

Combat HBV
Institutional Discrimination --
SPEAK UP FOR THOSE WHO CAN'T

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They can't speak out . . .

- Individuals muzzled by settlement agreement confidentiality clauses
- HBV-infected mothers traumatized on learning they infected and “caused” their children’s misfortune
- HBV-infected healthcare professionals who fear employment discrimination or loss of future opportunities
- Administrators whose organizations and professions prevent them from speaking out

. . . SO WE MUST

In 2010 dental and medical schools rationalized discriminatory policies by citing outdated or misinterpreted information attributed to a trusted source – the CDC

<http://www.cdc.gov/mmwr/preview/mmwrhtml/00014845.htm>

Centers for Disease Control and Prevention
Morbidity and Mortality Weekly Report (MMWR)



Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures

This document has been developed by the Centers for Disease Control (CDC) to update recommendations for prevention of transmission of human immunodeficiency virus (HIV) and hepatitis B virus (HBV) in the health-care setting. Current data suggest that the risk for such transmission from a health-care worker (HCW) to a patient during an invasive procedure is small; a precise assessment of the risk is not yet available. This document contains recommendations to provide guidance for prevention of HIV and HBV transmission during those invasive procedures that are considered exposure-prone

2010 to 2013 -- Steps to Dismantle Discriminatory Medical & Dental School Chronic HBV Policies

**Step 1: Joan Block of Hepatitis B Foundation is joined by HBV and infectious
disease experts to convince CDC of the urgent need for updated guidelines, . .**

Updated CDC Recommendations for the Management of Hepatitis B Virus-Infected Health-Care Providers and Students

Recommendations and Reports

July 6, 2012 / 61(RR03);1-12

*These updated recommendations reaffirm the 1991 CDC recommendation
that HBV infection alone should not disqualify infected persons from the
practice or study of surgery, dentistry, medicine, or allied health fields. . . .*

**. . . Including a measurable, specified HBV/DNA threshold for
“invasive, exposure-prone procedures,” . . .**

*. . . The previous recommendations have been updated to include the following changes: no prenotification of patients of a health-care provider's or student's HBV status; use of HBV DNA serum levels rather than hepatitis B e-antigen status to monitor infectivity; and, for those health-care professionals requiring oversight, specific suggestions for composition of expert review panels **and threshold value of serum HBV DNA considered "safe" for practice (<1,000 IU/ml)**. These recommendations also explicitly address the issue of medical and dental students who are discovered to have chronic HBV infection. **For most chronically HBV-infected providers and students who conform to current standards for infection control, HBV infection status alone does not require any curtailing of their practices or supervised learning experiences. These updated recommendations outline the criteria for safe clinical practice of HBV-infected providers and students** that can be used by the appropriate occupational or student health authorities to develop their own institutional policies. These recommendations also can be used by an institutional expert panel that monitors providers who perform exposure-prone procedures.*

. . . and a precise definition and examples of such procedures.

Category I. Procedures known or likely to pose an increased risk of percutaneous injury to a health-care provider that have resulted in provider-to-patient transmission of hepatitis B virus (HBV)

These procedures are limited to major abdominal, cardiothoracic, and orthopedic surgery, repair of major traumatic injuries, abdominal and vaginal hysterectomy, caesarean section, vaginal deliveries, and major oral or maxillofacial surgery (e.g., fracture reductions).

Techniques that have been demonstrated to increase the risk for health-care provider percutaneous injury and provider-to-patient blood exposure include

- digital palpation of a needle tip in a body cavity and/or
- the simultaneous presence of a health care provider's fingers and a needle or other sharp instrument or object (e.g., bone spicule) in a poorly visualized or highly confined anatomic site.

Category II. All other invasive and noninvasive procedures

These and similar procedures are not included in Category I as they pose low or no risk for percutaneous injury to a health-care provider or, if a percutaneous injury occurs, it usually happens outside a patient's body and generally does not pose a risk for provider-to-patient blood exposure. These include

- surgical and obstetrical/gynecologic procedures that do not involve the techniques listed for Category I;
- the use of needles or other sharp devices when the health-care provider's hands are outside a body cavity (e.g., phlebotomy, placing and maintaining peripheral and central intravascular lines, administering medication by injection, performing needle biopsies, or lumbar puncture);
- dental procedures other than major oral or maxillofacial surgery;
- insertion of tubes (e.g., nasogastric, endotracheal, rectal, or urinary catheters);
- endoscopic or bronchoscopic procedures;
- internal examination with a gloved hand that does not involve the use of sharp devices (e.g., vaginal, oral, and rectal examination; and procedures that involve external physical touch (e.g., general physical or eye examinations or blood pressure checks).

Step 2: In 2011 Nadine Shiroma files initial ADA complaint with Dept of Justice, Disability Rights Section. In total, ADA complaints are filed by 4 healthcare students. 2 years later -- March, 2013, -- DOJ publishes the DOJ-UMDNJ settlement agreement . . .

JUSTICE NEWS

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE
Tuesday, March 5, 2013

Justice Department Settles with the University of Medicine and Dentistry of New Jersey Over Discrimination Against People with Hepatitis B

The Justice Department announced today that it has reached a settlement with the University of Medicine and Dentistry of New Jersey School (UMDNJ) under the Americans with Disabilities Act (ADA). The settlement resolves complaints that the UMDNJ School of Medicine and the UMDNJ School of Osteopathic Medicine unlawfully excluded applicants because they have hepatitis B. This is the first ADA settlement ever reached by the Justice Department on behalf of people with hepatitis B.

In 2011, the two applicants in this matter applied and were accepted to the UMDNJ School of Osteopathic Medicine, and one of them was also accepted to the UMDNJ School of Medicine. The schools later revoked the acceptances when the schools learned that the applicants have hepatitis B. The Justice Department determined that the schools had no lawful basis for excluding the applicants, especially because students at the schools are not even required to perform invasive surgical procedures, and that the exclusion of the applicants contradicts the Centers for Disease Control and Prevention's (CDC) updated guidance on this issue.

According to the CDC's July 2012 "Updated Recommendations for Preventing Transmission and Medical Management of Hepatitis B Virus (HBV) – Infected Health Care Workers and Students," no transmission of Hepatitis B has been reported in the United States from primary care providers, clinicians, medical or dental students, residents, nurses, or other health care providers to patients since 1991.

"Excluding people with disabilities from higher education based on unfounded fears or incorrect scientific information is unacceptable," said Thomas E. Perez, Assistant Attorney General for the Civil Rights Division. "We applaud the UMDNJ for working cooperatively with the Justice Department to resolve these matters in a fair manner."

"It is especially important that a public institution of higher learning – especially one with a mission to prepare future generations of medical professionals – strictly follow the laws Congress has enacted to protect from discrimination those people who have health issues," said U.S. Attorney for the District of New Jersey Paul Fishman. "The remedies to which the school has agreed should ensure this does not happen again."

. . . and DOJ, Dept of Health & Human Svcs and Dept of Education jointly issue an unprecedented joint Technical Assistance Letter to all healthcare schools.

<https://www.ada.gov/hepatitis-b-letter.htm>



To Schools of Medicine, Schools of Dentistry, Schools of Nursing, and other Health-Related Schools:

We write on behalf of the Department of Justice, the Department of Health and Human Services, and the Department of Education to update you on the latest recommendations from the Centers for Disease Control and Prevention (CDC) regarding the participation of students with hepatitis B in medical, dental, nursing, and other health-related programs. We also take this opportunity to emphasize the importance of these recommendations, especially as they relate to your institution's nondiscrimination obligations under the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and Title VI of the Civil Rights Act of 1964 (Title VI).

... that explains and emphasizes the following:

- In addition to the ADA and Section 504, the management of students and applicants with hepatitis B may also implicate Title VI, which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. ¹⁰ One way in which specific policies or practices used in the management of students with hepatitis B may result in unlawful discrimination is if such policies have an unjustified disparate impact on particular students. ¹¹ This means that a policy or practice that is neutral on its face – the policy itself does not mention race, color, or national origin – but has a disproportionate and unjustified effect on students of a particular race, color, or national origin, may result in unlawful discrimination under Title VI. Statistical disparities may be evidence that a policy or practice has an adverse discriminatory impact and should be reviewed to ensure compliance with Title VI. It is notable that while Asians, Native Hawaiians, and Pacific Islanders make up roughly 4.5 percent of the U.S. population, they represent 50 percent of the persons with hepatitis B in the United States. ¹² With this in mind, institutions of higher education should be aware that Title VI applies to the extent that specific policies, practices, or procedures regarding hepatitis B discriminate, or have the effect of discriminating, against students or applicants of a particular race, color, or national origin. ¹³

BE ADVISED:

- Some schools exclude, discourage or dismiss HBV-infected healthcare students – through misinformation, failure to provide reasonable accommodation, or under the guise of charges unrelated to the health condition
- Misleading admissions policy statements may be published – e.g., mandatory HBV immunization and titer readings or citation of state law that prohibits enrolling persons with chronic HBV infection. Though revealed in a survey of published admissions policies and reported to DOJ in 2015, no investigation ensued for lack of complainants. Yet In 2018, two complaints were reported in different states. One has been settled; one is under review by the DOJ.
- If you are aware or learn of unreasonable institutional action based on an individual's HBV status, take action to immediately contact the Hepatitis B Foundation.

Ongoing HBV Institutional Policy Challenge, 2013 to Present:

- Lack of written HBV accommodations for persons diagnosed after enlisting in the U.S. Armed Services
- Continuing Dept of Defense chronic HBV Enlistment and Commissioning Exclusion Policy that affects the armed services – Army, Navy, Air Force, Marines, military service academy appointments, ROTC and Health Sciences Scholarship Programs -- and the Public Health Svc, Coast Guard and Natl Oceanic Atmospheric Administration



Feb, 2018

It's official: DoD releases new 'deploy or get out' policy

By: Tara Copp

QUESTION:

Given: 80% of DOD's current force are classified as undeployable for administrative reasons, -- pregnancy, overdue physicals or dental work, etc -- while HBV-infected personnel, who have never been protected by official, science-based accommodations and are among the 20% considered permanently "unfit for deployment," along with others with chronic, incurable infectious disease, physical disability or those classified as "wounded warriors who continue to serve but cannot deploy, . . .

Question: ... *With no official DOD accommodation policy and no HBV cure, which group of nondeployable DOD personnel will likely be among the first to be discharged from active duty when the "deploy or get out" policy is implemented on Oct 1, 2018?*

HOW YOU CAN HELP:

- Incorporate institutional discrimination as an outreach or recruiting tool
- Inform community members, especially teens and recent high school graduates, their parents and community mentors
- Support the ongoing work to reform discriminatory HBV institutional policies by volunteering or referring individuals who have HBV, disability or civil rights background, lots of patience, and strong commitment to social justice

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**SAMPLE
INFORMATIONAL
POSTER**

RECOGNIZE THE INTERSECTION OF

- HEPATITIS B HEALTH DISPARITY
- DISABILITY DISCRIMINATION
- OUTDATED, UNSCIENTIFIC HBV POLICIES THAT HAVE A DISPROPORTIONATE AND UNJUSTIFIED EFFECT ON PERSONS OF A PARTICULAR RACE, COLOR, OR NATIONAL ORIGIN, I.E., DISCRIMINATION UNDER TITLE VI

**TAKE ACTION TO END SYSTEMIC DENIAL
OF SCHOLARSHIP AND CAREER
OPPORTUNITIES**



for accomplished graduates, healthcare and public health students, and aspiring military college appointees living with chronic hepatitis B

End HBV Discrimination by the U.S. Uniformed Services

ARMY * AIR FORCE * NAVY * MARINES

(includes the NATIONAL GUARD AND RESERVES)

PUBLIC HEALTH SVC * COAST GUARD

NATL OCEANIC & ATMOSPHERIC ADMIN

DISCRIMINATION UNVEILED Since the 1700's the military and uniformed services have afforded immigrants or their children opportunities to gain skills and employment, access higher education and develop national identity in service to their adopted country. **But today, the scholarship and career opportunities available through the uniformed services are being denied to a disproportionate number of young adults who were born or whose parents were born in regions of Asia and the Pacific** where there is high incidence of hepatitis B (HBV) passed from mothers to children at birth or during infancy.

U.S. Dept. of Health
& Human Svcs

U.S. Dept. of
Homeland Security

U.S. Dept. of
Commerce



U.S. Dept. of Defense



**SAMPLE
BROCHURE INFO**

HIV and HBV: DIFFERENT POLICY APPROACH, DIFFERENT OUTCOME Developed in the U.S. and widely distributed by 1982, the HBV vaccine was hailed as the world's first anticancer vaccine. It is now required for all U.S. school children, and the CDC highly recommends that physicians administer the HBV vaccine to newborns at the time of delivery. **Since 2002 the Dept. of Defense (DOD) has required all cadets, soldiers and officers to receive HBV vaccinations upon accession into the service. However, DOD has NOT codified instructions for fair and reasonable accommodation of personnel living with chronic HBV. By contrast, although there is NO vaccine for HIV, DOD Instruction 6485.1, "Human Immunodeficiency Virus (HIV)" has been in place since 1991 for identification, surveillance, and management of military personnel infected with HIV. Today, individuals who are living with HIV and receive appropriate evaluation and medical clearance are even allowed to deploy aboard naval vessels and serve overseas.**

"Institutional discrimination is built into the structure of an organization. More covert and more tenacious than individual discrimination, institutional discrimination can occur regardless of the desires or intentions of the people perpetuating it."

Jo Freeman

WHAT APAMSA MEMBERS CAN DO

- The Dept. of Defense is currently reviewing its HBV accession policies and expects to complete the process by Dec, 2016. DOD policy influences the policies of all uniformed services and should receive and weigh input from all uniformed services, the CDC, DOJ and nationally-recognized HBV specialists and researchers.

Additionally, in July, 2015 the 1.9 million- member Veterans of Foreign Wars passed a resolution calling for 1) the VA to provide screening, immunization and treatment for veterans born between 1945 and 1980 –before the HBV vaccine became available and 2) for the DOD to update and establish affirmative, stand-alone policies to accommodate personnel diagnosed with chronic HBV.

As individuals and/or APAMSA chapters, contact the HBV civil rights advocates listed below to receive information and participate in sign-on letters, petitions and other advocacy to have congressional members hold the uniformed services policymakers accountable for HBV personnel policies that are objective, fair and based on current science and standard of treatment.

- **Join our advocacy team** and share your insights and talent in ways that are reasonable and meaningful for you.
- **Are you or is someone you know living with chronic HBV? Please contact us and share your story. Identities will be protected.**
- **Share this information** with family, friends, mentors and colleagues, especially young people interested in careers in the uniformed services, military academy nominations, the Reserve Officer Training Corps or the Armed Forces Health Professions Scholarship Program. If an individual is ineligible due to chronic HBV, we definitely want to hear from them. Again, identities will be protected.
- **Encourage HBV screening** and follow-up vaccination or treatment for all community members.

CONTACT US

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Figure 1. Comparing HBV and HIV

**SAMPLE POLICY AND
STATS & ONLINE
SOURCE LINKS**

	<u>Chronic HBV</u> (Hepatitis B Virus)	<u>HIV</u> (Human Immunodeficiency Virus)
Most common modes of transmission	In high-prevalence, immigrant populations: At birth from mother to child; In low-prevalence populations: Unprotected sexual activity and intravenous drug abuse	Unprotected sexual activity and intravenous drug abuse
No. of people in the U.S. living with the virus	2 million	1.2 million
Racial group(s) bearing the most severe burden of the disease	Asian & Pacific Islander Americans	Blacks/African Americans followed by Whites
% of total U.S. population represented by the most affected racial group	5%	14%
% of total cases represented by the most affected racial group	50%	46%
Proportion unaware of their chronic infection	More than 50%	Approx. 20%
Are effective antiviral medications available to slow the disease and reduce viral load?	Yes	Yes

<p>Long term prognosis without monitoring or healthy lifestyle choices</p>	<p>Chronic Hepatitis B is a serious disease that can result in premature death due to cirrhosis, liver failure, and liver cancer (2nd deadliest cancer in the U.S.)</p>	<p>Acquired Immunodeficiency Syndrome, AIDS –the final stage of HIV infection where people have badly damaged immune systems and are at risk for opportunistic infections.</p>
<p>Do institutional policies require vaccination against this chronic disease for individuals entering health professional schools or the U.S. Uniformed Services?</p>	<p>Yes</p>	<p>(no vaccine available)</p>
<p>Were students with this chronic disease denied enrollment or dismissed from certain medical or dental school programs prior to the March, 2013 DOJ-UMDNJ settlement agreement?</p>	<p>Yes</p>	<p>No</p>
<p>Are disease-specific written DOD guidelines in place for chronically-infected personnel in the Armed Forces and other uniformed services?</p>	<p>No</p>	<p>Yes</p>

Sources:

Hepatitis B Foundation: www.hepb.org

www.cdc.gov/hepatitis/hbv/bfaq.htm#bFAQ06

www.cdc.gov/hiv/statistics/basics/ataglace.html

www.hiv.gov/hiv-basics/overview/data-and-trends/statistics

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

www.ada.gov/umdnj_sa.htm

www.thinkprogress.org/u-s-navy-ends-policy-preventing-hiv-positive-servicemembers-from-serving-overseas-8852452d676/

**SAMPLE POLICY AND
STATS & ONLINE
SOURCE LINKS**