

Cases Involving Discrimination Based on Treatment with Medication for Opioid Use Disorder (MOUD)



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This list highlights key cases, investigations, and government settlements/consent decrees involving denial of access to MOUD in various settings. It is not exhaustive.

Criminal Legal System

Jails and Prisons

Pesce v. Coppinger, 355 F. Supp. 3d 35 (D. Mass. 2018). The court held that it likely violates both the Americans with Disabilities Act (ADA) and Eighth Amendment of the U.S. Constitution to deny an incarcerated person access to MOUD without individual assessment and contrary to the treating provider’s medical recommendation. The plaintiff, soon to be incarcerated in a Massachusetts jail, alleged that the defendant/jail’s policy of denying incarcerated persons access to methadone for the treatment of opioid use disorder (OUD) violated Title II of the ADA and the Eighth Amendment. The court granted the plaintiff’s motion for a preliminary injunction, holding that “absent medical or individualized security considerations underlying the decision to deny access to medically necessary treatment,” the plaintiff was likely to succeed in his ADA claim. The court also held that the plaintiff was likely to succeed on his Eighth Amendment claim because the defendant was deliberately indifferent to his serious medical need in repeatedly ignoring the plaintiff’s doctor’s treatment recommendation. The court made these holdings despite the defendant’s arguments that MOUD creates safety and diversion concerns.

Smith v. Aroostook Cty., 376 F. Supp. 3d 146 (D. Me.), *aff’d*, 922 F.3d 41 (1st Cir. 2019). The court held that it likely violates the ADA to deny an incarcerated person access to MOUD without a particular assessment of the individual’s need for medication. This decision granting the plaintiff’s motion for preliminary injunction came after the plaintiff was going to be incarcerated in the county jail and requested access to her prescribed MOUD. The court did not find persuasive defendant’s concerns about safety and diversion. The case was affirmed by the First Circuit.

Kortlever v. Whatcom County (D. Wash. 2018). This class action lawsuit settled with an agreement to provide MOUD on class-wide basis. A class of current and future incarcerated persons at the Whatcom County Jail alleged that the jail’s policy prohibiting MOUD violated the ADA and Eighth Amendment. The settlement included guidelines for training and implementation of written policies for MOUD – primarily buprenorphine maintenance *and* induction – as well as medically-assisted withdrawal.

Finnigan v. Mendrick, No. 21-CV-341, 2021 WL 736228 (N.D. Ill. Feb. 24, 2021). The plaintiff, who faced imminent incarceration in the DuPage County Jail, alleged that the defendants’ policy and practice of denying incarcerated individuals’ access to medication for addiction treatment (MAT; also known as medication for opioid use disorder (MOUD)), violated Title II of the ADA and the Eighth Amendment. In a motion to dismiss, the defendants contended that the case was not “ripe” because they had not yet decided whether to allow the plaintiff access to her medication. The court granted defendants’ motion to dismiss and denied the plaintiff’s motion for preliminary injunction, finding that the case was premature because the defendants had not decided whether to provide the plaintiff access to her medication. However, the court ordered defendants to report their decision on the plaintiff’s first full day of incarceration and invited the plaintiff to file an amended complaint if the jail denied her methadone. Ultimately, defendants decided to allow the plaintiff to access her medication and they also made plans to implement a policy to provide access to MAT.

P.G. v. Jefferson County, No. 5:21-CV-388-DNH-ML (N.D.N.Y. Sept. 7, 2021). The court held that it likely violates Title II of the ADA (Title II) and the Fourteenth Amendment of the U.S. Constitution to deny pre-trial detainees access to medically necessary methadone treatment. The plaintiff, who faced imminent detention in the Jefferson County Jail, alleged that the defendants’ policy of denying all non-pregnant detainees access to medically necessary methadone for treatment of OUD violated Title II and the Fourteenth Amendment. The court granted the plaintiff’s motion for a preliminary injunction, finding that where the plaintiff’s “treating physician has prescribed methadone and concluded that it is medically necessary . . . a refusal to guarantee access to methadone treatment likely violates the ADA.” The court similarly found that the plaintiff was likely to succeed on his Fourteenth Amendment claim that the defendants were acting with deliberate indifference to a serious medical need amounting to constitutionally inadequate medical care. Due to the defendants’ lack of medical testimony or evidence, the court rejected their arguments that there is no constitutional right to methadone treatment and that other constitutionally adequate treatment options were available.

Additional Settlements with State and Local Prisons and Jails

- ***Smith v. Fitzpatrick*** (D. Me. 2018)
- ***Sclafani v. Mici*** (D. Mass. 2019)

These cases settled with state departments of corrections or local jails agreeing to provide plaintiffs with their prescribed MOUD throughout their terms of incarceration. In each case, the plaintiff sued the respective facility for denial of access to MOUD in violation of the ADA and Eighth Amendment.

Additional Settlements with the Federal Bureau of Prisons

- ***DiPierro v. Hurwitz*** (D. Mass. 2019)
- ***Crews v. Sawyer*** (D. Kan. 2019)
- ***Godsey v. Sawyer*** (W.D. Wash. 2019)

These cases settled with the Federal Bureau of Prisons (BOP) agreeing to provide plaintiffs with their prescribed MOUD. In each case, the plaintiff sued the BOP for denial of access to MOUD in violation of the Rehabilitation Act and the Eighth Amendment.

Investigations of Jails and Prisons

DOJ Investigation of the Cumberland County Jail (CCJ, Jan. 14, 2021). The DOJ [investigated](#) CCJ, located in New Jersey, in part for failing to provide MOUD to detainees with OUD. The DOJ found that because MOUD is the standard of care for treating OUD, categorically denying MOUD is a failure to provide adequate medical care for a serious medical condition, in violation of the Eighth Amendment. The DOJ ordered a number of remedial measures for CCJ to take immediately, including to “[e]nsure that medication assisted treatment is immediately provided to prisoners who have been identified as having or potentially having Opiate Use Disorder at time of admission.”

Employment

Equal Employment Opportunity Comm'n v. Hussey Copper Ltd., 696 F. Supp. 2d 505 (W.D. Pa. 2010). The court held that before an employer may deny someone a job because of their MOUD, including from a safety sensitive position, they must make an individualized determination of the person’s ability to perform their job duties. In denying Hussey Copper’s, motion for summary judgment, the U.S. District Court agreed with the Equal Employment Opportunity Commission (EEOC) that Hussey Copper should have considered the applicant’s experience with methadone and whether methadone had side effects on his cognitive functions. The court iterated that the ADA requires an individualized assessment of a job applicant rather than a sole reliance on literature about MOUD, to determine an individuals’ ability to perform their job duties, even if the job is safety sensitive. The case ultimately settled with Copper Hussey paying \$85,000 in fines, hiring the applicant, and implementing policy changes.

Pollard v. Drummond, No. 2:12-CV-03948-MHH, 2015 WL 5306084 (N.D. Ala. Sept. 10, 2015). In denying the employer’s motion for summary judgment as to an ADA claim, the court found that there were genuine issues of material fact as to whether the plaintiff posed a direct threat to safety. Although the plaintiff was taking a high dose of methadone, reliance on that fact alone was improper when based on how that dose might affect people generally. The court emphasized that in making an individualized assessment, the employer should have considered the plaintiff’s treating physician’s recommendations and the fact that the employee had performed his job functions for years without significant issue.

EEOC v. Randstad, US, LP (D. Md. 2016). The EEOC sued Randstad for failing to conduct an individualized assessment of a job applicant’s ability to perform the job duties, as required by the ADA. Despite the applicant continually informing the company that she did not have any medical restrictions hindering her ability to perform the job duties, she was repeatedly told that she would not be hired because she was taking methadone. The case settled with Randstad paying the applicant \$50,000 and entering a consent decree enjoining the company from violating the ADA.

EEOC v. Foothills Child Development Center, Inc. (D.S.C. 2018). The EEOC sued Foothills Child Development Center, Inc. (“Foothills”) after Foothills fired an afterschool preschool teacher because of his prescribed Suboxone. The EEOC claimed that Foothills failed to conduct an individualized assessment of the employee, in violation of the ADA. An individualized evaluation would have allowed the company to determine what, if any, effect the employee’s

prescribed Suboxone had on his ability to conduct his job. The case settled with Foothills paying a monetary award to the employee and implementing policy changes, as per a five-year consent decree.

Breaux v. Bollinger Shipyards, LLC (E.D. La. 2018). The plaintiff filed suit against his former employer after being terminated from his safety-sensitive position as a welder because of his treatment with Suboxone. In denying the defendant's motion for summary judgment on the plaintiff's ADA claim, the court found that there was a genuine factual dispute regarding the plaintiff's use of Suboxone as being a direct threat to safety. The court explained that although the employer presented evidence that Suboxone was a narcotic that can cause sedation, the plaintiff had taken Suboxone throughout his employment without incident, and his doctor released him to work as a welder without restrictions, suggesting that Suboxone therapy did not cause those symptoms in the plaintiff.

EEOC v. Appalachian Wood Products, Inc. (W.D. Pa. 2018). In 2018, the EEOC sued Appalachian Wood Products, Inc. for violating the ADA after the company refused to hire an applicant for a factory position because he was taking medically prescribed Suboxone, and the employer did not conduct an individualized assessment of the applicant's ability to complete the job tasks safely while taking Suboxone. The complaint also alleged that the company unlawfully required applicants to disclose their use of medications prior to making conditional job offers and refused to hire individuals into certain jobs or assigned them to less-desirable positions based on their answers. The case settled with Appalachian Wood Products paying \$42,000 to two employees, agreeing to stop discriminatory practices, creating and implementing anti-discrimination employment policies, training employees about providing reasonable accommodations, and more.

EEOC v. SoftPro (E.D.N.C. 2018). The EEOC sued SoftPro after an employee who was taking MOUD for approximately eight years was terminated after disclosing that he had been on leave for participating in a program aimed at eliminating his need for ongoing MOUD. The EEOC alleged that SoftPro violated the ADA because it fired the employee based on his disability. The case settled with SoftPro entering a consent decree with the EEOC, paying \$80,000 in damages, implementing antidiscrimination policies, training employees, and more.

EEOC v. Professional Transportation, Inc. (S.D. W. Va. 2021). The EEOC sued Professional Transportation, Inc. (PTI) for violating the ADA after PTI rescinded a conditional offer made to a job applicant because she was taking medically prescribed Suboxone. PTI rescinded its offer after reviewing general information about the possible side effects of Suboxone, even though the applicant herself did not experience any of those side effects. The case settled with PTI entering a consent decree with the EEOC requiring payment of \$60,000 to the job applicant, implementation of antidiscrimination policies and measures to ensure individualized assessment of workers receiving MOUD, and the appointment of a decree compliance monitor.

EEOC v. Dragon Rig Sales and Services, LLC and The Modern Group, Ltd. (E.D. Tex. 2021). The EEOC filed suit against the defendants for refusing to hire a qualified job applicant for a welding position because of his use of prescription medications to treat anxiety and OUD. In alleged violation of the ADA. The suit alleges that after making a conditional offer based on his qualifications and 13 years of welding experience, defendants rescinded the offer upon learning of his medication without conducting any further inquiry into his ability to perform the job. The case is pending.

Health Care

DOJ Settlement with Selma Medical Associates, Inc. (Selma Medical, 2018). The DOJ entered into a [settlement](#) with Selma Medical, a primary and specialty care facility, in which Selma Medical agreed to cease violation of the ADA by not discriminating against people on the basis of their OUD, implement a policy and staff training for providing MOUD, pay fines totaling \$40,000, and more. The DOJ concluded after investigation, that in refusing to provide primary care services to the complainant and others because of their use of MOUD, Selma Medical violated the ADA.

DOJ Agreements with Skilled Nursing Facilities

- DOJ [Settlement](#) with Charlwell Operating Nursing Facility, LLC (2018)
- DOJ [Agreement](#) with Athena Health Care Systems (2019)
- DOJ [Agreement](#) with Alliance Health and Human Services (December 2020)
- DOJ [Agreement](#) with Genesis HealthCare, Inc. (August 2021)
- DOJ [Agreement](#) with CareOne Realty, LLC; Hebrew Senior Life, Inc.; Sheehan Health Group, LLC; and Wingate Healthcare (September 2021)

In these cases the DOJ entered into settlement agreements with skilled nursing facilities due to discriminatory policies and practices in violation of the ADA. In each case, the DOJ responded to complaints that the facilities were denying admission to individuals being treated with buprenorphine or methadone for their OUD. Per each of the agreements, the facilities were required to adopt a non-discrimination policy, train personnel on OUD and federal civil rights law, and pay civil monetary penalties as high as \$60,000.

DOJ Agreement with Massachusetts General Hospital (MGH, 2020). The DOJ entered into an [agreement](#) with MGH, after MGH decided that a patient was ineligible to receive a lung transplant because of their treatment with MOUD. After investigation, the DOJ found that MGH violated the ADA when it made its transplant eligibility determination based on the patient's OUD. In addition to paying the patient and his mother \$250,000 as relief for emotional distress and out of pocket expenses, as part of the agreement MGH was required to implement a non-discriminatory policy and train medical staff involved in decisions about transplants about OUD and the ADA.

DOJ Agreement with New England Orthopedic Surgeons (NEOS, May 2021). The DOJ entered into an [agreement](#) with New England Orthopedic Surgeons (NEOS) in Springfield, Massachusetts, for refusing to accommodate patients who were receiving treatment for OUD, in violation of the ADA. The investigation began after multiple complaints indicated that patients were being turned away due to their treatment with buprenorphine. In addition to adopting a non-discrimination policy, the settlement required NEOS to pay each of the complainants \$15,000 for pain and suffering.

Child Welfare

U.S. Department of Health and Human Services Office for Civil Rights (OCR) Voluntary Resolution Agreement with West Virginia Department of Health and Human Resources Bureau for Children and Families (DHHR) (2020). OCR entered into a [Voluntary Resolution Agreement](#) (Agreement) with DHHR after an investigation of DHHR preceded by a complaint from a couple that was denied custody of their niece based on one's use of medically prescribed Suboxone and history of OUD, in violation of the ADA and Rehabilitation Act. DHHR agreed to cease discrimination against individuals with disabilities, including OUD, in child placement and other services, as well as ensure that any grant sub-recipients and contactors also comply with the ADA and Rehabilitation Act. Other terms of the agreement include revision of policies, staff training, evaluating any concerns regarding safety based on actual risk and not speculation or stereotypes, creating a grievance procedure for resolution of complaints alleging disability discrimination, two years of monitoring by OCA regarding compliance with the Agreement, and more.

Department of Justice Letter to New York Attorney General (2017). The U.S. Attorney in the Southern District of New York sent a [letter](#) to the New York Attorney General's office, explaining why courts that prohibit MAT as a condition of child custody or visitation may be discriminating in violation of the Americans with Disabilities Act.