

# The ADA, Addiction and Recovery

## ADA Coalition of CT State Conference 2022

November 16, 2022



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# Purpose

## 1. The ADA's definition of disability and how it protects people with:

- Alcohol Use Disorder (AUD)
- Opioid Use Disorder (OUD)

## 2. How the ADA protects people with addiction recovery in:

- Employment (Title I of the ADA)
- State and Local Government: services, programs and activities (Title II of the ADA)
- Businesses (Title III of the ADA)

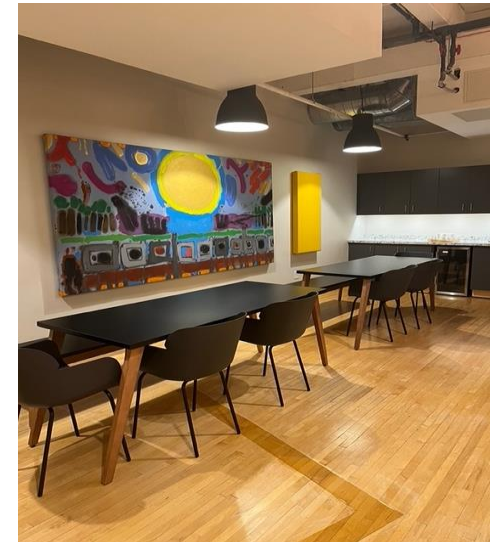
## 3. Knowing your rights can address discrimination often identified as stigma.



SOWA Art + Design District  
560 Harrison Avenue  
Boston, Massachusetts

IHCDesign.org

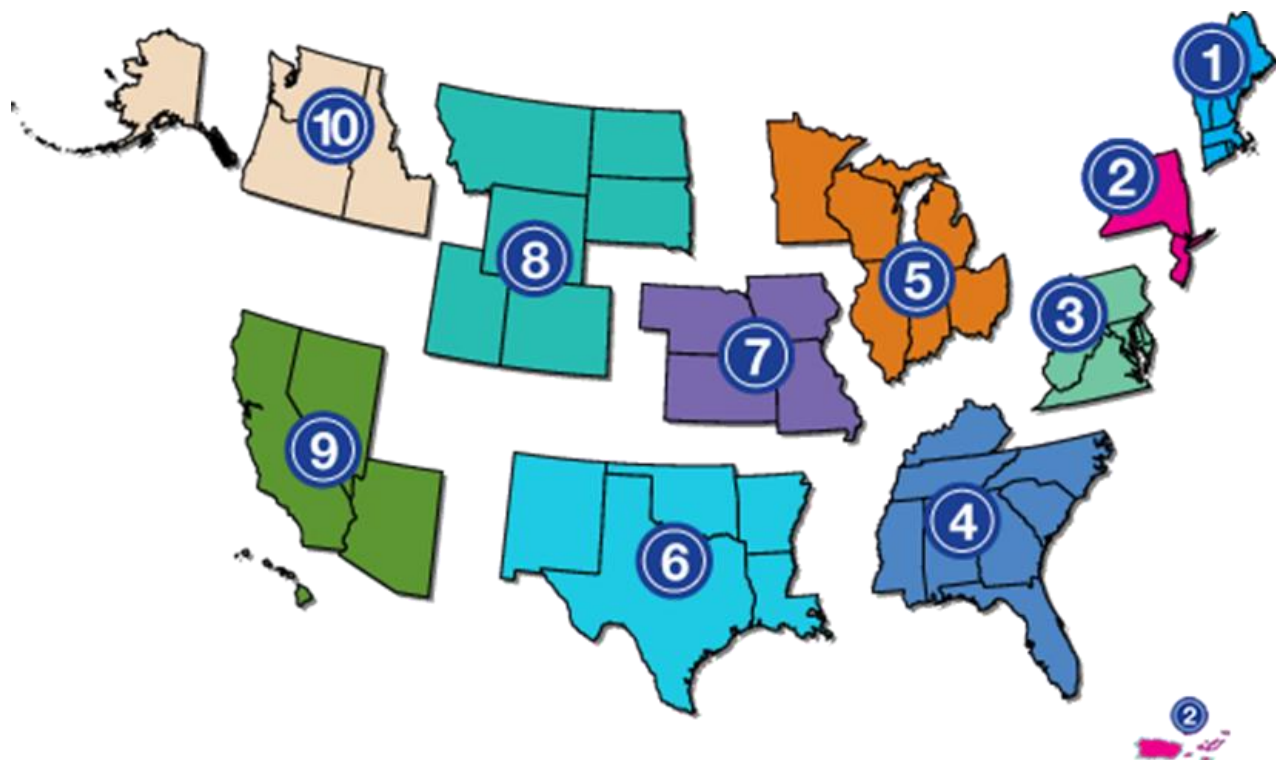
A 44 year old international education and design non-profit dedicated to the role of design in social equity across the spectrum of ability, age, culture, gender and economic status.





# National Network

Information, Guidance, and Training on the  
Americans with Disabilities Act



**1-800-949-4232**

**ADAta.org**

Funded by the National Institute on  
Disability, Independent Living and  
Rehabilitation Research through the  
Administration for Community Living  
and US Health and Human Services.



## THE ADA COALITION OF CONNECTICUT (ADACC):

- Was formed in 1992 to promote the Americans with Disabilities Act.
- Is a non-profit membership run organization and an affiliate of the New England ADA Center.
- Is the only statewide Connecticut organization devoted to educating individuals, businesses and government entities about the ADA.



Information, materials, and/or technical assistance provided by the ADACC is intended solely as informal guidance to promote understanding of the ADA.





# Americans with Disabilities Act



July 26, 1990

President George H. Bush Signing the ADA

The ADA, a civil rights law insures that people with disabilities have the same rights and opportunities as everyone else, including people with addiction to alcohol, and those in recovery from addiction to opioids and other drugs.

## ADA Definition of Disability

1. Has a physical or mental impairment that substantially limits one or more **major life activities**, e.g. bi-polar disorder, diabetes and addiction; or
2. Has a **history** of a physical or mental impairment, e.g. someone who completed a rehabilitation program and is no longer illegally using drugs; *or*
3. Is **regarded as** having such an impairment e.g. perceived as having an impairment, but does not have an impairment.

**\*A person must meet one of the three prongs to qualify as a person with a disability**

# What are Major Life Activities?

Major life activities include, but are not limited to:

Caring for oneself, thinking, learning, working, breathing, sleeping, seeing, hearing, concentrating, walking, lifting, bending, and major bodily functions such as neurological and brain functions.

\*Not an exhaustive list



**Addiction is considered a physical or mental impairment that substantially limits the major life activities of:**



- Working
- Learning
- Sleeping
- Eating
- Concentrating
- Caring for oneself
- Remembering
- **Brain and neurological functioning**

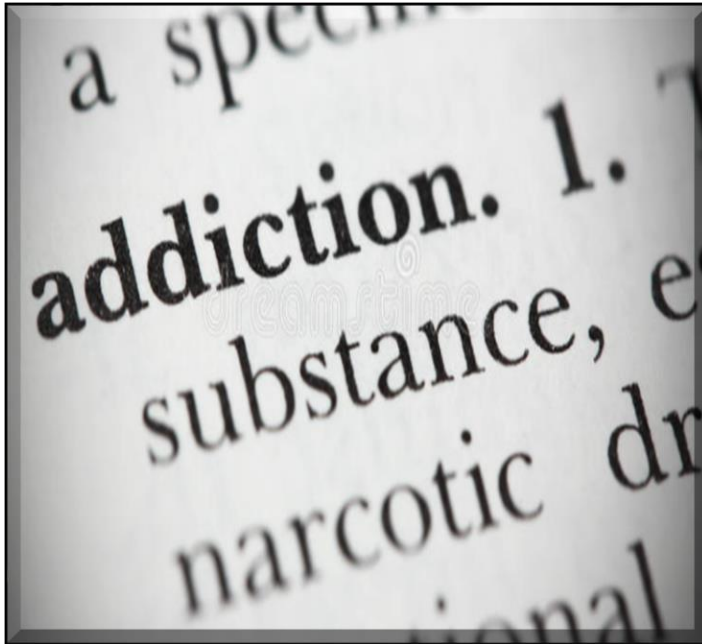
# The ADA Treats AUD and SUD Differently



People with **Alcohol Use Disorder (AUD)** have ADA protections in recovery and while using alcohol.

People with **Substance Use Disorders (SUD)** have ADA protections in recovery, and when not engaging in the illegal use of drugs.

# Alcohol Use Disorder



- Is generally a “disability” regardless of whether the person is in recovery or currently drinking alcohol.
- However, the addiction must substantially limit a major life activity, like learning, working, sleeping, or thinking, etc.

# Scenario



- Michael is often late for work.
- The third time he's late, his supervisor gives him a written warning stating that one more late arrival will result in termination.
- Michael tells his supervisor that he has an addiction to alcohol. His late arrivals are due to his drinking, and needs time off for detox and treatment.
- **Does Michael have protections under the ADA?**

# Answer to Scenario



- **Yes**, Michael is a person with a disability (alcohol use disorder).
- The employer does not have to withdraw the warning.
- The employer must grant Michael's request to get treatment, unless the employer can prove that his absence would cause a great difficulty or expense (an undue hardship).

# Substance Use Disorders



A person has ADA protections when that person is:

- **In recovery**
- **And no longer engaging in the current illegal use of drugs.**



# What Does “In Recovery” Mean?



Massachusetts Organization for Recovery (MOAR)  
Celebrating Recovery Month September 2022  
on Boston Common

## The ADA’s Definition of Disability:

1. Is in recovery from substance use disorder
2. Has ceased engaging in the current illegal use of drugs
3. Is participating in a supervised rehabilitation program, *or*
4. Has been successfully rehabilitated.

AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED  
Section 12114

Web: <https://www.ada.gov/pubs/adastatute08.pdf>

# What Does “Illegal Use of Drugs” Mean?



1. Use of **illegal drugs** such as heroin or cocaine
2. Use of **legal drugs** such as opioids:  
**BUT** person has no prescription  
**OR** has a fraudulent prescription  
**OR** is using more than prescribed

# What Does “Current” Mean?



## Current illegal use of drugs means:

- “Illegal use occurred recently enough to justify a reasonable belief that a person’s drug use is a real and ongoing problem.”
- “Current” is not limited to the number of weeks or days, but is determined on a case-by-case basis or **an individualized assessment**.

# Access to Health Care Services



The ADA's **general rule** regarding SUD is that people with SUD have no protections under the ADA while their engaging in the illegal use of drugs.

## There is an exception to this rule:

It is a violation of the ADA for ER's and health facilities to refuse services to people who are currently engaging in illegal drug use.

For example, a person with heroin in their system must be provided health care services.

# Scenario

**Application for Employment**

accommodations for persons with disabilities in the hiring process. If your disability  
se let us know, and we will provide assistance.

Date of Application

First Name

City

18 years of age or over?

☐ No If No, Date of Birth

Education

Middle Initial

Date of Birth

Marianna has been in recovery from heroin use disorder for three years. She applies for a job that she is qualified to do. The employer refuses to hire her because he learns about her past history.

**Is she protected under the ADA?**

# Answer to Scenario

- **Yes**, Marianna is protected under the ADA because she:
- Has a history of an impairment (addiction to heroin)
- Has refrained from the use of illegal drugs for three years which is a good indication that there is not an on-going problem.
- The potential employer violated the ADA when he refused to hire Marianna based on her history of addiction.



# We Do Recover!



- There is evidence that we do recover.
- 1 in 10 adults in the U.S. report having a substance use disorder  
**27.5 million**
- Among those, nearly 75% report being in recovery  
**20.5 million**

Jones, C.M., Noonan, R.K., Compton, W.M. (2020). Prevalence and correlates of ever having a substance use problem and substance use recovery status among adults in the United States, 2018 [Epub ahead of print]. Drug and Alcohol.

# Recurrence or Return to Use



William Stoehr, Artist  
Stigma and Survival Exhibit  
University of Colorado & Aroura

Can a professional in recovery such as a social worker, licensed professional counselor, nurse, doctor, addiction treatment specialist, or peer-coaches be fired from their job because of a recurrence or return to use?

**Web:** <https://www.cuanschutz.edu/centers/bioethicshumanities/arts-and-humanities/william-stoehr>

# Answer to Return to Use Question

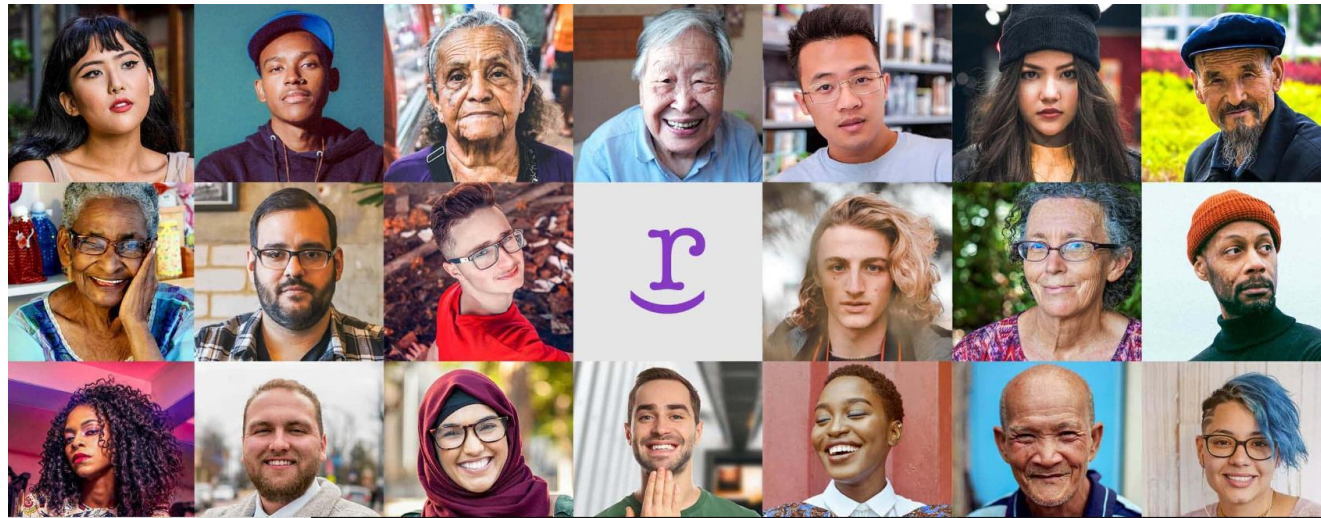


Eminem Recovery Album Cover 2010

**Yes**, they can be fired.

If an **employee** is currently engaging in the illegal use of drugs at work, then that person is not protected under the **employment section of the ADA**. And, can be terminated without an employer violating the ADA.

# What can employers do to improve supportive mechanisms for anyone in recovery who may have experienced a return to use?



Faces and Voices of Recovery

**Web:** <https://facesandvoicesofrecovery.org/>

- The employer can choose:
  - But is not required to terminate an employee under the ADA
  - To grant medical leave for the employee to seek treatment, or permit a modified work schedule to get support.
  - To make clear that any further relapse at work could result in termination (another chance).

# Another Chance Agreement



- An employer agrees not to terminate the employee in exchange for an employee's agreement to receive treatment and avoid further workplace problems.
- A violation of the agreement usually warrants termination because the employee failed to meet the conditions for continued employment.



# A person who is in recovery has ADA protections such as reasonable accommodations



- **Has a right to** reasonable accommodations including: a modified work schedule so the employee can go to meetings, pick up their medication for opioid use disorder (MOUD), or take a leave of absence from their job to seek treatment.
- However, getting the support they need must be communicated and taken before the employee illegally uses drugs.



# Scenario



- Julie works in an office at a day care center.
- She has been in recovery from opioid use disorder (OUD) and is taking prescribed methadone to manage OUD.
- Her boss learns about her history & tells her to “get off methadone or you’ll be fired.”

## **Does Julie have protections under the ADA?**

**Yes** Julie has a history of OUD and is being regarded as a current drug user due to stigma and misunderstanding about methadone.

**Prepared by the Legal Action Center with support from Partners for Recovery**

# Scenario Continued



What if Julie's employer found out that she recently used cocaine while taking medication to treat her addiction?

**Would she have rights under the ADA?**

Prepared by the Legal Action Center with support from Partners for Recovery

# Answer to Scenario

A photograph of a blackboard with the word "illegal" written in white chalk. The word is underlined with a single horizontal line.

**No, she has lost protections because she is  
“currently engaging in the illegal use of drugs.”**

# Julie's Scenario Continued

What if Julie's employer found out that she recently used cannabis while taking medication for her addiction?

**Would she have protections under the ADA?**

- ☐ Yes
- ☐ No

# Answer



**No, Julie would not be protected under the ADA because...**

# Cannabis in all it's forms is illegal under federal law





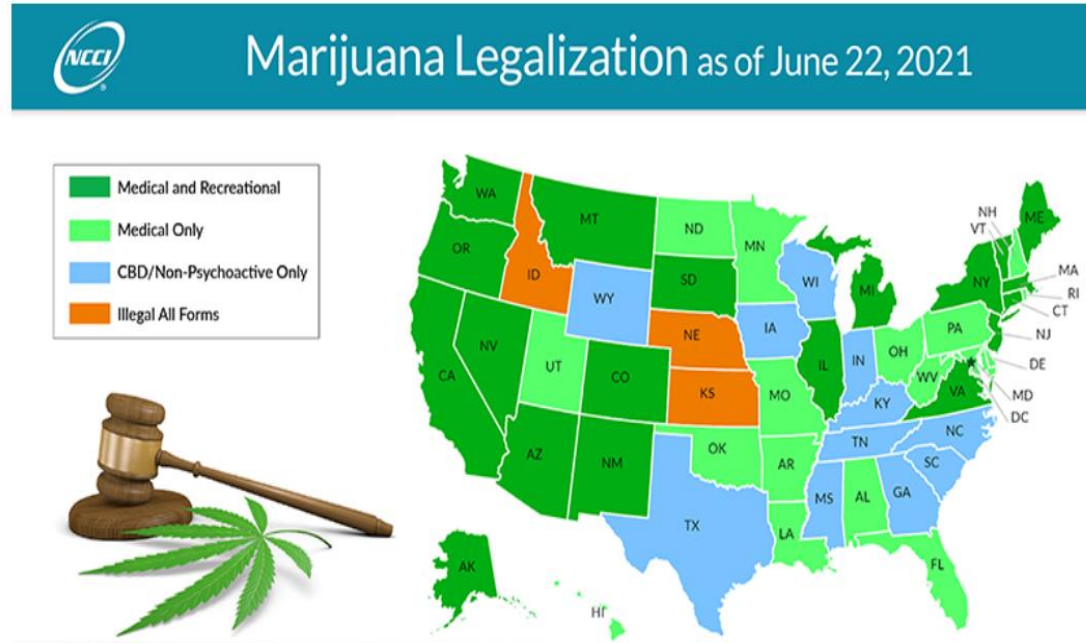
# Medical Cannabis is Illegal under the ADA



- Even when used to treat a medical condition with a card, certificate or medical prescription.

**\*However, check your state law**

# State Law May Provide Protections for Medical Use of Cannabis



- If medical cannabis is legal under **state law**, employers may need to consider **reasonable accommodations** for employees with disabilities for offsite use of medical marijuana.
- However, an employee who uses or is high at work has **NO** protections under either federal or state law.

# Connecticut's State Medical Marijuana Registration Certificate Law



- Does CT's state medical marijuana law intersect with employment and disability?
- [https://www.cga.ct.gov/current/pub/chap\\_420f.htm](https://www.cga.ct.gov/current/pub/chap_420f.htm)



## MEDICAL MARIJUANA

- Medical marijuana is regulated by the Department of Consumer Protection (DCP).
- Patients receive certification from their physician to obtain and use medical marijuana after being diagnosed with certain debilitating medical conditions.
- Connecticut law protects patients who meet the law's requirements from arrest or other penalties.
- The protection does not apply if the person's marijuana use endangers the health or well-being of others.
- The law does not apply if the patient consumes marijuana: (a) in a way that exposes someone under age 18 to secondhand marijuana smoke or (b) within the direct line of sight of someone under age 18 or (c) if the marijuana is consumed in in a public place whether owned or operated for public or private use or (d) in a bus or other moving vehicles or at work; or (e) on school grounds or (f) any public or private school, dormitory, college, or university property

## ADULT-USE CANNABIS:

As of July 1, 2021, Adult-use Cannabis is legal in Connecticut, residents over the age of 21 can legally possess and consume marijuana.

The law allows employers to continue enforcing drug-free workplaces to maintain workplace safety and compliance with federal laws and contracts. The law allows all employers to take adverse actions against employees who are impaired at work.

# Katelin Noffinger v. SSC Niantic Operating Co



- Katelin was offered a position, and before starting the job, she was asked to take a drug test.
- Katelin notified the employer she was a registered medical marijuana user only at night and before bed so she would not be impaired at work.
- Employer refused to hire because she tested positive for marijuana in a post offer and pre-employment drug test.
- Katelin won the right as a person with a disability for off-site use of legally prescribed medical marijuana.

# Questions



# Employment

## (Title I of the ADA)

The ADA Applies to private employers with 15 or more employees, and all state and local government employers.

CT State accessibility law applies to private employers with one or more employees.

Applies to all aspects of employment.

# How the ADA Applies the Three Stages of Employment

1. Application and interview process
2. After a job offer, but before starting work
3. On the job

# The Application and Interview Process



**The ADA prohibits disability-related questions, medical inquiries and exams**, whether on the application or during the interview, and *even if* they are related to the job.

# What are Disability - Related Questions?



Questions about the existence, nature, or severity of a disability such as:

1. Are you taking prescription drugs?
2. Do you have a disability, illness or condition that will prevent you from doing this job?
3. Have you ever been treated for addiction to alcohol, opioids or other drugs?

# Questions About Gaps in Employment



- Angel has a job interview and her resume shows gaps in employment.
- The gaps are due to her addiction and recovery.
- She calls the ADA Center and asks:
  - Can an employer ask about gaps in my work history?  
**Yes!**
  - If asked, do I have to mention my addiction and recovery process?  
**It depends...**

# Answer to Question About Gaps in Employment



- Angel can say that she had an illness, and is recovered and is excited to get back to work.
- If the employer asks a **specific question about her disability** (addiction), it's best if she tells the truth.
- If she lies, it may be a reason for not hiring her.
- The employer can be found liable for asking an illegal questions about her disability during the application and interview stage.



# Permissible Questions About Alcohol and Illegal Drugs

- An employer may ask questions about **use of alcohol or illegal drugs** such as:
- “Have you ever used or do you currently use \_\_\_\_\_?”
- A yes or a no answer does not reveal a disability.

# Non-Permissible Questions About Alcohol and Illegal Drugs

An employer cannot ask about **extent or frequency of use**:

- **How much** alcohol or illegal drugs do/did you consume?
- **How often** do/did you drink alcohol or use illegal drugs?

These questions may reveal an addiction.

# After a Job Has Been Offered But Before Starting a Job



- An employer may make medical inquiries, require medical exams and ask disability-related questions provided it does so for all individuals within a job category.
- All questions about use of alcohol/drugs, extent of use, or diagnosis of alcohol/drug addiction are lawful.
- At this stage, the new hire must disclose a disability if asked.

# Questions about Alcohol/Illegal Drugs During Employment



- Questions about **use** of alcohol or illegal drugs are permissible so may ask any time (answers can't reveal a disability).
- Questions about **extent or frequency** of use are disability-related and reason for asking **must be job-related and consistent with business necessity**.

# Questions

# State and Local Governments (Title II of the ADA)

People with disabilities must be able to participate in or benefit from all state and local government **services, programs & activities.**

- Courts
- Corrections
- Public Education
- Public Transportation
- Recreation
- Health Care
- Social Services
- Voting



# Scenario



- Tom is taking medication to treat his addiction.
- He appeared in family court and requested that he begin to see his kids on the weekends.
- The judge responded to his request saying, “You’ll see your kids when you get off Suboxone.”
- **Is Tom protected under the ADA?**

# Answer to Scenario

- Yes, he has a **history** of addiction.
- Family court is **regarding** the use of Suboxone as though it is an illegal drug due to stigma and misunderstanding.
- Tom's use of Suboxone cannot, by itself, justify a refusal to his kids on weekends.
- Suboxone is a legally prescribed medication for a diagnosed disorder.
- It is a violation of the ADA for the judge to ask anyone to stop or limit taking a their doctor prescribed medication for their disability.

# Scenario



- People who enter the correctional system with medications for opioid use disorder are discontinued on their medications.
- **Are people protected under the ADA?**

# Scenario Answer



Massachusetts Franklin County Jail inmates were watched by a nurse and a corrections officer after receiving their daily doses of suboxone, a drug that helps control opioid cravings.

*Elise Amendola/AP*

- **Yes**, correctional systems have an obligation to provide three medications for opioid use disorder (MOUD): Suboxone, Methadone and Vivitrol to people entering with a prescription when the correctional facility has a medication dispensary.
- By some estimates, at least half to two-thirds of today's U.S. jail population has a substance use problem.

## A Few Cases



### **The Unified Judicial System of Pennsylvania**

The judge ordered all people to get off their medication for opioid use disorder (MOUD) or to limit their use in all courts in the State of PA.

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### **Massachusetts Parole Board Sued**

Parole Board violated the ADA by discriminating against individuals with SUD by requiring certain parolees with SUD to take a specific form of MOUD (Vivitrol) as a condition of parole. PB is to comply with parolees health care provider's recommended treatment.

# Questions

# **Businesses and Non- Profits**

## **(Title III of the ADA)**

The ADA requires places of business and non-profits to provide goods and services to people with disabilities.

- Social Services
- Health Care
- Hospitals
- Private Schools
- Day Care Centers
- Hotels
- Movie Theaters
- Pharmacies



# Recovery Homes, Sober Houses and Half-Way Houses



**Some recovery homes don't allow residents to use MOUD.**

**Do residents have protections under the ADA?**

- Yes, person with a history of OUD has a right to take their doctor prescribed MOUD. To refuse a person entry into a home solely based on their medical prescription may be a violation of the ADA or the Fair Housing Act.
- If a recovery home disagrees with this, then it is the recovery homes responsibility to prove that accepting a person with MOUD into the home would drastically alter the nature of their program or be a great expense (an undue burden under the ADA).

## Two More Cases



### **Ready to Work Boulder, Colorado Housing Discrimination**

Discriminated against an individual with OUD by denying her admission to its housing and work program because she used prescribed MOUD.

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### **Selma Medical Associates, Inc. Virginia**

Selma Medical in Virginia refused to accept a new patient into their family practice after learning that he had a prescription for Suboxone.

# Health Care



- The MA U.S. Attorney's Office warns skilled nursing facilities not to refuse treatment to people with opioid use disorders.
- There have been settlement agreements with groups operating physical rehabilitation facilities in CT, RI and MA. Despite this, thousands across the US continue the practice of turning away patients with opioid use disorder.

# In Summary



Americans with Disabilities Act

1. People with addiction are people with disabilities under the ADA.
2. The ADA applies to addiction to alcohol and addiction to opioids and other drugs differently.
3. The ADA protects people with disabilities from discrimination in employment; by social services agencies; child welfare agencies; courts; prisons and jails; medical facilities, including hospitals, doctors' offices, and skilled nursing facilities.
4. The ADA protects people in recovery from OUD who are not engaging in illegal drug use, including those who are taking legally-prescribed medication to treat their opioid use disorder (OUD).
5. Knowing your rights can address discrimination often identified as stigma.



# Resources

## 1. Questions About the Americans with Disabilities Act

**Phone:** 1-800-949-4232 or **Email:** [ADAinfo@IHCDesign.org](mailto:ADAinfo@IHCDesign.org)

**Web:** <https://www.newenglandada.org/>

## 2. ADA, Addiction and Recovery Fact Sheets and Frequently Asked Questions

**Web:** <https://www.newenglandada.org/addiction-and-recovery>

## 3. National Association for Addiction Professionals

**Advances in Addiction and Recovery Magazine**

**Web:** [How the ADA Addresses Addiction and Recovery](#)

# More Resources

## 1. STAT Reporting From the Frontiers of Health and Medicine

**Web:** To Protect People with Addiction from Discrimination, the Justice Dept. Turns to a Long-Overlooked Tool: The ADA

## 2. Equal Employment Opportunity Commission Releases Technical Assistance Documents on Opioid Addiction and Employment

**Web:** Q&As Provide Helpful Guidance to Employees and Health Care Providers

## 3. Department of Justice Civil Rights Division

**Web:** The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery

# How to File an ADA Complaint

## **US Equal Employment Opportunity Commission (EEOC)**

**Web:** <https://www.eeoc.gov/employees/howtofile.cfm>

**Phone:** 1-800-669-4000 or **Email:** [info@eeoc.gov](mailto:info@eeoc.gov)

## **US Attorney's Office of Civil Rights**

**Web:** <https://www.justice.gov/usao>

**Civil Rights Complaint Portal:** <https://civilrights.justice.gov/>

## **Department of Justice**

**Web:** [https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm)

**Phone:** 1-800-514-0301

## **Connecticut Commission on Human Rights and Opportunities**

Toll Free: 1-800-477-5737 and 1-860-541-3459 (TDD)

<https://portal.ct.gov/CHRO>



# THANK YOU!

## Have an ADA Question?

1-800-849-4232

[ADAinfo@IHCDesign.org](mailto:ADAinfo@IHCDesign.org)



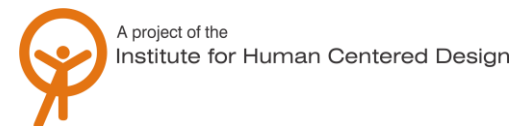
William Pierce  
[William.Pierce@ct.gov](mailto:William.Pierce@ct.gov)

860-418-6933

(TTY Relay 7-1-1 provided  
by [relayconnecticut.com](http://relayconnecticut.com))

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[www.NewEnglandADA.org](http://www.NewEnglandADA.org)