

Educating Courts, Other Government Agencies and Employers About Methadone

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“The judge said that I won’t get my kids back unless I withdraw from methadone. Is that legal?”

“My Probation Officer instructed me to withdraw from methadone. Can he do that?”

“I was arrested while driving from my program and charged with DUI. What can I do?”

Individuals in methadone maintenance treatment or other forms of Medication Assisted Treatment (MAT)¹ sometimes experience discrimination by courts, other government entities, and employers. A judge in the criminal justice or child welfare system might require an individual to stop participating in MAT because the judge mistakenly thinks that the individual is “substituting one addiction for another” and not truly in recovery. Individuals are sometimes arrested and charged with “driving under the influence” merely because they participate in a methadone treatment program. An employer might deny someone a job because a drug test was positive for methadone. The individuals who act in this fashion often do not understand how MAT works and are not familiar with the anti-discrimination laws that often make such conduct illegal.

Following are suggestions for how individuals in methadone maintenance programs and other forms of MAT, as well as their treatment programs and advocates, can advocate for their rights so that they can get in or stay in the treatment they need – without discrimination. The focus of this publication is practical advocacy for individuals who face discrimination by:

- **Child Welfare System**
- **Criminal Justice System:**
 - **Driving under the influence**
 - **Jails and prisons**
 - **Probation and parole**
- **Employers**

For more information about which laws are violated by this type of discrimination and how people can enforce their rights, see *Know Your Rights: Are You in Recovery from Alcohol or Drug Problems?* available for free at www.lac.org. Click on “free publications” and then “Alcohol & Drugs.”

¹ Medication-assisted treatment (MAT) refers to treatment approaches that utilize prescribed medications as a component of care. While the types of medications prescribed for the treatment of addictive disorders is growing, this publication focuses only on opioid agonist and partial agonist medications used for treatment of *opioid addiction*, specifically, methadone and buprenorphine. People receiving these forms of treatment tend to experience the greatest discrimination.



Child Welfare System

Problem: *Judges, prosecuting attorneys, and others in the child welfare system sometimes require parents to end their participation in MAT in order to get their children back or to keep their children. Is this legal?*

No. The court system (and other government agencies) must comply with the Americans with Disabilities Act (ADA). If they are federally assisted, government agencies also must comply with the Rehabilitation Act of 1973 (Rehabilitation Act). Courts and other government agencies may *not* single out people in MAT and require them to stop taking legally prescribed medications. Such a requirement is no different than telling an insulin-dependent diabetic parent that she may not have her children back unless she stops taking insulin & addresses her diabetes through nutrition and exercise alone. Courts may, however, require people in MAT to comply with treatment requirements. With proper written consent, treatment programs may report such compliance – or non-compliance – to the court.

Advocacy strategy: What can MAT patients and/or their advocates do in response to discrimination by courts and others in the child welfare system?

Patients should immediately ask their treatment programs to help. They should request the program to write a letter to the court (and/or other government officials), discussing:

- Patient's length of time in treatment
- Patient's progress in treatment (including amount of time with no illegal use of drugs)
- That patient is stabilized on his/her dose
- The consequences of disrupting treatment (e.g., relapse, medical crisis)
- General information about MAT, which can be attached to the letter. Some useful educational materials about MAT include:
 - *Medication Assisted Treatment for the 21st Century: Community Education Kit*, which can be ordered from <http://ncadi.samhsa.gov/>. The two "Fact Sheets" are good resources.
 - Two good fact sheets on the website of the American Association for the Treatment of Opioid Dependence (AATOD), www.aatod.org:
 - Q&A: <http://www.aatod.org/qa.html>
 - Fact Sheet: *Opioid Use and Dependence: Medication Assisted Treatment*, http://www.aatod.org/print_version/print_fact_sheet_op.html



Criminal Justice System

1. Driving Under the Influence

Problem. *People in methadone maintenance programs and other forms of MAT are sometimes arrested for driving under the influence (“DUI”). Is that legal?*

It depends on the law in that particular state, and there are three types. The first two, which are similar, are –

1. No DUI unless the drug renders the driver “incapable” of driving safely, and
2. No DUI unless the drug impairs the driver’s ability to operate safely or the driver is under the influence of (or affected by) an “intoxicating” drug.

Under these laws, the prosecution must show that (1) the drug was present, *and* (2) the person’s ability to drive was actually impaired, or the person was “intoxicated.” The fact that methadone (or other medication administered in MAT) was present in the driver’s body, by itself, is not enough for a conviction. The driver’s conduct would *not* violate the law if (1) the driver was taking methadone legally, and (2) the methadone (or other medication) was not impairing driving ability.

But there is a third type of law, in which it is a criminal offense merely to have any amount of the drug(s) in one’s body while driving. Under this third type of law, it is *does not matter* that the treatment is legal and does not impair functioning.

Advocacy strategy: What can patients do when arrested for driving with methadone in their bodies?

First two types of laws – only illegal if impaired: An attorney can defend an individual in such a case by showing that:

- The individual was legally prescribed the medication. If the individual is enrolled in a methadone treatment program, show that the individual is a patient in good standing.
- There was no causal connection. The driver’s use of MAT did not impair functioning/driving because the individual was stabilized on clinically appropriate dose – there were no side effects that did (or would) impair normal functioning, including driving ability. Point to studies of methadone-maintained patients’ functioning, including driving abilities: these studies show that there is no cognitive or psychomotor skills impairment from methadone. They are available at

www.lac.org. Click on “free publications,” then “Alcohol & Drugs” and scroll down to “*Methadone Maintenance Treatment: Memorandum of Driving.....*”

- There is no evidence of other drug(s) or alcohol whose interaction with MAT could impair driving ability. For example, there is no evidence of drug interactions that might impair functioning or driving ability. If the driver is taking other medications, address concerns about possibly impairing medication interactions.

Third type of law – illegal to have methadone in body. Here, the only real advocacy tool is community relations and public education to change law enforcement attitudes and how they apply DUI law to patients in MAT.

2. Jails and Prisons

Problem. *Very few jails and prisons in the United States permit inmates or detainees to receive methadone treatment or other forms of MAT. Individuals who are already in such programs when they are arrested are often required to withdraw from their medication, sometimes without proper medical supervision. Is that legal?*

Court decisions have *not* clearly established the legal right to receive methadone or other MAT in jails & prisons. Nevertheless, some inmates have argued that forced withdrawal from MAT constitutes (1) discrimination in violation of federal & state anti-discrimination laws, (2) “cruel & unusual punishment” in violation of the 8th Amendment to the U.S. Constitution (jails only), or (3) medical malpractice. There have not been many lawsuits based on these legal theories.

Advocacy strategy: Following are practical suggestions for what individuals in MAT can do when facing jail or prison time. Patients should immediately contact their program, or if impossible, then ask a family member or the jail/prison to do so. The program should contact the jail or prison and try to convince the jail or prison to –

- permit the program to deliver the medication to the jail or prison. If “no,” then...
- allow the patient to reduce his/her dose using methadone in jail/prison. If “no,” then...
- provide medically supervised withdrawal, e.g., with buprenorphine or methadone. If the patient has advanced notice that s/he will be going to jail or prison, the patient could ask the program to begin a therapeutic withdrawal process (e.g., start tapering the dose).

Will this type of advocacy work? Can a jail or prisons really be convinced to change its policy of requiring withdrawal from MAT? Yes, in some instances. While there are no guaranteed results, this type of advocacy can sometimes succeed.

3. Probation and Parole

Problem. *Judges and probation and parole officers sometimes require individuals to end their participation in MAT as a condition of probation or parole. Is that legal?*

No. Courts and probation and parole departments must comply with the ADA and the Rehabilitation Act. As in the child welfare system, these governmental actors may not single out people in MAT and require them – and them only – to stop taking legally prescribed medications.

Advocacy strategy: What can patients and their advocates do in response to such discriminatory conduct by courts and probation and parole departments?

Patients should ask their program to contact the individual imposing this discriminatory condition. It is a good idea to involve a program administrator, supervisor or medical director, and not just the counselor. The program should talk to the official requiring the withdrawal and ask for the reasons, including whether it is required by department policy. If so, is the policy written or unwritten? The program should follow up with a letter, possibly to the probation or parole officer's supervisor. The letter should explain:

- Patient's progress in treatment
- Why patient needs to remain in treatment
- Consequences of forced withdrawal:
 - Likely to relapse to pre-treatment opioid abuse, most surely resulting in probation or parole violation
 - Could put patient into medical crisis. List co-morbidities which will be exacerbated – possibly catastrophically – upon relapse due to failure to get proper medical care and medical complications of withdrawal. Some of these might include hypertension, diabetes, HIV, and hepatitis C. Pregnant women have particularly severe risks from withdrawal.
- That forced withdrawal is illegal discrimination:
 - Persons in MAT who are not illegally using drugs are individuals with a “disability” under anti-discrimination law
 - Singling them out for forced withdrawal from prescribed medication violates Title II of the ADA, Rehabilitation Act, and perhaps state law
- That the program is attaching educational materials about MAT – same as referenced in the “child welfare system” section, above.

The program should follow-up the letter with a phone call. This type of advocacy requires persistence!



Employers

Problem. *Employers sometimes refuse to hire individuals in MAT or sometimes require them to end their participation in MAT as a condition of employment. Is that legal?*

No. Private employers with 15 or more employees and state or local government employers must comply with the Americans with Disabilities Act (ADA). Federal government employers and private employers who are federally assisted, must comply with the Rehabilitation Act. Employers may *not* single out people in MAT and require them to stop taking legally prescribed medications. Employers may, however, require people in MAT to provide documentation from their program in order to explain methadone or buprenorphine appearing in a drug test.

Advocacy strategy: What can patients and their advocates do in response to such discriminatory conduct?

The steps are similar to those described in the discussion of “Probation and Parole,” above.

What if this advocacy does not work? Advocacy of this nature – while sometimes successful – does not always work. Sometimes, the only way to preserve your rights is to file a formal legal case charging a violation of anti-discrimination laws. You might be able to find information about filing a lawsuit or other complaint against a government agency by contacting your city or state human rights agency, the National Alliance for Medication Assisted Recovery, www.methadone.org, Faces and Voices of Recovery, www.facesandvoicesofrecovery.com, or your local or state bar association. Complaints against employers may be filed with the United States Equal Employment Opportunity Commission, www.eeoc.gov, (800) 669-400 (voice) or (800) 669-6820 (TTY). To file a complaint against a local or state government agency, contact the United State Department of Justice, www.usdoj.gov. Complaints against Federally assisted programs and activities should be filed with the Federal agency that gives financial assistance to, provides, or regulates the program or activity.