

The ADA and its Implications for Patients with OUD

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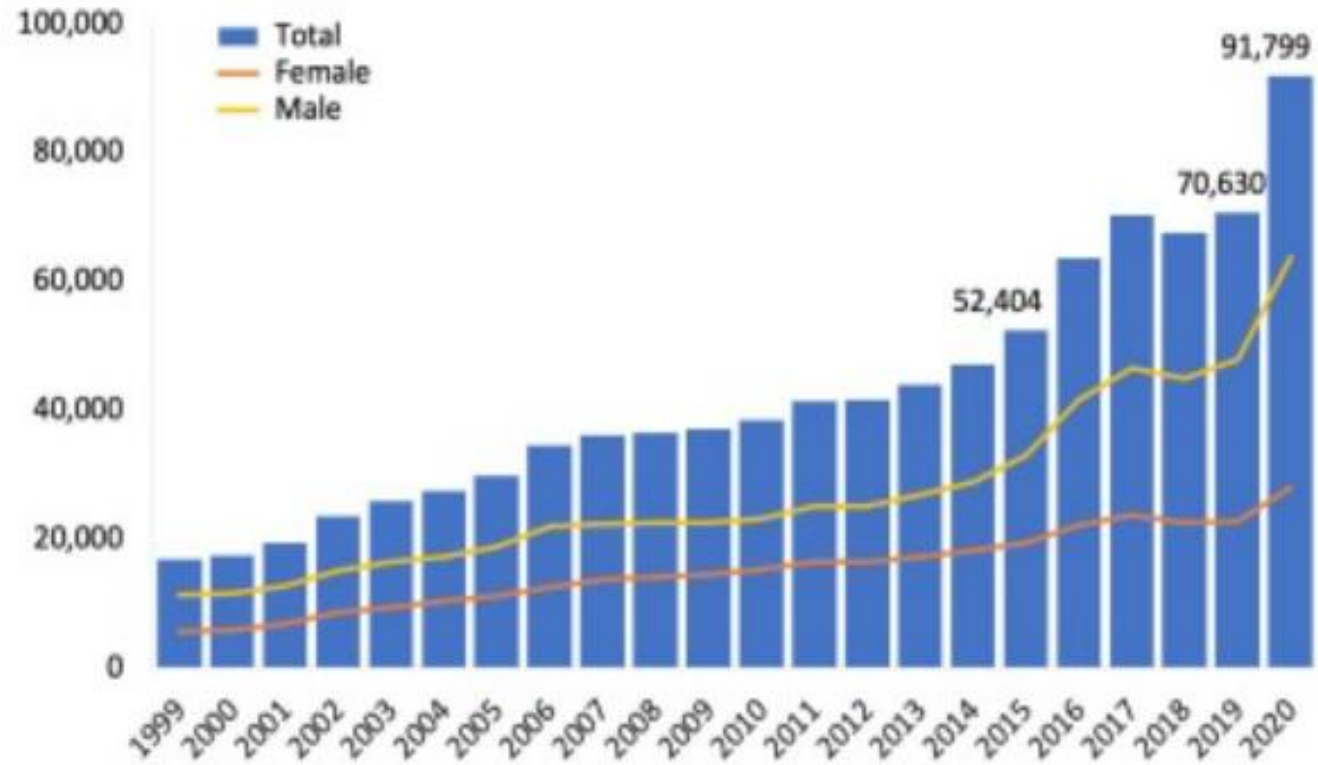
Learning Objectives

- Review evidence-based treatment with medications for opioid use disorder (MOUD)
- Describe the Americans with Disabilities Act (ADA)
- Discuss landmark cases and settlements to ensure ADA compliance by covered entities

Guiding Principles

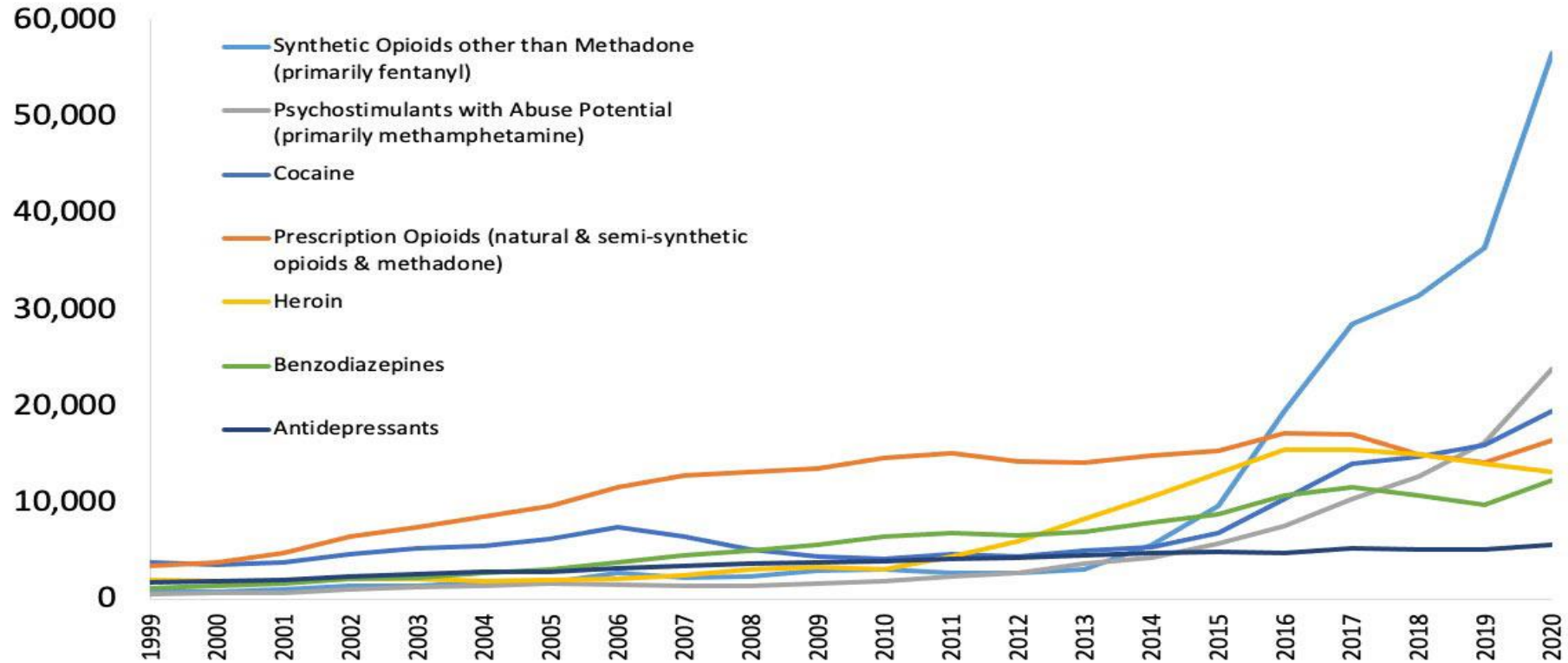
- Opioid use disorder (OUD) is a chronic medical condition
- ADA gives civil rights protections to individuals with disabilities
- OUD is a disability
- Discrimination based on MOUD is a violation of the ADA
- Physicians need to advocate for patients to ensure compliance by public entities with the ADA

**Figure 1. National Drug-Involved Overdose Deaths*
Number Among All Ages, by Gender, 1999-2020**



*Includes deaths with underlying causes of unintentional drug poisoning (X40-X44), suicide drug poisoning (X60-X64), homicide drug poisoning (X85), or drug poisoning of undetermined intent (Y10-Y14), as coded in the International Classification of Diseases, 10th Revision. Source: Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death 1999-2020 on CDC WONDER Online Database, released 12/2021.

Figure 2. National Drug-Involved Overdose Deaths*, Number Among All Ages, 1999-2020



*Includes deaths with underlying causes of unintentional drug poisoning (X40–X44), suicide drug poisoning (X60–X64), homicide drug poisoning (X85), or drug poisoning of undetermined intent (Y10–Y14), as coded in the International Classification of Diseases, 10th Revision. Source: Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death 1999-2020 on CDC WONDER Online Database, released 12/2021.

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Benefits for Withdrawal			
Mortality Benefits			
FDA Approval for OUD			

Medications for Opioid Use Disorder (MOUD)

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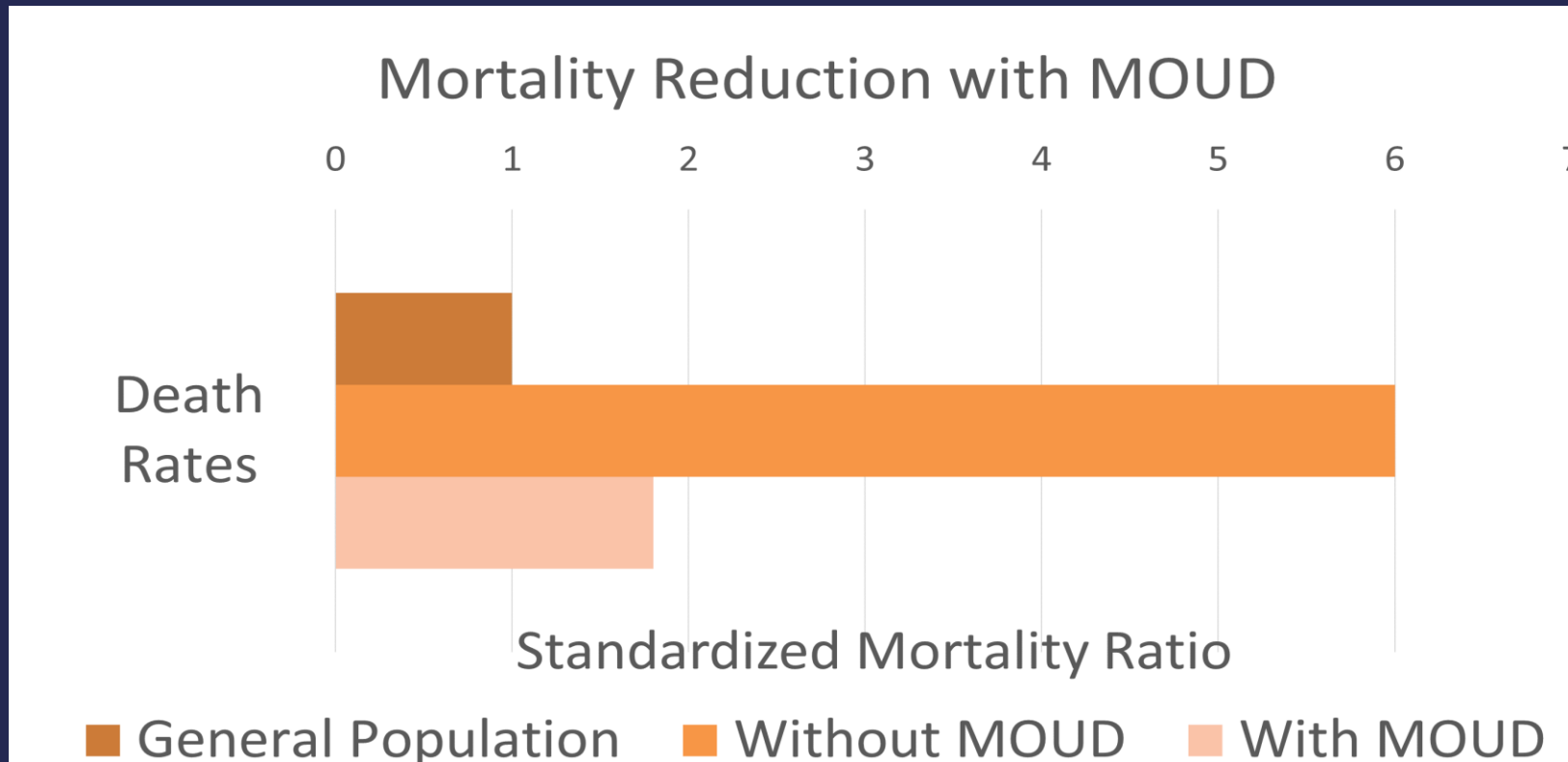
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FDA Approval for OUD	Treatment of OUD		Relapse Prevention

Addressing the Opioid Overdose Crisis: MOUD Must Be Part of the Solution



Dupouy J. et al Mortality Associated With Time In and Out of Buprenorphine Treatment in French Office-Based General Practice: A 7-year Cohort Study. *Ann. Fam. Med.* 2017. 15(4): 355-358.

Evans E. et al Mortality Among Individuals Accessing Pharmacological Treatment for Opioid Use Disorder in California, 2006-2010. *Addiction.* 2015. 110 (6): 996-1005.

Sordo L. et al Mortality Risk During and After Opioid Substitution Treatment: Systemic Review and Meta-Analysis of Cohort Studies. *BMJ.* 2017. 357:j1550.

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Source: [CDC](#)

Anti-Discrimination Laws

Anti-discrimination laws protect the rights of people who use drugs or have substance use disorders to access treatment, healthcare, housing, work, and more.

Anti Discrimination Laws	Applicability
Americans with Disabilities Act (ADA)	-State and local governments (includes jails, prisons, courts, etc.) -Places of public accommodation (hospitals, recovery homes, skilled nursing facilities) -Employers
Rehabilitation Act of 1973	Federally funded entities
Affordable Care Act, Section 1557 (ACA)	Health care entities receiving federal funding
Fair Housing Act (FHA)	Housing and related services

Who do the laws protect?

- People with disabilities
 - Impairment that substantially limits one or more major life activity/body function
- **Substance use disorder** is generally considered a disability
 - But laws do not protect illegal use of drugs
 - So only SUD not *currently* involving illegal use of drugs
 - Alcohol is protected whether past or present use
- However, even if someone currently uses drugs illegally, they cannot be denied health and treatment services because of their drug use

Protections Under
ADA, Rehabilitation Act, ACA

Prohibits discrimination against people
with disabilities, including SUD (no
current illegal use of drugs)

Prohibits denial of health services
because of drug use

Discrimination
because people
take MOUD

What do the Laws prohibit?

Covered entities may not...

- Deny participation or services because of SUD
- Deny equal participation/services because of SUD
- Have admission criteria that screen out or tend to screen out people with SUD
- Have methods of administration that discriminate against people with SUDs
- Deny reasonable modifications for people with SUDs
- Deny health services due to current illegal use of drugs

Discrimination v. Legitimate Decisions

- Decisions based on stigma, rather than objective, medical evidence = discrimination
- Failure to complete an individual assessment often indicates discrimination
- Total bans on MOUD are well established as discriminatory

Department of Justice (DOJ) Guidelines for the ADA for Patients with OUD



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

The opioid crisis poses an extraordinary challenge to communities throughout our country. The Department of Justice (the Department) has responded with a comprehensive approach prioritizing prevention, enforcement, and treatment. This includes enforcing the Americans with Disabilities Act (ADA), which prohibits discrimination against people in recovery from opioid use disorder (OUD) who are not engaging in illegal drug use, including those who are taking legally-prescribed medication to treat their OUD. This guidance document provides information about how the ADA can protect individuals with OUD from discrimination—an important part of combating the opioid epidemic across American communities. While this document focuses on individuals with OUD, the legal principles discussed also apply to individuals with other types of substance use disorders.

1) What is the ADA?

The ADA is a federal law that gives civil rights protections to individuals with disabilities in many areas of life. The ADA guarantees that people with disabilities have the same opportunities as everyone else to enjoy employment opportunities,¹ participate in state and local government programs,² and purchase goods and services.³ For example, the ADA protects people with disabilities from discrimination by social services agencies; child welfare agencies; courts; prisons and jails; medical facilities, including hospitals, doctors' offices, and skilled nursing facilities; homeless shelters; and schools, colleges, and universities.

2) Does an individual in treatment or recovery from opioid use disorder have a disability under the ADA?

Typically, yes, unless the individual is currently engaged in illegal drug use. See Question 5.

The ADA prohibits discrimination on the basis of disability.⁴ The ADA defines disability as (1) a physical or mental impairment that substantially limits one or more major life activities,

- Describes how the ADA protects individuals with OUD, and other SUDs, from discrimination
- “The ADA protects people with disabilities from discrimination by social services agencies; child welfare agencies; courts; prisons and jails; medical facilities, including hospitals, doctors’ offices, and skilled nursing facilities; homeless shelters; and schools, colleges, and universities.”

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Case 1: A Patient with OUD who needs physical rehab

- 24 year old male with OUD on buprenorphine
- Admitted for acute hypoxic respiratory failure due to COVID-19
- Now needs acute rehab for debility after being in the MICU
- Rehab declines patient due to patient OUD and being on buprenorphine

Case 1: A Patient with CF and OUD (cont)

Settlement Agreements under the ADA

- SNIF cannot screen out an individual/a group of individuals (patients with OUD) from receiving health care services

Sample letter:

https://www.lac.org/assets/files/Advocacy-Guide_v4-w-attach-a.pdf

Discussion Questions

- Is this a potential ADA violation?
 - *Yes. The settlements explain this.*
 - *Blanket policies denying admission to people taking MOUD in health care settings like recovery homes and skilled nursing facilities are illegal.*
- What could you do to advocate for this patient if you were his doctor?
 - *Educate the patient and other providers about the ADA to ensure compliance and file a complaint with e.g., assistant US attorney, so it can be investigated to determine if it is an ADA violation*

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Breaking Barriers. Defending Dignity.

**Opioid Use Disorder & Health Care:
Skilled Nursing Facilities**

People who take medication for opioid use disorder (MOUD), like methadone or buprenorphine, often experience illegal barriers to healthcare.

Admission to Skilled Nursing Facilities
(including nursing homes and long-term care facilities)

People needing care at a skilled nursing facility (SNF) are often denied admission because they take methadone or buprenorphine to treat opioid use disorder (OUD). The U.S. Department of Justice has stated that these practices are illegal discrimination.

Signs of discrimination include:

- SNF has a policy not to admit people taking methadone or buprenorphine
- SNF says someone must taper off of MOUD to be admitted
- SNF says it cannot provide the "type of services" someone with OUD needs
- SNF denies someone admission after commenting about their substance use

For help, call the Legal Action Center: (212) 243-1313
Visit LAC's [MAT ADVOCACY TOOLKIT](#) for materials that can help you advocate!

How Skilled Nursing Facilities Can Provide Access to MOUD

SNFs can provide access to MOUD, and many do. Below are some ways SNFs may facilitate access to methadone and buprenorphine:

- The SNF can bring patients to their opioid treatment program (OTP) for methadone doses
- Methadone may be transported from an OTP to an SNF
- The patient's qualified practitioner in the community can prescribe buprenorphine
- An SNF qualified practitioner can prescribe buprenorphine with a federal waiver. 2021 federal guidance allows qualified practitioners to prescribe buprenorphine to up to 30 patients without satisfying counseling and training requirements
- SNFs may store and administer MOUDs the same way they do other controlled substances

For more information, visit NYS Office of Addiction Services and Supports:
[Medications for the Treatment of Opioid Use Disorder](#)

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Case 2: A Patient with OUD Seeking Care for Post-Traumatic Stress Disorder (PTSD)

- You are a PCP and have a patient with OUD on buprenorphine is seeking treatment for PTSD
- Refer patient to psychiatrist for management
- Calls outpatient psychiatry clinic to make an appointment
- Clinic demands for patient to be off MOUD for several months to establish care for PTSD

Case 2: A Patient with OUD Seeking Care for PTSD (cont.) - Settlement

- Cannot withhold medical care for patients for being on MOUD
- If lacking expertise to treat condition due to OUD: Do not have to treat OUD, but refer to a provider who can
- Clinic to provide nondiscriminatory care for patients with OUD and ensure compliance with the ADA

Source: United States Department of Justice. <https://www.justice.gov/usao-edky/pr/us-attorney-s-office-reaches-settlement-ashland-based-hospital-resolving-alleged>

Discussion Questions

- Is this an ADA violation?
 - *Yes. A recent settlement helps establish this*
- What avenues of advocacy can you think of for the patient to use?
 - *Let's discuss the physician's role as an advocate*

Case 3: Incarcerated Patient with OUD and Chest Wall Abscess

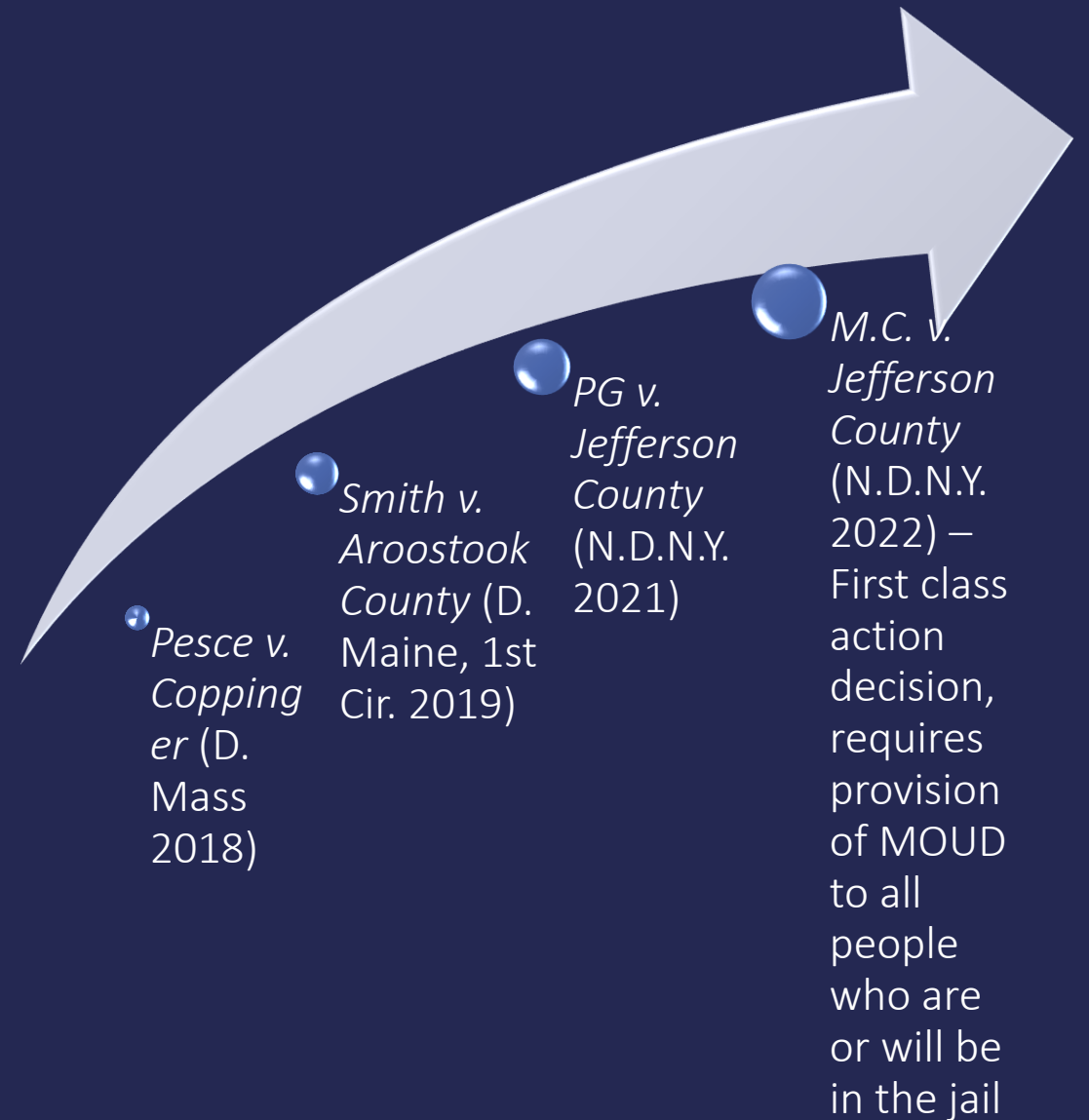
- Hospitalized for injection related chest wall abscess
- Receives appropriate medical management for his injection
- Diagnosed with severe OUD
- Desires buprenorphine to treat OUD
- Guards at bedside interrupt buprenorphine administration:
“You know he can’t have this in jail, right?”

Discussion Questions

- What are some complicating factors for this patient?
 - *Barriers to treatment as carceral system is interfering with medical care*
- Does the ADA still apply?
 - *Yes. Incarcerated patients with OUD on MOUD are still protected by the ADA and the Eighth/14 Amendments*
- How can you advocate for this patient?
 - *Barriers require multistep approach*

The ADA for Incarcerated Patients on MOUD

- Discontinuation of MOUD = ADA violation
- Ex) Agreement between the United States of America and Lexington-Fayette Urban County Government Division of Community Corrections
- ***Not all jails or prisons are currently compliant with the ADA***
 - ***Continued advocacy is needed***



Right to Health Care Under the 8th Amendment

- Eighth Amendment (1971): prohibits cruel and unusual punishment of incarcerated patients
- Supreme Court upheld protection to apply to health care: deliberate indifference to serious medical need
- Incarcerated patients should receive same standard of care as nonincarcerated patients
- MOUD is the standard of care for OUD

Source: Constitution of the United States. Eighth Amendment

Eber GB Using the Constitution to Improve Prisoner Health. Am J Public Health. 2009. 99(9). 1541-1542.

Substance Abuse and Mental Health Services Administration. Medications for Opioid Use Disorder. Treatment Improvement Protocol (TIP) Series 63

Publication No. PEP21-02-01-002.

Avenues for Advocacy for Patients and Physicians

Education – Use LAC’s resources found at <https://www.lac.org/major-project/legal-help-4-pwud>

File Administrative Complaints:

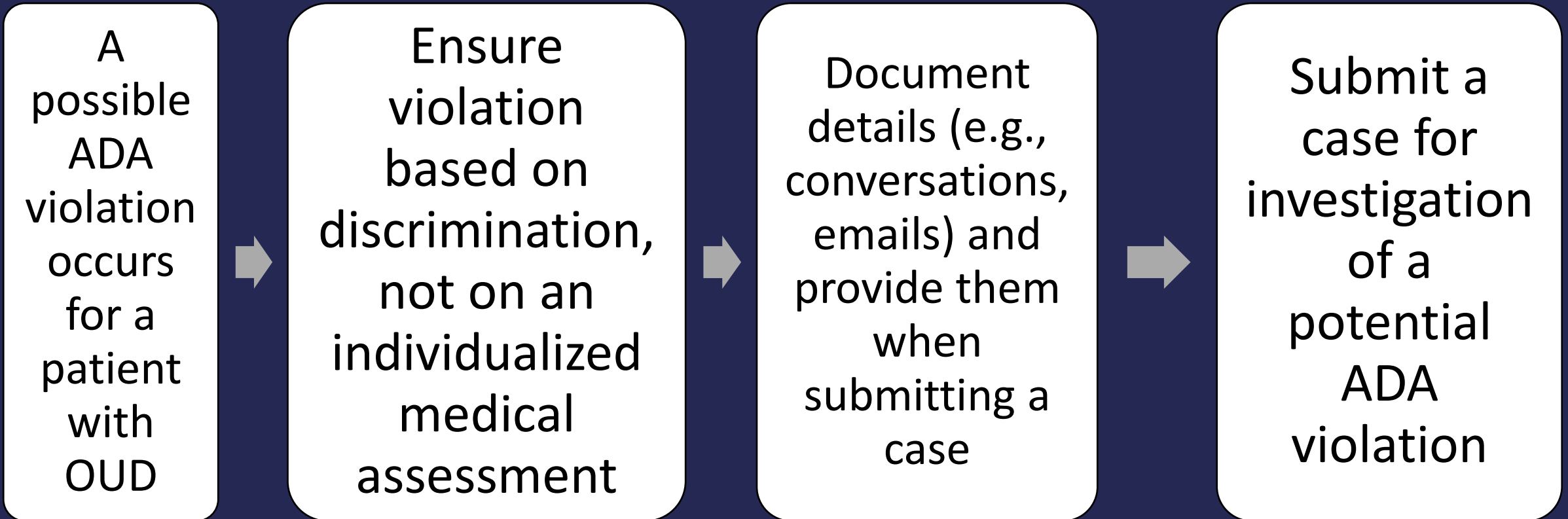
- **ADA** – file with DOJ at [ada.gov](https://www.ada.gov) or <https://beta.ada.gov/file-a-complaint/>
- **Rehabilitation Act** – file with OCR: <https://www.hhs.gov/civil-rights/filing-a-complaint/index.html>
- **FHA** – file with HUD: https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint#_How_To_File
- **EMTALA** – file with agency that investigates complaints about hospitals in state where incident occurred. See Centers for Medicare & Medicaid Services list at <https://www.cms.gov/files/document/state-survey-agency-directory-june-2022.pdf>

Don’t forget **state agency complaints** – including Attorneys General!

New York – Contact LAC for any discrimination based on SUD

North Carolina/Kentucky – Contact LAC for denial of healthcare based on SUD

How to File a Potential ADA violation



How to File a Potential ADA violation

Ensure that either:

- Patient signs release of information form OR de-identify data to be compliant with Health Insurance Portability and Accountability Act (HIPAA)

Optional:

- Discuss violation with the patient (patient can also file on their own behalf – the more complaints received, the more information that the assistant US attorney will have)
- Be available for assistant US attorney for follow up

Considerations when filing ADA violation

- DOJ can investigate public entities and places of public accommodation (private hospitals, SNFs, etc.)
- Assistant US attorney represents the United States
- Monetary settlements are often smaller amounts
- Goal: To ensure public entities/places of public accommodation are compliant with ADA

Guiding Principles

- OUD is a chronic medical condition
- ADA gives civil rights protections to individuals with disabilities
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- Physicians need to advocate for patients to ensure compliance by public entities with the ADA

Acknowledgements

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