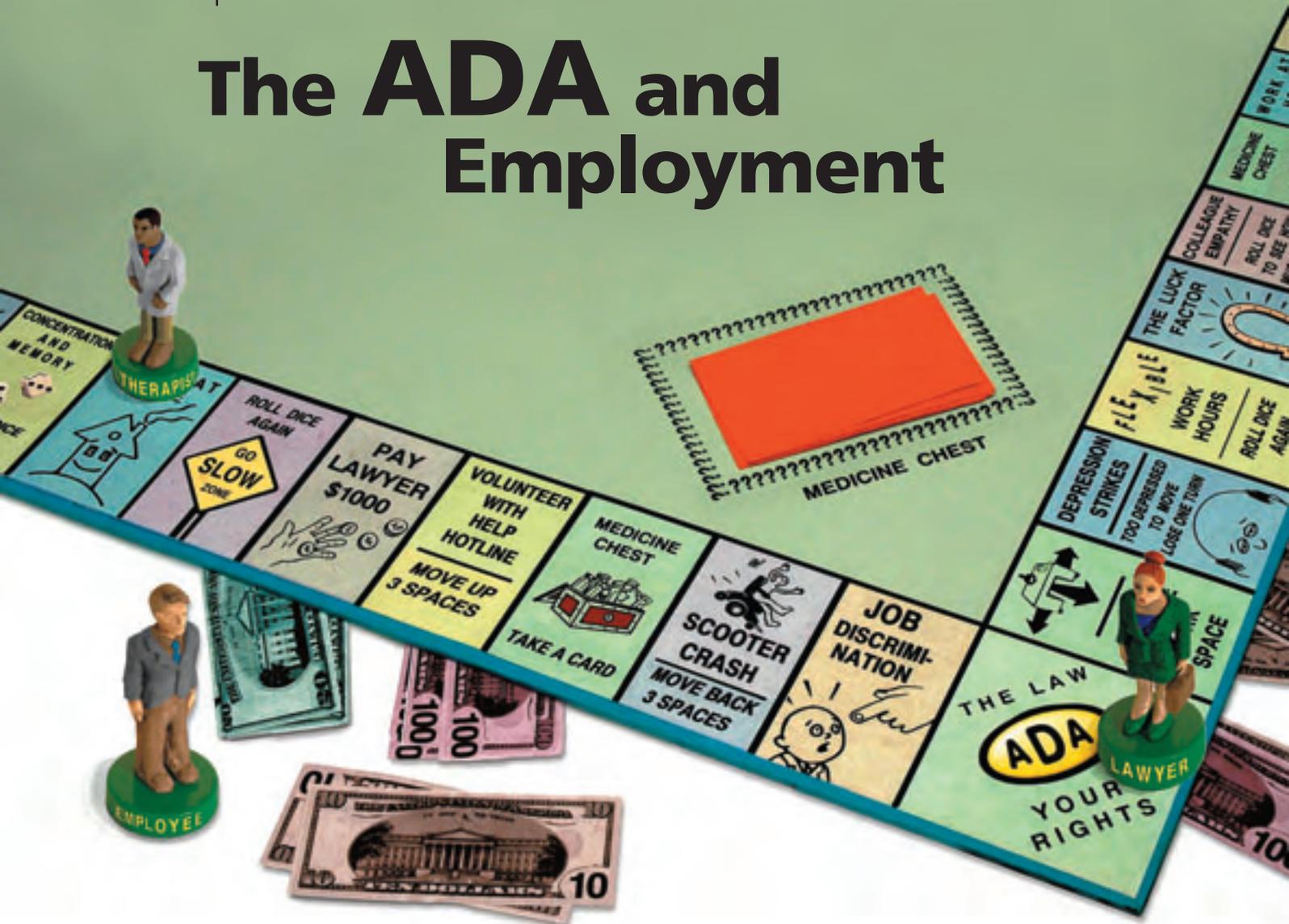


# The ADA and Employment



BY JOANNE DICKSON

A

good-looking man rolled to the stop sign as I rounded the corner on my scooter. He greeted me; I guess I looked bewildered. "You were my grade school counselor," he said. I was pleased; I wondered which child he had been.

I had worked as a counselor at the Mendocino Grammar School in 1995 as an intern. I enjoyed great success with the children and had a good relationship with my peers. There was a job opening for a school psychologist for the following year. I applied;

I thought I was a shoo-in. My résumé was impressive and I had been doing the job for a year. I waited eagerly to hear when my interview would be. Three days before school started, I received a call from the principal saying someone else had been hired. I was never even offered an interview. I wanted that job!

According to the Americans with Disabilities Act (ADA), all pre-offer inquiries about an individual's diagnosis or possible future disability are prohibited. Interviewers can ask about current abilities

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required by the job. However, I had readily disclosed; everyone knew I had MS. It was no big deal. Or so I thought. Had I been more savvy, I might have thought I was being discriminated against.

Instead, I decided to move on.

### **Does disclosure hurt?**

Pamela Hirshberg, programs manager at the National MS Society's Southern California Chapter, advises her clients that it might. She strongly urges people to think through how their peers and supervisors might react and to practice what they will ask for with an employment counselor or advisor.

“In my employment groups, I tell people not to disclose unless they need a specific accommodation,” Hirshberg said. “Even then, they don't need to tell their diagnosis. They need to explain how an accommodation will solve problems caused by a medical condition,” she said.

### **Does ADA protect us?**

According to ADA attorney Charles Goldman, who practices in Washington, D.C., enforcement issues are rarely clear-cut. ADA provisions are a continuing process ... open to interpretation. Employers who disobey the law can be cited for non-compliance. But most never go to litigation according to Pamela Hirshberg.

“To go to litigation an employer would have to say you were refused a job, or terminated, or not promoted because you have MS. Employers are too smart to do that nowadays,” she said. There are many more subtle ways for employers to discriminate.

The best, most specialized attorneys may know all the fine points. If you decide to make a formal complaint, it is also very important to have your neurologist on board. You may be called on to provide professional medical opinion about whether you can do a specific job.

Clearly fighting employment discrimination in court is difficult, expensive, time-consuming, and emotionally draining. But ADA does offer us some protection because it has helped change public attitudes.

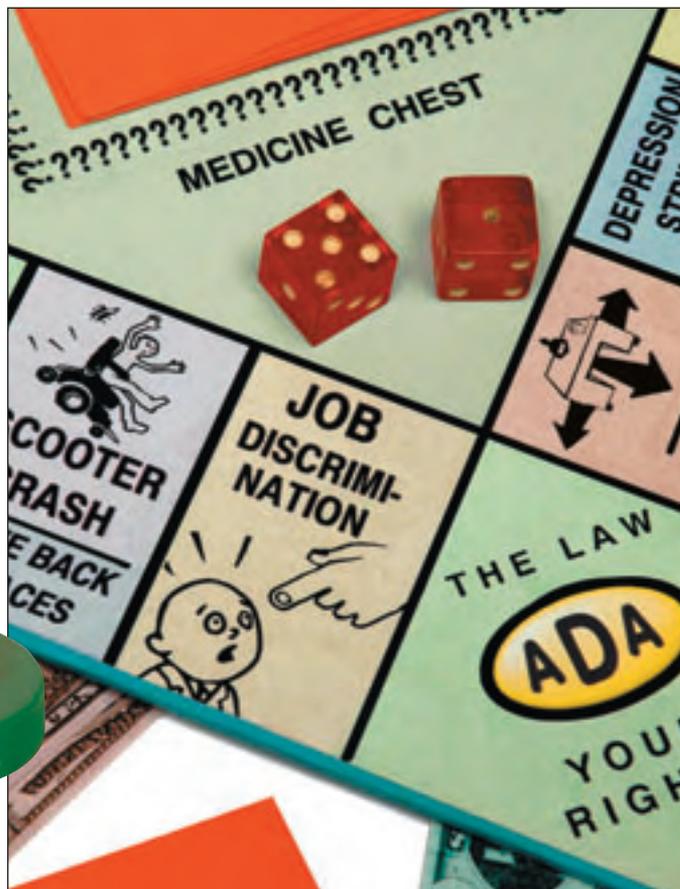
## Some background

I first heard the phrase “reasonable accommodation” years before it became the cornerstone of the ADA. It appeared in the Rehabilitation Act of 1973, which covered federal employees, and it heralded a change toward people with disabilities. Some very progressive private employers adopted policies of this act long before ADA made them legally obligated to do so.

The ADA was passed by Congress in 1990. It was the first comprehensive legislation passed by any country to prohibit discrimination on the basis of disability. It covers all aspects of the employment relationship, from recruitment to firing, and it goes well beyond those issues to provide protections in public facilities, including transportation, telephones, and more.

Historically, ADA is an extension of the Civil Rights Act of 1964, guaranteeing full participation in American society for all people with disabilities, just as the Civil Rights Act guaranteed this for all people regardless of their race, sex, national origin, or religion.

The landscape for people with disabilities has changed dramatically in the years since. Before that time it was unusual to see disabled people who were working. Today, attitudinal barriers continue to break down as more people with disabilities become employed. Moreover, employers are aware that there are guidelines as to what constitutes discrimination.



## What to do if you experience disability discrimination

Contact your National MS Society’s nearest office first. In addition to information and advice on negotiating with your employer, your chapter may be able to refer you to a professional mediator. If, ultimately, you want to file a legal charge, shop around for a lawyer. Don’t assume that the person who did your real estate closing knows the ADA. Call your state or local bar association and ask for someone who is experienced in employment law. Ask if he or she represents management or employees. Don’t be afraid to ask the dirty question, “What are your fees?”—J.D.

## How ADA redefined disability

ADA covers almost everyone with MS. It doesn't apply only to those in wheelchairs. It covers every person with an impairment that "substantially limits one or more major life activities." Invisible symptoms like MS fatigue or bladder dysfunction clearly fit this definition. Initially, people thought about ADA making workplaces wheelchair accessible. They weren't thinking about people with MS who might require an adjusted schedule because of issues of stamina. But an adjusted schedule can be a reasonable accommodation based on the "must do" functions of a job.

Suppose you are a toll taker on a freeway and MS fatigue leaves you too tired to get to work. You can't expect the high-

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way department to keep you on. (You could ask for a different type of job.) But if you were an accountant for the highway department, you might say, "Let's adjust my schedule." A vacant desk and a vacant tollbooth are two different stories. Adjusting an accountant's schedule could be considered a reasonable accommodation, according to attorney Charles Goldman.

While the system is far from perfect, reasonable accommodations keep many

people with disabilities employed, and that in turn slowly educates the public about us. The more visible we are, the better. For that reason I roll in the Fourth of July parade in my town every year. When I'm out in public, I'm helping to raise public awareness about people who use wheelchairs.

## Did ADA work for me?

By 1990 my function was noticeably declining. I struggled more and more with fatigue and with pain. I have an MA in Art History and was working as an art critic. I could no longer climb stairs or do the hustling necessary for my job. I agonized about what I should do. With the help of my therapist, I decided to study psychology and become a psychotherapist. A friend told me that California's Department of Rehabilitation (DOR) would help people who needed to make career changes for health reasons, so I contacted them.

My DOR counselor was a wonderful man named Stan White. He worked with me for some time and had me attend workshops with other excellent counselors. With their help I entered a graduate program and received my MA in Clinical Psychology in 1993. The DOR helped pay my tuition and subsidized books and school supplies.

But then my career plans derailed. My marriage ended. I was on my own. And my MS was progressing. I had to move to a rural community, and there I had to develop my own counseling internships. I ended up working with many different populations—from children to alcohol



### On our Web site

For more information on employment, cognition, and fatigue, go to:

[nationalmssociety.org/employment.asp](http://nationalmssociety.org/employment.asp)

[nationalmssociety.org/spotlight-cognition.asp](http://nationalmssociety.org/spotlight-cognition.asp)

[nationalmssociety.org/spotlight-fatigue.asp](http://nationalmssociety.org/spotlight-fatigue.asp)

and drug addicts. In all my internships, reasonable accommodations were made for me without questions. I was granted flexible work hours. The DOR purchased an adapted van to carry me and my scooter. Driving instruction was provided. Occupational therapists (OTs) designed plans to minimize my fatigue and maximize my function. It was done with great sensitivity. My life was on a roll.

Then came "The Driving Evaluation." Here I got into some murky territory. The driving test was scheduled over a three-day period. It was grueling. I might compare it to an able-bodied person having to climb a wall as part of a driving test. On the final day I was not allowed to drive when my energy was at its peak. The same OT who had taught me to minimize the impact of my

fatigue by scheduling tasks for my best times, now insisted that I do several extra transfers, and take the test after I was totally exhausted. I did not pass.

I appealed and was granted a new evaluation, but it had to be done in a distant city, where the three-day exam would be compressed into a single day. I tried to argue, but the OT insisted that they needed to see me "at my worst."

Ultimately, I was advised to close my file with the DOR. The hand controls would be removed from the van and I would no longer be able to drive. I had no other options, so, reluctantly, I took their advice. I am still processing this loss.

Since that time I have been self-employed conducting therapy groups in my home. This works well. There is much work to be done. With my background, I feel well qualified to be part of whatever comes next.

### Where we all are now

Despite ongoing problems, the world is very different from what it was before the ADA. Today individuals with disabilities are far more likely to be contributing their abilities and their intellects to their communities. And the world gets something back. Not to sound like a Pollyanna, but as a therapist, my MS has given me insights into the human spirit I couldn't have imagined before dealing with this disease. Of course, if they found a cure tomorrow, I would take it. After all, I'd still have the insights. ■

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