

**American Diabetes Association Statement
Diabetes and the Americans with Disabilities Act**

September 13, 2006

The American Diabetes Association (the Association) applauds the House Judiciary Subcommittee on the Constitution for holding an oversight hearing on the Americans with Disabilities Act (ADA).

Discrimination is one of the most prevalent policy-related issues that adversely affects people with diabetes. The Association has made ending discrimination against people with diabetes a priority and is committed to assisting those who encounter discrimination because of diabetes.

Enacted in 1990, the ADA promised to be a vital means to protect the interests of people with diabetes who face discrimination. It sought to provide an opportunity for all Americans, including people with disabilities, to enjoy independence, economic self-sufficiency and to be judged on the basis of their abilities, rather than their actual or perceived disabilities.

While this landmark legislation has provided numerous benefits, several problematic Supreme Court decisions have very seriously eroded the protections the Act provides to people with diabetes. It is clear from the record that when the ADA was enacted, Congress and President George H.W. Bush intended to protect people with diabetes from discrimination. Since that time, numerous courts have turned people with diabetes away finding, in essence, that they were doing too good of a job managing their disease to meet the statute's definition of disability. As a result, these individuals are not provided with any form of redress, even when they are told explicitly that they are being denied a job *because of* their diabetes. An employer can refuse to hire an individual with diabetes, claiming that he or she cannot safely perform the job because of his or her diabetes, but then prevent the employee from showing this isn't the case by successfully claiming that the individual's diabetes is so well-controlled that it doesn't rise to the level of "disability" as defined by the ADA. Thus, the person is too sick to perform the job, but too healthy to bring a claim for discrimination. And, ironically, the better job a person does in trying to manage his or her diabetes, the less likely that person is to be protected from discrimination.

At the heart of the difficulties facing people with diabetes and other conditions is the definition of disability. To be protected from discrimination, an individual must have a physical impairment that substantially limits a major life activity, have a record of such an impairment, or be regarded as having such an impairment. People with diabetes began to face serious difficulties meeting this definition following the Supreme Court's decisions in the Sutton trilogy of cases in which the Court determined that whether an individual has a disability must be determined in light of the mitigating measures, such as insulin, that a person uses.¹ These problems were exacerbated by the Supreme Court's decision in *Toyota Manufacturing v. Williams* in which the Court ruled that the phrase "substantial limitation in a major life activity" must be

¹ *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999); *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516 (1999); *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555 (1999).

“interpreted strictly to create a demanding standard for qualifying as disabled,” and that “substantial limitation” means “prevents or severely restricts.”²

Judicial interpretations regarding who is covered by the ADA have caused confusion in the administration of employment policies and have led to many lengthy and costly court cases. Both employees and employers are required to utilize costly experts for protracted litigation on the simple issue of whether the individual can indeed bring a lawsuit alleging discrimination. These experts delve into the very personal issues surrounding the employee’s home life and treatment regimen with some courts even holding that a person isn’t covered by the Act if the individual doesn’t utilize the regimen that the employer prefers. The results from the courts are inconsistent with some individuals with very well-managed diabetes found to be covered by the federal anti-disability discrimination law, while most people with diabetes, including many with extreme complications from the disease such as amputation, vision loss, severe diabetic neuropathy and retinopathy, and repeated episodes of loss of consciousness, are found not to be protected by the law.

Once again, the Association thanks the Committee for holding this important oversight hearing. We hope that this conversation leads to an opportunity to fine tune the Act so that no entity can claim that a person is unable to do a job because of his or her diabetes, but then successfully argue the person’s diabetes was under such good control that he or she was unprotected by the Act. We look forward to working with the Committee on capitalizing upon the success of the Americans with Disabilities Act, while strengthening the Act to protect people with diabetes.

² *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184, 197 -198 (2002).