



**Questions and Answers:
The Americans with Disabilities Act
And the Rights of Persons with HIV/AIDS
To Obtain Occupational Training and State Licensing**

Q: What is the ADA?

A: The Americans with Disabilities Act (ADA) gives Federal civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

Q: Are people with HIV or AIDS protected by the ADA?

A: Yes. An individual is considered to have a “disability” if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. Persons with HIV disease, either symptomatic or asymptomatic, have physical impairments that substantially limit one or more major life activities and thus are protected by the ADA.

Persons who are discriminated against because they are regarded as being HIV-positive are also protected. For example, the ADA would protect a person who is denied an occupational license or admission to a school on the basis of a rumor or assumption that he has HIV or AIDS, even if he does not.

Q: Does the ADA prohibit State licensing agencies and occupational training schools for occupations such as barbering, massage therapy, and home healthcare assistance from discriminating against individuals with HIV or AIDS?

A: Yes. State licensing agencies and public trade schools for barbering, cosmetology, massage therapy, and other occupations are covered by Title II of the ADA as agencies or programs of the State or local government. Title II of the ADA applies to State and local governments, their departments and agencies, and any other instrumentalities or special-purpose districts of State or local governments. Title II protects qualified individuals with disabilities from discrimination on the basis of disability in all the services, programs, and activities of State and local governments.

Private trade schools are covered by Title III of the ADA, which governs public accommodations. A public accommodation is a private entity that owns, operates, leases, or leases to a place of public accommodation. Places of public accommodation include a wide range of entities, such as restaurants, hotels, theaters, doctors’ offices, dentists’ offices, hospitals, retail stores, health clubs, museums, libraries, private schools, and daycare centers. Private clubs and places run by religious organizations are not considered places of public accommodation. Title III prohibits public accommodations from denying persons with disabilities, on the basis of disability, the equal opportunity to use and enjoy their goods, services, or facilities.

Consequently, a public or private entity cannot deny a person with HIV an occupational license or admission to a trade school because of his or her disability.

Examples of discrimination against persons with HIV/AIDS would include, for example:

- a certificate program for health aides having a blanket policy denying admission to anyone with HIV; and
- a cosmetology school denying admission to an HIV-positive individual because State cosmetology regulations require that cosmetologists be free from contagious, communicable, or infectious disease.

Q: Can a licensing entity, a trade school, or a training program exclude a person with HIV/AIDS because of their HIV status?

A: In almost every instance, the answer to this question is no. Persons with disabilities may be excluded from the activities or services of a private or public entity because of a health concern only if they pose a significant risk to the health or safety of others, known as a “direct threat,” that cannot be eliminated or reduced to an acceptable level by reasonable modifications to the entity’s policies, practices, or procedures. The determination that a person poses a significant risk to the health or safety of others may not be based on generalizations or stereotypes about a particular disability; it must be based on an individualized assessment of the person with the disability that relies on current medical evidence.

Transmission of HIV in this context will rarely raise a legitimate “direct threat” issue. It is medically established that HIV can only be transmitted by sexual contact with an infected individual, exposure to infected blood or blood products, or perinatally from an infected mother to an infant during pregnancy, birth, or breastfeeding. HIV cannot be transmitted by casual contact. Thus, circumstances do not exist for the transmission of HIV in a school or workplace setting, including those involving massage therapy, cosmetology, or home healthcare services. For example, a cosmetology school’s refusal to admit a qualified applicant who is HIV-positive because of unfounded fears or beliefs about risks of transmission of HIV during work as a cosmetologist would violate the ADA.

Q: May licensing entities or trade schools require an applicant to provide a doctor’s certification that he or she is free of infectious, communicable, or contagious disease?

A: For the purposes of occupational training and licensing requirements, the terms “infectious, communicable, or contagious disease” must exclude diseases, such as HIV, not transmitted through casual contact or through the usual practice of the occupation for which a license is required. Consequently, licensing boards and trade schools must amend their policies to state that such a certification requirement excludes diseases not transmitted through casual contact or through the usual practice of the occupation for which a license is required.