

# ATTORNEY'S GUIDE ADDICTION MEDICATION AND YOUR CLIENT



**C**riminal justice and child welfare agencies sometimes require people to stop taking prescribed medication to treat opioid addiction. Often, they do this because they misunderstand the nature of opioid addiction and its effective treatment. The consequences can be devastating, including relapse, overdose, and increased risk of communicable disease. This guide provides **answers to frequently asked questions** about medication-assisted treatment (MAT) for opioid addiction. It also offers **strategies for attorneys** to use so that pursuit of a favorable court outcome does not jeopardize their clients' health and safety.

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## What is medication-assisted treatment (MAT)?

MAT is the use of medications, in combination with counseling and behavioral therapies, to treat addiction. MAT utilizes medication, such as methadone, buprenorphine, and injectable naltrexone, to stabilize brain chemistry, block the euphoric effects of opioids, relieve physiological cravings and normalize body functions. Numerous studies have shown that MAT reduces illicit drug use, disease rates, and criminal activity among opioid addicted individuals.

## Shouldn't people only be on MAT for a short period of time?

There is no one-size-fits-all duration for MAT. For some patients, MAT could be indefinite. According to the National Institute on Drug Abuse, addiction medication is an “essential component of an ongoing treatment plan,” with methadone maintenance recommended for a “minimum” of 12 months.

## What are the risks of forced taper?

Requiring people to stop taking their addiction medications is counter-productive and increases the risk of relapse. Because opiate tolerance fades rapidly, one episode of opioid misuse after detoxification can result in a life-threatening or deadly overdose.

## Doesn't MAT substitute one addiction for another?

No. Two of the three MAT medications are opioid-based, but are fundamentally different from short-acting opioids such as heroin and prescription painkillers. The latter go right to the brain, causing sedation and a “high.” But methadone and buprenorphine, when properly prescribed, reduce drug cravings and prevent relapse without a “high.” They help patients disengage from drug seeking and related criminal behavior and become more receptive to behavioral treatments. Injectable naltrexone is not opioid based and does not result in physical dependence.



## Why is it illegal to deny people MAT?

A federal court has ruled that denying access to methadone maintenance treatment in jail likely violates the Americans with Disabilities Act (ADA) and the Eighth Amendment's prohibition on cruel and unusual punishment. See *Pesce v Coppinger*, 2018 WL 6171881, \*7-8 (D. MA, Nov. 26, 2018). Any court, criminal justice agency or child welfare agency that denies access to MAT can violate the ADA for the same reasons. See "Treatment of Opioid Use Disorder" by the National Judicial Opioid Task Force (available at <https://www.ncsc.org/-/media/Files/PDF/Topics/Opioids-and-the-Courts/NJOTF%20Resources/OD%20Tx%20Final.ashx>), the U.S. Department of Justice letter explaining why courts that disallow MAT as a condition of child custody and visitation may violate the ADA (available at <https://lac.org/department-of-justice-addresses-mat-discrimination/>), and *Legality of Denying Medication-Assisted Treatment in the Criminal Justice System* by the Legal Action Center (available at <https://lac.org/MAT-advocacy>).

## HOW CAN ATTORNEYS ADVOCATE FOR A CLIENT'S RIGHT TO MAT?

### Educate the Decision Maker

#### Provide educational materials.

Information about how MAT works, its effectiveness, and the dangers of forced taper are available in *Sample Letter to Court or Probation Advocating to Stay on Medication-Assisted Treatment* and *Medication-Assisted Treatment for Opioid Addiction: Myths and Facts*, available at [lac.org/MAT-advocacy](https://lac.org/MAT-advocacy).

#### Submit a letter from the treatment provider.

See the Legal Action Center's *Sample Treatment Provider Letter in Support of Medication-Assisted Treatment* at [lac.org/MAT-advocacy](https://lac.org/MAT-advocacy).

#### Have the treatment provider testify in court.

### Raise the Americans with Disabilities Act

Say -

Your client has the disability of opioid addiction and is protected by the Americans with Disabilities Act (ADA).



- If given the chance, add that your client’s addiction significantly limits his/her brain and neurological functioning and other life activities, such as the ability to care for him/herself, function in daily life, work, or learn, and that the court regards your client as having a disability.

### **The court (or probation)’s denial of access to MAT violates the ADA because:**

- It is not justified by objective medical evidence, and
- It is based on inaccurate assumptions about people with opioid addiction.

**Your client is entitled to a reasonable accommodation** of an exemption from the policy/practice prohibiting MAT (or from a broader practice that prohibits all prescribed controlled substances).

**If this is a child welfare case:** Cite the U.S. Department of Justice letter explaining why courts that prohibit MAT as a condition of child custody and visitation may violate the ADA; see letter at <https://lac.org/justice-dept-opioid-initiative-barriers-to-mat/>).

## **Raise Constitutional Due Process and Applicable State Laws**

Say -

**Prohibiting MAT violates Constitutional substantive due process rights**, which prevent the government from interfering in the fundamental right to control one’s own medical care.

**Prohibiting MAT may violate state laws.** In child welfare cases, it is not in the best interests of the child to deny parents access to effective medication. MAT prohibition may violate arbitrary/capricious and reasonableness standards in child welfare and criminal cases.

## **Call the Legal Action Center for Help**

Call the Legal Action Center at (212) 243-1313 or visit [lac.org/MAT-advocacy](http://lac.org/MAT-advocacy) for resources, including our report, research on MAT, sample letters, strategies for use of MAT in drug courts, and myths and facts sheet.