

Legal Issues related to OUD Treatment

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Overview/Disclaimers

- ▶ **DISCLAIMERS**
 - ▶ NOT LEGAL ADVICE
 - ▶ Meant to be “quick-hitters” on variety of topics
 - ▶ Will not cover DATA Waiver issues—see previous presentation
 - ▶ Will also not cover HIPAA/Healthcare privacy issues—too complex for short didactic
- ▶ **Overview**
 - ▶ Discrimination/Civil Rights
 - ▶ Drug Courts/Criminal Justice
 - ▶ Social Security Disability
 - ▶ Family Law/DCS
 - ▶ Expungements/Specialized Driving Priveleges
 - ▶ Advance Directives

Discrimination/Civil Rights of SUD patients

- ▶ Two components
 - ▶ “Discrimination”
 - ▶ Adverse treatment because of protected class, including disability
 - ▶ “Reasonable Accommodation”
- ▶ SUD is a protected “disability” under civil rights laws (ADA/FHA) IF person is in active treatment AND “not currently engaging in illegal use of drugs”
 - ▶ What “currently” means is unclear
 - ▶ Note: Healthcare providers generally cannot discriminate on the basis of current use of illegal drugs
 - ▶ Employers/landlords (and many others) cannot take adverse actions on the basis of the disability
- ▶ Can an employer require disclosure of prescriptions/medical treatment?
 - ▶ Before job offer, no, unless it is directly related to job duties
 - ▶ After job offer, but before employment, yes, but only if the same inquiries are made of all employees
 - ▶ Once someone is working, only if job-related and “consistent with business necessity”

Discrimination/Civil Rights of SUD patients

- ▶ FMLA applies to substance abuse treatment, but be careful of pretextual adverse actions
- ▶ Specific MAT issues:
 - ▶ Reasonable Accommodation from Employer to participate in NTP
 - ▶ Recovery Homes prohibiting MAT
 - ▶ Unwilling vs. not-equipped
 - ▶ Professional Licenses (including Nursing)
 - ▶ Outright rule banning probably violates ADA, but as far as can be ascertained IN does not allow MAT patients to obtain/maintain license
 - ▶ Area for advocacy/policy change
 - ▶ Other licenses vary
 - ▶ CDL license holders cannot be on methadone
- ▶ In general with discrimination claims—major proof/evidence issues

Drug Courts/Criminal Justice System

- ▶ In theory, drug courts are meant to be less punitive and encourage treatment
- ▶ In practice, completely dependent on judge/prosecutor
- ▶ “diversion” program—diversion from more serious/traditional punishments
 - ▶ Considered a “privilege”
- ▶ Best practice: “Sanction schedule”
 - ▶ Graduated sanctions for missing treatment or failed drug test, eventually resulting in jail time
 - ▶ Ultimately is up to the judge
- ▶ Much more serious: Failure to Appear for Court dates

Drug Courts/Criminal Justice System (cont.)

- ▶ DUI risks
 - ▶ Methadone: Yes, but it is a defense if it was prescribed and done under appropriate supervision
 - ▶ Buprenorphine/Naltrexone: No
- ▶ Providers are strongly encouraged to educate and participate with local drug courts

Social Security Disability

- ▶ Basic Eligibility: disability substantially impairs you from working
- ▶ Addictions are not considered in this context
- ▶ To get disability with addictions, must show that, even if there was no addiction, other disabilities would prevent work
 - ▶ Really important role for providers to explain interactions between addictions and other medical conditions, especially co-occurring mental illness
 - ▶ Medical records usually aren't enough

Family Law/DCS

- ▶ Indiana DCS is overwhelmed, in large part due to OUD
 - ▶ Quality/attitudes vary greatly by caseworker
 - ▶ Real role for providers to explain nature/course of treatment to DCS and CHINS court
 - ▶ Attitudes towards MAT vary greatly
- ▶ Other family law issues
 - ▶ Busting the myth of the “notarized statement”
 - ▶ Only court order can change custody/child support
 - ▶ Common situation: both parents are individuals with SUD, one enters recovery and assumes primary care of the child, but parties never formally changes custody
 - ▶ Standby guardianship/third party POA
 - ▶ Grandparents taking over custody (BIG issue)
 - ▶ Child Support—arguably the #1 civil legal re-entry barrier

Expungements/Drivers License Suspensions

- ▶ Expungements: after certain period has passed, can apply to have record expunged
 - ▶ Generally, 5 years if only misdemeanors and 8 years if there are any felonies
 - ▶ Effect: person should be treated as if they were never convicted
- ▶ Specialized Driving Privileges
 - ▶ For any reason, including multiple OWIs, HTV, Child Support, Failure to provide insurance, etc
 - ▶ Can be as restrictive as court wants (certain hours, only to work and back, etc) or without restrictions
 - ▶ Completely up to the court—evidence of treatment compliance is key
 - ▶ Important: no SDP if suspension was based on refusal to take chemical test

Advance Directives for SUD: a new frontier?

- ▶ Generally: POA, Healthcare POA, Living Will
- ▶ Psychiatric Advance Directives
 - ▶ Instructive PAD: gives instructions about the specific mental health treatment a person wants should he or she experience a psychiatric crisis
 - ▶ Wishes can be overridden for health or practical reasons
 - ▶ Proxy PAD: names a healthcare proxy or agent to make treatment decisions
- ▶ Advance directives for substance use
 - ▶ Not codified anywhere
 - ▶ Being studied by FL legislature
 - ▶ Could be a useful tool, some ideas for provisions:
 - ▶ Proxies
 - ▶ Individuals that hinder or negatively impact recovery
 - ▶ Brand new area—open for examination and creativity

Final Thoughts

- ▶ Your role as a provider
 - ▶ You are in the best position to advocate and educate for patients
 - ▶ Anytime a patient is treated in any way other than an individual with a chronic medical condition, you can step in
- ▶ Medical-Legal Partnership Model
 - ▶ Embeds attorneys as part of treatment team to include legal services as a recovery support service
 - ▶ SUD MLP is in nascent stage
 - ▶ More info: <http://medical-legalpartnership.org/mlp-resources/opioid-crisis-brief/>