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July 20, 2022

Via First-Class Mail
Lonnie Oliver, Superintendent
Dr. Nicholas Longnecker, Medical Director
SCI Albion
10745 Route 18
Albion, PA 16475-0001

Re: Anthony Day (HQ-4005), Medication for Opioid Use Disorder

Dear Superintendent Oliver and Dr. Longnecker:

On behalf of the Pennsylvania Institutional Law Project (PILP), we are writing regarding Anthony Day, who has been incarcerated in the Pennsylvania Department of Corrections ("DOC") since 2005, and at SCI Albion since 2016. We urge to you take immediate action to prevent further harm and long-term injury to Mr. Day by providing him with agonist Medication for Opioid Use Disorder ("MOUD"), specifically buprenorphine in the form of Sublocade or Suboxone.

Mr. Day has struggled with drug use, including opioids, since he was a teenager, and it wreaked havoc on his life for many years. After being prescribed oxycodone for pain from a degenerative back injury, Mr. Day's opioid use disorder ("OUD") intensified and caused him to turn to illegal drugs. Mr. Day was hospitalized three times over a four-year period before his incarceration for overdoses. However, shortly before his incarceration, Mr. Day began taking buprenorphine in the form of Subutex, albeit without a prescription, and was able to maintain his sobriety. Recognizing that this medication was lifesaving for him, Mr. Day seeks to continue taking it.

Broad consensus in the medical and scientific communities, as well as the National Commission on Correctional Health Care (NCCHC) and the National Sheriffs' Association, is that MOUD is necessary to effectively treat OUD. The National Sheriff's Association and NCCHC have noted many benefits to providing MOUD in a carceral setting, including "stemming the cycle of arrest, incarceration, and release associated with substance use disorders (SUDs)," "contributing to the maintenance of a safe and secure facility for inmates and staff," "reducing costs," among other benefits.[1] They also state that the choice of medication "should be a shared decision between clinician and patient" and that providers "should consider the patient's preferences, past treatment

[1] The National Sheriff's Association and National Commission on Correctional Healthcare, *Jail-Based Medication-Assisted Treatment Promising Practices, Guidelines, and Resources For The Field* (Oct. 2018), https://www.sheriffs.org/publications/Jail-Based-MAT-PPG.pdf.

history, and treatment setting" when deciding on the appropriate treatment.[2] "Scientific evidence shows that MOUD, in particular agonist MOUD, reduces illicit drug use, overdose deaths, and crime. The U.S. Substance Abuse and Mental Health Services Administration (SAMHSA), a division of the federal Department of Health and Human Services, has concluded that "just as it is inadvisable to deny people with diabetes the medication they need to help manage their illness, it is also not sound medical practice to deny people with OUD access to FDA-approved medications for their illness."[3]

Mr. Day has repeatedly advocated for himself to receive MOUD while incarcerated including through the filing of several grievances over the past year and a half, as well as by submitting a request for a disability accommodation. After submitting a request to staff regarding the status of his disability accommodation request, Mr. Day was informed that you (Superintendent Oliver), had approved his request, only to later be denied by Central Office. We are aware that the DOC has now offered to provide Mr. Day with naltrexone in the form of Revia. However, this medication is not appropriate for Mr. Day for two reasons.

First, naltrexone may prevent someone from dying from an overdose, but it will not prevent the suffering caused by OUD in the form of cravings, difficulty sleeping, eating, concentrating, etc. There are two types of MOUD: agonists and antagonists. Agonist medications, including methadone and buprenorphine, work to relieve cravings and eliminate withdrawal symptoms without producing the euphoria associated with illicit drug use. Antagonist medications, including naltrexone, do not control withdrawal symptoms or cravings, and only prevent opioids from producing euphoria. The medical standard of care is the use of agonist MOUD.[4]

Second, naltrexone cannot be taken while any other opioid remains in the individual's system, including buprenorphine, and if done so could cause a person harm. Mr. Day's requests for MOUD are well-documented in his DOC records, including his most recent grievance explaining that agonist MOUD is necessary to treat his OUD. It is also well documented that during his incarceration, Mr. Day has self-medicated with Suboxone. However, instead of acknowledging that this medication is a necessary treatment for a chronic disease, the DOC has repeatedly punished Mr. Day for its use. Now, the DOC has offered him a treatment which it knows he cannot take without suffering through withdrawal.

PILP understands that the DOC has made significant progress on the issue of offering MOUD to incarcerated people since the initiation of a Vivitrol pilot program in 2014. However,

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[2] *Id.*

[3] SAMHSA, Medications for Opioid Use Disorder for Healthcare and Addiction Professionals, Patients, and Families, Treatment Improvement Protocol Tip 63, at ES-2 (2020), https://store.samhsa.gov/sites/default/files/SAMHSA_Digital_Download/PEP21-02-01-003.pdf (last visited Feb. 2, 2022).

[4] *See* Sarah E. Wakeman, et al., *Comparative Effectiveness of Different Treatment Pathways for Opioid Use Disorder*, JAMA Network Open (2020), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2760032; National Academies of Sciences, Engineering, and Medicine, *Medications for opioid use disorder save lives* (2019), https://nap.nationalacademies.org/read/25310.

the DOC's MOUD program is still woefully behind on the science, as it fails to offer agonist MOUD to everyone with OUD. While it is possible that Mr. Day may have violated a DOC policy, he would have done so only to ensure that he received necessary and critical medical care. In fact, research shows that Mr. Day's experience of using buprenorphine without a prescription is common, and that the vast majority of people who do so, use it to control the otherwise debilitating symptoms of their OUD, not to get high.[5] This research also demonstrates that as buprenorphine becomes more available legally, the less likely people are to seek it out illegally, suggesting that the best way to prevent an illicit buprenorphine market in prison is to provide more people the medication they need.[6] The DOC's MOUD policy leaves out many of those who need this life-saving medication, and ignores the reality of the situation within DOC facilities. As a result, Mr. Day's only option is to face punishment and withdrawal, only to potentially receive an ineffective medication.

While Mr. Day is in your custody, it is your duty to provide him with adequate medical care. It is well-settled law that the Eighth Amendment to the United States Constitution imposes a duty on jailers to ensure the safety and well-being of those whom they imprison.[7] This duty requires you to provide MOUD to those in custody diagnosed with opioid use disorder. "Where knowledge of the need for medical care is accompanied by the intentional refusal to provide that care," the Constitution is violated.[8]

Further, the denial of MOUD to Mr. Day implicates the DOC's obligations under the Americans with Disabilities Act ("ADA") and Rehabilitation Act ("RA"). The DOC is subject to Title II of the ADA and Section 504 of the RA,[9] which prohibit covered entities from precluding an individual with a disability from participating in a program, service or activity because of their disability and require them to provide "reasonable accommodations" to individuals with disabilities.[10] Mr. Day is unquestionably an individual with a disability for the purposes of ADA and RA and is entitled to their broad protections.[11] Denying Mr. Day MOUD and refusing to provide him with a reasonable accommodation, thus violates the ADA and RA. Here, a reasonable accommodation includes the provision of buprenorphine.

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[5] Zev Schuman-Olivier, et al., *Self-treatment: Illicit buprenorphine use by opioid-dependent treatment seekers*, 39 Journal of Substance Abuse Treatment 41 (2010), https://pubmed.ncbi.nlm.nih.gov/20434868/.

[6] *Id.*

[7] *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

[8] *Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004).

[9] *See Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998); *Geness v. Cox*, 902 F.3d 344, 361 (3d Cir. 2018); 29 U.S. § 794(b)(1)(A).

[10] *See* 42 U.S.C. § 12132; 29 U.S.C. § 794; *Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 287 (3d. Cir. 2019).

[11] *See e.g.*, *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 306 (3d Cir. 1999).

Several federal courts have now required facilities to provide this treatment and have found that the failure to do so likely violates the ADA and Constitution.[12] Your failure to provide Mr. Day with agonist MOUD has already caused him to experience symptoms of painful withdrawal and to face unwarranted punishment, and your continued denial exposes him to an unacceptable risk of even greater harm. We therefore urge you to immediately provide buprenorphine to Mr. Day.

Given the seriousness of these issues, please respond in writing by August 3, 2022. In your response, please explain in detail how you will address the concerns we have raised here and whether you intend to ensure that Mr. Day has access to this medically-necessary prescription.

The Pennsylvania Institutional Law Project (PILP) is a legal aid organization dedicated to representing incarcerated and institutionalized persons regarding their civil rights and other civil claims through litigation and advocacy. We seek to ensure the health, safety, and humane treatment of incarcerated individuals throughout Pennsylvania.

If you do not agree to take immediate steps to remedy the denial of buprenorphine for Mr. Day, or if we do not receive a response by the appointed time, we may seek relief in federal court. If you would like to discuss this further you can reach Sarah Bleiberg Bellos at sbellos@pailp.org or by phone at 215-925-2966.

Thank you for your attention to this matter.

Sincerely,

Sarah B Bellos

Sarah Bleiberg Bellos
Attorney

Su Ming Yeh
Executive Director

[12] *P.G. v. Jefferson Cty.*, No. 21-388, 2021 U.S. Dist. LEXIS 170593 (N.D.N.Y. Sept. 7, 2021); *Smith v. Aroostook Cty.*, 376 F. Supp. 146, 160-62 (D. Me 2019) (granting motion for preliminary injunction under the ADA when jail refused to provide plaintiff with buprenorphine "without regard to her medical needs and without any true justification"); *Pesce v. Coppinger*, 355 F. Supp. 3d 35, 47-48 (D. Mass. 2018) (granting motion for preliminary injunction because a blanket policy denying prescribed methadone treatment was likely to violate both the ADA and Eighth Amendment). See also *Strickland v. Delaware Cty.*, No. 21-4141, 2022 U.S. Dist. LEXIS 71347 (E.D. Pa. April 19, 2022) (motion to dismiss Fourteenth Amendment and ADA claims denied where Plaintiff alleged that he "asked for medically accepted treatment and was denied pursuant to an official policy").

CC: Timothy Holmes (via e-mail)
Chase DeFelice (via e-mail)
Steven Seitchik (via e-mail)