help set the tone and emphasize the importance of equal opportunity as a college-wide priority, it will be important for the top leaders in any institution to use their bully pulpits to talk about the values that underlie the college's commitment to opening the doors to nursing to all qualified candidates. Similarly, to underscore the college's commitment to diversity in the nursing profession, it is very helpful for the college's marketing materials to feature students with visible disabilities in these materials. Ultimately, as the nursing profession diversifies, it will find that it is better prepared to meet the needs of the increasingly diverse communities it serves.

Resources

The U.S. Department of Education's Office for Civil Rights (OCR) has responsibilities for enforcing the federal laws requiring equal opportunity for qualified students with disabilities and others. Two recent documents OCR has issued that have useful information on this topic include:

"Students with Disabilities Preparing for Postsecondary Education: Know Your Rights and Responsibilities," July 2002, available free at www.ed.gov/offices/OCR/transition.html; and

"Auxiliary Aids and Services for Postsecondary Students with Disabilities: Higher Education's Obligations Under Section 504 and Title II of the ADA," revised September 1998, available free at www.ed.gov/OCR/docs/auxaids.html.

The national information number for OCR is 800 421-3481 (voice) or 800 437-0833 (TTY). The U.S. Department of Justice also operates an ADA information line for publications, questions, and referrals. The number is 800 514-0301 (voice) and 800 514-0383 (TTY). The ADA homepage administered by the Department of Justice can be found at www.usdoj.gov/crt/ada/adahom1.htm.

The American Association of Colleges of Nursing's "Guidelines for Accommodating Students with Disabilities in Schools of Nursing" is available free at www.aacn.nche.edu/Education/ada.htm.

Addition to Position Paper Presentation

Andrew Imparato. I really want to commend everybody who was involved in conceptualizing this and organizing this conference. To me this is exactly what we need to be doing in every profession. We need leaders from the profession to come together with disability leaders and folks with disabilities who are working in the profession to work together to try to open up professions. Whether the profession is nursing, law, medicine, accounting or information technology, every field would benefit from this kind of symposium. I really want to commend all of you for putting this together and doing it at a very high level. It's crystal clear to me that you're taking this seriously and that you hope real change and systemic change is going to come out of what everybody is working on over the next day and a half. I'm privileged to be a part of it.

I thought what I would do is talk about why we have laws that require accommodations for students. You will be hearing from people who will talk more about the employment issues later today. Why do we have laws requiring accommodations for students with disabilities. Anybody?

Audience. To level the playing field, otherwise students with disabilities are set up to fail.

Andrew Imparato. OK, there's a ringer in the audience. One is to level the playing field, to give them an equal chance to succeed. The concern is if we don't level that playing field, we're setting some students up to fail. How can having nurses with disabilities improve the nursing profession?

Audience. By being able to better connect with their patients because their patients might have or develop a disability. They will be able to say, "Well, I have one too," be empathetic with them and sympathetic at the same time.

Andrew Imparato. Great. The answer was to be able to better connect with their patients and for the nursing profession as a whole to better connect with a part of their patient population. I think that the basic questions of why do we have laws that require accommodations and why is this good for the nursing profession are important for everybody to be able to answer. As you go back to your institution, as you heard in the last panel, you will encounter professors, administrators, and board members who are not helpful. You will encounter people in the media who are going to write about one negative experience and blow it out of proportion. So I think it's always useful to go back to why are we here. Why do we do these things?

From my perspective, all the reasons that we think and talk about diversity are the best reasons to think and talk about disability. If you want a nursing profession that is diverse then you also want a nursing profession that is inclusive of nurses with disabilities.

I think what is important about the ADA are the broad goals. What did Congress say when they passed the ADA? They said that there were four big goals that we're trying to accomplish. The goals were equality of opportunity, full participation, independent living and economic self-sufficiency. Those goals are not easy. In many ways they are revolutionary. When you hold those goals up against centuries of people with disabilities experiencing exclusion, paternalism, and in

some cases being targeted for extinction, those goals really are revolutionary.

I think some economists and some political thinkers get frustrated that the ADA was passed in 1990 and here we are in 2003 and we haven't seen huge changes in employment rates for people with disabilities. We haven't seen some of the decreases in disability benefit participation and other things that people had hoped would happen or talked about happening in the context of the ADA being passed.

I think Justin Dart did a nice job on a pretty regular basis pointing out that these things don't change in a period of ten years or thirteen years or fifteen years. It took centuries and generations to develop the barriers that people with disabilities face. It is going to take generations before we see the promise of those four goals really happening on a regular basis for people with disabilities.

I really appreciated the point Gordon Ninde made about the disability benefit system. I think one of our biggest challenges is a public policy challenge. How do we take the public programs where we spend most of our money, Social Security, disability insurance, Medicare and Medicaid and make sure that those programs are consistently supporting the four goals that Congress established in the ADA? When an 18-year-old has to swear to the government that a disability prevents him or her from working in order to get health care, then we're basically expecting an 18-year-old to retire at age 18. That's clearly inconsistent with the vision of the ADA. That is our public policy. There have been small steps to change that. A law passed in 1999 called the Ticket to Work and Work Incentives Improvements Act, and it's a very small step. It didn't do anything about that basic definition of who's eligible for disability benefits.

The key legal concepts really come from two laws, section 504 of the Rehabilitation Act and the Americans with Disabilities Act. From my perspective you don't need to worry about which law you're dealing with. They pretty much require the same thing, and they're both federal laws. It's more a question of whom they apply to. Section 504 applies to any entity that receives federal financial assistance, which is true of most nursing programs. The ADA applies to everyone else. Both laws apply equally in most of the areas that matter. The

obligation under both of those laws is that a nursing college not discriminate against an applicant with a disability or a student with a disability or an employee with a disability.

What does it mean to not discriminate? First you have to look at what does it mean to be a person with a disability. The definition of an individual with a disability under these two federal laws is an intentionally broad and inclusive definition. The first prong that sometimes gets referred to as actual disabilities is for somebody who has a physical or mental impairment that substantially limits at least one major life activity. The basic concept is you have an impairment, so it's something that's medically knowable. Then you look at how the impairment interacts with the person's life and if the person is substantially limited in a major life activity, that comes under that first prong.

The second prong is a person who has a history of such an impairment. A person may have been treated for cancer at some point, but not currently experiencing symptoms. The person is protected against discrimination based on that history. A person may have been hospitalized for a mental illness and not currently experiencing symptoms. That person could still be protected under the history prong.

The third prong is being perceived or regarded by others as having an impairment or disability. That's really to cover people who are very qualified for a position but, because of something that they say or something about them, the employer or the school is making an assumption that the person is substantially limited and not hiring or admitting the person on that basis. Let's say the person is on an Indian reservation and there's an assumption that people from that particular Indian reservation are going to be more likely to have a particular impairment. That would be discrimination on the basis of American Indian status. It also would be disability discrimination under the third prong, even if the person has no actual impairment. That last prong is really a catch-all that's intended to get at if somebody is treated unfairly based on something that's going on in the employer or the school's mind. That's still disability discrimination if what's going on in the mind relates to physical or mental impairment.

The obligation is not to discriminate. For schools, it means you don't discriminate in admissions, you don't discriminate in housing. If you're providing housing, you need to make sure that that housing is accessible for students with disabilities and that you're not going to charge them more for the accessible housing. They should pay whatever the other students pay. It means you don't discriminate in any programs run by the school.

The other basic requirement is that a school of nursing must provide academic adjustments as necessary to ensure that students with disabilities have equal opportunity to succeed at that institution. I think one thing that's important to recognize is you will have applicants and students with disabilities who need absolutely no academic adjustment.

There is the whole question about disclosure. I think it's important to recognize that for some people there really is no reason to disclose other than disability pride or trying to get qualified for affirmative action. Most of the programs that my organization runs are for people with disabilities. We don't ask for medical documentation of anything, but we do ask them to self identify so that we know that they're part of the group that we're intending to benefit from the program. I want to emphasize that every one of you has students with disabilities in your programs. You may not be aware of what the disabilities are or the breakdown. It's not a question of if you have students with disabilities but how many and in what combination.

I think that it is useful to think of disability as not being black and white. It is not a simple concept, nor a static concept. Your level of ability or disability, level of impairment can change on a daily basis, on an hourly basis. So it's important to recognize that diversity. Again, the basic obligation on the part of schools is that you need to make some adjustments to give people equal opportunity.

There are two types of adjustments that I wanted to briefly mention. One is what sometimes gets called modification of academic requirements. An example could be arranging for priority registration or reducing a course load. Let's say a student is experiencing depression and needs to take a lighter course load while trying to deal with the depression or work out medication. That could be an accommodation. There are other disabilities that might require a reduced course load.

Substituting one course for another can be an accommodation. Providing extended time for testing is a very common accommodation.

There's another category of academic adjustments called auxiliary aids and services. Examples of that could be providing note-takers for students not able to take notes themselves. Other examples are recording devices, allowing a student to record what goes on so that they can have the recording in an accessible format to listen to the material, and providing qualified sign language interpreters. I emphasize the word "qualified." Some schools think that one sign language interpreter is the same as the next. There are some people who are able to sign but clearly are not qualified sign language interpreters. It's a matter of understanding that it's a profession and that there are standards within the profession. If you're going to provide the accommodation, you want to make sure that the people you hire to do the interpreting are qualified and are at a high enough professional level that the student is truly going to get equal access to the information that the professor is conveying. Other examples could be providing text telephone or TTY in dorm rooms. If you provide a regular telephone for your students in their dorm rooms and somebody needs a TTY, you need to make that accommodation and give them a TTY in their dorm room. Equipping school computers with screen reading, voice recognition or other adaptive software or hardware is another example of this kind of auxiliary aids and services.

One thing that I think is important for you all to hear is that, under these two federal laws (Section 504 of the Rehabilitation Act and the Americans with Disabilities Act), a school of nursing is not required to lower or effect substantial modifications to essential requirements of its program. You don't have to lower your standards in order to admit and welcome students with disabilities into your programs. For example, although you may be required to provide extended test time for a student, you do not have to change the substantive content of the test in order to accommodate a student. We can get more into some of this in the Questions and Answers, but the notion that you don't have to lower standards I think is an important one. Then it's really a question of how do people understand that and operationalize it. I think the panel you heard from earlier is a good example of people who have obviously been very successful as students and as professionals in the field of nursing and who didn't ask and wouldn't ask that the standards of the profession be lowered to permit them to succeed.

The other kind of qualifier that is important for schools to know about is that nursing schools do not have to make modifications that would fundamentally alter the nature of a service program or activity or would result in undue financial or administrative burdens. I think one of the other speakers said that the ADA was deliberately vague. I try hard not to use the word vague because that's a word that is used by a lot by people who are criticizing the ADA. I would say it's deliberately flexible.

The notion of what is reasonable is inherently a very fact-specific thing. It depends on the circumstances. You could have five different schools of nursing that are located in different areas with different budgets, different physical plants, different size of faculty, different size of the parent institution that they may be affiliated with. So the ADA requirement is going to flex depending on some of those factors. And the same is true for students. You could have five students who self-identify as blind who need five very different accommodations. Figure out what is reasonable and effective for each student. It's not going to work if you just give them what you haven't given all the other blind students. It really is about listening to the student and understanding what will work for that student. The same thing is true for a student with a hearing impairment or a psychiatric disability or any number of other conditions. Be very wary of saying, "Oh yeah, I know how to do X disability because I did it for somebody last year." It really depends on the specific requirements and specific needs of that person.

The final thing I wanted to mention is that a nursing school does not have to provide personal attendants, individually prescribed devices, readers for personal use or study or other devices or services of a personal nature such as tutoring or typing. I'm getting all this from the Office of Civil Rights at the Department of Education. That's kind of the lead entity that is in charge of enforcing a lot of the disability nondiscrimination requirements under Section 504 and the ADA. I don't know that I agree completely with what I just said. That is the law.

I wanted to touch a little on admissions issues. A qualified individual with a disability for purposes of admissions is an individual who meets the skills, experience and education requirements of the

position held or desired and can perform the essential requirements of the program with or without a reasonable accommodation. What people are going to fight about is what are the essential requirements of the program. I'm not going to try to answer that question. That would be a useful thing for everybody to discuss tomorrow.

I want to let people know that I read a document that I found from a Google search that helped me in preparing today. It's produced by the American Association of Colleges of Nursing. I don't agree with what they describe as the essential functions of nursing. It says you have to have the ability to see, touch, manual dexterity, gross and fine motor movement, ability to learn, think critically, analyze, assess, solve problems and reach judgments, and, finally, emotional stability, and ability to accept responsibility and be accountable. Some of those things we agree with. I think they are seizing on the wrong thing to define what is an essential requirement. You don't talk about ability to speak and hear, but talk about effective communication. I'm not going to try to resolve that question. I just wanted to get it out there and clearly it's been brought up by other panelists.

I wanted to read as a direct quote from this paper again, from the American Association of Colleges of Nursing. I assume it's a credible source. In terms of the nursing field, I have a real problem with this statement. I don't have a problem with the first sentence but the second sentence. "An individual may be able to master content and pass classroom examinations, but possess certain limitations or conditions that cannot be surmounted with present day technology." Let's assume that that's true. I'm not sure, but let's assume. This next sentence I have a problem with. "For example, it is unlikely that an individual who has no use of her arms and hands or is completely blind could be successful in a nursing curriculum." That to me is inherently suspect. I just encourage people to talk that statement through as we move forward in this group. The gentleman from the Illinois Council of the Blind certainly was pointing in the right direction. There most definitely are jobs within the field of nursing that somebody who has no use of their hands or arms or someone who is completely blind, no vision at all, could still do successfully, with or without a reasonable accommodation.

The last thing that I want to encourage people to think about is how to get beyond compliance. I mean you all are leaders. You're

trying to take a profession that is a growth profession within our economy and make sure that doors are open as widely as possible. Don't get so fixated on compliance with federal legal requirements that you miss an opportunity to go beyond compliance.

There are a lot of things that aren't required by law that can make a huge difference. What is the picture on the cover of your brochure that you use to market your institution? Does it have a person with a visible disability on it or not? That's not required by law, but it will send a very strong message. I just encourage people to think beyond compliance as you think about accommodations.

Also, whatever you do to accommodate students with disabilities, make those accommodations available to all students. If somebody needs extra time on a test, give it to him or her. I think most of the studies show that extra time on a test does not help the students who don't need the extra time for a disability-related reason. Again, I just encourage you to think about going beyond compliance.

I'm going to close with a quote from Martin Luther King that is very appropriate. This is my favorite quote from Dr. King. Dr. King said: "Everybody can be great because anybody can serve. You don't need a college degree to serve. You don't need to make your subject and verb agree to serve. All you need is a heart full of grace, and a soul generated by love."

Thank you.

Legal Aspects of Accommodations for Students with Disabilities in Nursing Education Response

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(FARB)**

I also would like to thank everyone involved in putting this important symposium together. I think that these topics need to reach as broad an audience as possible. And I'm happy to be here and provide some of my remarks as a paper responder, although I try to refer to myself as more of a paper expander. If I wanted to respond, I could just say I agree with everything that Andy said.

The gap that I would like to try to bridge in response will supplement the comments that have been made. Somewhere between education and employment is licensure. And that's where my expertise falls and that's what I do on a day-to-day basis insofar as my representation of these associations. The groups that I represent are made up of regulatory boards involved in the licensure process. In doing that, they provide programs and services to the boards themselves. They're not professional associations and what have you. They have public protection in mind but they also have statutory

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mandates and legislative responsibilities to follow. All of this is mixed into the discussions and the issues that we're trying to address at this symposium. I think these may prove to be interesting discussions.

The laws and roles that regulatory boards play are all set forth legislatively, and these boards then have to follow those laws to determine licensure eligibility. This is what I would like to focus on. Of particular interest and perhaps the easiest way to illustrate some of the points I would like to make is through the examination programs. That's the easiest way to illustrate issues of individuals with disabilities and how they may be impacted either adversely or positively in the process of becoming or going from being educated to being employed, getting to that licensure point somewhere in between.

These associations of regulatory boards that I represent develop and administer the licensure examinations in all jurisdictions. They're uniform programs. The states that choose to use them rely upon these associations because of their expertise in development and in the administration of examinations. They provide uniformity so that individuals who become licensed in state A and want to move to state B have taken a similar or same examination built on the same content. This is the easiest way to illustrate issues of individuals with disabilities who have gone through a process of being educated and now want to work. Licensure stands in between. Licensure stands in between for everyone, not just for individuals with disabilities.

I'm happy to say that these associations that I represent have been providing accommodations long before the ADA was enacted. They were savvy in understanding the issues of individuals who were seeking licensure through an examination process. So when the ADA came out, although it was watched and it was studied and discussed and debated, most of my clients did not have to make many substantive changes to their programs, insofar as the exams are concerned. These issues of awareness to disabilities I think were present within these associations and their policies and programs were understanding to the fact that individuals may need accommodations relative to the examinations themselves.

As an example, in social work last year we probably had over 800 requests for accommodations across the country relative to the exam program. Those accommodations are generally granted. There's a

three-pronged approach to the process, dealing with the applicant for licensure, the association that develops and administers the exam and is responsible for ensuring the integrity of the program, and the regulatory board itself. It's important that these three entities work together to ensure that not only the laws are met, but there is an equal opportunity for exam administration and completion relative to the licensure process.

Another point in relating back to the educational or academic process that we all go through prior to becoming licensed is the fact that those accommodations that are given within the educational setting help set the standard for the regulatory board to give and grant accommodations in the future. As we talk about educational programs and what accommodations should and should not be granted, that is setting the stage for the licensure process. The first thing that I advise regulatory boards when I'm asked the question about whether an accommodation is reasonable is, "What is the ADA standard?" What accommodations did the individual receive during his or her education? These professions are post-secondary and we're talking about a process through which an individual has become educated. So that question will be asked. And I think it's important that the educational institutions as well know that that's how the process will work, at least in part from the standpoint of providing these accommodations.

It's also very important for us to understand the role of each of these entities, academic and education, regulatory, and employment. Although the ADA applies across the board, different laws apply to different ones of these entities relative to how you will assess the legal issues that might come up. So there are some of these differences that we don't have time to talk about now, but at least we can lay a little bit of foundation. The accommodations that we see granted include readers, describers, physical access to the tests themselves, large print, extra time, and separate rooms. Most of the exams are given by computer, but there are paper and pencil administrations for those who need them as well. We can carry this list on as far as we would like. We do see a lot of requests for accommodation. That's positive because the awareness level is being raised by those who are going to need accommodation and those who are going to grant those accommodations as well.

The last part of my remarks I would like to refer to the general regulatory process. It is broad-based and the ADA applies to all the board activities, not just the exam. So we're talking about the application for licensure, the disciplinary process, post discipline, reinstatement of a license, continuing education, licensure renewal, a lot of topics. From a legal basis, a lot of issues do come up that are fully discussed by these associations that I represent as well as the regulatory board and individuals as well.

I'm happy to open up to questions right now. Perhaps we can address specific issues to make this as beneficial to the audience as possible.

Andy Imparato. I'm going to ask my old boss, Bobby Silverstein, to join us up here. I know if I get anything wrong, Bobby will know the right answer, because he wrote a lot of these laws that we're talking about.

Audience Participation

Martha R. Smith, Project Coordinator for the Health Sciences, Oregon Health Sciences University. My question is combined for two things that you each brought up. One is the changing nature of disability, what someone needs today might not be what they need tomorrow. And you brought up the issue of accommodation needs for licensure exams, which are determined by what students used when they were in educational settings. What we have is a Catch-22 developing for students with disabilities. As faculty and institutions are becoming more aware of universal access, they are providing better access for all their students, including extended test time as a matter of course. They are providing overheads as handouts, as a matter of course, not as a matter of accommodation. We have students who don't have a formal record of having used specific accommodations while they were in their programs. Now they go to a regulatory board that says we're going to base our decision on what you used in your institution when there might not be a formal history. So we have now set up students for situations where they've developed great strategies and they have faculty who have provided them with accommodations

informally. Now the regulatory board says because you don't have a history to prove that, we will not provide you with that accommodation.

Dale Atkinson. Your point is well taken. I didn't mean to mislead anybody that that's the sole indicator of what accommodations might be given. Generally, that's the starting point for determining the reasonableness of the accommodation. We have seen in the past individuals who under the guise of certain laws try to take advantage of situations and as was discussed or mentioned earlier, perhaps everyone then should be given these accommodations. I have no problem with that. They're not time-based tests. Some of the other issues perhaps do impact the validity of the exam to assess the content areas that it is intended to assess. Back to your question, it's not the sole determining factor. Frankly, if someone comes up and explains a situation like that, I think they would be granted the accommodation.

Andrew Imparato. The only other thing I would add is a lot of professions like the legal profession require passing an exam to practice law. I assume in the medical profession and in nursing and in other professions there are exams that are part of the licensure process. One thing that I have noticed is the higher up you get in the food chain, the harder it is to get an accommodation. Even if you have the exact same disability, exact same accommodation need, it's a lot harder to get an accommodation on a bar exam than it is to get an accommodation on the SAT, for example. Now, I'm hoping this will all change over time. I'm just saying one thing I have observed is some of the strongest attitudinal barriers are at that pre-professional stage where they are really trying hard to be a gatekeeper, in what I see is the worst sense of that term. Bobby, I don't know if you want to say anything on this question.

Bobby Silverstein, JD (Silverstein whispers/mouths his answer so that no one can hear his comment). There is one person in this room who understood what I was saying. I am now doing a reasonable accommodation for all the rest of you. And this point is very important. When we use words like accommodation and auxiliary aids and services, they sound like special treatment. If we're inviting everybody to participate who's qualified, all means all. And everybody should have an effective, genuine and meaningful opportunity to benefit from whatever it is we're talking about. So accommodation sounds like

something special. It's not. When we start looking at policy tomorrow, I hope the standard and the criteria are genuine, effective and meaningful opportunity.

What we do tomorrow is also look at the purpose and function of an essential function or whatever it is that we want to talk about. We figure out what is the purpose and function. And ask that question 3,000 times. When somebody looks at a criterion, whether it's admissions or credentials or certification or licensure, you ask why. What is the purpose and function of this provision? We ask that question over and over and over again and make sure that we recognize again that this is not accommodation, this is not special treatment, this is genuine, effective, and meaningful opportunity.

Jean Bartels, PhD, RN, President-Elect, American Academy of Colleges of Nursing (AACN). Sitting right next to me is the past president of the Association of Colleges of Nursing. I wanted to make a comment and certainly agree with your remarks. We have a routine policy of looking at our position statements every so many years. Clearly, it's the reason I'm here, and as you pointed out, it's time for AACN to review its position policy on disabilities. I know that the organization (AACN) has continued to look at its membership taking active roles in interpreting the law. We have to look at our interpretation differently than we did at the time the current position statement was written. I'm reassuring you that this will happen. Again, there are a number of our schools that are doing some remarkable work, looking at how to make learning more accessible.

Andrew Imparato. Great.

Karen McCulloh, RN, Karen McCulloh and Associates. I just want to ask in regard to your regulation of the organizations that you work with, what policy or procedure do you have when you have a social worker or a veterinarian who simply is renewing a license? The renewal license forms come in, they write their checks for whatever amount, and they send them back. Do you have any questions on that renewal form that asks if that social worker or veterinarian has a disability, and if you do, then how is that handled and who makes the decisions? I will give you an example. The state of Alaska, and so many other states in the country are now asking on their nursing license renewal forms if you have a disability.

I have a friend who is sight impaired in Alaska who now has to attach a doctor's form to her renewal application, and is now limited to practicing community education. I was just wondering if there's any process in your organization that does this kind of thing.

Dale Atkinson. The licensure and renewal process is a state-driven issue. I will try to be as direct as possible. But the laws vary from state to state. The associations that I represent do not participate in and do not write applications for licensure or renewals. Based on my experiences with working with the boards on a state basis, the questions that are asked on either an application or renewal are going to be based upon the statutes as to what requirements there are for licensure. For instance, if the application has, say, three years between renewals and asks questions about education, examination, experience, moral character or whatever else is included in there, you file the application, pay a fee, and that's it. That's what the licensure decisions are based upon, the questions that the application form has on it. Regulatory boards I advise should not ask questions that are not relevant to the ability of someone to practice. They should not ask questions beyond the statutory empowerment that was given to them; that they do not have authority to do. So the questions on the form should be limited to whatever their authority is. It's hard to answer your question with a yes or no. But that's the kind of advice that we deal with in regards to regulatory boards. The associations we represent are national, and they don't get involved with the state-by-state issues.

Margaret Younger-White, MUPP, Illinois Department of Human Services. I'm curious about the Office of Civil Rights interpretation of personal accommodation. One particular accommodation is tutoring. I can't imagine that there aren't individuals with disabilities who receive genuine access to a program and that tutoring would be viewed as a personal accommodation. I guess I wanted to hear your opinion.

Andrew Imparato. Let me try. This is one I definitely want Bobby to speak to. The reason I had concerns about it when I read it is I think it's not a simple concept. For example, to say that you do not provide a reader for personal use or personal study could be over interpreted. For example, let's say you assign a text for a class and you

have a blind student who goes to the library to get that text. Just like all the other students, you do have to provide a reader or an alternate format of that text for the blind student to be able to read it the first time. You don't have to provide the reader for them to read it again when they're studying for the exam. It strikes me as a little odd, but that is as I understand it, the state of the law. I'm not sure it's easy to justify that distinction.

I think what the drafters of the law, and the folks who were in charge of administering it and implementing it, have tried to do is draw a line around personal care attendant services and other things that are personal in nature that can be very costly, and try not to get all that stuff lumped in under the category of accommodation. Again, in regards to the "beyond compliance idea," I encourage you to think about what are some of the barriers to full participation that may not be required by law but where we could help. For example, in orientation we can help to get a student access to personal assistant services if they don't otherwise know how to do that. I think there's a role that education facilities can play, even though it is not required by law, because it's personal in nature. Bobby, please, fill in with your comments.

Bobby Silverstein. In general, I definitely agree with what Andy said. Going back to some of the things I said a moment ago, ADA and 504 are civil rights statutes. Another way of describing civil rights statutes is: Is the same effective, genuine, meaningful opportunity provided to non-disabled folks? It's the same benefit, the same opportunity. Andy's description I think is fine and totally appropriate. If you assign a reading and say go into the library and it's not there in an alternative format, a reader is totally appropriate. But in terms of studying, you're not necessarily providing study aids to non-disabled folks. You may. If you do, make them genuine, effective, and meaningful. If you're not, equal opportunity says you don't have to.

This session is going late in terms of time. There will be a Website up in the next two weeks from my center: www.disabilitypolicycenter.org. One of the links that you can go to is the ADA and there's an article on personal assistant services or the obligation to provide personal assistant services under the ADA; what's required by law and what's not. This specific question is addressed in one of the documents on the Website.

Linda Laatsch, PhD, Rehabilitation Psychologist. I do assessment of individuals with disabilities for the licensing examinations. Generally if the individual is on medication that assists cognitive status, I ask the person for the evaluation purposes to not be on the medicine, so that I can measure the true extent of the disability. Now, I was asked by the examination licensing board to retest the individual on medication. Could you please state an opinion about that.

Andrew Imparato. Bobby encourages us all to really ask that question. From my perspective, what's the purpose? Is the purpose of your role to screen out people who are not qualified to be in the profession? That may not be the purpose.

Linda Losche. No, the purpose is to evaluate their need for accommodations for the exam.

Andrew Imparato. If the purpose is to evaluate the need for accommodations for the exam, that will enable them to show what they could do to get into the profession, then from my perspective, there is absolutely no reason for you to test them in the absence of medication. You should test them with whatever medication they will take and will be on when they are taking the exam. The only reason to test somebody in the absence of medication is if they're trying to really fixate on who is an individual with a disability. This is in disagreement with the Supreme Court, who said you look at how people function while they are on their medications, and it disagrees with states like California that say you should look at them without medications for purposes of whether they're substantially limited in major life activity. That for me is the only reason to do that test. But it strikes me as bizarre. I'm not sure why they would do that.

Bobby Silverstein. This is facetious. I will preface it. It would be okay if and only if everybody who wore glasses were not allowed to use their glasses first.

Dale Atkinson. I agree. I have nothing else to add to that. Well said.

Thank you.