

# Health Law: Quality & Liability

Prof. Thaddeus Pope

ADA - Disability  
Discrimination



**ADA**



Federal statutes prohibit  
**disability** discrimination

Rehabilitation Act (1973)

ADA (1990)



Can make claim **even if** no  
p/p formation

*E.g.* if very reason for no  
formation is  
discriminatory



Enacted 1990



CELEBRATING 25 YEARS

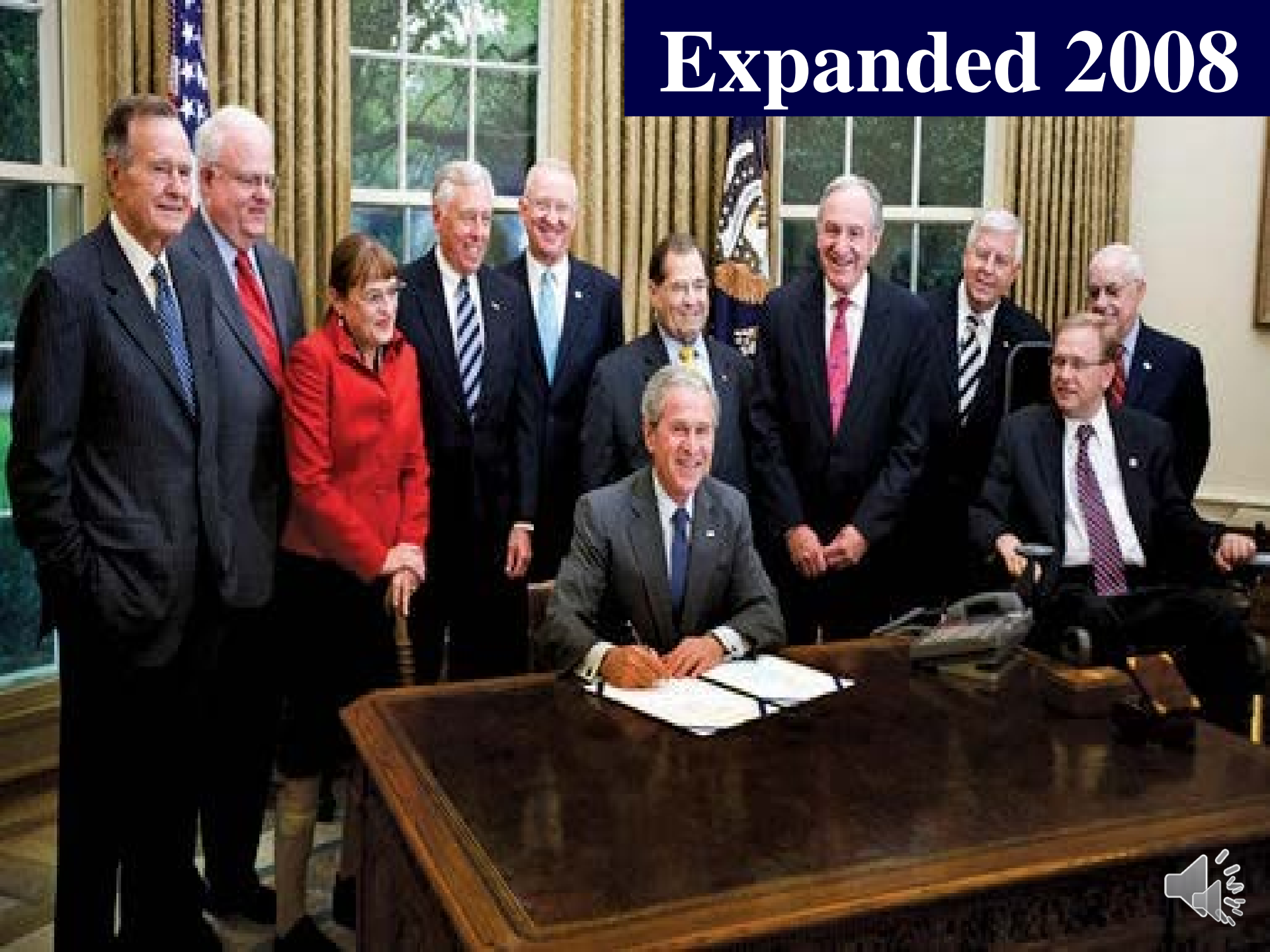
1990-2015



AMERICANS WITH  
DISABILITIES ACT  
[WWW.ADA1A.ORG](http://WWW.ADA1A.ORG)



# Expanded 2008



# CHARGES FILED

More disabled workers filed charges of discrimination last year than in any other year in the Americans with Disabilities Act's 20-year history.



1 – The first full year of ADA-related charges filed to the EEOC

Source: Equal Employment Opportunity Commission

By Julie Snider, USA TODAY





12101

Purpose

12102

Definition

“Disability”

12181(7)(F)

Definition

“Pub Accomod”

**12182**

Prohibition

disability discr

by Pub Accom



# ADA

# Purpose



Protect persons with  
disabilities

**Against** discrimination on  
basis of disability

When the person is **qualified**  
for the service



# ADA

Prima facie  
elements (3)



(1) PTF must show that she has a **disability**

A physical or mental impairment that substantially limits one or more major life activities



# 37 to 57 million

# people are living with a disability in USA

U.S. Census Bureau; American Community Survey, 2011  
American Community Survey 1-Year Estimates, Table  
S1810; generated by Michael H. Fox, using [American  
FactFinder](#); (16 July 2013).

Brault MW. Americans with disabilities: 2010. Washington,  
DC: US Census Bureau; 2012.



or

**regarded as** having an  
impairment that limits a  
major life activity



(2) PTF must show that she was denied treatment **because of** her disability





PTF must show that she is  
**“otherwise qualified”** for  
the denied treatment

That she has the  
capacity to benefit  
from it



# ADA

Physician  
defenses



PTF does not have disability

or

Even if (1), treatment not denied  
because of disability

or

Even if (1) and (2), PTF was not  
“otherwise qualified”

or



Patient posed a “direct threat”

A significant risk to the health or safety of others

and



The “direct threat” could not be eliminated by “reasonable accommodations” (i.e. modification of policies, practices).



## PTF

Disability

Denied treatment  
because disability

Otherwise  
qualified

## DEF

Direct threat - even  
with reasonable  
accommodation



**Bragdon**

**v.**

**Abbott**







## Legal element

## Facts establishing

Disability

Denied HC because  
of disability

Otherwise qualified

Direct threat

Threat reasonably  
eliminated



DCT

Summary jmt  
to PTF

CTA

Affirm

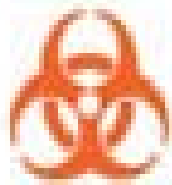
SCT

Remand

CTA

Affirm





# UNIVERSAL PRECAUTIONS



Protect Yourself Against the Risk of Infection with HBV, HIV, and Other Bloodborne Pathogens.

## NEEDLES & SHARP INSTRUMENTS



Never break, bend or reuse a used needle or other instrument. Dispose of needles and other instruments in puncture-resistant containers designed for their disposal. Handle all sharp instruments and broken glass with extreme caution. Immediately report any cut or needlestick to your supervisor. Recycled and used instruments pose the greatest risk of exposure to HBV and HIV.

## WEAR PROTECTIVE CLOTHING

When there is a potential for blood or body fluid splatter or spray, protective gowns and/or coats should be worn.



## WEAR GLOVES



Always wear latex gloves whenever you may be exposed to blood, body fluids, secretions, excretions, tissues, or mucous membranes. Wash hands before putting on gloves and after gloves have been removed. Use gloves when cleaning soiled instruments and surfaces, when handling soiled items and when cleaning up spills of blood or body fluids. Handwashing personnel may use nitrile rubber gloves.

## HOUSEKEEPING

Standard housekeeping procedures are adequate for routine daily cleaning including mopping, wiping, and sweeping (even shoes and cloths).



## WASH HANDS

As a basic infection control, be sure to wash your hands regularly. Wash hands thoroughly using soap and a steady stream of water for at least 10 seconds.



## CASUAL CONTACT



Casual contact does not pose a risk of infection with HBV or HIV. Handshaking, hugging, kissing, talking, and other casual contact does not require any special infection control procedures since HBV and HIV are not spread through casual contact.

## CLEAN UP SPILLS

Immediately clean up all spills of blood or body fluids. For clean up use a 1:10 ratio of household bleach and water and be sure to wear gloves. Check to see what the proper procedure is for cleaning; some instruments require special disinfectants.



## WEAR GOGGLES



Protective eyewear, such as goggles should be worn if there is a potential for exposure to spraying or splashing of blood or body fluids.





Doe v. Triple Canopy (D.D.C. 2009)



**“Real”  
medical  
reasons  
to refuse**



Okay to deny health service if not “otherwise qualified”

Courts defer to “qualification” decision on **medical basis**

Concern is decision made on **stereotype** basis



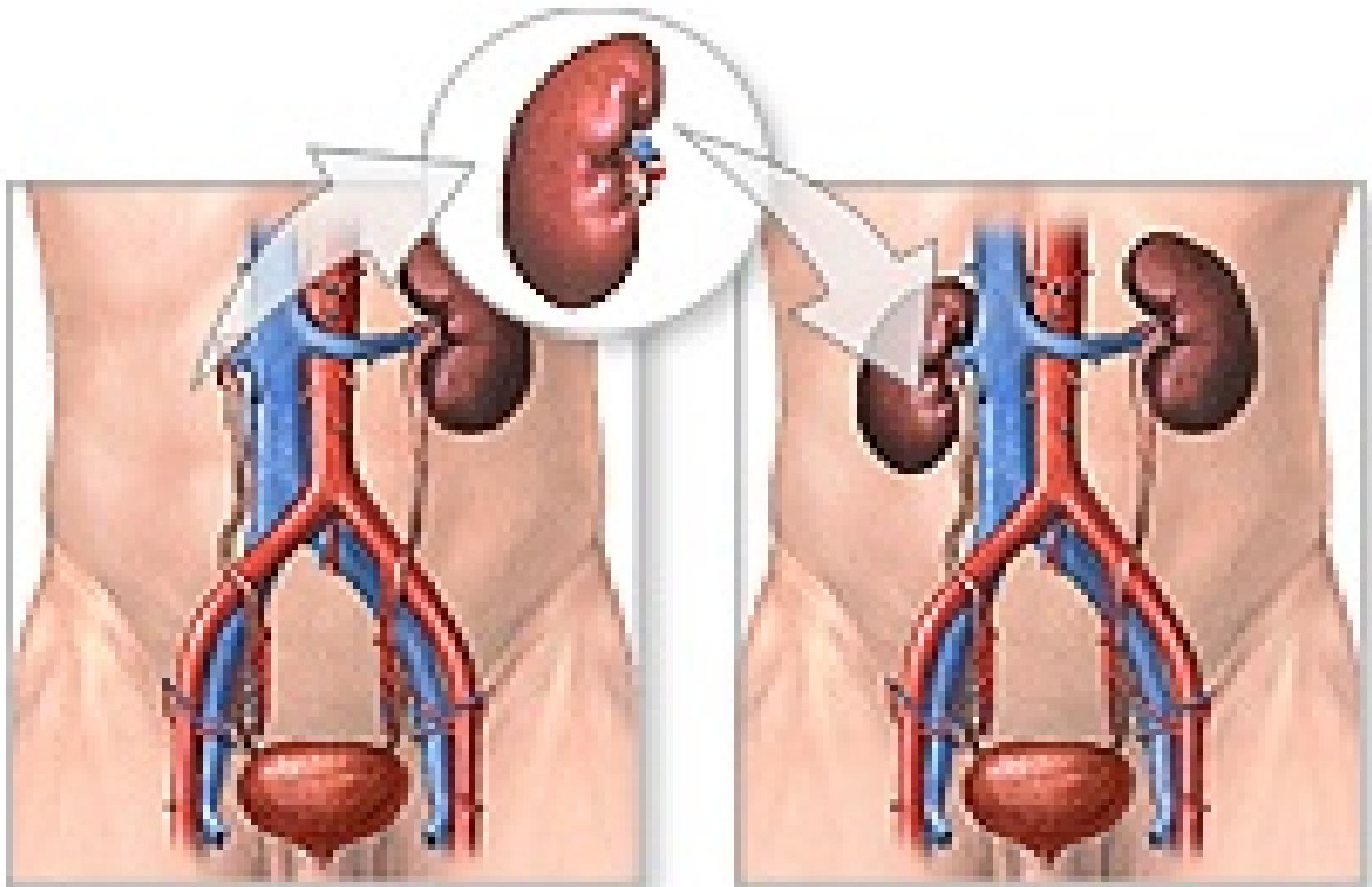
**McElroy**

**v.**

**Patient Selection**

**Comm.**









## Legal element

## Facts establishing

Disability

Denied HC because  
of disability

Otherwise qualified

Direct threat

Threat reasonably  
eliminated



# Transplant Trends

Waiting list candidates as of today 2:45pm	112,125
<u>Active</u> waiting list candidates as of today 2:45pm	72,521
Transplants January - May 2011	11,485
Donors January - May 2011	5,669

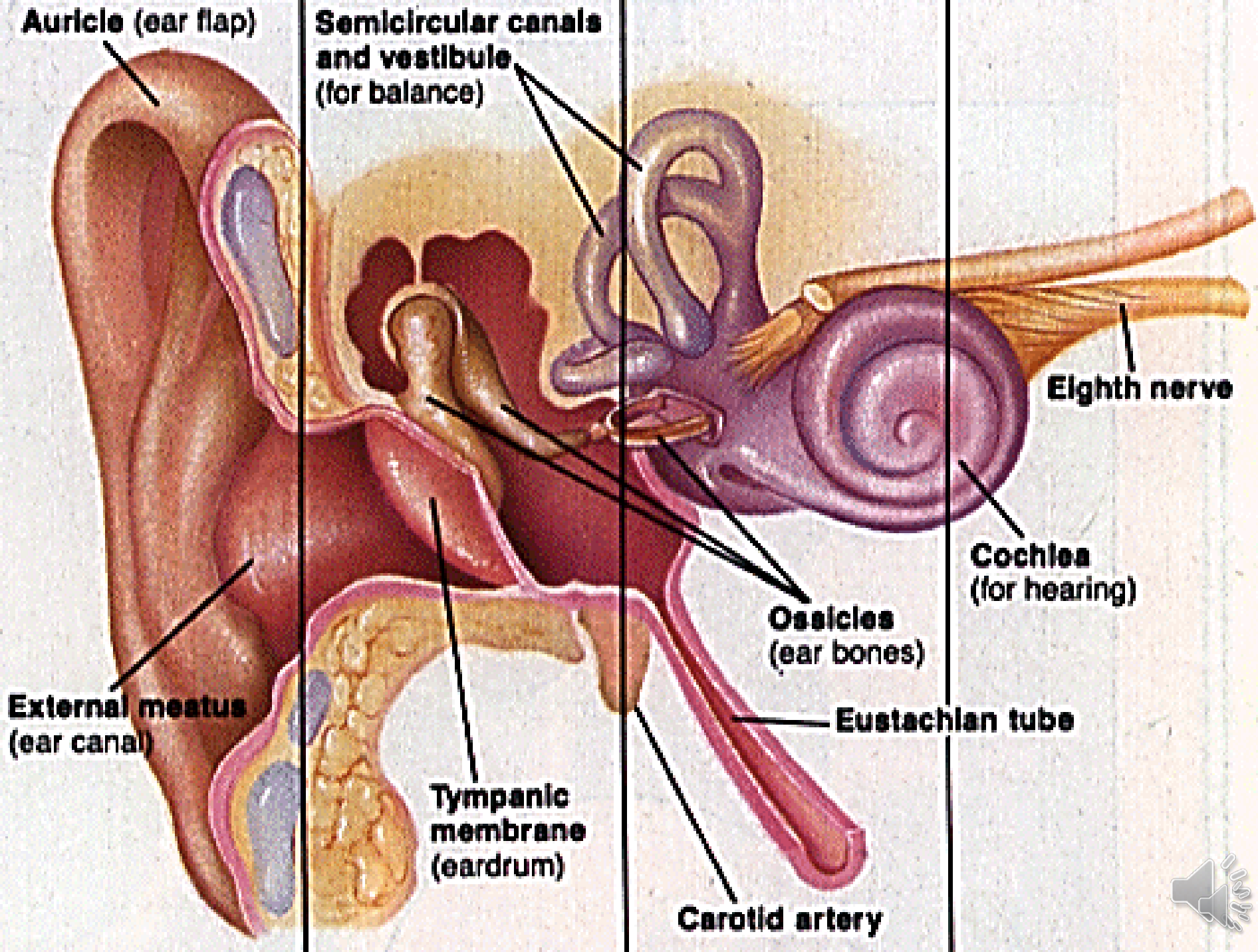


**Glanz**

**v.**

**Vernick**





**Auricle (ear flap)**

**Semicircular canals and vestibule (for balance)**

**Eighth nerve**

**Cochlea (for hearing)**

**Ossicles (ear bones)**

**Eustachian tube**

**External meatus (ear canal)**

**Tympanic membrane (eardrum)**

**Carotid artery**



## Legal element

## Facts establishing

Disability

Denied HC because  
of disability

Otherwise qualified

Direct threat

Threat reasonably  
eliminated



**HHS OCR  
v. San  
Agustin**



Like EMTALA,  
enforcement not just by  
private plaintiffs

Here no medical basis for  
refusal of surgery





# Current

# ADA

# Enforcement

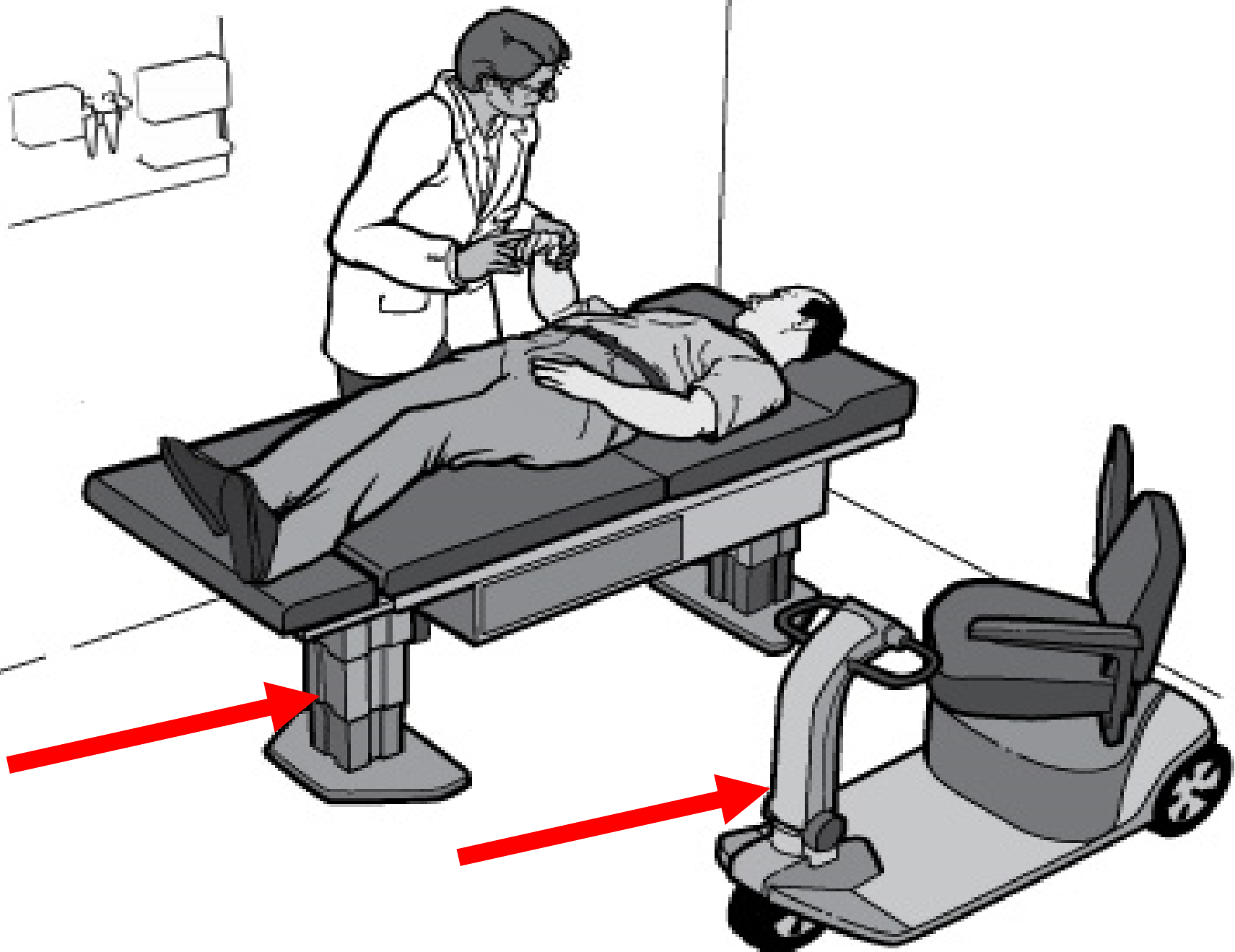


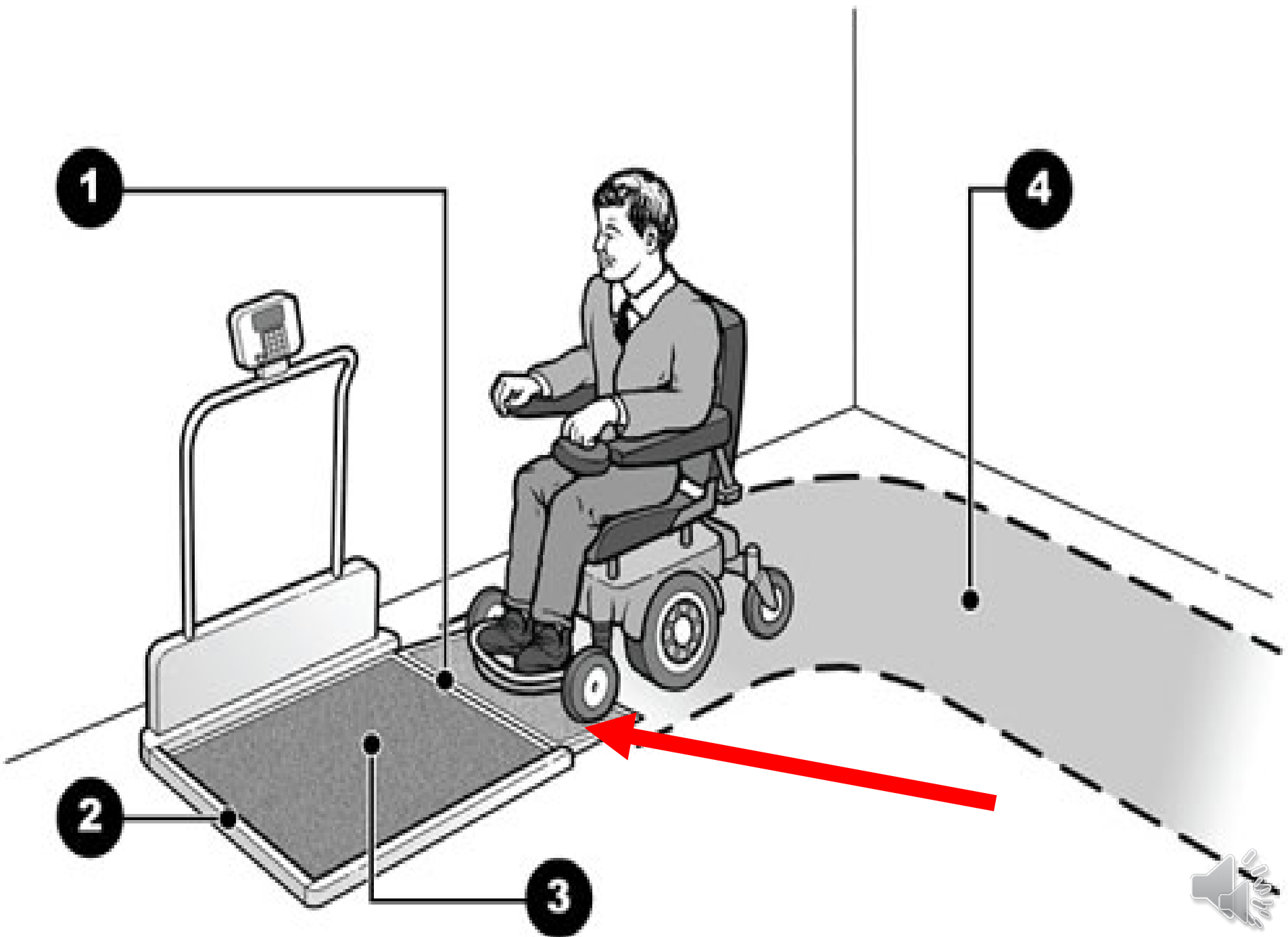
# 12101(a)(5)

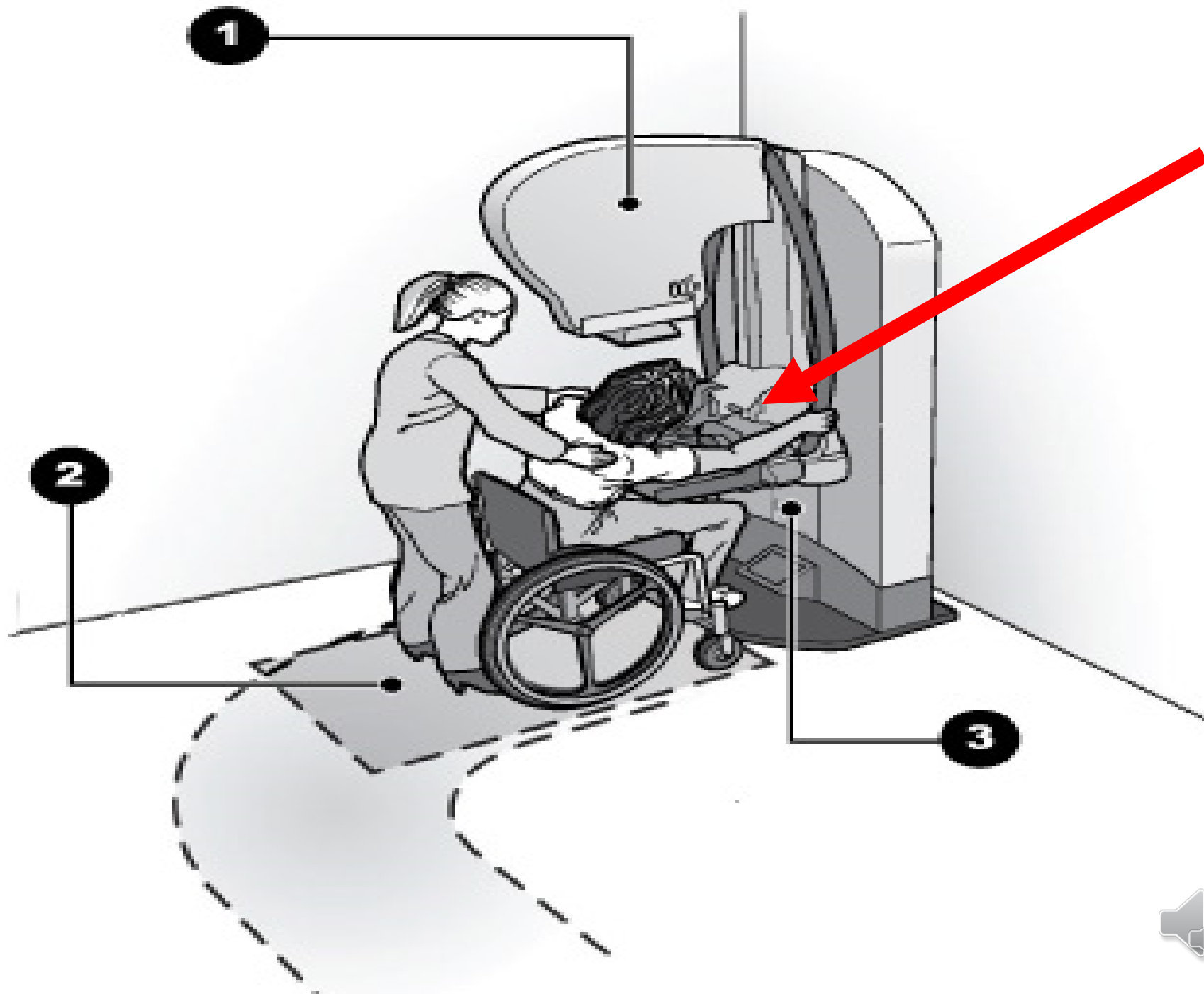
Outright intentional  
exclusion

Failure to make . . .  
modifications . . . failure  
to remove . . . barriers









# Communicating with People Who Are Deaf or Hard of Hearing

