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NAADAC

THE AMERICANS WITH DISABILITIES ACT:
SUD AND ELIMINATING DISCRIMINATORY BARRIERS TO TREATMENT

PRESENTERS:
OCE HARRISON
CHARLOTTE LANVERS

MAY 27, 2020

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>> SAMSON TEKLEMARIAM: Hello, everywhere. And welcome to today's webinar on the Americans with Disabilities Act, SUDs and barriers to treatment and recovery presented by Dr. Oce Harrison and Charlotte Lanvers. It's great that you can join us today. My name is Samson Teklemariam. And I'm the Director of Training and Professional Development for NAADAC, the Association for Addiction Professionals. Can see I'll be the organizer for this event. The permanent homepage for NAADAC webinars is www.NAADAC.org/webinars. Make sure to bookmark this webpage so you can stay up-to-date on the latest in addiction education. Closed-captioning is provided by CaptionAccess. Please check your most recent confirmation email or our Q&A and chat box for the link to use closed-captioning.

And as you can see, we're using GoToWebinar for this live event. You'll notice that GoToWebinar webinar panel looks like the one you see here on my slide. You can use that orange arrow any time to minimize or maximize the control panel. If you have any questions for the presenter, just type them into the questions box. We'll gather your questions and give them to our presenters during designated points of a live Q&A. Any questions that we don't get to, we'll collect directly from you all and send them to the presenter and post the questions and answers on our website at a later date.

Lastly, under the questions tab, you also see another tab that says handouts. You can download the PowerPoint slides from the handouts tab and a quick reference guide giving you more detailed instructions on how to get your CEs. Let me introduce you to today's presenter. First, Charlotte Lanvers is a trial attorney in the Disability Rights section of the Civil Rights Division at the Department of Justice where she enforces the A.D.A.

From 2012 to 2014, Lanvers worked as a Staff Attorney at the Department of Education Office for Civil Rights prior to joining OCR, Lanvers worked at Disability Rights education and defense fund as a Skadden Fellow and Staff Attorney on cases

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enforcing the rights of individuals with disabilities. Charlotte also holds a Bachelor's degree from Princeton University Woodrow Wilson school and a jurisdiction doctorate from Cornell Law School.

Also with us today, Oce Harrison, she has directed the New England A.D.A. Center since 2001. She provides A.D.A. addiction recovery trainings throughout the region presented at NAADAC's 2019 annual conference in Florida. The Massachusetts organization for addiction recovery at the Massachusetts Alcohol and Drug Counselors Association annual conference. And in 20 cities in towns in Massachusetts on behalf of learn to cope. Oce also led the A.D.A. National Network in creating the A.D.A. addiction recovery fact sheet and the A.D.A. addiction recovery employment fact sheet. Both of these resources are available in your GoToWebinar control panel handouts tab. If they will be posted on the dedicated webpage for this webinar, the same one you use to register for this webinar.

NAADAC is delighted to provide this webinar to you presented by these two experts. So, Oce, whenever you're ready, I'll hand this over to you.

>> OCE HARRISON: Thank you, Samson. This webinar today. Okay, here we go. Yes, the New England A.D.A. Center is one of 10 A.D.A. centers regionally located throughout the country. All the A.D.A. centers provide information, guidance, training and research on the A.D.A. We are not enforcers. We're educators. And we're all connected about a single 800 number. So no matter where you are in the country and you call our number, you'll get connected to the nearest center to you.

We'll answer your ADA questions anonymously and confidentially. The New England A.D.A. Center is located in Boston at the institute for human center design. And is grant funded by the national Institute on Disability, independent living and rehabilitation research.

>> CHARLOTTE LANVERS: Today we will be teaching you about the A.D.A. And in particular, it's protections for people with alcohol substance and opioid use disorders. You'll also be able to identify potential discrimination under the A.D.A. that people in treatment and recovery may experience. And, finally, we will provide you with

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clear guidance about where to reach out to assist individuals with opioid use or substance use disorders in filing complaints of discrimination either as to DOJ or to the appropriate federal agency.

One second. And overview of today's presentation will first provide you with an overview of the A.D.A. The A.D.A.'s application to individuals with substance use disorder, including opioid use disorder as well as examples of alcohol use disorder. And some examples of our recent enforcement activity.

>> OCE HARRISON: So the Americans with Disabilities Act ensures that people with disabilities have the same rights and opportunities as everyone else. This includes people with alcohol use disorder, and people in recovery from opioid and substance use disorders. This summer, we celebrate 30 years of the passage of the A.D.A. And today, there are thousands of people in addiction recovery unaware of their Civil Rights under the law. But the A.D.A. is clear. Addiction is considered a disability.

>> SAMSON TEKLEMARIAM: Thank you Charlotte and Oce. We'll go ahead and launch this polling question here. You'll see a polling question pop up on the screen. The question asks how familiar are you with A.D.A.? Go ahead and launch it. There it is. So just as a reminder for those who have questions for our presenters for Oce or Charlotte, you can send the questions into the question box of your GoToWebinar control panel. You may not see it right now. It will pop up when the poll is finished. It looks like half of you already voted. That's awesome. The question is asking how familiar are you with the aid detachment you'll see four options there. And we'll give you 5 more seconds to complete this poll.

[Polling]

Perfect, thank you so much, everyone. We're going to close the poll and share the results and I'll turn this back over to your presenters.

>> CHARLOTTE LANVERS: That's great. So some individuals in the audience are familiar and some are not as familiar. So, hopefully, everyone here will gather some information that will be useful to them.

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>> OCE HARRISON: And I just want to say the results really make sense to me, because people associate the A.D.A. as a law for people using wheelchairs, people who are blind and deaf. And there are young people who have visible with these disabilities led the movement for A.D.A. But there does many people with conditions affecting the brain, immune system, and the respiratory system and more as Charlotte is about to show us.

>> SAMSON TEKLEMARIAM: Charlotte? Can you hear us? We haven't been able to hear you yet.

>> CHARLOTTE LANVERS: So today we'll talk about the application of the A.D.A. and three main areas. The first is employment. And it is frequently referred to as Title I of A.D.A. because it's the first title of the A.D.A.

And then we'll talk about Title II of the A.D.A., which applies to state and local governments. The A.D.A. doesn't know how to apply to Federal Government. The parallel law that applies to the Federal Government is Section 504. And then, finally, we will talk about Title III of the A.D.A., public accommodations. The public and public accommodations is often confusing to individuals if it applies to private services, which the public can freely go. So restaurants, movie theaters, grocery stores, and thing along those lines.

There are three separate definitions of disability under the A.D.A. The first is a physical or mental impairment that's substantially limits one or more major life activities. We'll discuss further in the slides that follow. The second is a record of having an impairment. This includes a person who has a history of impairment that's substantially limits a major life activity. Including a person who has recovered from an impairment. It could also include a person who has been characterized as having an impairment.

The third category of disability is regarded as. This provision applies if people are treated as if they have an impairment that substantially limits a major life activity, regardless of whether they, in fact, have that impairment. Here's the perception of the covered entity is a key element of the test. Titles 2 and 3. So titles applying to state and local entities or public accommodations have regulations that specifically include

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drug addiction in their definition of physical or mental impairment. While title 1, the employment provision does not expressly include drug addiction in the definition of physical or mental impairment, it clearly falls within the definition.

This is subject to an important exclusion regarding current illegal users of drugs that we will discuss in a moment. Major life activities include a plethora of activities that all of us engage in every day. Everything from caring for oneself, to concentrating, to working. Some courts have even recognized social interactions and parenting as being major life activities affected by substance use disorder.

So the definition of disability is sometimes is subject to a person with a disability being qualified. So as an example, assume a person with an OUD seeks to participate in a state government program where lack of a recent criminal conviction is a prerequisite. The person has a recent criminal conviction, and the program turns the person away on that cases. That person has no resource under the A.D.A. because that person is not qualified to participate regardless of his or her OUD.

The second example mitigating measures take for instance an individual who's MAT allows them to fully function. They're covered by the A.D.A. even though they are on MAT. And it is arguably hindering them fully functional.

They would still be protected by the A.D.A. The definition of disability is expansive. Courts have indicated it should be interpreted broadly. It should not demand extensive analysis.

>> SAMSON TEKLEMARIAM: Thanks, Charlotte. You'll see the second poll up on the screen. This poll asks how familiar are you with protections for people with AUD, OUD, and SUD under the A.D.A.. It's not alphabet soup challenge. Thank you so much for participating in this poll and half of you answered. If you have questions for the presenters, go ahead and send them in the questions box in the webinar panel. We actually will have more than live Q&A. So thank you for the questions that's already come in. All right. So 5 more seconds to answer the poll. And then I'll turn this back over to our presenters. Perfect. Thank you so much, everyone. I'm going to close the poll and share the results.

And I'll turn this back over to Charlotte and Oce.

>> OCE HARRISON: Okay, this is Oce. And this makes sense to me. Because the part of the A.D.A. that applies to addiction recovery is the most under utilize piece of the law. Charlotte, do you have anything to add?

>> CHARLOTTE LANVERS: I don't.

>> OCE HARRISON: Okay. So, let's talk about how the A.D.A. addresses addiction. And, hopefully, the slide will move this time. There we go. Okay. So, the A.D.A. addresses addiction to alcohol and the illegal use of drugs differently.

And I'm going to repeat this. The A.D.A. addresses addiction to alcohol and the illegal use of drugs differently.

We're going to talk about this distinction with various scenarios around alcohol, opioids, and other drugs. So let's start with alcohol.

Addiction to alcohol generally is a disability regardless of whether it is in the present or in the past. However, a person still has to meet the definition of disability that Charlotte previously talked about.

So let's look at a scenario. Michael is often late for work. His supervisor warns him about his lateness. The third time he's late, the supervisor gives him a written warning stating that one or more late arrival will result in termination.

The Michael tells his supervisor that he is addicted to alcohol. And his late arrivals are due to his drinking and he needs immediate time off for detox treatment. Does Michael have protection under the A.D.A.? What do you think?

Yes. Michael is a person with a disability, but it's complicated. The employer does not have to withdraw the warning. The employer must grant Michael's request to take a leave to enter a rehab program, unless the employer can prove that Michael's absence would cause a great difficulty or expense.

Which the A.D.A. calls undue hardship. So, to summarize. Addiction to alcohol is generally a disability regardless of whether it's in the past or the present. Now, let's turn to substance use disorders.

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>> CHARLOTTE LANVERS: So the exclusion I referenced earlier is that an individual with a disability does not include an individual who is currently engaging in the illegal use of drugs. The regulations under the A.D.A. explain that the term "Disability" excludes substance use disorders from current illegal use of drugs.

Drugs are defined as controlled substance Schedule I through 5 of the controlled substances acts. Opium, opioids are considered under this definition.

The regulations make clear that the terms disability and qualified individual with a disability do not include individuals currently engaging in the illegal use of drugs. But if a covered entity acts because the person has OUD and not the individual's current illegal use, this could give rise to liability under the A.D.A.

The question that immediately follows is what counts as currently engaging. And the definition provided is that illegal use of drugs have occurred recently enough to indicate the individual is actively engaged in such conduct.

So that is offering us a little bit more information. But it is not a bright line rule. And there have been a few cases analyzing, and it is a heavily fact-bound inquiry of courts considering whether or not individual illegal drug use stopped enough ago for the person to be protected under the A.D.A.

Key questions that the courts have asked are does the illegal use of drugs remain a problem? How much time has passed since the individual used drugs illegally? Some courts have found that when treatment does not begin until after the alleged discriminatory action, the A.D.A. doesn't apply.

Some courts have interpreted current use to include the weeks and months prior to the alleged discriminatory act. Some courts have found that 30 days free of illicit use of substance is no longer considered currently engaged in illegal use.

So there's a lot of variety across the country depending on how the courts have interpreted these fact-bound inquiries.

With that said, the A.D.A. does protect individuals who have successfully completed a supervised drug rehabilitation program. And are no longer using drugs illegally. A person who is participating in a program and is no longer using drugs

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illegally. And individuals who are mistakenly regarded as using drugs illegally but, in fact, are not.

>> OCE HARRISON: So what does illegal use of drugs mean? It means two things. Use of illegal drugs such as heroin or cocaine and use of substances such as opioid or morphine. But person has no prescription or, oops, that means by itself they have a fraudulent prescription or person using more than prescribed.

So let's see how this breaks down. A scenario with the real-life situation.

Marianna has been heroin-free for 3 years. She applies for a job that she is qualified to do. The employer refuses to hire her because he knows about her past addiction. Is she protected under A.D.A.? She has a history of impairment from heroin. Has refrained from the use of illegal drugs for three years which is a good indication that there is not an ongoing problem. So the potential employer violated the A.D.A. when he refused to hire Marianna because of her recovery status.

Another scenario.

Julie has been in recovery for 5 years from a diversion to oxycontin. She is in medical assisted treatment. She works in an office at a daycare center. Her boss learns about her former addiction and tells her to "Get off methadone or you'll be fired." Does Julie have protection under the A.D.A.?

She does. She has a history of addiction. And she's being regarded as a current user of illegal drugs because of her medical condition. Julie's boss is incorrectly regarding the use of methadone as an illegal drug. And we know that methadone is a legally prescribed medication used to treat addiction just like insulin is prescribed to treat diabetes.

So, what if Julie's employer found out she recently used cocaine while in medical assisted treatment? Would she have rights? No. The A.D.A. does not protect individuals who are currently engaging in the illegal use of drugs.

But what if Julie's employer found out she recently used marijuana while in medical assisted treatment? Would she have protections under the A.D.A.? I'll wait couple of seconds on that one. No. Marijuana in all its forms is illegal under Federal law.

However, if medical marijuana is legal under state law, as it is in my states of Massachusetts and other states, then employers need to consider reasonable accommodations for off-site use of medical marijuana under state law. You need to check your state law.

A quick story about a case that happened in Massachusetts. Jennifer Barbados v. Advantage marketing and sales. Jennifer applied for a job. And she was offered the job. And she was about to go for her medical exam. And the employer said that you'll be taking a drug test and she said that's fine. But I want you to know I'm a person with a Crohn's disease, and I have a prescription for medical marijuana I take at night.

So he said, yeah, that's fine. So she started working. And at the end of her first shift that day, end of the day, her supervisor came over and said, hmm... I have to let you go. Sorry, we found marijuana in your drug test. So she pursued to go to the State Court. And she was basically found yes, she's a person with a disability. And she has a right to have a prescription for medical marijuana, off-site use, to treat her Crohn's disease. And that treatment was really to help reduce her pain from the disease.

So, okay. Now, we're going to turn our attention to how the A.D.A. applies to a person who becomes addicted while legally using a prescription drug like Percocet. And that just went skipped by itself. So I'm going to go back here. So let's see. James became addict to do Percocet while taking the medication in a prescribed manner in prescribed amounts. Is James protected under the A.D.A.? He is under the A.D.A., because he's legally using drugs. However, if he takes more than prescribed, he may not be covered.

So let's say that James wants to take a leave of absence from his job to taper off Percocet. Does James have protections under the A.D.A.? Yep. He's a person with a

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disability. And he may have rights to an accommodation. He needs to discuss the possibility of an accommodation with his boss.

Well, what if James' employer found out he was using heroin on the job? Would he have rights under the A.D.A.? I know you all know the answer to this one. No. However, nothing in the A.D.A. would limit the employers' ability to offer leave or other assistance that may allow James to receive treatment.

There is an agreement called the "Last chance agreement." And it is usually considered for individuals with addiction. And when that individual can be fired, an employer may choose, but it's not required by the A.D.A. to offer a last chance agreement. Basically, under the agreement, the employer agrees not to terminate the employee in exchange for an employee's agreement to receive treatment and avoid further workplace problems. And the violation of agreement usually warrants termination.

>> CHARLOTTE LANVERS: Thanks, Oce. Before we move on, we thought it would be important for folks in the audience to understand that healthcare providers may not deny health or drug rehabilitation services to individuals because of their current or illegal use of drugs or alcohol intoxication if they are otherwise entitled to such services.

So as an example, an emergency department could not refuse to treat a person who has overdosed on heroin as an example. The A.D.A.'s exclusion for current drug use do not apply to medical providers.

We thought this would be a good time to take a break for questions. So I don't know if Samson, if you have any at this time.

>> SAMSON TEKLEMARIAM: Yeah, we have a lot. Here, let me see. Looks like we lost our spot here. Okay. So we do have a lot of questions. I guess I'll throw one out there for you Charlotte and Oce. One question comes from Laura in Pennsylvania. Laura asks I thought there have been restrictions related to substance use in the absence of a co-occurring mental illness. Has this been changed again or was this ever a part of the A.D.A.?

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>> OCE HARRISON: So the question is, Samson, could you repeat that question?

>> SAMSON TEKLEMARIAM: Sure. The question comes from Laura from Pennsylvania. I thought there had been restrictions related to substance abuse in the absence of co-occurring mental illness. Has this been changed again or has this been ever part of the A.D.A.?

>> CHARLOTTE LANVERS: I don't think it was ever part of the A.D.A. I mean, substance abuse disorder falls under the ambit of mental impairment. But it does not require co-occurrence of separate mental health impairment is my understanding. Oce, did you have anything to add?

>> OCE HARRISON: No. I don't recognize it at all.

>> SAMSON TEKLEMARIAM: Can I throw out another question? Because we had a lot. Some people were asking, I can't remember who went over the illustration or the story about the person who's using marijuana and had it prescribed. But there were a lot of questions, if you can expound on that situation a little bit more. The idea that marijuana may be legal in some states, but it's not legal federally and the A.D.A. is under the federal branch and maybe what considerations do our counselors and our patients need to know in terms of that scenario painted earlier.

>> OCE HARRISON: A.D.A. is a Federal law. Under Federal law, marijuana is illegal. However, in some of the states in want United States, there are state laws that have legalized medical marijuana and recreational marijuana.

So, you really have to look at your state law and see what it says. In Massachusetts, they interpreted that law to mean that this woman Jennifer had a disability, yes. And she was using medical marijuana like a person who had diabetes would use insulin to treat their illness. So that might go in other states, because the state laws are all different.

So when Jennifer took the company to court, she took it to a supreme judicial court in the United States. And the state law found her that she had a right for reasonable accommodation as a person with disabilities. I don't know if this helps this

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person, but this is a big, big discussion that usually takes place around this issue. It's a really messy kind of issue. I hope that helped.

>> CHARLOTTE LANVERS: We can certainly pick up on that at the end as well, if individuals have follow-up questions. Now we're going to delve into the various titles I mentioned earlier. And we'll begin with Title I, which includes employment.

So Title I of A.D.A. applies to all aspects of the employment process, everything from recruitment, to pay, to promotions, hiring, training, and other privileges of employment. It does not apply to entities that are not covered. So not religious entities, not private membership clubs, and not Native American reservations.

One of the key components of Title I of the A.D.A. is reasonable accommodations, which more essentially feasible change in the job environment or in performance of job duties to enable a qualified individual with a disability to perform the essential motions.

It's only required for known limitations. The employee is typically expected to ask for the accommodation. But there are no magic words. And it need not be a formal written request. And employer may request documentary proof of a disability and a functional limitation. The employer may choose the less expensive or burdensome accommodation as long as it is also effective.

Employers are not required to provide reasonable accommodation if they can demonstrate that the accommodation would amount to an undue hardship and we'll talk about this a bit more. Oce previously referred to undue hardship above.

So specifically, an employer is not required to provide a reasonable accommodation if they can show that the accommodation would amount to an undue hardship, which is defined as requiring significant difficulty or expense when considered in light of the following criteria. The nature and cost of the accommodation. The overall financial resources of the facility. The overall financial resources of the covered entity. And then the type of operation or operations of the covered entity. And an additional defense under the A.D.A. that employers can avail themselves of is qualification

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standard. And, so, they are permitted to require some tests or selection criteria under limited conditions. It must be job-related and consistent with business necessity. And such performance cannot be accomplished by a reasonable accommodation.

So, job-related requirements may include any of the following. Possessing specific training, possessing specific licenses or certificates, possessing certain physical or mental abilities. So vision, hearing, or lifting requirements. I'm happy to answer questions about this at the end.

And then employers can also avail themselves of the direct defense. And the qualification of standards may include requirements that individual that cannot be eliminated or reduced by reasonable accommodation.

In consideration whether an individual presents a direct threat, the entity is required to engage in an individualized assessment based on objective medical or other relevant information and must consider the duration of the risk, the nature and severity of the potential harm, likelihood of the harm occurring, and the eminence of potential harm occurring.

Inquiring about a disability, in general, an employer cannot ask disability-related questions or require a medical examination at this stage. There are very few exceptions to this. The first is that employers are permitted pre-offer to have limited questions about reasonable accommodation if they reasonably believe that the applicant may need an accommodation because of an obvious or voluntarily disclosed disability. Or where the applicant has disclosed a need for accommodation.

And employers may ask if the applicant will need an accommodation to perform a specific job duty. And if the answer is yes, the employer may then ask what the accommodation would be. The employer cannot ask questions about the nature or the severity of the disability pre-offer.

Questions about use of drug is permissible. Because a positive or a negative answer does not reveal a disability, but questions about the extent or frequency of drug use. For example, how much alcohol or illegal drugs did you consume or ingest? How often do or did you drink alcohol or use illegal drugs? And, finally, post conditional job

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offers may be permitted even if they relate to disability-related questions or require a medical examination as long as all individuals selected for the same job are asked the same questions. Or made to take the same examination.

And then current employees, questions about drug use are not disability-related questions. So they can be asked at any time. However, the answers can't reveal a disability. So questions about extent or frequency of drug use are disability-related questions. And, therefore, the reason for asking must be job-related and consistent with business necessity.

>> OCE HARRISON: I have a story but before that, I want to focus on this application and interview process. And Charlotte presented the A.D.A. prohibits disability-related question and medical exams because they can reveal a disability at this stage of employment. And disability-related questions are are you taking prescription drugs? Do you have a disability, illness or condition that will prevent you from doing the job? Have you ever been treated for addiction to alcohol, opioids , or other drugs? So one morning I received a call from a man we'll call Marc. And he is in medical assisted treatment. And he's applying to become, well, he's applying to firefighter academy. He is required to go through a medical exam as part of his application.

So, if he doesn't go through the exam, he will not be considered for the academy. And he is very well aware he will be taking a drug test. So he goes ahead with the medical exam. First question the doctor asks during his exam is, "Are you taking any prescription drugs?" Mark says, Suboxone. The doctor responds this will count against you. So does Marc have protections under the A.D.A.? He does. Marc is a person with a disability. And for Marc, medical exam requires that he divulge a prescription medication that revealed his impairment, a history of addiction to opioids.

So the employer violated the A.D.A. by requiring an medical examiner asking questions that revealed Marc's disability, which is a history of addiction.

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>> CHARLOTTE LANVERS: So I guess we can jump to drug testing under the A.D.A. As mentioned earlier, drug testing is permissible as long as it's not like it's not considered to be a medical examination under the A.D.A. So employers can drug test and the A.D.A. itself does not encourage or prohibit drug testing when making employment decisions.

So the following is an example of what illegal discrimination may play out under A.D.A. Here, Eduardo is a check out clerk at a local big box store and model employee. He has difficulty standing for a long period of time due to muscle pains related to his methadone treatment and his employer refused to provide him a stool as a reasonable accommodation. Here it's hard to see how any defenses apply. It would probably be not an undue hardship to provide him a stool.

It does not seem related to business necessity to prohibit use of stools. And he's unlikely a direct threat when using a stool. And, so, it would be reasonable for the employer to provide a stool as a reasonable accommodation in this example.

There have been some cases involving employers who failed to hire individuals on MAT when employer learned that they were taking a medically prescribed medication. And this involved Volvo and an applicant was taking medically prescribed Suboxone and upon reporting for his own work, informed him they could not hire him because of his Suboxone use.

EEOC entered into a consent with Volvo and the Volvo agreed to pay the individual \$75,000 in damages, and explaining the right to a reasonable accommodation where a disability amend policy on post offer medical and drug evals how it will assess whether an employee or applicant's lawful use of prescription medication poses a direct threat provide A.D.A. training. And report to the EEOC.

Under Title II, similar protections apply to public entities that are of state and local governance. So everything from courts to law enforcement agencies to public transportation.

Under Title II, a common obligation is to make reasonable modifications to policies, practices, and procedures. As with Title I, Title II entities have a series of

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potential defenses. They can avail themselves of undimensional alteration defense if the modification is asking the entity to fundamentally alter the nature of its services. It also has a legitimate safety requirement allowance, which permits entities to have certain requirements for the safe operation of their services, programs and activities and as with Title I, a direct threat to defense. In the context of Title II, we have seen quite a bit of activity in the area of zoning for, say, methadone providers who may be subject to variances or additional burden not set forth in the law to justify their need or desire to open a treatment facility.

So this is an example of a city adopting and enforcing zoning rules that subject presidential substance use disorder programs to a burdensome approval process. Some examples of this includes United States v. City of Baltimore agreement. Successfully challenged a discriminatory zoning rule that subjected presidential use disorder program to a burdensome approval process.

If anyone is interested in reading more about these agreements, you can go to ADA.gov and search City of Baltimore. And you should be able to find it. There is also a similar agreement with the City of Ansonia. These examples can also manifest in the context of parole and probation if a local law enforcement agency has a blanket policy against any and all MAT. Also in the context of child welfare agencies who may apply a blanket prohibition to custody of parents and policy that would run afoul of A.D.A.

>> OCE HARRISON: People who enter correctional system in medical assisted treatment are often discontinued on their medication. Are inmates protected under the A.D.A.? I'll give you the answer.

Then medical assisted treatment can be treated for like a diabetes for cancer. When there's no medical dispensary, then a reasonable modification can be discussed like in the case of Jeffrey Pish. and he was going to jail because of a driving violation. The jail did not have a medical dispensary. So Jeffrey brought this to the attention of the Massachusetts ACLU. And the ACLU claimed that denying Jeffrey his medication was a violation of the A.D.A. And they won the case. And from jail, Jeffrey was driven to a healthcare clinic each morning to get his methadone.

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So miracles do happen. Well, I don't know what that or how that happened. But I'm going to turn that off. And I'll try moving it again. Okay. Well, when I get this going, Charlotte will turn back to Title III.

>> CHARLOTTE LANVERS: So, public accommodations, these are, again, public is in the name, but they apply to hospitals, insurance offices, pharmacies, healthcare providers, private entities that we seek services from every day.

In the Title III context, we have seen examples of medical providers turning away perspective patients due to a patient's medically prescribed use of Suboxone with a separate physician. And the matter of Selma, an individual was seeking to find a new physician, and because of his medically prescribed MAT, he was turned away. The facility allegedly engaged in this practice of turning away patients who lawfully took medical assisted treatment for their conditions.

The agreement required Selma medical associates to not deny services on the cases of disability, including OUD. To not apply standards of criteria that screen out individuals with disabilities. To adopt a non-discrimination policy and train staff, and to pay \$30,000 in damages to the complaint and \$10,000 for penalty to the United States.

Similarly, Charlwell enter into an agreement with a skilled nursing facility that had allegedly denied admission to a patient with OUD due to the patient's use of Suboxone. Similar to Selma, they were applying an eligibility criteria that screened out individuals and when we say eligibility criteria, in this context the name they essentially had a blanket policy to refuse admission to anyone using MAT, regardless of whether or not it was medically prescribed by a physician. With respect to this entity agreed to adopt non-discrimination policy and provide training on the A.D.A. and OUD to admissions personnel, and to pay a civil penalty of \$5,000 to the United States.

Oce.

>> OCE HARRISON: Sorry. Yes, Athena Health Care physical rehab centers. I'm going to tell you a brief story before I tell you a little bit about what happened at Athena. At a training last year, nurse who works at a hospital said that it's common practice to spend hours trying to find a patient in medical assisted treatment a bed than

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a physical rehab center. And sometimes it's impossible. And, so, two people applied to become patients at Athena physical rehab. And they were denied admissions on the basis of being treated with Suboxone. So, Athena refused to administer their opioid use disorder medication as they would any other medication.

And Athena Health Care is in mostly southern New England. And that is all I wanted to say about that actually.

So, we're at the end and we just want to share some resources with you. First, if you have questions about your rights and responsibilities under the A.D.A., call 1-800-949-4232. Or you can visit A.D.A.org find your region. And we have addiction recovery fact sheet and A.D.A. addiction recovery and employment fact sheet. And the fact sheets are also available in the GoToWebinar control panel and the same website you used to register for the training.

Charlotte.

>> CHARLOTTE LANVERS: Here is some information about how to file a complaint with the EEOC. It's worth explaining the fact that Disability Rights section where I work enforces Title I of the A.D.A. as to public employers. But first all charges go through to and through the EEOC. And after EEOC has gone through the charges, if it is a public employer, it will be sent to our office for them it is a private employer, they will keep the charge or issue a right to sue, a letter to the individual.

For individuals who are experiencing OUD discrimination, or SUD, or anything that you encounter as addiction counselors, we would encourage you to encourage them to file complaints at ADA.gov. Complaint may not be formal. They can just include facts about the allegations and while we don't open every complaint that we receive because of resources, we are very interested in these issues and would welcome anyone experiencing hardship in this area to please file a complaint with our office.

>> SAMSON TEKLEMARIAM: Thank you so much Oce and Charlotte. So we're going to go to a live Q&A. We have a lot of questions that came in. There's no way we'll get to all of them. So the questions are going to be in order received. But

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everyone, please continue to send in your questions. We'll get them typed up in a Q&A document and then we will email them to Charlotte and Oce and see if we can get them answered and posted in our website in a next week or so, so Charlotte and Oce, the first question is about employment. The question is can an employer say they cannot hire past clients or someone who may have at some point in their life been involved with treatment from that company? Or is this considered discrimination under the A.D.A.?

>> OCE HARRISON: I think it depend on why they're saying what they're saying. Is it based on any record of performance? Is there observable data that they have as to the reason why they couldn't do that? Is it a place that holds bombs like Raytheon? It depends on why they're saying what they're saying.

>> CHARLOTTE LANVERS: I agree with Oce. These are always factual inquiries at the end of the day, so we can't provide a definitive legal answer. It would depend on the facts, but the question, I think is a question to ask in that analysis is, is it pre-text? Is this eligibility criteria pre-text to keep a certain type or a certain class of individuals out? It may be that they have a legitimate reason for doing it. That is not at all tied to disability. And if that is the case, then it would seem that they would be permitted to do it.

>> SAMSON TEKLEMARIAM: Great. Our next question business those individuals who are incarcerated. This question comes from Nicole from Wisconsin and also few people from Pennsylvania and Washington also ask a similar question. They're wondering if you can expound on more information and clarity about protections for incarcerated individuals or those individuals who are on probation. And how that affects their ability to access medical assisted treatment, just to give you Charlotte and Oce maybe a background here. Most of us in addiction treatment profession are accustomed to have clients in our caseload whether they're incarcerated or released, and they're not able to take medication as prescribed, even if they're used to treat a substance use disorder. It's common for some reason in court systems are seen differently although in the A.D.A. they're not supposed to be. If someone is on incarceration or probation, they may not have access to MAT and that's what a lot of people were asking about.

>> OCE HARRISON: Umm... well, I have to say corrections is not something I know a lot about. But I do know that there have been, especially in the State of Rhode Island has had quite an amazing research project at their state correctional facilities, in which when people are coming in and become inmates, they actually do an evaluation there on whether or not this is a person with an addiction and if he or she needs medication. And then they keep the person on medication and follow them through probation and parole and support them. I know it's very different and it's not what you're asking. But it's not an area I'm very familiar with. Charlotte.

>> CHARLOTTE LANVERS: I would just say that the A.D.A. applies to corrections. So to the extent that individuals are experiencing hardship, I would encourage them or their advocates, or their representatives to consider filing a complaint at ADA.gov.

>> SAMSON TEKLEMARIAM: That's a great reminder, Charlotte. Thank you for saying that. Same to everyone else. We're getting a lot of questions about this. I'm trying to filter through them. A lot of these specific cases or questions you all have it sounds like you're asking these questions on behalf of a client that you're advocating for. And Charlotte mentioned, go to ADA.gov and also on the slides, there's a phone number you guys can call for case consultation, case review. This is another one, very similar, because it's about families, I just thought maybe we would ask this one a little bit different. This question comes from Heather. Can a judge in a CPS case for parent to come off Suboxone or methadone in order to receive custody of their children?

>> CHARLOTTE LANVERS: They're all asking the hard questions. So legal decisions are kind of protected and are a lot more complicated because they turn on a variety of factors. So, while it would seem suspicious for any judge to disregard doctor's orders and essentially supplant their judgment ahead of an expert, there are complications to retroactively applying the A.D.A. to decisions in nature. With that said, if a parent is sort of heading potentially down that course early on, and the child's welfare contacts or if an agency, say, has a blanket policy against allowing parents to use MAT, that might be the kind of issue to file a complaint with our office on. I would add, anyone should file a complaint at any time, because all of these issues are fact

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specific and fact dependent. But there have been quite a bit of case law about the way that the A.D.A. applies to court decisions and it is a lot less straightforward than a blanket policy that, say, another agency is applying to another individual short of a judge's decision. Oce, I don't know if you have anything to add.

>> OCE HARRISON: I certainly have heard of cases where, you know, where a judge has said to a person who has a prescription for Suboxone. You'll see your kids again when you get off the Suboxone. And I think that shows a lack of understanding about what that drug is and the benefits that drug has. So to deny a parent the ability to see their kids based on the prescription only does not seem right. It seems like a violation of A.D.A. Let's just focus on that.

>> SAMSON TEKLEMARIAM: Thank you both so much. Let's see if we can squeeze in 2 more. Marc from Pennsylvania adds if a person suffers from alcohol use disorder and covered under the A.D.A., would they lose coverage if they also abusing cocaine at the same time?

>> OCE HARRISON: Well, cocaine is an illegal drug. And it gets a little tricky, because the A.D.A. does not protect a person who is currently engaging in the illegal use of drugs. However, what does that mean? It's a very tricky question. And what does recovery mean? How long has it been since the person has used? And what is the life situation? And most of the time, the A.D.A. decides on a case-by-case basis, because people's lives are very different. And takes into consideration where the person is at in the process of recovery. And is there currently an ongoing problem?

So a lot of questions come to bare and has to be answered. But it's always on a case-by-case basis.

>> SAMSON TEKLEMARIAM: Next question is more about history, putting things in context. Until 1996, SSI, supplemental Social Security was covered addiction as a disability. Suddenly in 1997, it seemed as though SSI dropped addiction as disability. Why has this happened and what impact has that had on the A.D.A.?

>> CHARLOTTE LANVERS: Oce are not SSI or SSA or SSDI experts. We're saying that the definitions of disability and addiction are not necessarily the same under

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the A.D.A. and the Social Security Act. So we cannot answer that. But I think there is an answer out there. And it's important to keep keep in mind that the definitions aren't the same. One is attempting to ascertain a functional limitation more so. And the A.D.A. is more from the perspective of a Civil Rights law. So it's kind of apples and oranges is my answer.

>> OCE HARRISON: Yeah, I would agree with Charlotte. There are hundreds of definitions of disability, depending on which agency you're talking with. Whether it's SSI, vocational rehabilitation has a definition of disability or the A.D.A. So you have to get down to what is their definition and why did they stop covering addiction as you say?

>> SAMSON TEKLEMARIAM: So Oce, this is from someone from New England. What is your understanding of Vermont state marijuana laws and disabilities? If legal, does the state override the Federal law in these scenarios? Or is it the opposite?

>> OCE HARRISON: It's not matter of overriding. The A.D.A. basically does not see marijuana as legal. It's illegal. And then there's the state law that says, oh, well, marijuana is legal in the state. How it's legal and to what extent it's legal, and you would have to really get a copy of that law and Google it. I'm sure it will be on the website. I don't know the ins and outs of the Vermont state law although I'm a New Englander.

>> CHARLOTTE LANVERS: I think it it's important for people on the call to understand that federal A.D.A. protections go out the window when individuals are using medically prescribed marijuana. So to the extent that they're able to avail themselves of other states Civil Rights laws, I don't know, I think that would vary depending on the state. But the A.D.A. protections that we have talked about today would not apply to those individuals, the control substances act also prohibits medical marijuana.

>> SAMSON TEKLEMARIAM: Charlotte and Oce, thank you so much for your valuable expertise and time. And everyone you see Charlotte and Oce's contact information on this slide. You also see it on the slide deck that you can print out, three slides per page which is on our website and on the handouts tab of the GoToWebinar control panel. If you're wondering about your CE quiz for this webinar or how to access

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the recording after the live event, well, every NAADAC webinar has its own page that houses everything you need to know about that particular webinar.

So immediately following the live event, you'll find the online CE quiz on the exact same website you use to register for this webinar. So, for example, for this webinar it's www.NAADAC.org/ada-sud-eliminating-barriers-webinar.

Here's the schedule for our upcoming webinars. Please tune in if you can. There's some really interesting topics with great presenters. For example, as you can see in June, we're really fortunate to welcome Dr. Sherra Watkins on June 10, presenting on "Substance use disorder in the African-American community" and Dr. Cardwell C Nuckols sharing his latest research and neuroscience on addiction recovery. The unbearable heaviness of loneliness on Friday June 12, 2020.

You can learn more by going to www.NAADAC.org/webinars. Please visit our COVID-19 resources page. The website is on my slide here and being sent to you in the chat box now. NAADAC, the Association for Addiction Professionals provided to you 6 excellent free webinars covering top concerns in the addiction profession. And presenting by leading experts in the field. Again, you can go to www.NAADAC.org/COVID-19-resources to access these 6 free webinars. And currently, NAADAC is also offering two specialty online training series. You can visit www.NAADAC.org/clinical-supervision-online-training-series for more information on this exclusive content. The second series is addiction treatment in military and Veteran culture. If you're interested in providing targeted treatment or you have been providing specialized treatment and counseling services to those who are in the military affiliated population Service members, Veterans, and/or their families, please make sure to take a look at this specialty online training series. Targeted to give you more information that is about this particular culture.

The series presented by Duane K.L. France, a license counselor, addiction treatment specialist, and retired combat Vet. You could find more information from our webpage you see at the bottom of the slide, www.naadac.org/military-Vet-training-webinar-series.

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As a NAADAC member, here's a quick review of all the benefits of being a member with us. If you join NAADAC, you have access to over 145 CEs through our free educational webinars. You will also receive our quarterly advances in addiction recovery magazine where each article is eligible for CEs as well. You'll be able to read a featured article from this most recent Spring 2020 edition directly from Dr. Oce Harrison. She wrote an article that is very similar to what this webinar, but even gave more scenarios, more examples, and information that you can learn about the A.D.A. and substance use disorders. Please note also that a short survey will pop up at the end. Please take some time to give us feedback. Share any notes have you for the presenters and tell us how we can improve your learning experience. Thank you, again, for participating in this webinar. Oce and Charlotte, thank you for your valuable expertise. I encourage you all to take some time to browse our website and learn how NAADAC helps others. You can stay connected with us on LinkedIn, Facebook, or Twitter. Have a great day, everyone!